

>> Marshal: ALL RISE. HEAR YE HEAR YE HEAR YE..THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR. GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES,THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: GOOD MORNING OUR FIRST CASE TODAY IS IN RE: AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE CASE NO. SC2024-0317.

>> Chance Lyman,Proponent: I JUST WANT TO START BY THANKING YOUR HONORS TO RESCHEDULE THIS ARGUMENT IN LIGHT OF THE STORM WE ARE HERE TODAY TO PROPOSE FOR RULE AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE TO A RATHER TECHNICAL THE OTHER TO CREATE A PROCEDURE TO PROVIDE FOR NON FINAL APPEAL AND STAND YOUR GROUND IN MANY CASES IN BOTH THE CIVIL AND CRIMINAL CONTEXTS THAT SECTION 776.032 I WILL BEGIN BY SAYING THOSE REFERRALS FOR THE DEBTS WHERE FOLKS MAY COME TODAY YOUR HONORS. THOSE REFERRALS CAME FROM DCA STRUGGLING WITH THE REMEDIES THAT WERE ALREADY PROVIDED FOR THOSE IMMUNITY DETERMINATIONS. COURTS WERE USING CERTIORARI AND PROHIBITION.

>> Chief Justice Carlos Muniz: CAN WE TALK ABOUT BUT THE NATURES OF THOSE STRUGGLES REALLY AS IT SEEMS TO ME PERHAPS IF WE BIFURCATE THE QUESTION BETWEEN THE CIVIL CONTEXT IN THE CRIMINAL CONTEXT IT WOULD SEEM IN THE CRIMINAL CONTEXT PROHIBITION I DON'T HAVE DATA THAT IS WHY I'M ASKING THE QUESTION LIKE LEGIBLY WOULD SEEM TO WORK JUST FINE. AND PERHAPS YOU HAVE A BETTER CASE IN THE CIVIL CONTEXT THAT IS WHY YOU NEED SOMETHING OTHER THAN A WRIT OF PROHIBITION HOW STRONGLY ISN'T THE CASE BEFORE YOU GUYS WITH THE COMMITTEE THAT WE SHOULD AMEND THE RULE WITH RESPECT TO BOTH CIVIL AND CRIMINAL PROCEEDINGS.

>> Chance Lyman,Proponent: THE STRUGGLE YOUR HONOR CAME PRIMARILY FROM THE USE OF PROHIBITION IT WAS A TIME LIMIT STRUGGLE. I CAN TELL YOU THAT IS WHAT WE SEE WHEN WE PULL.

>> Justice: TELL ME HOW IT BITES ANY DIFFERENTLY THAN ANY OTHER TIME LIMIT SWITCH ALL THE ABSENCE OF THE TIME WAS RESULTING IN UNREASONABLE DELAYS AND LAST-MINUTE CONTINUANCES AND C THAT IS WHAT WE SEE IN THE SNOW DECISION THE DISCUSSION THERE AND ADDING A TIME LIMIT TO SEEKING A REVIEW OF THE STAND YOUR GROUND DETERMINATION WAS DESIGNED TO ASSUAGE THAT THE OTHER ISSUE IS SORT OF A SQUARE PEG IN A ROUND HOLE WITH THE USE OF PROHIBITION.

IT IS NOT A REVIEW TRADITIONALLY IT IS A WRIT THAT IS FORWARD-LOOKING IT SEEMED LIKE THIS IS EXPRESSED IN THE.

[LISTING NAMES] DECISION IT SEEMED LIKE THAT THE DCA STRUGGLING WITH APPLYING THAT REVIEW MECHANISM FOR THIS TYPE OF RULING WHICH IS REALLY I THINK UNIFORMLY USED TO REVIEW IN ORDER OF THE COURT. THAT IS NOT

TRADITIONALLY THE USE OF PROHIBITION ALTHOUGH I WILL CERTAINLY SAY.

>> Justice: ONCE IT IS ESTABLISHED IT IS LOCATED THE STRUGGLE SORT OF IT IS SORT OF AN ACADEMIC STRUGGLE.

>> Chance Lyman, Proponent:

>> Justice Charles Canady: THEY ARE STRUGGLING WITH WHAT WE SAID TO A CERTAIN EXTENT.

>> Justice: TO A CERTAIN EXTENT.

>> Justice Charles Canady: WE SAID WHAT WE SAID THEY ARE DELIVERING AND THE STRUGGLE IS I GUESS INTERESTING.

IT IS MORE SIGNIFICANT WHAT WE HAVE SAID UNLESS IT IS UNREASONABLE.

>> Chance Lyman, Proponent: I WOULD SAY THIS THE SUPREME COURT HAS THE ABILITY TO CREATE THE ADMINISTRATIVE CONVENIENCE OF A NONFINAL RULE HERE.

