

>> 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.

>> Chief Justice Carlos Muniz: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT OUR FIRST CASE TODAY IS 2024-0839 INVOLVING POTENTIAL AMENDMENTS TO CRIMINAL PROCEDURE 3.190

>> Hon.Joseph A. Bulone: GOOD MORNING MAY IT PLEASE THE COURT. HONOR TO BE HERE I AM JUDGE. BULONE, CHAIR OF THE CRIMINAL COURT STEERING COMMITTEE OUR COMMITTEE HAS MADE A NUMBER OF PROPOSALS TO MODIFY RULE 3.190. HOW DID THIS START?

TO US IT NEVER SEEMED PRACTICAL THAT A MOTION TO DISMISS HAD TO BE FILED BEFORE OR AT THE ARRAIGNMENT. THAT IS WHAT THE RULE CURRENTLY PROVIDES. WE HAVE ACTUALLY NEVER SEEN ANYONE DO THAT BEFORE AND THE RULE HAS BEEN UNIFORMLY IGNORED.

FOR YEARS.

IT SEEMS APPROPRIATE TO PERHAPS AMEND THE RULE.

OUR PROPOSAL IS A MOTION TO DISMISS MUST BE FILED BEFORE THE DEADLINE SET BY THE TRIAL COURT OF COURSE THERE IS GOING TO BE A GOOD CAUSE EXCEPTION FOR THAT.

HOWEVER, THE MOTION SHOULD BE FILED OR MUST BE FILED BEFORE JEOPARDY ATTACHES SO THAT THE STATE HAS THE ABILITY TO APPEAL AN ADVERSE RULING. IMMUNITY MOTIONS ARE A WHOLE DIFFERENT ANIMAL THE REASON IS THAT THEY ARE EVIDENTIARY AND THEY CAN BE VERY LONG.

THEY ARE BASICALLY A TRIAL BEFORE THE TRIAL.

BELIEVE IT OR NOT, AT TIMES LAWYERS WILL FILE THESE MOTIONS ON THE EVE OF THE TRIAL OR ON THE MORNING OF THE TRIAL. WHY DO THEY DO THIS?

FOR THE WORST POSSIBLE REASONS BECAUSE THEY CAN.

THERE IS NO DEADLINE INIT THE RULE ACCEPT BEFORE OR AT THE ARRAIGNMENT WHICH IS UNIVERSALLY IGNORED. IN THE FOURTH DCA IN ACOSTA FIGUEROA RULED THAT MOTION CAN BE FILED AT ANY TIME BEFORE TRIAL.

THE COURT OF COURSE CAN FIX THIS WE PROPOSE THAT IMMUNITY MOTIONS TO DISMISS MUST BE FILED NO LATER THAN 30 DAYS BEFORE THE TRIAL OF COURSE THERE IS A GOOD CAUSE EXCEPTION AND THAT THERE WILL BE GOOD CAUSE.

FROM TIME TO TIME OF COURSE. THERE IS A SENTENCE FOR THIS IN THE RULE.

WILLIAMS RULE, CHILD HEARSAY, ALIBI DEFENSE, BATTERED SPOUSE SYNDROME, DEFENSE ALL HAVE FILING DEADLINES BEFORE THE TRIAL. EITHER 10, OR 30 DAYS, IT SEEMS TO WORK.

AFTER WE DEALT WITH THAT.

>> Justice: JUDGE, CAN I ASK A QUESTION ABOUT THAT CAN YOU ADDRESS THE CONCERNS THERE ARE DIFFERENCES IN THE DEFENSE VERSUS AN IMMUNITY GRANTING PROVISION BECAUSE THOSE ARE KIND OF TWO DIFFERENT THINGS I

THINK THEY HAVE RAISED SOME INTERESTING CONCERNS ABOUT THAT.
CAN WE LIMIT IMMUNITY PROCEDURALLY?

>> Hon. Joseph A. Bulone: WELL I THINK YOU CAN I THINK IT IS A PROCEDURAL THING OBVIOUSLY THEY ARE VERY CLOSELY RELATED THERE BASED ON THE SAME FACTS IT WILL BE THE SAME FACTS THAT COME OUT IT IS JUST A MATTER OF THE ISSUE OF WHO HAS THE BURDEN OF PRODUCTION AND I WILL GET INTO THAT A LITTLE BIT LATER.

