

>> ORDER IN THE COURT.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
CHIEF JUSTICE CANNADY PRESIDING.
>> WE WILL TAKE THE THIRD CASE,
AMENDMENTS TO APPELLATE
PROCEDURE 94443.
RECOGNIZE COUNSEL FOR THE
PETITIONER.
KEITH UPSON.
>> MY NAME IS KEITH UPSON AND I
APPEAR ON BEHALF OF THE
APPELLATE COURT RULES COMMITTEE.
GOOD MORNING.
THANK YOU FOR ALLOWING US TO
APPEAR REMOTELY.
I HAVE THE HONOR OF SHARING THE
CRIMINAL SUBCOMMITTEE FOR THE
ORIGIN OF THIS REFERRAL FOR
RESPONSE TO COMMENTS FILED IN
JUNE IN WHICH WE PROPOSE
ALTERNATIVE LANGUAGE TO
SUBSECTION C OF OUR PROPOSED
RULE 9 ONE 443.
IN RESPONSE, A FANTASTIC JOB OF
CONCISELY NOTING CHALLENGES WE
FACED AS WELL AS MEMORIALIZING
THE MAJORITY AND MINORITY
POSITIONS ON MANY FACETS
INCLUDING MANY IF NOT ALL OF THE
CONCERNS THAT WERE ALSO RAISED
BY THE COMMENTERS TO THE
PROPOSED RULE.
THE MAJORITY OF THE COMMITTEE
CONSISTENTLY CONCLUDED THAT THE
AMENDMENT PROVISION 16 BE 6 BE,
PROVIDING THAT VICTIMS HAVE A
RIGHT TO BE HEARD IN ANY PUBLIC
PROCEEDING INVOLVING PRETRIAL
RELEASE FROM ANY LEGAL
CONSTRAINT, PLEA, SENTENCING,
ADJUDICATION OF PAROLE AND ANY
PROCEEDING DURING WHICH THE
RIGHT OF THE VICTIM IS
IMPLICATED AS WELL AS 16 BE 6
G's RIGHT TO BE INFORMED OF ALL
POSTCONVICTION PROCESSES AND
PROCEDURES TO PARTICIPATE IN
SUCH PROCESSES AND PROCEDURES
MUST INCLUDE APPELLATE
PROCEEDINGS IF THOSE PROVISIONS
BY THEIR PLAIN LANGUAGE HAVE ANY
MEANING AT ALL.

PERHAPS A TYPICALLY IN A RULES
CASE OUR RESPONSE TO COMMENTS
RECOGNIZES IF THIS COURT AGREES
WITH COMMENTERS OR WITH MAJORITY
POSITION OR THE MINORITY
POSITION FROM THE COMMITTEE THAT
THE APPLICATION OF 16 BE 6 TO
APPELLATE PROCEEDINGS IS
DEBATABLE OR NEEDS FURTHER
JUDICIAL INTERPRETATION THE
COMMITTEE AGREES THAT THE
ADOPTION OF AN APPELLATE RULE
WOULD BE PREMATURE AT THIS TIME
AND WOULD WAIT FOR THIS AREA OF
THE LAW TO BE DEVELOPED.

AS WE -

>> A QUESTION ABOUT THAT.

IF I LOOK AT THIS REVISED FULL
AND PROPOSAL IT DOESN'T SEEM TO
PRESUME WHAT THE SCOPE OF ANY
RIDE WOULD BE.

IT JUST SAYS SEEKING TO INVOKE A
RIDE UNDER ARTICLE 1 SECTION 16
AND THIS SEEMS TO BE MORE OR
LESS LIKE A PROCEDURAL FRAMEWORK
TO RAISE A RIGHT THEY THINK THEY
MIGHT HAVE AND SEEK TO ASSERT IT
AND IF THERE ARE ARGUMENTS
WHETHER THEY HAVE THE RIGHT OR
NOT IT COULD BE PASSED IN THE
CONTEXT OF THAT.

WHY IS IT WRONG TO LOOK AT THAT
AS THE REVISED IN THAT WAY?

IT IS NOT REALLY SETTLING
WHETHER THERE IS A RIDER NOT A
RIDE BUT OBVIOUSLY THERE IS A
RIDE AND SOMEBODY SEEKS TO
ASSERT IT, RECOGNIZING THAT IS
HOW THEY OUGHT TO DO IT.

>> JUSTICE CANNADY, THAT IS
EXACTLY WHAT WE ARE TRYING TO
DO.

PARTICULARLY IN THE FIRST
SUBSECTION REFERRING TO THE
DEFINITION OF VICTIM AS PROVIDED
FOR IN THE AMENDMENT ITSELF,
SUBSECTION B DIRECTING TRIAL
COURT CLERKS TO INCLUDE IN THE
RECORD ON APPEAL THOSE THINGS
THE VICTIMS MAY HAVE FILE THAT
THE TRIAL COURT LEVEL BUT WITH
THE PROPOSED REVISION TO SEE WE
HAVE TRIED, THE EXTENT OF
PARTICIPATION WITH THE

JUDICIARY.