WE THINK THAT D MECHANISM IS APPROPRIATE IN LIGHT OF THE FACT THAT THESE ARE BEING REVIEWED RATHER REGULARLY SO THIS WOULD NOT BE AN ISSUE OF CHANGING CASELOAD IT IS REALLY JUST TRANSFORMING SOMETHING THAT COURTS ARE ALREADY DOING INTO ESSENTIALLY A BLACK AND WHITE PROCEDURE IF YOU WILL. AND GIVING AT THE TIME LIMIT THAT SOME OF THE COURTS ARE IDENTIFYING AS BEING A BIT OF A PROBLEM.

>> Justice: IT DOES SEEM PART OF THE CONCERNS AGAINST IT IN THE CRIMINAL CONTEXT OR AT LEAST IT WOULD NOT JUST PUT A DIFFERENT LABEL ON THE SAME QUANTITY OF THINGS IT WOULD ACTUALLY TITLE TURN SOMETHING THAT IS STILL UNDERSTOOD TO BE EXTRAORDINARY AND HAS THIS HIGH BAR AND IT'S SOMETHING THEY WOULD FEEL ALMOST OBLIGATED TO DO EVERY IN EVERY CASE.

>> Chance Lyman, Proponent: YOUR HONOR ON THAT POINT THE COMMITTEE DOES NOT FEEL WE ARE ASKING THIS COURT TO CREATE A RIGHT THAT IS WHAT THE OPPOSITION THE PUBLIC DEFENDER ASSOCIATION IS TAKING DEPOSITION IN TERMS OF THE CRIMINAL ELEMENT. THIS IS AGAIN AN ADMINISTRATIVE ROLE WITHIN YOUR JURISDICTION UNDER ARTICLE 5. IT DOES NOT CREATE A CONSTITUTIONAL RIGHT CERTAINLY THIS COURT IS NOT IN THE BUSINESS OF CREATING CONSTITUTIONAL RIGHTS.

THIS IS JUST SOMETHING THAT AGAIN PURSUED REALIZES FOR LACK OF A BETTER WORD SOMETHING THAT IS ALREADY HAPPENING.

>> Justice: WE ARE NOT BEING CRITICAL WE ARE NOT FAULTING YOU THROUGH THESE QUESTIONS FOR SUGGESTING WHAT YOU SUGGEST.

>> Chief Justice Carlos Muniz: WE ARE ACTUALLY SAYING THANK YOU IN A SPECIAL WAY.

>> Justice: THE.

[LISTING NAMES] CASE I THINK IT WAS OF THE 50 SEE IT BECAUSE THE DIFFERENCE IN HOW THESE CASES ARE TREATED WHETHER THEY ARE TREATED WHETHER IT IS CHALLENGING A PROCEDURAL ISSUE V. AMERICAN ISSUE IF IT IS PROCEDURAL IT GOES INTO CERTIORARI IF IT IS NOT BECAUSE INTO PROHIBITION THEIR SITUATIONS WHERE THE PARTIES HAVE PRESENTED WRIT OF PROHIBITION IN REALITY IT PRESENTED A PROCEDURAL ISSUE THAT WOULD BE CERTIORARI IT IS BARRED UNDER 30 DAY RULE FOR CERTIORARI PROHIBITION WOULD BE DISCRETIONARY YOU

SEE THIS ONGOING CONFLICT IN THE DISTRICT COURTS BETWEEN OUR OBLIGATION TO TREAT PETITIONS AS SEEKING THE APPROPRIATE REMEDY BUT THEN RUNNING UP AGAINST AN ISSUE WHEN YOU HAVE DISCRETIONARY DEADLINE FOR PROHIBITION HARD DEADLINE FOR CERTIORARI.

>> Chance Lyman, Proponent: ABSOLUTELY YOUR HONOR THERE IS A BIT OF A PROCEDURAL TRAP IN TERMS OF YOU WHO MAY HAVE PICKED THE WRONG WRIT. THE RULES DO PROVIDE FOR TREATING A REMEDY AS IF THE CORRECT WHAT HAD BEEN SOUGHT.

IN MOST OF THE CASES THERE IS STILL THE STRUGGLE ABOUT ARE YOU MAKING A PROCEDURAL CHALLENGE ARE YOU MAKING A MERIT CHALLENGE. FRANKLY THAT IS ONE OF THE MAIN REASONS IT JUST MAKES SENSE TO CALL IT WHAT IT REALLY IS WHICH IS AN INTERLOCUTORY APPEAL.

