

WE WILL NOW PROCEED TO THE SECOND CASE ON TODAY'S DOCKET, SANCHEZ VERSUS MIAMI-DADE COUNTY.

>> MAY IT PLEASE THE COURT, I AM THE COUNCIL FOR CHRISTOPHER SANCHEZ ALONG WITH STEPHANIE GRAVES.

THIS IS A CASE WHERE THE COUNTY'S NEGLIGENT FAILURE TO MANAGE ITS PROPERTY FOR SPECIAL EVENT RESULTED IN A LARGE TEENAGE PARTY AT NIGHT AFTER HOURS WITH LOUD DJ MUSIC AND A HIGH CRIME AREA.

>> I WANT TO GET SOME CLARITY HERE AND MAKE SURE I UNDERSTAND WHAT YOU ARE ARGUING THAT THE COUNTY FAILED TO DO THAT IT HAD A DUTY TO DO.

I UNDERSTAND IT IS ABOUT SECURITY.

IF I UNDERSTAND WHAT YOU ARE SAYING YOU ARE NOT ARGUING THE COUNTY FAILED TO ALLOCATE POLICE RESOURCES TO PROVIDING SECURITY.

>> THAT IS ABSOLUTELY CORRECT. WE ARE NOT SAYING THEY SHOULD HAVE BROUGHT POLICE.

>> AM I CORRECT IN UNDERSTANDING YOU ARE ARGUING THAT THE COUNTY FAILED TO ENSURE THAT THE PERSON WHO RENTED THE PAVILION AT THE PARK FULFILLED THE AGREEMENT BY PROVIDING SECURITY FOR THE EVENT AS REQUIRED BY THE AGREEMENT.

THAT IS THE FAILURE OF THE COUNTY HERE.

>> THAT IS ONE OF THE FAILURES OF THE COUNTY.

>> WHAT IS THE OTHER FAILURE?

>> THERE WERE SEVERAL OTHERS. THE RECORD SHOWS AND THERE IS A SWORN STATEMENT FROM THE TEENAGER WHO RENTED THE PAVILION SAYING NOBODY EVER TOLD ME I NEEDED TO GET OFF

DUTY POLICEMAN SO THE FAILURE TO INFORM THAT IT WAS REQUIRED IS NEGLIGENCE.

FAILURE TO VERIFY THAT HE HAD COMPLIED.

>> ALL ABOUT THEIR FAILURE TO TAKE ACTION THAT INSURED THAT HE WOULD OBTAIN THE REQUIRED SECURITY.

I THINK ALL THE THINGS YOU DESCRIBE FALL INTO THAT CATEGORY.

>> THEY CERTAINLY ARE TIED TOGETHER, NO DOUBT ABOUT IT. BUT WHAT WE ARE SEEING IS THE NEGLIGENT FAILURE TO MANAGE THIS EVENT CAUSED THE FACT THAT THERE ARE NO OFF-DUTY POLICE.

>> LET ME CONCLUDE WITH THIS. THOSE THINGS YOU TALKED ABOUT HERE.

DID YOU ARGUE THOSE IN THE DISTRICT COURT.

IS THAT YOUR ARGUMENT?

THE DISTRICT COURT SAYS IT WASN'T IF I UNDERSTAND THE DISTRICT COURT CORRECTLY.

>> THAT IS WHAT THE MAJORITY OPINION TALKS ABOUT BUT IT IS CLEAR THE WE ARGUED IT. JUDGE SALTER UNDERSTOOD.

>> I WOULD RATHER LOOK AT YOUR INITIAL BRIEF IN THE DISTRICT COURT.

TELL ME WHERE THAT IS IN YOUR INITIAL BRIEF IN THE DISTRICT COURT.

>> IT IS IN AN APPENDIX THAT WAS FOLLOWED.

>> LET ME -

>> CANDIDLY I LOOKED THROUGH AND I COULD NOT FIND THAT ARGUMENT.

I FIND LOTS OF GENERAL TALK ABOUT THE LAW BUT I CANNOT FIND THIS ARGUMENT.

PERHAPS I OVERLOOKED IT AND THAT IS WHY WANT YOU TO HELP ME FIND IT.

I CAN'T FIND THIS ARGUMENT THAT

IS FOCUSED ON THE COUNTY'S
FAILURE TO MANAGE THE
PERFORMANCE OF THE PERSON WHO
RENTED THE FACILITY.

AND I THINK I AM NOT SEEING
THAT IN YOUR INITIAL BRIEF.

>> AND DECENT DOES NOT AN
INITIAL BRIEF MAKE.

IT HAS TO BE YOUR ARGUMENT.

>> LET'S GO TO THE SUMMARY OF
THE ARGUMENTS.

WE TALK ABOUT WHEN THE
GOVERNMENT UNDERTAKES TO
OPERATE A PARK IT MUST DO SO ON
A REASONABLY PRUDENT MANNER
JUST AS A PRIVATE INDIVIDUAL
UNDER CERTAIN CIRCUMSTANCES.
ONCE A GOVERNMENTAL ENTITY
BUILDER TAKES CONTROL OF
PROPERTY OR IMPROVEMENT IT HAS
THE SAME COMMON-LAW DUTY AS A
PRIVATE PERSON TO MAINTAIN AND
OPERATE THE PROPERTY.

>> YOU TALK ABOUT WHETHER THEY
NEGLIGENTLY FAILED TO PROVIDE
ADEQUATE SECURITY, THAT IS
SUGGESTING THE COUNTY HAD A
DIRECT OBLIGATION TO PROVIDE
THE SECURITY.

NOT THAT THEY HAD AN OBLIGATION
TO MANAGE THIS CONTRACTUAL
RELATIONSHIP TO PROVIDE THE
SECURITY.

IS THAT THE BEST YOU COME UP
WITH?

>> KNOW, YOUR HONOR.