HAVING CONCLUDED A MAJORITY OF THE FULL COMMITTEE THAT PROCEEDINGS MUST BE INCLUDED, TO CONSIDER WHETHER HAVING A BUT THIS TIME IS BETTER THAN PROVIDING SOME GUIDANCE OR WHETHER A MORE SPECIFIC RULE AS SUBSECTION C ORIGINALLY APPROVED AND PROPOSED AND SUBMITTED TO THIS COURT WOULD BE BETTER THAN A GENERAL AND AT GREAT LENGTHS DISCUSSED WHETHER THE GENERAL RULE BEFORE THE COURT TODAY IS BETTER OR WORSE THAN HAVING NO RULE AT ALL BECAUSE WE - I CAN TELL YOU ANECDOTALLY, YOU HAVE SOME OF THE MINUTES OF MY SUBCOMMITTEE MEETINGS.

I DON'T KNOW YOU HAVE APPENDICES, THOSE WE TRIED TO FLUSH OUT BECAUSE IF YOU ARE GOING TO FOLLOW A VICTIM NEEDS TO FILE A MOTION IT SEEKS TO INVOKE A RIGHT, THERE OUGHT TO BE SOME TIMEFRAME ON IT AND TRIED REALLY HARD TO DO THAT GIVEN THE NATURE OF DIFFERENT PROCEEDINGS ON DIRECT APPEAL WITH NOTICE OF APPEAL UNDER RECORD VERSUS ORIGINAL PROCEEDINGS WHERE NEITHER OF THOSE COULD BE TRIGGERING EVENTS.

WE FOUND THE MORE UNWIELDY AND WE INSTEAD RECOMMENDED TO THE FULL COMMITTEE WHICH IN TURN APPROVED AS AN ALTERNATIVE SUBSECTION C FAR MORE GENERAL THAN I THINK IS A PRACTICAL MATTER TO PROVIDE AN AMENDMENT DEFINED VICTIM, BY WHICH THEY ARE ON NOTICE THAT IF THEY WANT TO AVAIL THEMSELVES OF A RIGHT UNDER THE AMENDMENT WE NEED TO FILE SOMETHING IN WHICH THE MATTER IS PENDING OUTLINING THE NATURE AND SCOPE OF WHAT THEY WOULD LIKE THAT PARTICIPATION TO BE.

>> IT PROVIDES A VICTIM MAY FILE AN ASSIGNED STATEMENT, THINGS THAT ARE OUTSIDE THE RECORD?

>> I THINK THAT ARE ONE ALARM

BELL CONCERN FROM BOTH COMMENTS,
MYSELF INCLUDED, THIS IS MY
PRACTICE, IN ORIGINAL
PROCEEDINGS.

AND AFTER I CALM DOWN WHICH IS
NOT TO SAY THE COMMENTERS HAD OR
HAD ANY REASON TO AND THEY CAN
SPEAK FOR THEMSELVES.

WE'VE GOT RULES TO ADDRESS THAT
IN A WORST-CASE SCENARIO.

WE CAN MOVE TO RESPOND IF AND AN
EXTRA ORDINARY CIRCUMSTANCE, IT
WOULD HAVE TO BE EXTRAORDINARY
TO FEEL LIKE I NEED IT TO
RESPOND.

I'VE BEEN FORTUNATE TO APPEAR IN
ALL SUCH COURTS AND HAVE
CONFIDENCE MY COURTS WILL BE
CONCERNED WITH EXTRA RECORD.
WORST-CASE MOVE TO STRIKE, WE
CAN ACKNOWLEDGE PRACTITIONERS
ARE NOT AVAILING THEMSELVES
SHOULD THEY FEEL IT ROSE TO THE
LEVEL NECESSARY BUT MAJORITY OF
THE COMMITTEE DIDN'T FEEL LIKE
ONE OF THE CONCERNS OF THE PDA
SHOWING THE BRIEFING SCHEDULE A
KIMBO AND WILL INTRODUCE VICTIMS
BRIEF AND REPLY TO THE VICTIMS,
PARAPHRASING CONCERNS THAT ARE
EXPRESSED.

>> WAS THERE CONSIDERING AMICUS
STATUS TO VICTIMS.

PARTICIPATING AS A POOL PARTY?

>> I SENSE IN SOME WAYS THAT IS
A LOADED QUESTION.

>> IT IS NOT INTENDED TO BE.

>> THIS COURT IN BUTLER LAST
YEAR.

I AM CONFUSED.

AND ELSIE.

I NEVER CONSIDERED IT DID.