I ANALOGIZE IT TO WHAT HAS HAPPENED WITH THE PUNITIVE DAMAGES AMENDMENTS I THINK WE'RE ALWAYS USING CERTIORARI AND A SORT OF ADULT WOULD SAY STRUGGLING WITH THAT BUT CERTAINLY IT WAS NOT AN IDEAL SOLUTION AND THAT THIS COURT JUST RECENTLY ADOPTED I THINK A VERY SIMILAR INTERLOCUTORY RULE PROCEDURE TO BRING CERTAINTY TO THAT AREA. THIS IS OUR OVERALL THEME IS BRING CERTAINTY IN AN AREA THAT SEEMS TO BE UNCERTAIN.

>> Justice: SOME OF THAT STUFF HAS TO DO WITH THE CHALLENGE THAT THE CERTIORARI STANDARDS HAVE THIS SUBSTANTIVE COMPLICATION TO THE STANDARD OF REVIEW AS OPPOSED TO WHETHER YOU CALL IT PROHIBITION OR YOU CALL IT AN APPEAL WILL BE LOOKING IS GOING TO ESSENTIALLY BE A DE NOVO REVIEW LEGALLY OF WHAT IS GOING ON. CERTIORARI HAS THAT WEIRD LAYER OF HOW OFF THE RESERVATION LEGALLY DOES HAVE TO BE.

>> Chance Lyman, Proponent: SOMETHING MORE THAN LEGAL ERROR HAS TO EXIST HERE. PART OF THE COMMITTEE'S THINKING ON THIS WAS SORT OF THE WRIT OF PROHIBITION IN THIS CONTEXT DOES NOT SEEM TO BE THE BEST FIT. WHEN YOU COULD USE AN INTERLOCUTORY APPEAL RULE TO THE EXTENT YOU FOUND YOURSELF IN A POSITION WHERE YOU ARE MAKING A PROCEDURAL CHALLENGE TO THE DETERMINATION AND ALL OF A SUDDEN WILL BE SUBJECT TO A DIFFERENT STANDARD OF REVIEW THEN ONE WOULD BE UNDER THE PROHIBITION FIT THAT IS BEEN MADE. AND AGAIN I THINK IT'S A LITTLE BIT OF WHAT IS GOING ON IS JUST I WANT TO SAY APPRECIATION OR RESPECT FOR THAT EXTRAORDINARY CERTIORARI AND KEEPING IT WORSE WAS TO BE AND USUALLY THE INTERLOCUTORY APPEAL MECHANISM TO TAKE CARE OF SOMETHING THAT WALKS LIKE A DUCK INTOXICANT DOCK IN THAT SENSE.

I DON'T THINK THERE'S REALLY IN QUESTION THAT THE STATUTE ITSELF PROVIDES FOR IMMUNITY FROM SUITS. TO THE EXTENT THERE WERE ANY CONCERNS ON THE CIVIL SIDE OR THE CRIMINAL SIDE. I THINK THIS COURT HAS ALREADY ISSUED SOME DECISIONS THAT PRETTY MUCH CONCLUSIVELY RESOLVE THERE IS A SUBSTANTIVE RIGHT TO BE IMMUNE FROM SUIT IMMUNE FROM PROSECUTION AND IMMUNE FROM

CIVIL ACTION AND SO I DON'T SEE ANY CONCERNS IN TERMS OF THE FACTORS IN SOME OF THE CASE LAW IN THAT VEIN.

I WOULD BRIEFLY ADDRESS SOME OF THE ISSUES THAT WERE RAISED IN THE COMMENT FILED BY THE PUBLIC DEFENDER'S OFFICE. ASSOCIATION.

I THINK THE OVERARCHING THEME THESE APPEALS THESE REVIEWS ARE ALREADY HAPPENING. WE DON'T SEEM AN OUTCOME HERE WHERE ALL OF A SUDDEN THESE THINGS SKYROCKET.

BECAUSE AS YOUR HONOR POINTED OUT REVIEW AND PROHIBITION REALLY SEEMS TO BE THE DE NOVO REVIEW OF THE ISSUE ALREADY.

AGAIN THE CONCERN THERE WHILE THERE WERE SOME EXAMPLES AND SNOW IS ONE OF THEM FOLKS WAITING LONGER THAN 30 OR 15 DAYS OR SO TO GET THAT PROCESS STARTED.

PART OF THE CONCERN THERE WERE CERTAINLY ISSUES RELATED TO THE TRANSCRIPT. AGAIN THE COMMITTEE FELT THAT CREATING AN INTERLOCUTORY APPEAL RULE BREAK AND SUBMIT YOUR NOTICE OF APPEAL TIMELY THEN TO SEEK RELIEF FROM THE COURTS TO THE EXTENT YOU NEED TIME TO GET A TRANSCRIPT TOGETHER THINGS OF THAT NATURE EXTENSIONS. AT LEAST THAT WAY AGAIN IT IS FORMALIZED IT IS PROCEDURAL IS SPREAD THAT WAS A CONCERN THAT WE FELT WAS ACTUALLY ADDRESSED BY THE RULE.