ON PAGE 16 OF THE BRIEF I
BELIEVE IT IS PAGE 28 OF THE
RECORD IT TALKS ABOUT HOW THE
COUNTY HAD ORDINARY PREMISES
LIABILITY DUTIES.

>> I'M ASKING SPECIFICALLY, NOT
WHAT YOU ARE SPECIFICALLY
ARGUING HERE WHICH IS THE
COUNTY HAD THIS OBLIGATION TO
MANAGE THE PERFORMANCE OF THE
PERSON WHO RENTED THE FACILITY.

>> THIS HAS BEEN OUR POSITION
AT EVERY LEVEL.

IT WAS OUR POSITION.

>> I UNDERSTAND YOU SAYING THAT AND THAT IS YOUR POSITION YOU ARE TAKING.

I'M ASKING WHERE IS IT IN THE INITIAL BRIEF IN THE DISTRICT COURT?

AND I'M NOT GOING TO KEEP AT THIS BUT THAT IS MY QUESTION.

>> ALL RIGHT, YOUR HONOR.

THE THRUST OF THE INITIAL BRIEF ESPECIALLY IF YOU LOOK AT THE FACTS DEVELOPED IN THEIR IT IS ALL ABOUT HOW THE COUNTY DID NOT INSURE AND VERIFY THAT THE TEENAGER BROUGHT THE REQUIRED SECURITY.

IT IS THE FOCUS OF ALL OF THE FACTS, YOUR HONOR, THE ARGUMENT WE MADE IN THE BRIEF AND IN THE ORAL ARGUMENT HAVE BEEN THE SAME.

IN THE TRIAL COURT, THE COUNTY UNDERSTOOD WHAT OUR ARGUMENT WAS.

IF YOU LOOK AT THEIR JURY INSTRUCTIONS ON PAGE - RECORD 287.

291.

AND 401 AND 401-18, IT TALKS ABOUT THE ISSUE IS WHETHER THE COUNTY WAS NEGLIGENT IN THE OPERATION OF THE PARK.

>> IF YOU ARE NOT TALKING ABOUT THE SECURITY, DOESN'T IT TAKE AWAY THE CONFLICT WITH THE WOODSON CASE?

>> KNOW, YOUR HONOR,

I THINK THERE IS STILL A CONFLICT WITH THE WOODSON CASE BECAUSE IN THE WOODSON CASE, THERE WAS AN AUTHORIZED GATHERING OF TEENAGERS WHERE THERE WAS LIABILITY AND HERE, IT WAS AUTHORIZED.

THE COUNTY CAN'T EVEN CLAIM WE DON'T KNOW THESE PEOPLE WERE GOING TO SHOW UP.

>> IF I READ THE WOULDSON CASE, THE CITY BREACHED ITS DUTY BY FAILING TO PROVIDE ADEQUATE

SECURITY FOR THE TEEN DANCE
WHEN THE CITY KNEW FROM PAST
EXPERIENCE THAT STANCES WERE
DANGEROUS EVENTS.

YOU ARE SAYING YOUR CASES AND
NOTWITHSTANDING THE THIRD DCA,
YOU ARE SAYING IT IS NOT
NEGLIGENT SECURITY, SO WHERE --
THERE'S NO WAY WE WOULD KNOW
THAT THAT HAD ANYTHING TO DO
WITH THE KINDS OF THINGS YOU
ARE SEEING ARE NEGLIGENT.

>> I THINK YOU ARE RIGHT.
THE WOODSON CASE IS RELATIVELY
BRIEF.

WHAT THE WOODSON CASE DOES SAY
IS NEGLIGENT FAILURE TO OPERATE
THE PREMISES AND THAT IS WHAT I
WAS TRYING TO POINT OUT.

WHAT OUR INITIAL BRIEF IN THE
DISTRICT COURT ALSO TALKS ABOUT
HIS FAILURE TO OPERATE THE
PREMISES CORRECTLY AND THAT IS
WHAT WE HAVE HERE.

OF THE PREMISES HAD BEEN
OPERATED CORRECTLY, THERE WOULD
HAVE BEEN THE OFF-DUTY OFFICERS
AND ALL THE EVIDENCE ALTHOUGH
IT WAS STRICKEN BUT SHOULDN'T
HAVE BEEN STRICKEN WE DON'T
BELIEVE WAS THE SITUATION MAY
-- MADE THIS KIND OF EVENT,
THIS KIND OF SHOOTING
FORESEEABLE AND PREVENTABLE AND
THIS IS A SUMMARY JUDGMENT, THE
PLAINTIFF OR NONMOVING PART IS
ENTITLED TO THE INFERENCES AND
WE RECEIVE THIS CASE.

WHAT I WOULD LIKE TO POINT OUT
IS IT IS CRITICALLY IMPORTANT
THE TEENAGER WHO RENTED THE
PAVILION, NOBODY TOLD ME ABOUT
THIS.

IF YOU'RE NOT TOLD ABOUT THE
REQUIREMENT TO GIVE THE
OFF-DUTY POLICEMAN NOW, HOW
WHAT I KNOW?

WE ARE NOT QUESTIONING THE
FUNDAMENTAL DECISION TO PROVIDE
SECURITY ARE NOT PROVIDE

SECURITY OR NOT QUESTIONING THE
FUNDAMENTAL DECISION TO RENT
THE PAVILION OR NOT RENT THE
PAVILION ARE TALKING HOW THE
RENTAL WAS MANAGED AND IT WAS
MANAGED NEGLIGENTLY.

>> YOUR POSITION ABSENT THIS
CONTRACT, CONTRACTUAL
RELATIONSHIP, SAY THERE HAD
JUST BEEN A PRACTICE OF HAVING
PEOPLE COME IN AND SIGN UP, TO
GET ACCESS TO THE PAVILION,
NOTHING MORE THAN THAT AND THEN
THINGS HAPPEN JUST LIKE THEY
DID SUBSEQUENTLY.

>> I DON'T KNOW ABOUT THAT BUT
THOSE ARE NOT THE FACT WE HAVE
HERE.