I WANT TO GET VERY CLEAR AND YOU
WILL HEAR FROM F TBA THAT AS A
MATTER OF FACT AS WE ALLOW THEM
TO PARTICIPATE TO THE LEVEL
ORIGINALLY PROPOSED IN C1 THEY
WILL BE DEFECTIVE PARTY STATUS
TO DISAGREE.

ANECDOTALLY, DISCUSSION IN

CAUTION -- WE DID BRIEFLY

CONSIDER PROCEDURE SIMILAR TO
THE AMICUS PROCEDURE.

BEFORE YOU TODAY I DON'T RECALL

WHY THAT VERY QUICKLY DIED ON THE VINE.

THE MOST LIKELY EXPLANATION GIVEN THE OVERALL UNIVERSE OF THE CONVERSATIONS AND THINGS WE GRAPPLED WITH OUR CONCERN WAS THAT WE NOT CREATE THINGS BEYOND PLAIN LANGUAGE OF THE AMENDMENT ITSELF AND OUR CONCERN WOULD HAVE BEEN ABOVE AND BEYOND WHAT THE AMENDMENT CONTEMPLATED OR CALLED FOR AND NOT A PROPER PROCEDURAL ROLE.

IT ONLY TOOK FIVE MINUTES TO GET TO THE ANSWER TO YOUR QUESTION.

>> IF AMICUS STATUS IS RECORDED HYPOTHETICALLY WOULD IT ALSO REQUIRE US TO PERMIT VICTIMS AND WHOEVER ELSE INTO ENTITLED TO IT TO HIRE COUNSEL AND AMICUS BRIEFS AND BE PROVIDED WITH TIME TO ARGUE.

>> THAT IS EXACTLY THE CONCERN THAT WE DON'T PAY MUCH SUBSTANCE ON THE SKELETON AND PROCEDURAL ROLE AT THIS TIME.

AND WHERE I AM SURE PUBLIC DEFENDERS ASSOCIATION WILL TELL YOU BECAUSE THEY PROBABLY ALREADY ARE ATTORNEYS MARKETING THEMSELVES AS VICTIMS COUNSEL, THIS COURT HAS GOT TO BE ON YOUR RADAR ALL THESE DEATH PENALTY CASES THAT YOU ARE GOING TO SUDDENLY HAVE COUNSEL FOR VICTIMS NOW ASKING TO AVAIL THEMSELVES OF THIS BUT THE COURTS HAVE TO SORT IT OUT.

WE DON'T THINK THERE IS ANYTHING ABOUT OUR WHOLE PROPOSE THAT IS MUTUALLY EXCLUSIVE TO THAT OR OVERSTEPPED THE BOUNDS OF A SIMPLE PROCEDURE.

IT MERELY NOTIFIES VICTIMS WITH REVISED PROPOSED SUBSECTION C THAT THEY ASK THE COURT THIS IS WHAT I WOULD LIKE TO DO.

WHICHEVER COURT THAT IS.

THEY CAN THEN SAY HOW THAT COURT WILL HANDLE IT AND WE ANTICIPATE THERE WILL NEED TO BE REVISION TO THE 9 ONE 43 SHOULD THE COURT ADOPTED AS MORE SUBSTANCE IS DEFINED AS LIMITS AND BOUNDARIES

ARE DEFINED IN THE JUDICIARY.
>> IN LIGHT OF THAT, WHAT IS THE
ARGUMENT FOR ADOPTING 9143 AS IT
IS REVISED NOW?

>> IT STARTS WITH THE MAJORITY
OF THE FULL COMMITTEE,
CONSISTENTLY READS 16 BE AS
GIVING DEFINED VICTIMS THE RIGHT
TO PARTICIPATE IN APPELLATE
PROCEEDINGS.

IF THIS COURT AGREES AND THEY DO
HAVE THAT RIGHT, WE ULTIMATELY
AGREE, HAVING THIS GENERAL RULE
TO BE BETTER, TO PROVIDE SOME
GUIDANCE TO THOSE DEFINED
VICTIMS ON HOW TO AVAIL
THEMSELVES OF THOSE RIGHTS.
WE FELT IT WAS LITERALLY THE
MINIMAL THRESHOLD PROCEDURAL
PROCESS BY WHICH THEY COULD
REQUEST THE DETERMINING BODY, I
WOULD LIKE TO AVAIL MYSELF OF
THESE RIGHTS THAT I NOW HAVE.

>> COUNSEL, YOU ARE UNDER YOUR
REBUTTAL TIME AND I WILL GIVE
YOU EXTRA TIME, BE AWARE.

>> THAT LAST MINUTE.

>> I WILL GIVE YOU A COUPLE
EXTRA MINUTES.

FROM OPPOSING COUNSEL.

>> GOOD MORNING.

THE COURT OF PUBLIC DEFENDERS
ASSOCIATION, I JOIN KEITH
UPSON'S GRATITUDE.