I'VE ALREADY MENTIONED WE DON'T FEEL WE ARE ASKING THE COURT TO CREATE A SUBSTANTIVE RIGHT CONSTITUTIONAL RIGHTS BROTHER AT ALL.

FOR THAT REASON THAT IS WHY WE PROPOSE THE ENTERS LANGUAGE THAT SAYS ANDERS BRIEFS ARE NOT APPROPRIATE . ANDERS APPLIES TO YOUR FIRST DIRECT CRIMINAL APPEAL THAT IS IN THE CASE LAW ITSELF.

THAT IS BECAUSE THAT IS THE CONSTITUTIONAL RIGHT SPACE. THIS IS NOT THIS IS AN ORDER THAT EXIST BEFORE A JUDGMENT AND SENTENCE. THIS IS ESSENTIALLY A PROCEDURAL ORDER PERHAPS ON THE WAY THERE. BUT NOT QUITE THERE ALREADY.

THOSE SAME CONSIDERATIONS THAT THE COURT IS TALKING ABOUT IN ANDERS WE DON'T SEE THOSE AS BEING PRESENT DOES NOT SEEM TO MAKE SENSE TO ASK REVIEWING COURTS TO REVIEW RECORDS THAT ARE NOT REALLY TRANSMITTED IN A SENSE YOU CREATE YOUR APPENDIX WITH A NONVIOLENT APPEAL AND OF COURSE WITH A WRIT.

A LOT OF REASONS ANDERS DOES NOT WORK IN THIS NARROW WHICH IS WHY WE MADE THAT RECOMMENDATION.

>> Justice: WHAT IS THE COMMITTEE'S POSITION ON WHETHER THERE NEEDS TO BE A STAY.

>> Chance Lyman,Proponent: THE COMMITTEE'S POSITION THAT MECHANISM EXIST IN THE ROLES CAN BE SOUGHT VIA MOTION.

THERE IS THE CROSS REFERENCE BETWEEN 9.140 AND 9.13 OPERATOR AND THE REFERENCE YOU SEEK CRIMINAL APPEALS SHALL PROCEED AS CIVIL APPEALS EXCEPT AS MODIFIED. OUR POSITION WOULD BE IF THERE NEEDS TO BE A STAY IT IS

IS AT YOUR IN A NON- FINAL APPEAL CASE YOU FILE A MOTION SEEK REVIEW PURSUANT TO THAT MECHANISM THAT IS ALREADY THERE. I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL UNLESS THERE ARE ANY OTHER QUESTIONS.

>> Chief Justice Carlos Muniz: THANK YOU.

>> John E. Morrison,Opponent: I APPRECIATE THE COURTS ATTENTION FROM THE COURTS QUESTION I KNOW THE COURTS UNDERSTANDS OUR COMMENTS. CONTRARY TO THE COMMITTEE'S SUGGESTION THAT THE DCA'S ALREADY REVIEWING THESE REGULARLY QUITE FRANKLY YOU HAVE NOT SEEN ANYTHING YET. IF THIS IS THE PROPOSAL IS ACCEPTED THIS IS A RIGHT I NOTE THE COMMITTEE DISPUTES THAT. A RIGHT TO APPEAL CAN BE CREATED BY CONSTITUTION. FINAL RIGHTS OF APPEAL FINAL ORDERS ARE CREATED BY STATUTE. UNDER THE FLORIDA SEPARATION OF POWERS THIS COURT CREATE DIRECT TO INTERLOCUTORY APPEALS. WHAT THE COMMITTEE IS PROPOSING IS FOR THIS COURT TO CREATE A RIGHT TO INTERLOCUTORY APPEAL. WHICH HAS A LOT OF IMPLICATIONS IN THE CRIMINAL WORLD. BECAUSE WE WILL NEED TO TELL OUR CLIENTS YOU HAVE THIS RIGHT. OUR CLIENTS AS THEY HAVE SAID TO ME MANY TIMES, WHAT IS THE DOWNSIDE TO ME DOING THIS? IF I SAY NOTHING.

>> Justice: HOW IS THAT ANALYSIS ANY DIFFERENT THAN THE CONTEXT OF PROHIBITION DOES GIVE THE OBLIGATION TO ADVISE YOUR CLIENT THAT YOU HAVE THE RIGHT TO CHALLENGE THIS PROCEDURE OF PROHIBITION.

>> John E. Morrison,Opponent: WE DO NOT INFORM OUR CLIENTS A VERY EXTRAORDINARY WRIT DISCLOSED THE CHIEF JUSTICE IS POINT. EVERY PERSON WHO SITTING IN JAIL ON A BOND HAS TO USE YOUR HONORS SUGGESTION A RIGHT TO HABEAS CORPUS.