AND WHAT THE BURDEN OF PROOF IS. IT IS ALWAYS THE STATE IS EITHER CLEAR OR CONVINCING EVIDENCE OR BEYOND A REASONABLE DOUBT AT A TRIAL.

I THINK EVEN IF IT IS AN IMMUNITY ISSUE I THINK THAT THE COURT IS STILL ABLE TO DEAL WITH IT PROCEDURALLY.

AFTER WE DEALT WITH THE DEADLINE ISSUE WE DECIDE TO REVIEW THE ENTIRE RULE WE SAW A LOT OF THAT LANGUAGE WAS ANTIQUATED AS A MATTER OF FACT THERE WERE SOME PORTIONS WE DID NOT EVEN UNDERSTAND WHAT IT MEANT. WE TRIED TO UNDERSTAND WHAT IT MEANT THEN WE TRIED TO MAKE IT EASIER FOR EVERYBODY TO FOLLOW.

I DON'T THINK THERE IS A LOT OF CONTROVERSY ABOUT THAT.

ONE PROPOSAL THAT HAS GENERATED DISCUSSION IS THE REQUIREMENT THAT WE ARE PROPOSING THAT ALL MOTIONS TO DISMISS INCLUDING IMMUNITY MOTIONS MUST BE SWORN BY SOMEONE WITH PERSONAL KNOWLEDGE OF THE CASE. IT DOES NOT HAVE TO BE THE DEFENDANT OBVIOUSLY IT CAN BE THE DEFENDANT BUT IT CAN BE A WITNESS THAT WAS THERE WITH KNOWLEDGE OF THE FACTS.

THE PURPOSE IS TO MAKE SURE THAT THESE MOTIONS ARE MADE IN GOOD FAITH AND ARE SOMEWHAT RELIABLE.

>> Chief Justice Carlos Muniz: WHAT ABOUT THE ARGUMENT I THINK THIS COMES UP ELSEWHERE THAT THESE ARE EXTRA STATUTORY REQUIREMENTS I COMMEND YOU FOR TAKING ON THE PROJECT AND DOING SUCH A GOOD JOB OF IT.
WHY SHOULD WE NOT BE GUIDED BY WHAT THE STATUTE REQUIRES?

>> Hon. Joseph A. Bulone: WELL, THAT'S A GOOD QUESTION AS FAR AS WHAT THE STATUTE REQUIRES THE DCA SAYS THE STATUTE IS UNAMBIGUOUS BUT THE DCA FIND DIFFERENT MEANINGS THEY DON'T AGREE ON WHAT THE MEANING IS.
AS YOU KNOW THE APPLICABLE STATUTE IS 776.032 SUBSECTION NUMBER FOUR IT STATES THAT A BENEFICIARY CLAIM OF SELF-DEFENSE IMMUNITY MUST BE RAISED BY THE DEFENSE AT A PRETRIAL IMMUNITY HEARING.

>> Justice John Couriel: IT DOES NOT SAY ANYTHING ABOUT WHO NEEDS TO BE SWORN.

>> Hon. Joseph A. Bulone: WRITE THE DCA HAS HELD AND SOME I WILL GO OVER THAT BRIEFLY THAT IS IN JEFFERSON THE 2ND DCA RULED THAT THE DEFENDANT ONLY NEEDS TO MAKE A CLAIM IN OTHER WORDS JUST FILE A MOTION THEN THE THIRD DCA IN CASANOVA FOLLOWED JEFFERSON AND HELD THAT THE MOTION DID NOT HAVE TO BE SWORN. THE FIRST DCA TOOK A WHOLE DIFFERENT APPROACH HERE IN FREEMAN. WHERE THEY HELD THAT IN THEIR VIEW THE PLAIN LANGUAGE OF THE STATUTE MEANS THAT THE DEFENDANT MUST PRESENT PRIMA FACIE EVIDENCE AT