IT ALREADY MET WITH A
SUBSTANTIVE ARGUMENT AS TO
WHETHER OR NOT THIS LAW APPLIES
IN APPELLATE PROCEEDINGS AND
THIS IS A SUBSTANTIVE ISSUE TO
ADDRESS JUSTICE CANNADY'S FIRST
QUESTION, THE AMENDED PROPOSAL
STILL SAYS THE VICTIM MAY FILE A
MOTION BUT THE QUESTION IS NOT
WHETHER THE VICTIM MAY
PARTICIPATE, BUT POST SCOPE OF
THE VICTIM.

>> A VICTIM SEEKING TO INVOKE A
RIGHT UNDER ARTICLE 1 SECTION 16
MAY FILE A MOTION AND SET FORTH
PROPOSED SCOPE OF.

THAT DOES NOT SEEM TO ME TO
PRESUME THAT THE ANSWER TO THE
SUBSTANTIVE QUESTION, IT IS JUST
SAYING OBVIOUSLY THIS - THERE

ARE DIFFERENCES OF OPINION
WHETHER IN ANY SUCH MOTION COULD
BE SUCCESSFUL WHETHER THERE IS
ANY SUCH RIGHT.

IF YOU WANT TO A SEEK TO ASSERT
THERE IS SUCH A RIGHT AND TO
INVOKE IT, FILE A MOTION AND
TELL US ABOUT IT, THAT IS WHAT
PEOPLE ARE GOING TO DO ANYWAY.
IT IS JUST KIND OF - MAYBE NOT
MUCH DIFFERENT THAN WHAT WOULD
HAPPEN IN THE ABSENCE.

>> YES.

>> THAT IS AN OBSERVATION.
PLEASE RESPOND.

>> LET ME GO THROUGH THE WAY
THIS WOULD WORK IN REAL LIFE WAS
THE ONE WOULD FILE A MOTION.
SOMEBODY WILL OBJECT, SAYING NO,
THERE'S NO RIGHT UNDER ARTICLE 1
SECTION 16, AND THE RESPONSE
WOULD BE THE FLORIDA SUPREME
COURT ALREADY SAID I MY FILE A
MOTION.

THAT'S THE QUESTION OF THE
ROULETTE THE QUESTION IS THE
PROPOSED SCOPE OF THE VICTIM'S
PARTICIPATION.

THAT IS HOW EVERY ARGUMENT IS
GOING TO GO.

>> SEEKING TO INVOKE A RIGHT.

>> THE ONLY LANGUAGE I CAN SEE
THAT WOULD GET TO THE REAL ISSUE
IS THE VICTIM MAY OR MAY NOT
PARTICIPATE DEPENDING ON
SUBSTANTIVE LAW TO COME.
THAT IS WHAT THE SUBSTANTIVE LAW
IS.

THE PROBLEM -

>> SOMETHING COMING OUT KIND OF
ASSUMES INDIRECTLY ESTABLISHES
SUBSTANTIVE LAW AT THIS POINT.

>> THAT IS THE CONCERN AND THE
LANGUAGE MAY FILE PETITION AND
WHAT IT TALKS ABOUT, THE SCOPE
OF THE PARTICIPATION ASSUMES
PARTICIPATION - THE CHANGE IF WE
ISSUED THIS, ADOPTED THIS RULE,
AN OPINION COULD SAY THIS COULD
NOT DECIDE ANY SUBSTANTIVE
MATTER RELATED TO WHAT IS
SUCCESSFULLY INVOKED.

>> I HAVE SEEN THOSE CAVEATS AND
OPINIONS FOR THIS COURT AND THE

DC OPINION PRESUMED TO BE
CONSTITUTIONAL AND IN EVERY JURY
INSTRUCTION CASE.

IT IS AN AMAZING DICHOTOMY IN
FLORIDA LAW.

YOU CAN SAY THAT IN YOUR
OPINION?

SOMETIMES THE DIFFERENCE TO THIS
COURT FROM THE DC PAYMENT IS
CORRECT.

AND THEY STILL D FOR IT AND THEY
DO THAT IS A REAL CONCERN.

ANY LANGUAGE THAT LOOKS LIKE
THIS COURT IS LEANING ONE WAY OR
THE OTHER, AND THE REAL ISSUE

FOR US, A REAL CASE IN
CONTROVERSY WITH REAL FACTS AND
REAL PARTIES THIS WILL BE MUCH
CLEARER AS TO WHETHER THE WILL
APPLIES OR NOT.

MOST CRIMINAL APPEALS, NO
RELEASE ISSUES BUT A REQUEST FOR
TRIAL.

DOESN'T COME INTO PROVISIONS OF
ARTICLE 1 SECTION 16.

THERE'S ONE PROVISION THAT TALKS
ABOUT APPEALS OR PARTICIPATION
WITH EXPEDIENCY.

THE DRAFTERS OF THIS
CONSTITUTIONAL LANGUAGE THOUGHT
ABOUT APPEALS, THEY KNEW ABOUT
HOW TO INCLUDE LANGUAGE AND
DELIBERATELY DIDN'T.