WE DO NOT SUGGEST EVERY CLIENT THAT TAKES A WRIT .

>> Justice: WHY IS AN EXTERNALLY WRIT DIFFERENT IN TERMS OF THE CLIENTS POTENTIAL REMEDIES WHY WOULD ADVISING ON INTERLOCUTORY APPEAL V. AN EXTERNALLY WRIT BE ANY DIFFERENT.

>> John E. Morrison,Opponent: BECAUSE IT IS DISCRETIONARY IS THE BEST ANSWER THE SECOND ANSWER GIVEN A PROMISE YOU THAT IS THE PRACTICE. IF THIS COURT THINKS WE SHOULD BE TELLING EVERY PERSON WHO SITTING IN JAIL ON A MONETARY BOND THAT THEY HAVE A RIGHT TO HABEAS CORPUS WILL TAKE THAT INSTRUCTION BUT I DO NOT THINK THE COURT WANTS TO DO THAT.

>> Justice: I DON'T THINK THE COURT IS IN THE BUSINESS OF SELLING ATTORNEYS HOW TO ADVISE THEIR CLIENTS I'M JUST TRYING TO UNDERSTAND.

>> John E. Morrison,Opponent: THE COURT IS IN THE BUSINESS THE SAME WITH THE ETHICAL DUTIES ARE SERIOUSLY.

>> Justice Jorge LaBarga: YOU'RE TALKING ABOUT SOMETHING THAT WOULD HAPPEN IN EVERY CASE THAT YOU HAVE YOUR CLIENT IS IN JAIL. YOU HAVE AN OBLIGATION TO TELL THEM YOU HAVE A WRIT OF HABEAS CORPUS.

HE IS ABASCAL GOING TO SAY GO FOR IT.

YOU ARE TALKING ABOUT ALL OF YOUR CASES.

HOW MANY CASES ARE THERE INVOLVING THIS STANDING YOUR GROUND THING.

>> Justice: NOT AS MANY I WOULD THINK.

>> John E. Morrison,Opponent: AS A POINT OF INFORMATION MOST OF OUR CLIENTS ARE NOT IN JAIL PENDING TRIAL THANK GOD. WE TRIED TO DO A BETTER JOB FOR CLIENTS THAN THAT. SECOND, THERE ARE A LOT OF STANDING YOUR GROUND MOTIONS FILED.

WHAT THE DCA'S ARE SAYING AS REVIEWS OF THAT OR MAYBE 100 OR LESS IT IS A MIDDLE SCHOOL PERCENTAGE.

>> Justice: THE PART OF YOUR ARGUMENT I'M NOT SYMPATHETIC WE ARE IN THE RIGHT SCREENING BUSINESS AND NOT IN THE SYNTHETIC TO THEIR VIEW THAT WE ARE IN THE DIRECTION OF WHAT YOU NEED TO ADVISORY COUNSEL OR YOUR CLIENT ABOUT BUSINESS.

WITHOUT CONCEDED EITHER OF THOSE THE PART OF THE ARGUMENT THAT I FIND PERSUASIVE IS THE IDEA OR IF THERE'S SOMETHING NEW THEN THERE WILL BE JAILHOUSE LAWYERS THERE WILL BE GOOGLE SEARCHES YOU HAVE DEFENSE SAYING THEY JUST CHANGE THE RULE. I'M JUST WONDERING HOW MUCH OF THAT IS JUST A NEW AS A LAWYER AND AS THE DEFENSE COMMUNITY OF WHICH IS TO BE A MEMBER TO SAY YES THAT IS NOT WHAT THAT MEANS.

>> John E. Morrison,Opponent: WE CAN ALWAYS ADVISE CLIENTS IN FACT WE OBVIOUSLY WOULD ADVISE A CLIENT IF WE BELIEVE THAT APPEAL WOULD BE MERITLESS.

AS I SAID THAT CONVERSATION I'VE HAD THOSE CONVERSATIONS.

THEY ALWAYS GO I DON'T BELIEVE THAT IT HAS ANY MERIT I DON'T BELIEVE YOUR GETTING RELIEF.

THE ASKED WHAT IS THE COST NSA NOTHING TO YOU.

THERE IS A HUGE COST TO THE SYSTEM BUT NOTHING TO THE CLIENT.

>> Justice: I GUESS THAT IS WHAT I'M PUSHING ON I DON'T UNDERSTAND HOW IT IS ANY MORE COSTLY THAN THE MERITLESS HEAVIEST PETITION FOR THE DETAINEE BOTH ARE FRIVOLOUS AND BOTH AS AN COUNSEL YOU HAVE A JOB TO SAY THAT IS FRIVOLOUS THAT IS NOT GOING TO WIN US AND IN FAVOR WITH THE JUDGE WHO MIGHT ULTIMATELY BE SENTENCING YOU.