WHAT WE HAVE IS THE COUNTY NEW,
WE KNOW THE COUNTY NEW THIS WAS
FORESEEABLE AND THAT IS WHY
THEY HAD REQUIREMENT FOR
OFF-DUTY POLICE OFFICERS TO BE
AT AN EVENT LIKE THIS AND THERE
IS A FORESEEABLE ZONE OF RISK.

>> THAT IS CERTAINLY NOT TRUE
WITH RESPECT TO ENFORCEMENT OF
THE LAWS AND THE POLICE KNOW
THERE'S A PROBLEM IN A
PARTICULAR NEIGHBORHOOD AND
THEY ARE NOT GOING TO BE HELD
LIABLE FOR FAILING TO GO THERE.

>> YES, AND THAT IS WHERE THE
CASE INSTRUCTS US BUT WE GO
HERE, THIS IS CLEARLY
CATEGORY 3 FUNCTION DEALING
WITH THE MAINTENANCE AND
CONTROL OVER PROPERTY.

>> BY THIS ARGUMENT ABOUT NOT
FORCING THE RULES AND
REGULATIONS IT IS ALMOST LIKE
YOU'RE MAKING A CATEGORY ONE OR
2 CASE.

>> KNOW, YOUR HONOR.
WE ARE NOT QUESTIONING THE
FUNDAMENTAL IDEA OF RENTING THE
PAVILION ARE HOLDING THE EVENT
OR EVEN ALLOCATING POLICE
OFFICERS.

THEY DECIDED TO OPERATE THE

PAVILION THIS WAY AND HAVE THE SAME DUTY.

IT IS ORDINARY PRIVATE PERSON UNDER THE SAME CIRCUMSTANCES.

>> WHY WOULDN'T IT BE REASONABLE TO LOOK AT THIS AS A PERMITTING DECISION?

THERE ARE SOME PERMITS FREQUENTLY INVOLVING COMPENSATION FOR THE PERMIT, AND A PERMIT CONDITION AND THE ISSUE IS WHETHER THE CITY POLICE THE PERMIT CONDITIONS THAT WERE PROVIDED BY THE PERMIT TO HAVE ACCESS TO THIS PROPERTY?

WHY ISN'T THAT A SENSIBLE WAY AND THE MOST REALISTIC WAY OF LOOKING AT WHAT IS GOING ON HERE?

>> BECAUSE WHAT WE ARE DEALING WITH HERE ARE THE SECONDARY DECISIONS THE COUNTY MADE IMPLEMENTING A POLICY.

WE ARE NOT TALKING ABOUT PERMITTING, WE ARE TALKING HOW THEY DIDN'T DO THESE THINGS THAT THE ZONE MANAGER OF THE PARK SAYS EVERYONE KNEW THIS. BUT APPARENTLY THEY DIDN'T LOSE THEY HAD A NEW PARK MANAGER, SHE APPARENTLY DID NOT KNOW ALL THE RULES.

THE ZONE MANAGER SAID THE PARK EMPLOYEE IN ATTENDANCE SHOULD HAVE KNOWN THE RULE BUT APPARENTLY HE DIDN'T KNOW THE RULE.

>> HE WAS THE GUY WHO POLICED THE TRASH CANS AND BATHROOMS. HOW COULD YOU HOLD HIM TO THAT RESPONSIBILITY?

>> THE POINT IS THE ZONE MANAGER SAID EVERYONE SHOULD KNOW THIS NEEDED TO BE DONE. EVERYONE SHOULD KNOW THIS WAS REQUIRED AND GET IT WASN'T AND THERE IS EVIDENCE OF NEGLIGENCE HERE.

ON A SUMMARY JUDGMENT WE ARE

ENTITLED TO LET THE JURY DECIDE
THAT ISSUE OF NEGLIGENCE.
NO QUESTIONS, I WILL SAVE THE
REST FOR REBUTTAL.

>> GOOD MORNING AND MAY IT
PLEASE THE COURT.

MY NAME IS JONI MOSELY.
I ASKED THE COURT TO AFFIRM THE
DECISION OF THEIR DISTRICT
COURT OF APPEALS ON THE BASIS
THAT THE COUNTY IS SOVEREIGNLY
IMMUNE FROM LIABILITY IN THIS
CASE BUT ALSO FOR THE
ADDITIONAL REASON THAT THE
COUNTY DID NOT OWE SANCHEZ THE
DUTY OF CARE.

THIS COURT ACCEPTED
JURISDICTION OVER THIS MATTER
BASED ON A CONFLICT BETWEEN THE
DECISION BELOW AND THE WOULDSON
DECISION IN THE FOURTH DISTRICT
COURT OF APPEALS.

WOULDSON IS NO LONGER GOOD LAW
AS THE OPINION CONFLATES DUTY
AND SOVEREIGN IMMUNITY AND THAT
IS A PRACTICE THIS COURT
CONDEMNED IN WALLACE VERSUS
DEAN.

FOR A VERY LONG TIME AS EARLY
AS 1989 THIS COURT HAS BEEN
CLEAR.

>> YOUR POSITION IS THERE MAY
BE A TECHNICAL CONFLICT BUT NOT
A LOT OF CONFLICT.

AS EARLY AS 1989 THIS COURT HAS
INSTRUCTED THE QUESTION OF DUTY
AND SOVEREIGN IMMUNITY OR TWO
THINGS WAS THE ISSUE OF
SOVEREIGN IMMUNITY DOESN'T
ARISE UNTIL THERE IS A COMMON
LAW DUTY SOUND.

THE COURT FOUND THE SAME THING
IN FLORIDA VERSUS HIGHWAY
PATROL.

THE WOODSON DECISION MAKES A
DECISION ABOUT DUTY.
AND THE NEXT WORD CONCLUDES THE
CITY DID NOT HAVE SOVEREIGN
IMMUNITY.

IT DOES NOT DO ANALYSIS OF

BOTH.