OF ALL THESE ARGUMENTS THAT ONLY
BECOME CLEAR IN THE CONTEXT OF
VERY SPECIFIC CASE IS THIS CASE
INVOLVING POSSIBILITY OF
PRETRIAL RELEASE OR OTHER
RELEASES FROM THE CONSTITUTION.

ALL OF THAT ONLY HAPPEN WITH
SUBSTANTIVE LAW.

I BELIEVE THIS IS PREMATURE.

THE SUGGESTION THAT OF COURSE
VICTIMS COULD DO THIS WITH THE
AMICUS PROCEDURE THAT CURRENTLY
EXISTS WITH ANOTHER PROCEDURE.

IT ALREADY EXISTS UNDER THE'S
AND THAT COULD THEN ALLOW THE
DEVELOPMENT OF THIS LAW, AND
KEITH UPSON -- IS CORRECT.

THIS IS A BURGEONING AREA OF LAW
AND I AM SURE SUCH MOTIONS AND
PETITIONS WE'VE SEEN IN TRIAL
COURT'S WE WILL SEE IN APPELLATE

COURTS AND THEN WE CAN DECIDE
CASE-BY-CASE BUT WE HAVE A
PROCEDURE ALREADY.

>> WHAT YOU ARE SAYING, YOU
SUGGEST THAT WE WAIT UNTIL A
MONTH FROM NOW IN A PREDICTIVE
CASE BEFORE US, THE DEATH
PENALTY CASE OR ROBBERY CASE, A
VICTIM FILED A MOTION DEMANDING
PURSUANT TO THE CONSTITUTION TO
APPEAR BEFORE US AND ONLY AT
THAT TIME DO WE DEAL WITH IT?

>> SPECIFIC FACTS AND CASES AND
CONTROVERSY AND AT THAT TIME YOU
WILL SAY IS THIS CASE ALL UNDER
THE LANGUAGE, DOES THIS INVOLVE
PRETRIAL OR OTHER RELEASE OR IS
THIS PACE AND THE DIFFICULTY
CASE I KNOW OF NO SITUATION
WHERE THERE'S RELEASE FROM THE
DEATH PENALTY, THERE'S A NEW
TRIAL OR NEW SENTENCING OR
SOMETHING TO THAT EXTENT.

>> THERE ARE CASES WHERE PEOPLE
GET DISCHARGED.

>> IT HAS BEEN A WHILE.

I DON'T RECALL ONE.

>> I REMEMBER NOT LONG AGO.

>> I DO NOT DO DEATH PENALTY
WORK.

YOUR HONOR'S RECOLLECTION AND
KNOWLEDGE, I SIMPLY DON'T.

>> I AM SORRY - ARE YOUR
INVESTMENTS ALWAYS OR ELIMINATED
IF SUBSECTION C DROPS ALL
TOGETHER?

>> THAT HELPS, YOUR HONOR.

I AM A LITTLE CONCERNED ABOUT
SUBSECTION B WHICH SEEMS TO
ALLOW THE VICTIM TO PLACE THINGS
IN THE RECORD ON APPEAL WHICH
MAY NOT BE APPROPRIATE.

WE HAVE LESSER CONCERNS ABOUT
THAT, BUT AT THAT POINT,
CANDIDLY, I AM NOT SURE, I AM
NOT SURE WHAT WE ARE DOING.
THIS IS VERY PREMATURE.

IF SUBSECTION C DROPS AWAY WHAT
DOES THIS DO?

IT REPEATS THE CONSTITUTIONAL
DEFINITION AND SAYS TO INCLUDE
ANY FILING, THE WAS ALWAYS BEEN
IN APPEALS, THE APPELLATE IS THE
CAPTAIN OF THEIR OWN SHIP, SENT

FOR THE RECORD ON APPEAL,
SOMETHING ELSE TO BE INCLUDED
AND THEY SAID THAT FORWARD AND
THERE'S A PROCESS FOR THIS AND I
CAN SEE WHY THAT PROCESS WOULD
NOT WORK IN THIS CONTEXT.

IF FOR SOME REASON, THEY ARE
ALWAYS THE APPELLATE AND IF THE
STATE IS NOT INCLUDE APPROPRIATE
STATEMENTS, THE ESTIMATE OF
AMICUS, THE OTHER VICTIM WOULD
COME IN AND SAY LOOK AT THIS
PROBABLY AS JUSTICE PAULSON'S
EXTRA RECORD, INAPPROPRIATE
MATERIAL AND THE COURT COULD
MAKE A DECISION ON THAT.

WITHOUT SECTION C I'M NOT SURE
WHAT THIS DOES, THAT HIGHLIGHTS
THE PREMATURE NATURE.

>> HOW DOES SECTION C GO BEYOND
THAT?