>> John E. Morrison,Opponent: THAT'S UNDER EXTRAORDINARY REMEDY WHEN YOU HAVE A INTERLOCUTORY APPEAL I BELIEVE THAT IS A RIGHT I BELIEVE THAT IS A RIGHT CREATED BY THAT'S.

>> Justice Charles Canady: I STRUGGLE.

>> John E. Morrison,Opponent: THE RIGHT IS THE RIGHT TO BRING AN INTERLOCUTORY APPEAL.

>> Justice Charles Canady: UNDERSTAND IF YOU HAVE NO ISSUES IT IS FRIVOLOUS I UNDERSTAND I'M NOT UNSYMPATHETIC TO THE POINT YOU'RE MAKING. I JUST STRUGGLE WITH THIS IDEA THAT THERE IS A RIGHT TO BRING A FRIVOLOUS PROCEEDING WHICH EVERYBODY KNOWS IS FRIVOLOUS.

EVEN THOUGH THE DEFENDANT KNOWS IS FRIVOLOUS BUT DOES NOT CARE IT IS

JUST SOMETHING THAT CAN BE DONE.

>> John E. Morrison, Opponent: YOUR HONOR HERE IS THE POINT WHOSE DECISION IS IT TO TAKE AN APPEAL CONNECT THE LAW IS PRETTY CLEAR IS THE CLIENT'S DECISION TO TAKE AN APPEAL.

>> Justice: THIS IS A COMMON ARGUMENT WHETHER WE LOOK AT 9.130 OR IN THE CRIMINAL CONTEXT IF THE COURT CREATES A MECHANISM TO REVIEW THESE TYPES OF INTERLOCUTORY APPEAL THAT THERE WILL BE THESE WAVES APPEAL WILL NEVER END I DON'T KNOW IF THAT HISTORICALLY HAS HAPPENED WHEN THE RULES ARE AMENDED TO SEE THIS AS SOMETHING THERE MIGHT BE AN INITIAL RUSH WHEN THE RULE IS AMENDED IF IT WAS AMENDED AND THEN ONCE THE CLASS OF LITIGANTS SEES THESE ARE BEING REGULARLY DENIED IT SLOWS DOWN OR DO YOU THINK THIS IS A PERMANENT SITUATION.

>> John E. Morrison, Opponent: I BELIEVE IT WOULD BE SIMILAR TO WHAT WE HAVE WITH ANDERS APPEALS.

ANDERS WAS DECIDED IN THE 70S I SEE NO END TO THAT WAVE YOUR HONOR.

>> Justice: CAN YOU ADDRESS WHETHER THIS IS A SOLUTION IN SEARCH OF A PROBLEM.

MY QUESTION FOR YOUR FRIEND WERE ABOUT HOW MUCH DATA IS THERE OUT THERE ABOUT THIS BEING A REMEDY THAT WE ACTUALLY NEED HE HAD SOME LEARNING THINGS TO SAY ABOUT THE . IS HE RIGHT.

>> John E. Morrison, Opponent: NO YOUR HONOR THAT WAS MY SECOND POINT I ESSENTIALLY HAVE 2.1 THIS IS UNWORKABLE NEVER TO THIS UNNECESSARY. LET ME ADDRESS THE SECOND POINT. I THINK THAT THERE IS THREE CASES THE COMMITTEE CITE TWO CASES I FOUND THIRD CASE.

THERE ARE THREE CASES I THINK IT SPEAKS STRONGLY TO THE FACT THAT THIS IS NOT A SITUATION THAT NEEDS TO BE HANDLED BY A RULE CHANGE.

THE COURTS THAT DCA'S HAVE SHOWN THEY ARE QUITE CAPABLE IN IT THE BEST CASES IS LEWIS WHERE THE COURT SAYS YOU FILE THIS ON THE EVE OF TRIAL. WE ARE NOT GOING TO HEAR IT BECAUSE IT IS A DISCRETIONARY WRIT.

I THINK THAT IS APPROPRIATE.

THE OTHER CASES THAT DELL AND SNOW THERE REALLY ARE STRUGGLING WITH THE SUBSTANTIVE POINT OF WHETHER PROHIBITION IS CORRECT OR NOT JUSTICE CANADY SUGGESTED THIS COURT SAID IT MAYBE THEY DON'T LIKE IT MAYBE IT IS AN INTELLECTUAL BOX BUT WE CERTAINLY HAVE OTHER SITUATIONS WHERE PROHIBITION IS USED WHERE A COURT SIMPLY CANNOT PROCEED.

I THINK THAT IS WHAT THE ANSWER IS ABOUT.