IN ADDITION TO THAT ISSUE THE WOODSON OPINION DOES NOT ANALYZE WHAT THE ACTUAL ALLEGATION OF NEGLIGENCE IS. IT FOCUSES INSTEAD ON WHERE THE NEGLIGENCE TAKES PLACE ON GOVERNMENT PROPERTY.

BASED ON THAT IT CONCLUDES THIS IS A CATEGORY 3 ANALYSIS.

BUT IN REALITY, IN THE WOODSON DECISION LIKE HERE, THE ALLEGATION OF NEGLIGENCE IS FAILURE TO PROVIDE SECURITY, PROTECTION OF THE PUBLIC AND IF WE LOOK AT THE MILL DECISION OF THIS COURT THIS COURT WARNED NOT TO TIE THE ALLEGATION OF NEGLIGENCE TO WHERE IT HAPPENED.

IN THE WOODS DECISION IT CAME TO THIS COURT BASED ON CONFLICT BETWEEN THE FIRST DISTRICT AND THE THIRD DISTRICT AND THE FIRST DISTRICT CASE INVOLVES SLIP AND FALLS OF COURTHOUSE. THE THIRD DCA CASE INVOLVED ALLEGATION OF NEGLIGENCE SECURITY AT THE COURTHOUSE. THIS COURT FOUND THAT THE THIRD DISTRICT CASE WHICH CONCLUDED THAT THERE WAS NO DUTY BECAUSE THE ALLEGATIONS STEMMING FROM OPERATION OF THE COURTHOUSE, THIS COURT CONCLUDED THAT WHILE THE RESULT WAS CORRECT AND THERE WAS NO DUTY OF CARE, THE WAY THE COURT GOT THERE WAS INCORRECT BECAUSE THE COURT, LIKE THE COURT DID AND WOULDSON TIED THE ALLEGATION OF NEGLIGENCE TO WHERE IT OCCURRED AND REALITY WHAT SHOULD HAVE HAPPENED IN THE THIRD DCA CASE THE MILL DECISION LOOKED AT, WHAT SHOULD HAVE HAPPENED IS THE COURT SHOULD HAVE FOUND THAT THERE WAS NO DUTY OF CARE BECAUSE THE ALLEGATION OF NEGLIGENCE SECURITY WASN'T

PROTECTION OF PUBLIC ISSUE
WHICH IS A TRAIN ON CATEGORY 2
ISSUE WHICH THE GOVERNMENT
WOULD HAVE NO DUTY FOR.

>> DOESN'T IT SEEM TO SUGGEST
JUDGE SCHWARTZ IN HIS
CONCURRENCE IN THE THIRD
DISTRICT OPINION AND BANK
OPINION GOT IT RIGHT?

>> IT DOES, YOUR HONOR, IT
DOES.

BASED ON THAT, THE COUNTY
ARGUES THIS IS A CATEGORY 2
CASE AND THE REASON WE ARGUE
THAT IS BASED ON THE ARGUMENTS
MADE BY PETITIONER THROUGHOUT
THE COURSE OF THIS LITIGATION
FROM THE TRIAL LEVEL TO THE
THIRD DISTRICT, THIS IS THE
CASE ABOUT NEGLIGENT SECURITY,
THIS IS BEEN A CASE ABOUT THE
COUNTY'S OPPOSED DUTY TO HAVE
OFF-DUTY POLICE OFFICERS AT THE
LOCATION FOR THIS PRIVATE PARTY
AND BECAUSE THAT HAS BEEN THE
ALLEGATION THROUGHOUT THE
COURSE OF THIS LITIGATION -

>> THIS IS A STRANGE CONCEPT OF
THE COUNTY HAVING OFF-DUTY
OFFICERS BECAUSE IN A WAY IF
THE COUNTY HAS BEEN THERE THEY
ARE ON DUTY.

>> EXACTLY.

THAT IS A DISTINCTION WITHOUT
DIFFERENCE AND IF WE LOOK AT
WHAT PLAINTIFF'S EXPERT HAD TO
SAY ABOUT THE POLICE FORCE AND
WHY THAT WAS NECESSARY, LET ME
GO BACK FOR A MINUTE.

FIRST OF ALL THERE WAS SECURITY
AT THIS PARTY.

THE PERSON WHO RENTED THE
PAVILION HAD TWO SECURITY
OFFICERS.

LIEUTENANT HOWARD TESTIFIED
THOSE SECURITY OFFICERS WOULD
NOT HAVE BEEN ENOUGH AND THE
ONLY APPROPRIATE MEASURE OF
SECURITY AT THIS PARTY WERE TWO
POLICE OFFICERS AND THE REASON

FOR THAT HE TESTIFIED IS
BECAUSE THEIR ABILITY TO MAKE
ARRESTS, THEIR ABILITY TO
SUMMON OTHER LAW ENFORCEMENT AS
BACKUP.

THINGS THAT ONLY POLICE
OFFICERS CAN DO.

WHAT PETITIONER IS ATTEMPTING
TO DO IS COUCHING THIS IN A
PREMISES LIABILITY CONTEXT, BUT
WHAT THIS IS IS FAILURE TO HAVE
POLICE OFFICERS AT A LOCATION,
FAILURE TO ENFORCE THE LAW AND
FAILURE TO PROTECT THE PUBLIC,
THAT IS WHAT THE ALLEGATION
REALLY IS.

TYING IT TO THE PROPERTY
CREATES A LOT OF ISSUES BECAUSE
WHAT YOU HAVE IS AN EROSION OF
PROTECTIONS FOR CATEGORY 2
FUNCTIONS AND CATEGORY ONE
FUNCTIONS OF GOVERNMENT
DEPENDING ON WHERE IT IS AND
QUITE OFTEN POLICE OFFICERS GO
TO PUBLIC SPACES SO THE
ARGUMENT IS THAT BECAUSE THE
COUNTY DIDN'T HAVE ENOUGH
POLICE OFFICERS IN THIS PUBLIC
SQUARE THE COUNTY IS NEGLIGENT.