THE HEARING. THAT IS WHAT IT SAYS AT THE HEARING THEY THINK THE DEFENSE HAS PUT ON SWORN TESTIMONY AT THE HEARING THEY HAVE THE BURDEN OF PRODUCTION AND IF THEY SHOW OUR PRIMA FACIE CASE THEN THE STATE HAS THE BURDEN BY CLEAR AND CONVINCING EVIDENCE TO SHOW OTHERWISE. IN THEIR OPINION ON SWORN ALLEGATIONS ARE NOT GOOD ENOUGH THEY THINK THERE HAS ACTUALLY BEEN SWORN TESTIMONY AT THE HEARING. THERE IS SOME LEGISLATIVE HISTORY TO SUPPORT THAT WE HAVE THAT IN OUR REPORT. OUR PROPOSAL IS NOT TO GO AS FAR AS THE FREEMAN CASE. WE ARE JUST PROPOSING THAT ALL MOTIONS TO DISMISS AND THAT WOULD INCLUDE IMMUNITY SELF-DEFENSE MOTIONS SHOULD BE SWORN. WE JUST WANT TO MAKE SURE THAT THEY ARE DONE IN GOOD FAITH AND THAT THEY ARE SOMEWHAT.

>> Justice Charles Canady: IT'S A MATTER OF THE JUDICIAL ECONOMY.

IF YOU CANNOT GET SOMEBODY AM I CORRECT IN UNDERSTANDING THAT YOU CANNOT GET SOMEBODY TO SWEAR TO IT, PRIOR TO THE HEARING YOU MAY COME TO THE HEARING THEN IT OLD AND HAVE BEEN NOTHING.

>> Hon. Joseph A. Bulone: RIGHT I'M NOT SAYING THIS HAPPENS EVERY TIME LAWYERS, SOMETIMES WILL ASK FOR AN IMMUNITY HEARING JUST TO GET EXTRA DISCOVERY. THE MORE TIMES YOU HAVE A HEARING THEN THE MORE INCONSISTENT STATEMENTS YOU WILL HAVE IT IS JUST INEVITABLE.

THE OTHER THING THAT THEY CAN DO WHAT THEY CAN WEAR DOWN THE WITNESSES COOPERATION.

BECAUSE IF YOU STOP AND THINK ABOUT IT THEY HAVE TO GIVE UP STATEMENTS TO THE POLICE TO THE STATE ATTORNEY INVESTIGATION MAY BE A GRAND JURY. DEPOSITIONS, IMMUNITY HEARINGS. THEN THE TRIAL A LOT OF THESE INVOLVE DRUG DEALS GONE BAD WHERE EVERYONE HAS A GUN AND SOMEBODY SHOOTS SOMEBODY BECAUSE SOMEBODY GETS DISRESPECTED OR WHATEVER. OR THEY ARE GANGS THAT ARE SHOOTING AT EACH OTHER. THE CHANCES OF GETTING THESE WITNESSES IN EVERY SINGLE TIME IS NOT VERY GOOD.

OBVIOUSLY IF IT IS GOOD FAITH IMMUNITY HEARING WE HAVE THE IMMUNITY HEARING . THAT IS THE LAW. I THINK WE SHOULD HAVE AN ASSURANCE IT IS MADE IN GOOD FAITH AND IT IS SOMEWHAT RELIABLE.

>> Justice: WITH THE PEOPLE LIKE THE DEFENSE BE ABLE TO RELY ON THE SWORN STATEMENT AS EVIDENCE IN THE HEARING?

>> Hon. Joseph A. Bulone: THAT IS OUR PROPOSAL.

IT IS JUST IT IS A MOTION IT IS SWORN THERE CAN BE AN AFFIDAVIT.

BY ANOTHER WITNESS WITH THE DEFENDANT SWEARING TO IT LIKE WHAT HAPPENS IN OUR.

[LISTING NAMES] MOTION A SWEARING LIKE THAT. THEN OUR PROPOSAL WOULD BE HERE IT IS IT IS SWORN STATE, YOU HAVE THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE THEN TO GO. THAT IS NOT EXACTLY WHAT THE FREEMAN COURT SAYS WE ARE NOT PROPOSING ANYTHING THAT BARBARA FREEMAN SAYS THE DEFENSE HAS PUT WITNESS ON AT THE HEARING.

THAT MAY BE DICTA BUT THEY SAID IT.