SECTION 16 C TALKS ABOUT A
VICTIM OR THEIR LAWYER BEING
ABLE TO ASSERT ENFORCEMENT OF
THIS SECTION OR ANY APPELLATE
COURT AS A MATTER OF RIGHT, TO
BE DETERMINED WHETHER SINCE WE
ALREADY HAVE THAT PROVISION IN
THE CONSTITUTION IS IT DOING
HARM?

WHAT IS THE DOWNSIDE OF HAVING
WHAT IS PROPOSED?

>> THE CONVERSATION -

>> DON'T --

>> THE RESPONSE TO MY COMMENT.

>> I DID NOT TAKE IT AS GREEN.

THAT CONVERSATION THE CONCERN,
THE COURT PROPAGATES LANGUAGE,
THE RIGHT TO PARTICIPATE.

>> DO YOU HAVE A PROBLEM IN
PRINCIPLE, IF YOU HAVE IN THE
CONSTITUTION THAT YOU CAN ASSERT
YOUR RIGHTS, DO YOU HAVE A
PROBLEM IN PRINCIPLE WITH THE
RULES TELLING PEOPLE WITHOUT
COMMENTING ON WHAT THE MERITS OF
THE REQUEST MIGHT BE, HOW YOU
MECHANICALLY GO ABOUT ASSERTING
YOUR RIGHTS UNDER 16 C?

>> UNDER 16 C THEY BOTH WERE
PROPOSED AND THE ORIGINAL
VERSIONS.

ESSENTIALLY THE LANGUAGE
INDICATES THE VICTIMS ARE PART

OF THIS PARTY IF NOT A PARTY.
THE LANGUAGE YOU REFER TO SAID
ASSERT THE RIGHTS EARLIER IN THE
CONSTITUTION.

THE QUESTION IS DOES THAT APPLY
TO CRIMINAL APPEAL?

IS THERE ANY RIGHT IN A COMMON
APPEAL WHERE THE ISSUE ISN'T
RELEASE BUT THE ISSUE IS A NEW
TRIAL.

IS THAT - THAT IS ALL
SUBSTANTIVE LAW THAT NEEDS TO BE
WORKED OUT ON A CASE-BY-CASE
BASIS AND THE STATEMENT BY THIS
COURT THAT YOU MAY FILE THIS AND
ESPECIALLY UNDER THE NEW
PROPOSAL, THE PROPOSED SCOPE
GETS THIS EXACTLY BACKWARDS.
IT SAYS WE WILL DECIDE THAT YOU
CAN FILE A SUBSTANTIVE ISSUE AT
THE PROPOSED SCOPE OF WHAT YOU
WILL DO WILL BE LEFT UP TO EACH
AND EVERY DCA PANEL WHICH
DECIDES SOMETHING DIFFERENT.
I THINK THAT HIGHLIGHTS THE
FUNDAMENTAL PROBLEM WITH THESE
RULES.

WITHOUT SUBSTANTIVE LAW THIS
DOESN'T WORK FUNDAMENTALLY.
IT DOES NOT WORK.

>> I HEARD WHY YOU THOUGHT IT
WAS PROBLEMATIC TO DO WHAT I
SORT OF VIEW AS AN INTERIM ROLL.
IT SEEMS TO ME IF THE
SUBSTANTIVE ISSUE IS WE REPEAL
IT FROM THAT RESPECT.

WE DETERMINE THEY DO HAVE THAT
RIGHT, WE WANT TO AMEND IT TO
PUT SOME OTHER PROCEDURES IN SO
IT IS AN INTERIM RULE, DON'T
KNOW THAT WE HAD DONE THAT
BEFORE BUT I DON'T SEE A PROBLEM
IN TO SEE THE ADVANTAGE OF
TELLING PEOPLE JUST DO THIS
UNTIL WE FIGURE IT OUT.

I HAVE A HIGH DEGREE OF
CONFIDENCE WE CAN WRITE AN
OPINION THAT EXPLAINS THIS IS
NOT THE SUBSTANTIVE ISSUE AND
ALSO HAVE A HIGH DEGREE OF
CONFIDENCE THAT OUR DCA JUDGES
WILL READ THAT OPINION AND
UNDERSTAND THE SUBSTANTIVE
ISSUE.