>> YOUR BOUNCING AROUND FROM
THE DIFFERENT ISSUES INVOLVED.
DO YOU HAVE A PROBLEM WITH THE
WAY THE THIRD DCA LOOKED AT
THIS CASE.

THEY PUNTED ON ASSUMED DUTY,
WENT TO SOVEREIGN IMMUNITY AND
DID THE CATEGORY 3 ANALYSIS AND
PUT IT IN THE DISCRETIONARY
CATEGORY AND SAID THERE FOR YOU
WHEN.

ANY PROBLEM WITH THAT?

>> I BELIEVE THE DISTRICT COURT
WAS ABSOLUTELY POSITIVELY
CORRECT WITH IT SOVEREIGN
IMMUNITY ANALYSIS, BUT I DO
ARGUE THE DISTRICT COURT
PROBABLY PAST THE ISSUE OF DUTY
TOO QUICKLY BECAUSE THIS REALLY
IS EITHER A CATEGORY 2 UNDER
THAT OR IF WE LOOK AT THE

PETITIONER'S ARGUMENT TODAY IT WOULD BE CATEGORY ONE BUT I DON'T QUIBBLE WITH THE THIRD DISTRICT DECISION BECAUSE ULTIMATELY THE COUNTY PREVAILED AND THE COUNTY IS SOVEREIGNLY IMMUNE BUT IN THIS INSTANCE THE COUNTY DOES NOT HAVE A DUTY OF CARE.

>> HOLD ON.

YOU ARE OKAY THEN, DON'T HAVE A PROBLEM WITH SOVEREIGN IMMUNITY ANALYSIS, IF WE GO TO THE DUTY ISSUE HOW DO WE DEAL IF WE WANT TO LOOK AT IT YOUR WAY HOW DO WE DEAL WITH THE FACT THAT THIS IS A PARK THE COUNTY IS OPERATING IN SOME OF THE ARGUMENTS YOU ARE MAKING WOULD BE APPLICABLE IF YOU ARE TALKING ABOUT DUTY TO THE PUBLIC AT LARGE BUT WHEN TALKING ABOUT SPECIFIC CONTEXT OF A FACILITY THE COUNTY IS RESPONSIBLE FOR, WHAT IS YOUR ARGUMENT WHY WE SHOULD USE THIS AS AN OPPORTUNITY TO GET INTO THAT ISSUE?

>> IF WE LOOK AT THE MILLS CASE ALL THE ALLEGATIONS OF NEGLIGENCE HAPPENED ON COUNTY PROPERTY AT THE COUNTY COURTHOUSE BUT THE COURT INSTRUCTED WE HAVE TO LOOK AT WHAT THE ACTUAL ALLEGATION IS. WHAT WAS THE FAILURE AND BECAUSE THE FAILURE IS A WAS IN MILLS, THE FAILURE WAS PROTECTION OF THE PUBLIC SO THAT IS WHY IT IS A CATEGORY 2 ANALYSIS AS OPPOSED TO CATEGORY 3.

DESPITE THE FACT THAT IT HAPPENED ON COUNTY PROPERTY. THE PETITIONER CITES THE CASE, A LOT OF CASES.

I WANT TO TALK ABOUT AN IMPORTANT DISTINCTION BETWEEN THE CASE AND THE NEGLIGENCE SECURITY CASE.

IT DEALS WITH GOVERNMENT'S DUTY CONCERNING PUBLIC SWIMMING AREAS AND IT IS IMPORTANT WHEN WE LOOK AT THAT CASE, THIS COURT TALKED ABOUT COMMON-LAW DUTIES OF CARE THAT EXISTED PRIOR TO THE WAIVER OF SOVEREIGN IMMUNITY.

GOVERNMENT HAD A SPECIFIC DUTY OF CARE IS RELATED TO SWIMMING FACILITY IS RELATED TO HAVING LIFEGUARDS AT SWIMMING FACILITIES.

THAT ANALYSIS DOES NOT APPLY TO NEGLIGENT SECURITY CASES BECAUSE THAT IS A VERY SPECIFIC COMMON-LAW DUTY.

THEN THERE ARE DUTIES OF CARE THAT EXISTED PRIOR TO SOVEREIGN IMMUNITY.

THE DUTY OF CARE FOR SWIMMING FACILITY IS ONE OF THEM.

THE DUTY TO PROTECT THE PUBLIC, THERE HAS NEVER BEEN A DUTY OF CARE AND OTHER DECISIONS THAT PREDATE THE WAIVER OF SOVEREIGN IMMUNITY.

WHAT SEEMS TO BE HAPPENING IN TERMS OF PETITIONER'S ARGUMENT, IN TERMS OF THE OTHER DECISIONS WE HAVE, THEY ARE TAKING THE LANGUAGE OF ALIMONY AND FORGETTING THAT OPINION IS VERY SPECIFIC TO THE DUTY OF CARE AS RELATES TO POOLS AND IF YOU LOOK AT HOW THIS COURT INTERPRETED THE DUTY OF CARE AS RELATES TO POOLS, LOOKING AT SWIMMING FACILITIES -

>> ARE TO INTERRUPT BUT CAN WE BACKUP A SECOND?

IS THERE ANY REASON THE THIRD DCA DECIDED THE CASE ON SOVEREIGN IMMUNITY GROUNDS, THE OPINION THEY INCORPORATED COMPLETELY PERMANENT ON DUTY AND THIS THIRD DCA THAT IS UNDER REVIEW DOESN'T ANALYZE, THEY SAY IT IS NOT A DUTY CASE WHERE THEY ASSUME THERE IS A

DUTY OR BYPASS THE ISSUE.
IF WE ARE WRITING FOR THE
FUTURE, WHAT IS THE PROBLEM
WITH THE SOVEREIGN IMMUNITY
ANALYSIS IF ANY THAT THE THIRD
DCA ADOPTED HERE?

I DON'T UNDERSTAND WHY WE ARE
GETTING INTO SWIMMING POOLS AND
ALL THAT STUFF.