>> Justice Jamie Grosshans: ESSENTIALLY THE STATEMENTS CAN TAKE PLACE OF ANY LIVE TESTIMONY IN YOUR MIND OR IN THE MOTIONS.

>> Hon. Joseph A. Bulone: RIGHT, NOW ALL HAS TO BE IS AN UNSWORN MOTION. ALL RIGHT THANK YOU IF I HAVE TIME FOR REBUTTAL I'LL BE BACK.

>> GOOD MORNING MAY IT PLEASE THE COURT JOHN EDDY MORRISON, APPEARANCE FOR FLORIDA PUBLIC DEFENDER ASSOCIATION I WANT TO ADDRESS THREE ASPECTS OF THE COMMITTEE'S PROPOSAL SWORN STATEMENTS, FORFEITURE AND GOOD CAUSE.

SWORN STATEMENTS I BELIEVE THE COMMITTEE'S PROPOSAL IF I HEARD THE JUDGE CORRECTLY TODAY HE IS PROPOSING TO ESSENTIALLY REINSTITUTE A C4 PROCEDURE. FOR IMMUNITY MOTIONS.

WHICH I BELIEVE THIS COURT RULED WAS INAPPROPRIATE AND DENNIS. THE JUDGE WOULD LOOK AT THESE MOTIONS AND MAKE A DECISION BASED ON THE MOTIONS TO WHETHER YOU EVER GET HEARING.

THAT OF COURSE IS NOT WHAT THE STATUTE SAYS.

THE STATUTE SAYS IT PRIMA FACIE CASE IS MADE AT THE HEARING.

FRANKLY, IF YOU CANNOT COME UP WITH YOUR PRIMA FACIE CASE AT YOUR HEARING THEN IT'S A VERY VERY SHORT HEARING.

>> Justice John Couriel: HOW WOULD YOU RESPOND TO THE COMMITTEE'S ARGUMENT THAT THERE IS A CIRCUIT SPLIT ON THIS ISSUE IF WE DO NOT DEAL WITH IT IN AMENDING THE RULE WHERE WHISTLING PAST THE GRAVEYARD.

>> John Eddy Morrison: I APPRECIATE THE COMMITTEE'S POSITION ON THE SHORT THERE IS A CIRCUIT SPLIT THAT ASIDE THE CIRCUIT SPLIT IS ON THE WHAT HAPPENS IN AN EVIDENTIARY HEARING.

NEITHER FREEMAN NOR JEFFERSON NOR ANY OTHER CASE IN FLORIDA THAT I KNOW OF, SUGGEST THERE IS TO BE A SWORN MOTION BEFORE THE HEARING.

THERE NEEDS TO BE SOME SORT OF SHOWING OF PRIMA FACIE TO GET TO A HEARING THE LEGISLATURE SAID VERY DIFFERENT THE LEGISLATURE SAID, THIS IS THE LANGUAGE OUT OF 776.0324, FISHER RAISED BY THE DEFENDANT AT A PRETRIAL IMMUNITY HEARING . THAT IS THE STATUTORY LANGUAGE. I WOULD URGE THIS COURT TO FOLLOW THAT STATUTORY LANGUAGE.

THAT IS WHAT THE LEGISLATURE DID.

THAT IS THE SWORN MOTIONS I WILL MOVE ON TO FORFEITURE UNLESS THE COURT HAS OTHER QUESTIONS?

THIS PROPOSAL IS THAT MOTIONS TO DISMISS WOULD BE DECIDED ON A PROCEDURAL FORFEITURE RATHER THAN ON THE MERITS.

THIS IS ANTITHETICAL TO EVERYTHING THAT I KNOW AND HAVE EVER READ ABOUT FLORIDA LAW. FLORIDA LAW ALWAYS ALWAYS ONCE EVERY CASE DECIDED ON THE MERITS.

>> Justice Jamie Grosshans: THERE ARE ALL SORTS OF SUBSTANTIVE RIGHTS THE PARTIES HAVE THEY ARE CONSTRAINED BY PROCEDURAL LIMITATIONS.

>> John Eddy Morrison: THEY ARE CONSTRAINED BY PROCEDURAL LIMITATIONS YOUR HONOR BUT I CANNOT THINK OF ANY PLACE IN CRIMINAL LAW WHERE WE HAVE

CRIME JUSTICE PUNISHMENT LIBERTY AT STAKE. WHERE A PROCEDURAL.