OTHER THAN THAT CONCERN THAT THE
SUBSTANTIVE ISSUE HAS BEEN
DECIDED IS THERE ANY OTHER
REASON THIS IS A BAD IDEA?
>> OF THE COURSE WANTED TO DO
THAT, BACK TO THE COMMITTEE --
>> I DIDN'T FOLLOW WHAT YOU
SAID.
>> LET ME IN 15 SECONDS.
>> A LITTLE MORE TIME.
>> IF IT IS AN INTERIM WAR
SPECIFICALLY RESERVING THE ISSUE
OF SUBSTANCE THAN THE RULE WOULD
NEED TO SAY THE DEFENDANTS AS AN
OPPORTUNITY TO RESPOND AS TO
WHETHER THERE WAS A RIGHT UNDER
THE CONSTITUTION AND A SEPARATE
ISSUE WOULD REQUIRE ANOTHER
PROCEDURAL MOTION, THERE IS A
RIGHT TO RESPOND.
>> A PROVISION IN THE RULES, THE
RESPONSE CAN BE FILED BY PEOPLE
IN AN ADVERSE POSITION IN THE
CASE.
>> IT WOULD NEED TO BE CLEAR,
ONCE THE EMOTIONALLY TRIGGERS
THE ISSUE OF WHETHER THERE WAS A
SUBSTANTIVE - ANYTHING SHORT OF
THAT, PARTICULARLY THE SCOPE OF
THE VICTIM, IT IMPLIES PROCEDURE
WITH HOW, NOT WHETHER AND THERE
WOULD HAVE TO BE SOME SORT OF -
>> WHAT IF IT'S THAT NATURE, THE
WORD PROPOSED WAS IN THERE.
>> LIMITING THE QUESTION.
BUT NOT WHETHER THEY CAN
PARTICIPATE AT ALL.
A CONSTITUTIONAL RATE AT ALL.
I HAVE NOT RUN THIS BY THE
ELECTED PROPOSAL, NOT
PROMULGATED.
IF THERE'S AN INTERIM RULE, A
PROCEDURE LIKE THAT, NOT
SOMETHING ELSE.
YOU ARE OVER YOUR TIME.
SOME UP IN 30 SECONDS IF YOU
WILL.
>> I THINK I HAVE.
THIS IS NOT PROCEDURAL.
THANK YOU FOR YOUR TIME.
>> KEITH UPSON.
>> YOU DON'T WANT TO DO THIS,
THE LUXURY OF NOT HAVING TO DO
THAT AT THE TIME.

WITH THEIR SERVICE OF EMOTION TO FOLLOW.

THEY FILE A RESPONSE, AND PROBABLY NOT THE VICTIMS RIGHTS AMENDMENT.

>> I DON'T SCROLL THAT FAR.

BECAUSE THE REPLY TO THE RESPONSE IS SO WELL WRITTEN. IF NOTHING ELSE WE IDENTIFIED THERE WERE A LOT OF ISSUES AND A LOT OF CONCERNS.

AND THE REVERSE ORDER, 16 B6 G AND POST CONVICTION PROCEEDING, VICTIMS HAVE THE RIGHT TO BE INFORMED OF AND TO PARTICIPATE. THAT HAS GOT TO INCLUDE 9140 AND 9141.

IT HAS GOT TO.

LESS CLEAR BUT STILL DISPOSITIVE BE CLEAR, 16 B6 BE AND THAT CATCH ALL, ANY PROCEEDING DURING WHICH THE VICTIM IS IMPLICATED. THE AMENDMENT GAVE VICTIMS THE RIGHT TO PARTICIPATE TO SOME EXTENT IN APPEALS.

THEY DIDN'T SAY ANYTHING NEW MORAITIS PROCEEDING, ANY OF THE THINGS WE LISTED IN ANY PROCEEDINGS, OUR APPEAL IS THE SITUATION WHERE THE RIGHTS OF THE VICTIM BECOME IMPLICATED. I DON'T THINK -- THE CART BEFORE THE COURT - IT IS NOT A SUBSTANTIVE ISSUE.

THE ARGUMENT IS NONSENSICAL IF YOU THINK THE RIGHTS OF THE VICTIM ARE DUPLICATED ON APPEAL. THE HYPOTHETICAL, GIVEN 3 SECONDS.

WE ALL AGREED THE VICTIM HAS A RIGHT TO IF ATTENDED THE DEFENDANT'S SENTENCING, THE DEFENDANT IS REMANDED.

TWO YEARS LATER THE VICTIM RECEIVED A NOTICE OF A STATUS CONFERENCE IN THE TRIAL COURT. WHAT IS THIS?

THE VICTIM GOES TO COURT. THE CIRCUIT COURT JUDGE BRINGS THE DEFENDANT OUT AND SAYS I GOT THIS DCA OPINION THAT AS WE VIOLATED SPEEDING, AND YOU ARE DISCHARGED.

GOOD DAY, GO ABOUT YOUR LIFE.

THE VICTIM HAS NO IDEA WHAT HAPPENED IN THE INTERIM. UNLESS WE AGREE ANY PROCEEDING IN WHICH THE RIGHT OF THE VICTIM IS IMPLICATED INCLUDES THE ENTIRE APPELLATE PROCESS.

THE MAJORITY OF THE COMMITTEE CONTINUES TO MAINTAIN IF YOU AGREE SECTION 16 DOESN'T APPLY TO APPELLATE PROCEEDINGS, THEN NEVERMIND.