WHY YOU WOULD WANT TO ENCOURAGE
THIS TO GO DOWN THAT PATH
UNLESS THERE IS SOME PROBLEM
FROM YOUR PERSPECTIVE WITH THE
SOVEREIGN IMMUNITY ANALYSIS
THAT IS THERE SO I WANT TO MAKE
SURE IF YOU DO THINK THERE'S A
PROBLEM THAT WE UNDERSTAND WHAT
IT IS.

>> KNOW, THERE'S NO PROBLEM
WITH SOVEREIGN IMMUNITY
ANALYSIS.

>> ARE YOU PROVIDING US AN
ARGUMENT TO AN ALTERNATIVE
REASON TO RULE FOR YOU ON THE
ISSUE OF DUTY IF WE WERE NOT TO
FIND FOR YOU IN SOVEREIGN
IMMUNITY?

>> PRECISELY RIGHT.
I'M RESPONDING TO PETITIONER'S
ARGUMENT.

A PETITIONER IS ARGUING DUTY
AND BASED ON THE EXISTENCE OF
DUTY SAYING THERE IS NO
SOVEREIGN IMMUNITY.

BUT YES, YOUR HONOR.

I THINK THE THIRD DCA
ABSOLUTELY GOT THE CASE RIGHT
ON THE ISSUE OF SOVEREIGN
IMMUNITY BUT THE ALTERNATIVE
BASED ON THE FACTUAL SCENARIO
AND ALLEGATIONS HERE THE COUNTY
TAKES THE POSITION THAT THERE
WAS NO DUTY OF CARE BUT THIS IS
A TIPSY COACHMAN ARGUMENT IN
THE DUTY ANALYSIS COMES FIRST.
WHEN YOU LOOK AT THESE THINGS
I'M ARGUING DUTY FIRST.

BUT TURNING, ACTUALLY, GETTING
BACK TO WHY THOSE CASES DON'T
APPLY, THOSE CASES THAT ARE

INTERPRETING ALIMONY, BECAUSE THOSE ARE SPECIFIC SWIMMING POOLS THE COURT SAID BECAUSE GOVERNMENT UNDERTOOK TO OPERATE A SWIMMING POOL OR SWIMMING AREA IT HAD A DUTY OF CARE. BUT BECAUSE OF ALL THE CASES THAT DISSENT FROM ALIMONY ARE SPECIFIC ASSUMING AREAS, YOU CAN FIND THAT ANALYSIS HERE. THE ANALYSIS THAT NEEDS TO BE APPLIED IS LOOKING AND DETERMINING WHETHER THIS IS A CATEGORY TO WHICH IT IS BECAUSE WE ARE TALKING LAW ENFORCEMENT AND PROTECTION OF THE PUBLIC AND IF YOU LOOK AT IT THAT WAY AND GO ON AND DO A SOVEREIGN IMMUNITY ANALYSIS THERE IS NO DUTY AND THERE IS ALSO, WE ARE ALSO PROTECTED BY SOVEREIGN IMMUNITY.

THE DECISION TO PLACE LAW ENFORCEMENT IN A PARTICULAR LOCATION IS A GOVERNMENT PLANNING LEVEL DECISION. IT IS SOMETHING THAT INVOLVES THE COUNTY'S DETERMINATION ABOUT THE USE OF ITS RESOURCES AND ITS DETERMINATION ABOUT WHERE IT'S LAW ENFORCEMENT FORCES ARE MOST NEEDED AND THAT IS TRUE WHEN IT COMES TO POLICE FORCES AND ALSO WHEN IT COMES TO PARK RANGERS.

THIS PARTICULAR PARK WAS ESSENTIALLY AN UNMANNED PARK IN THE COUNTY MADE THE DECISION NOT TO HAVE SECURITY OFFICERS THERE AND DID NOT UNDERTAKE TO PROTECT THE PUBLIC AT THAT PARTICULAR LOCATION.

THE COUNTY ACTION IS VERY SPECIFIC ABOUT NOT UNDERTAKING THE DUTY.

>> A TANGENTIAL QUESTION. ARE YOU AWARE OF ANY CASES LOOKING BACK AT THE DUTY WHERE A PRIVATE LANDOWNER LIKE A NIGHTCLUB OR SOMETHING LIKE

THAT IS FOUND TO HAVE BREACHED
THE DUTY BY THIS THEORY NOT
HAVING OFF-DUTY POLICE
OFFICERS, HAVING SOME OTHER
TYPE OF SECURITY?

>> I AM SORRY, YOUR HONOR.

AM I AWARE ---

>> JUST AS A LANDOWNER, FORGET
AS THE GOVERNMENTAL ENTITY, THE
LANDOWNER SHOULD HAVE HAD
OFF-DUTY POLICE OFFICERS IF
THAT WAS THE ONLY TYPE OF
SECURITY THAT WAS SUFFICIENT.
ARE THERE ANY CASES ANYWHERE IN
THE COUNTRY THAT FOLLOW THAT
THEORY AND FIND THAT YOU ARE
AWARE OF THAT, LIKE A NIGHTCLUB
OR ANY PRIVATE LANDOWNER THAT
HAS A LOT OF PEOPLE FOR A
FESTIVE EVENT HAS TO HAVE
PRIVATE OFF-DUTY POLICE
OFFICERS?

>> KNOW, I'M NOT AWARE OF ANY
SUCH CASE, I'VE NOT SEEN ANY IN
MY RESEARCH AND A PETITIONER
HASN'T CITED ANY CASE WHERE IT
WAS HELD THE ONLY APPROPRIATE
MEASURE OF SECURITY WOULD HAVE
BEEN OFF-DUTY POLICE OFFICERS
AS OPPOSED TO SECURITY CARDS.

>> BUT THAT WAS THE OPINION AS
I UNDERSTAND IT THAT WAS NOT
ALLOWED PURSUANT TO APPLICATION
OF THE DOGBERT STANDARD.