WHETHER THE DCA'S ARE COMFORTABLE WITH THAT OR NOT THE KEY IS IF THE COURT BELIEVE THAT IN A DISCRETIONARY POSTURE. IF THERE ARE ABUSES, THE DCA'S ARE PERFECTLY CAPABLE AND WILLING TO DEAL WITH IT.

AND TO YOUR POINT, JUSTICE THE DIFFERENCE BETWEEN CERTIORARI AND PROHIBITION SOMETIMES THERE IS A TRAP THERE THAT IS ABSOLUTELY TRUE DEFENSE ATTORNEYS HAVE JUST GOT TO BE GOOD.

BUT THE COST SOMETIMES WE SEE A SITUATION AND HUMAN NATURE SAYS THERE

MUST BE A RULE THOUGHT TO BE A RULE. NOT ALWAYS. SOMETIMES MAKING A RULE CREATES THE SITUATION AND MAKES IT WORSE. THIS IS ONE OF THOSE SITUATIONS IT MAKES IT UNWORKABLE AND IT IS NOT NECESSARILY THE COURTS HAVE THE DISCRETIONARY WITH AN EXTRAORDINARY WRIT VARIABLE TO TAKE CARE OF THE SITUATION.

>> Justice Charles Canady: I FIND IT VERY INTERESTING ORDINARILY THE PUBLIC DEFENDERS WANTED THE KEY TO THE COURTHOUSE.

ADUL IN THIS IN A NEGATIVE WAY AT ALL BUT YOU ARE SUGGESTING THAT YOU HAPPY WITH THE WAY THINGS ARE NOW. I DON'T WANT THIS TO MAY BE AN EASY KEY TO THE COURTHOUSE I TAKE THAT SERIOUSLY.

I THINK THAT IS SIGNIFICANT BECAUSE IT IS NOT COMMON FOR PUBLIC DEFENDERS TO SAY WE DON'T WANT AN ADDITIONAL WAY TO GET THE COURT FOR OUR CLIENTS. THAT IS A WAY OF ACKNOWLEDGING I THINK THE WEIGHT OF YOUR CONCERNS IN THIS CONTEXT.

>> John E. Morrison,Opponent: THANK YOU YOUR HONOR IT TRULY DOES GO TO THAT WE SEE THIS AS CREATING TRULY ENORMOUS PROBLEMS.

>> Justice: IF I UNDERSTAND YOU RIGHT THE PROBLEM IT CREATES IS A CLIENT ATTORNEY PROBLEM IT SOUNDS LIKE WHAT YOUR POSITION REALLY IS ALL MY GOSH IF YOU GIVE US THIS TOOL IT WILL TAKE IT WILL BE POTENTIALLY DIVISIVE IN THE ATTORNEY-CLIENT RELATIONSHIP FOR US TO EXPLAIN WHAT THIS TOOL IS AND IS NOT AND IS GOING TO CREATE A SOURCE OF TENSION . A SYSTEMATIC SOURCE OF TENSION AM I HEARING YOU RIGHT.

>> John E. Morrison,Opponent: THAT IS TRUE IT IS THE SAME TENSION WE HAVE IN ANDERS WHEN WE ARE ASKED TO FILE AN APPEAL AND WE CANNOT FIND ANY MERIT TO IT.

I ASSURE YOU CLIENTS ARE NOT VERY HAPPY WHEN WE FILE AN ANDERS BRIEF. HERE WITHOUT AN ANDERS BRIEF THE PROBLEM GETS WORSE.

IT BECOMES A STACKING PROBLEM. IF WE FIND THAT THERE IS NO MERIT IN THE CLIENT IS UPSET AS THEY WILL BE WHEN WE SAY THIS TO THEM. WERE GOING TO HAVE A CONFLICT WILL HAVE TO CONFLICT OF THE CASE. AND SUBSEQUENT COUNSEL WILL BE IN THE SAME EXACT SITUATION WHERE THEY WILL LOOK AT IT THEY WILL SEE IT IS MERITLESS AND IT WILL BE TO BORROW A PHRASE TURTLES ALL THE WAY DOWN.

THAT IS A VERY SERIOUS PROBLEM.

ANDERS WORKS BECAUSE WE GET TO DRAW AT THE END OF THE FINAL APPEAL. THAT IS ESSENTIALLY OUR GOODBYE HANDSHAKE TO THE CLIENT I'M SORRY I CANNOT DO ANYTHING FOR YOU YOU'RE ON YOUR OWN.

WE CANNOT DO THAT IN AN INTERLOCUTORY APPEAL CONTEXT. THAT IS JUST A DIFFERENT SCENARIO AND SITUATION IT CREATES THIS BUILT-IN ATTORNEY-CLIENT CONFLICT DOES NOT NEED TO HAPPEN. IT DOES NOT HAPPEN WITH EXTRAORDINARY REMEDIES.