THERE IS NOTHING TO SEE HERE BUT IF IT GRANTS VICTIMS THE RIGHTS THAT WE READ THAT IT GRANTS THE VICTIMS WE OVERWHELMINGLY BELIEVE HAVING SOME ROLE, EVEN A VAGUE ROLE TO PROVIDE SOME GUIDANCE IS BETTER.

>> ARE YOU SAYING YOU WOULD OBJECT CORE COMMENTARY THAT PUNTED ON THE SUBSTANCE AS OPPOSED TO JUST DOING SOMETHING IN THE OPINION THAT WAS LOST IN THE MISTS OF WHATEVER?

PUTTING SOMETHING SEEMS LIKE THE CONVERSATION EARLIER -- YOU OBVIOUSLY HAVE A REVIEW OF THE SUBSTANTIVE ISSUES AND WHETHER YOU DID THAT SEEMS LIKE ANOTHER WAY OF LOOKING AT THE FULL THAT WOULD SAY THAT ITS ON THE NATURE OF THE SUBSTANTIVE RIGHTS.

WOULD YOU HAVE A PROBLEM WITH CORE COMMENTARY AS OPPOSED TO SAYING PROMULGATION OF THIS DOESN'T MEAN WE DETERMINED WHAT SUBSTANTIVE RIGHTS PARTICIPATE ANY VICTIM MIGHT HAVE AN APPELLATE PROCEEDING.

>> NO PROBLEM WITH THAT AT ALL. WE WILL FEEL BETTER WHEN WE HAVE MORE GUIDANCE.

SOME OF THE DETAIL THAT WAS SUGGESTED EARLIER BECAUSE THIS COURT CAN WRITE AN OPINION THAT FLUSHES THIS OUT RIGHT NOW.

I THINK IT IS NECESSARY BECAUSE THIS COURT CAN PROVIDE MORE SUBSTANCE DOESN'T MAKE THE PROPOSED RULE SUBSTANTIVE BUT SIMILARLY TO DIRECTLY ANSWER THE QUESTION THAT WAS ASKED, WOULDN'T HAVE ANY PROBLEM WITH THE COURT SAYING IMPLEMENTATION

OF THIS GENERAL IN NO WAY PASSES
ON THE SUBSTANCE OF THIS TIME.
THAT REALIZES OF THE SPIRIT OF
WHAT WE WERE TRYING TO PROVIDE A
FRAMEWORK WITH THE AWARENESS OF
THAT.

>> YOU SORT OF CONFUSED ME THAT
WHEN YOU CAME BACK AND SAID BUT
IF YOU DON'T THINK IT IS
SUBSTANTIVE THEN YOU MUST NOT
ADOPT IT.

>> IT IS KIND OF VARIED ON THE
LAST PAGE OF THE SIGNATURES AND
THE RESPONSE TO RECOMMENDATIONS,
HAS ALREADY DISCUSSED.
NO RIGHT TO PARTICIPATE WAS
CREATED.

>> WE DO DECIDE THOSE
SUBSTANTIVE ISSUES.

I WOULDN'T WANT TO DECIDE THAT
HERE IN THIS CASE ONE WAY OR THE
OTHER BUT JUSTICE CANNADY AND
THE OTHERS WERE SUGGESTING THE
WAY IT IS WRITTEN DOES IT ASSUME
A RIGHT OF PARTICIPATION OR WHAT
IT INVOLVES BUT THE FULL WOULD
GIVE PARTY GUIDANCE, THEY COULD
FILE SOMETHING AND SAY IT IS AN
ANIMUS BRIEF AND THERE IS NO
OBJECTION AT WE GO ON OR THEY
FILE SOMETHING AND SAY WE WANT
TO DESIGNATE SOMETHING ELSE FROM
THE RECORD OF APPEAL OF THE
OTHERS COULD OBJECT AND SAY WE
DON'T HAVE THE RIGHT TO DO THAT
UNDER THE CONSTITUTION SO I
DON'T THINK I WOULD WANT TO
DECIDE THAT ONE WAY OR THE
OTHER.

IF THAT IS THE CASE, IF WE DON'T
AGREE OR DISAGREE.

>> THANK YOU FOR THE OPPORTUNITY
TO EXPLAIN, WE BELIEVE THAT THE
LESS PROPOSED AS REVISED DOESN'T
CREATE ANY SUBSTANCE BUT THE
PROCEDURAL FRAMEWORK BY WHICH
THIS IS SORTED OUT BY THE
JUDICIARY.

I GOT HUNGRY TOO.

>> THAT SOUNDS UNLESS YOU HAVE
SOMETHING ELSE, WE ARE GOING
OVER HERE BUT THANK YOU ALL,
THANK YOU BOTH FOR YOUR
PARTICIPATION TODAY AND THE WORK

YOU PUT INTO THIS.
WE APPRECIATE IT.
THAT CONCLUDES THIS SESSION.