AM I RIGHT?

>> BELOW THE OPINION OF
LIEUTENANT HOWARD THERE WAS A
CONFLICT BETWEEN THE ORAL
PRONOUN SEDAN THE ORDER ABOUT
WHETHER LIEUTENANT HOWARD'S
TESTIMONY WAS ULTIMATELY
STRICKEN.

THAT IS NOT SOMETHING I HAVE
ADDRESSED IN MY BRIEF AND EVEN
IF WE CONSIDER THE TESTIMONY OF
LIEUTENANT HOWARD BECAUSE I
CONSIDER THE TESTIMONY OF
LIEUTENANT HOWARD IN MY ANSWER
BRIEF.

LIEUTENANT HOWARD'S TESTIMONY

IS ESSENTIALLY THE ONLY APPROPRIATE MEASURE OF SECURITY WOULD BE OFF-DUTY POLICE OFFICERS AND THAT BRINGS US FURTHER INTO THIS BEING A CATEGORY 2 UNDER TRIAGE.

>> YOU DON'T MIND THE TESTIMONY COMING IN?

>> IT HELPS YOU.

>> AT THIS MOMENT THE PIECE OF THE TESTIMONY, I SUPPOSE, DOES HELP.

>> IT GOES TO SHOW OBVIOUSLY PURSUANT TO THE WONG CASE AND OTHER CASES THAT DEPLOYMENT OF POLICE FORCES, ASSIGNMENT OF POLICE FORCES HAS ALWAYS BEEN GOVERNMENT PLANNING LEVEL DECISION, SO BASED ON --

>> START INTERRUPT.

IF THE STATUTE SAYS GOVERNMENT ENTITIES WILL BE LIABLE TO THE SAME EXTENT AS PRIVATE INDIVIDUALS AND LIKES CIRCUMSTANCES.

I UNDERSTAND ARGUMENTS ABOUT POLICE DEPLOYMENT, WHAT ARE THE DUTIES IN THE CONTEXT OF RUNNING A PARK IN THE CONTEXT OF ALLOWING EVENTS LIKE THIS THAT YOU THINK THE COUNTY WOULD HAVE?

>> THE COUNTY WAS TIED TO THE LAND, LET'S SAY THERE WAS A SIDEWALK INSIDE THE PARK THAT WAS IN A STATE OF DISREPAIR AND SOMEONE TRIPPED AND FELL ON THE SIDEWALK, THE COUNTY WOULD HAVE A NONDELEGABLE DUTY AS RELATES TO THAT SIDEWALK AND IF THAT WERE THE CASE WE WOULDN'T BE HERE.

THOSE ARE THE TYPES OF DUTIES WE HAVE, THE TYPES OF DUTIES THAT RUN WITH THE LAND.

>> THERE ARE MORE DUTIES THAN THAT.

A PRIVATE ENTITY, ARE THERE ANY PRIVATE ENTITIES, PRIVATE ENTITY OFFERING A SIMILAR TYPE

OF FACILITY.

WITH A HAVE ANY SECURITY
OBLIGATIONS?

>> THEY MAY HAVE SECURITY
OBLIGATIONS.

>> DOES THE STATUTE ASK US TO
COMPARE THOSE OBLIGATIONS AND
APPLY SIMILAR THINGS TO THE
COUNTY?

>> KNOW, YOUR HONOR.

WHEN WE ARE LOOKING AT THE
SOVEREIGN IMMUNITY WAIVER THE
TALKS ABOUT THE COUNTY BEING
LIABLE TO THE EXTENT OF A
PRIVATE INDIVIDUAL UNDER LIKE
CIRCUMSTANCES WE HAVE TO LOOK
AT THE STATUTE IN CONJUNCTION
WITH CASES THAT ARE
INTERPRETING IT WITH TRAY ON
NON-AND COMMERCIAL CARRIER.
THERE ARE CERTAIN THINGS ONLY
GOVERNMENT CAN DO.

ONLY GOVERNMENT ASSIGNS OR
DEPLOYS POLICE OFFICERS TO A
LOCATION AND NO PRIVATE
PROPERTY OWNER I AM AWARE OF
WHAT HAVE ANY OBLIGATION TO
HAVE POLICE OFFICERS, HAVE A
SECURITY FORCE ON THEIR
PROPERTY.

>> WHAT ARE THE THINGS THAT YOU
THINK WOULD BE COMPARABLE TO
WHAT A PRIVATE ENTITY WOULD
HAVE TO DO?

THAT AREN'T TAKEN OFF THE TABLE
BY THE DISCRETIONARY FUNCTION
OF SOVEREIGN IMMUNITY ANALYSIS?

>> AS I SAID THE TYPE OF THINGS
I SUPPOSE WOULD RUN WITH THE
LAND, WHAT A PRIVATE INDIVIDUAL
HAVE AN OBLIGATION TO PROVIDE
SECURITY?

UNDER CERTAIN CIRCUMSTANCES,
YES.

GOVERNMENT DOESN'T HAVE THAT
OBLIGATION BECAUSE WE ARE
TALKING ABOUT A CATEGORY TO
FUNCTION.

'S DID THE JUSTICES HAVE ANY
QUESTIONS FOR ME.

ON THE BASIS I ASKED THE COURT TO AFFIRM THEIR DISTRICT COURT OF APPEALS, THE THIRD DISTRICT GOT THE ISSUE OF SOVEREIGN IMMUNITY RIGHT, BUT ASK FOR ADDITIONAL BASIS THE COUNTY DID NOT HAVE A DUTY OF CARE, THANK YOU.

>> RUNNERS, BACK -- SUPPOSEDLY SOME PRIVATE INDIVIDUALS THAT MAY HAVE BEEN SECURITY AT THIS EVENT BUT THE COUNTY'S EMPLOYEE WHO WAS THERE AT THE TIME SAID HE DIDN'T KNOW IF THEY WERE LEGIT SECURITIES TO USE HIS TWO WORDS.