>> Justice Jorge LaBarga: [UNCLEAR AUDIO]

>> John E. Morrison,Opponent: I THINK THIS COURT HAS ALLOWED ANDERS NO I THINK

THE ANSWER TO YOUR QUESTION IS NO.

I WAS THINKING OF WHEN THEY REMOVE A CHILD FROM A PARENT.

>> Justice: TERMINATION.

>> John E. Morrison,Opponent: I DON'T PRACTICE IN THAT AREA THANK YOU I CANNOT REMEMBER THE TERM. THAT IS ALSO A FINAL ORDER I BELIEVE.

I BELIEVE.

I SHOULD NOT SPEAK ABOUT MORE I KNOW NOTHING ABOUT.

I WILL LEAVE THAT TO THOSE WHO ACTUALLY KNOW THAT AREA OF LAW. I WILL RETRACT ALL MY COMMENTS.

[LAUGHTER].

ANY OTHER QUESTIONS FROM THE COURT?

>> Justice: JUST OUR THANKS FOR DOING THE THANKLESS. BOTH OF YOU.

>> John E. Morrison,Opponent: THAT YOU YOUR HONOR BE GREATLY APPRECIATED AS CATTLE SAID WE REALLY APPRECIATE NOT HAVING TO FLY IN THE MIDDLE OF THAT HURRICANE. IT WAS QUITE WORRISOME.

THANK YOU.

>> Chance Lyman,Proponent: IF YOU WOULD LIKE TO HEAR FROM YOU FURTHER IN TERMS OF A DATA POINT I THINK INITIALING ONE THIS IS THE SECOND REFERRAL 2018 THIS CAME TO THE COMMITTEE THE COMMITTEE LOOKED AT IT WE DID NOT RECOMMEND ANY CHANGE AT THAT TIME BECAUSE IT WAS NOT THE RIGHT TIME PERHAPS. IMMEDIATELY AFTER DON'T DO THAT THESE NEXT TWO CASES COME UP AND THEY ARE STRUGGLING WITH IT AND THEY ARE WRITING ON IT AND REFERRING ON IT.

[LAUGHTER]

>> Justice: JUST BECAUSE SOME DCA JUDGE WANTS TO WITHOUT THE DUSTY BOX AND LOOK INTO PROHIBITION AND THIS AND THAT. THIS IS AN AREA WHERE CLARITY IS ALL THAT YOU NEED.

ONCE YOU KNOW IT IS AVAILABLE AND THE PEOPLE GET SUBSTANTIVE ACCESS TO WHAT THEY NEED IN THE SYSTEM IS NOT OVERBURDENED WITH UNNECESSARY THINGS YOU WOULD THINK IT HAS CREDIBILITY TO ME THAT PEOPLE WHO YOU WOULD EXPECT TO BE WANTING EVERY OPPORTUNITY ARE SAYING THIS WOULD MAKE THINGS WORSE.

>> Chance Lyman,Proponent: I CERTAINLY WOULD NOT DISPUTE THAT.

THE ISSUE FROM THE COMMITTEE'S PERSPECTIVE I CAN TELL YOU WE SORT OF THOUGHT THAT SEEMS TO BE SOMETHING THAT WOULD REALLY MATTER MORE AT THE TRIAL COURT LEVEL.

BRINGING THE MOTION IN THE FIRST PLACE. WE ARE TALKING ABOUT A REVIEW MECHANISM HERE AND ONE DIFFERENTLY SORT OF ALREADY EXISTS.

THE EDITION ABOUT WHETHER TO BRING THAT MOTION IN THE FIRST PLACE THAT IS PROBABLY THE BIGGER DECISION WHEN YOU TALK WITH THE CLIENT I CERTAINLY CANNOT SPEAK TO THAT.

THAT WAS CERTAINLY SOMETHING THE COMMITTEE CONSIDERED IN GRAPPLING WITH THIS PROBLEM.

>> Justice: CAN YOU REMIND ME IN THE 2018 REFERRAL I DON'T REMEMBER SEEING HER WAS THAT REFERRAL FROM WAS IT FROM THE ATTORNEYS WAS IT FROM THE DCA.

>> Chance Lyman, Proponent: I WANT TO SAY THAT WAS FROM THE DCA YOUR HONOR I WOULD NOT BE ABLE TO FEEL CONFIDENT WITH THAT ANSWER. I APOLOGIZE. I CAN CERTAINLY TALLY WE LOOK BACK INTO IT WHEN WE GOT THIS NEW ONE ON HER DESK TO REFRESH OUR MEMORY.

IF THERE ARE ANY FURTHER QUESTIONS AND HAPPY TO ANSWER THEM BUT I THINK WE HAVE TALKED ABOUT THIS ONE THANK YOU YOUR HONOR.

>> Chief Justice Carlos Muniz: THANK YOU SO MUCH WE APPRECIATE IT.