THERE IS A QUESTION OF FACT THERE ON SUMMARY JUDGMENT. THERE IS NO EROSION OF ANY RIGHTS OR ANYTHING.

WE ARE SIMPLY ASKING THAT THE COUNTY BE HELD TO THE SAME STANDARD AS A PRIVATE PERSON UNDER THE SAME --

>> IS THAT EVERY YOUR THEORY, I DON'T RECALL EVER BEING ARGUED THAT THE SECURITY WAS INADEQUATE IN AND OF ITSELF THAT THESE PEOPLE JUST WEREN'T TRAINED ENOUGH.

THE THEORY WAS SPECIFICALLY THEY HAD TO BE OFF-DUTY POLICE OFFICERS, CORRECT?

>> YES, AND WE BROUGHT UP WHAT I JUST SAID IN THE FACT JUST BECAUSE THEY MADE THIS ARGUMENT AND WE ANTICIPATED IT HERE. I WANT TO TOUCH BRIEFLY ON THE CITY OF JACKSONVILLE VERSUS MILLS AND CA GO CASE.

THIS CASE IS LIKE MILLS. A PREMISE IS --

>> YOU FOLLOWED UP BY SAYING YOU ARE ASKING ABOUT THE COUNTY BE TREATED LIKE ANY OTHER PRIVATE LANDOWNER.

ARE YOU AWARE OF ANY DUTY TO HAVE ANY OFF-DUTY POLICE OFFICERS THAT APPLIES TO PRIVATE LANDOWNERS AND

RECOGNIZE ANY JURISDICTION?

>> THE IS A PRIVATE LANDOWNER OR ANY LANDOWNER HAS THE DUTY TO PROVIDE ADEQUATE SECURITY. THAT MAY CHANGE DEPENDING ON THE CIRCUMSTANCES.

THE EVIDENCE IN THIS PARTICULAR CASE IS THAT UNDER THE CIRCUMSTANCES, ONE OR 2 OFF-DUTY POLICE OFFICERS WAS REQUIRED AND THE PARK ZONE MANAGER, WHY DO YOU WANT OFF-DUTY POLICE OFFICERS? OFF-DUTY POLICE OFFICERS IS WHAT THE COUNTY WANTS.

IT IS NOT WHAT THE PLAINTIFF WANTS, THAT IS WHAT THE COUNTY REQUIRES.

HE WAS ASKED, WHY DO YOU WANT OFF-DUTY POLICE OFFICERS?

HE SAID BECAUSE FOLKS DON'T DO THE NORMAL STUFF WHEN OFF-DUTY POLICE OFFICERS ARE THERE.

THIS WAS CLEARLY FORESEEABLE TO THE COUNTY BECAUSE THEY ARE THE ONES WHO REQUIRE THE OFF-DUTY POLICE OFFICERS, BUT THEY DIDN'T FOLLOW THROUGH IN ADMINISTERING THE PARK.

WE SAY THAT IS NEGLIGENCE.

BACK TO MILLS IF I MAY.

IT SAYS PREMISES LIABILITY AS A CATEGORY 3 AND IT ADMONISHES US.

>> IT CLEARLY SUGGESTS SECURITY CLAIM THAT HAD BEEN MADE IN THE CASE FROM THE THIRD DISTRICT WAS DIFFERENT AND WOULD NOT LEAD TO A FINDING OF LIABILITY. IS THAT CORRECT?

>> UNDER THOSE CIRCUMSTANCES, IT IS --

>> DOESN'T IT SEEM TO BE THE ONLY WAY YOU CAN READ WHAT THE MAJORITY IS SAYING IN MILLS, THAT THEY ARE AGREEING WITH JUDGE SWARTS?

>> I AGREE.

IT DOES NOT SAY WE ADOPT JUDGE SWARTS BUT THEY CITED THE WHOLE

OPINION AND IT IS IMPLICIT THAT THE COURT AGREE.

>> THEY SAY THE SECURITY IN THE COURTHOUSE IS DIFFERENT THAN A SLIP AND FALL ON THE COURTHOUSE?

>> I DON'T THINK SO.

WHAT THE COURT IS SAYING IS WE AGREE WITH THE LATTER ANALYSIS, THE CASE WAS PROPERLY DECIDED, THE MAJORITY OPINION PLACED TOO MUCH EMPHASIS ON THE LOCATION WHETHER INJURY OCCURRED RATHER THAN THE NATURE OF THE ACT THAT BROUGHT ABOUT THE INJURY.

THE NATURE OF THE ACT THAT BROUGHT ABOUT THE INJURY WAS AN ESCAPED PRISONER.

THE PRISONER GOT FREE, APPARENTLY BECAME ARMED AND TOOK A HOSTAGE AND THE PLAINTIFF WAS INJURED.

THERE ARE PLENTY OF CASES, THE COUNTY AND STATE IS NOT LIABLE FOR WHAT AN ESCAPED PRISONER DOES.

THAT IS WHAT HAPPENED, AN ORDINARY PERSON DOESN'T HAVE A DUTY TO PROTECT AGAINST AN ESCAPED PRISONER.

A PRIVATE PERSON DOESN'T HAVE THAT DUTY.

THAT IS WHY THE CASE WAS DECIDED THE WAY IT WAS.

IN THIS CASE A PRIVATE PERSON UNDER THE SAME CIRCUMSTANCES WOULD HAVE THE DUTY TO PROVIDE TWO OFF-DUTY POLICE OFFICERS, THAT IS WHAT THE EVIDENCE IN THIS CASE SHOWS WITH A SUMMARY JUDGMENT.

WE ARE ENTITLED TO PRESENT THE EVIDENCE TOO.

NO FURTHER QUESTIONS.

WE ASK THE COURT TO REVERSE THE SUMMARY JUDGMENT AND REVERSE THE THIRD DISTRICT OPINION.

>> THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT WILL NOW STAND IN

RECESS FOR 10 MINUTES.
>> ALL RISE.