>> Justice: I UNDERSTAND IF THE ARGUMENT INCARCERATION IS CATEGORICALLY DIFFERENT ONE MIGHT ARGUE THAN OTHER AREAS OF THE LAW LIKE LOSING YOUR LIFE OR YOUR BUSINESS YOUR CHILD.

EVERYTHING IS CONSTRAINED BY PROCEDURE.

>> John Eddy Morrison: IT IS CONSTRAINED BY PROCEDURE BUT I CANNOT THINK OF ANY PLACE WHERE IT WOULD BE DECIDED WHERE MERITORIOUS MOTION WOULD BE PURSUED REALLY FORFEITS.

>> Justice John Couriel: WHAT ABOUT 3851.

>> John Eddy Morrison: LET ME THINK THROUGH THAT THAT IS POSTCONVICTION YOUR HONOR.

>> Justice John Couriel: IT SEEMS TO ME JUSTICE SASSO'S POINT IS CORRECT THERE IS DUE PROCESS MEANS PROCESS.

I THINK YOUR ARGUMENT PROVES WAY TO MUCH IT CANNOT BE THAT WE DON'T HAVE SOME FILTRATION MECHANISM IN THE RULES YOU ARE SAYING THIS CLAIM FOR EXAMPLE IS FORECLOSED BECAUSE IT HAS BEEN FORFEITED . NOW THAT DOES NOT SAY THAT WE DON'T REVIEW ULTIMATELY FOR FUNDAMENTAL ERROR. BUT DOES MEAN THE RULE SAYS A SUCCESSIVE EFFORT AT MAKING AN ARGUMENT THAT WAS AVAILABLE TO A PARTY AT AN EARLIER TIME OPERATES AS A PRIMA FACIE FORFEITURE.

>> John Eddy Morrison: YOUR HONOR PARTICULARLY IN POSTCONVICTION I THINK THAT MIGHT BE DIFFERENT. QUITE CANDIDLY.

THE FINALITY OF CONVICTIONS CHANGES THE LEGAL LANDSCAPE QUITE SIGNIFICANTLY.

IN THIS CONTEXT I WOULD ASK VERY STRONGLY FOR THE COURT TO NOT BUILD INTO THE RULE THE FORFEITURE OF THE CURRENT RULE.

>> Justice Charles Canady: DID YOU SAY THE IMMUNITY MOTION CAN BE RAISED IN THE MIDDLE OF A TRIAL.

>> John Eddy Morrison: NO YOUR HONOR BECAUSE IMMUNITY IS FROM GOING TO TRIAL.

>> Justice Charles Canady: IT COULD BE FROM CONTINUING THE TRIAL COULD IT NOT? IT SEEMS LIKE YOUR ARGUMENT ABOUT FORFEITURE JUST PROVES WAY TOO MUCH. THERE IS NOT A FORFEITURE OF THE DEFENSE DEFENSE IS STILL AVAILABLE CORRECT?

>> John Eddy Morrison: SOME DEFENSES MAY BE AVAILABLE.

>> Justice Charles Canady: ASSUMING IT IS RAISED THE DEFENSE CAN BE FORFEITED IF YOU DON'T RAISE IT AT AN APPROPRIATE WAY AT THE TRIAL YOU CAN LOSE THE DEFENSE RIGHT?

>> John Eddy Morrison: YES, THAT IS TRUE BUT IT IS NOT DECIDED ON THE PROCEDURAL FORFEITURE.

>> Justice John Couriel:: LET'S SAY YOU REACH THE END OF JURY SELECTION AND YOU THINK I SHOULD HAVE STRUCK THIS JUROR FOR BATSON REASONS I'M GOING TO REOPEN I HEREBY AMASSIN THE COURT TO REOPEN JURY SUCTION BEFORE WE

SWEAR IN THE PANEL. THE COURT SAYS I'M NOT GOING TO REOPEN JURY SELECTION.

THAT WOULD SEEM TO ME TO BE A PRETTY GOOD EXAMPLE OF HOW YOU HAVE A CONSTITUTIONAL RIGHT AND YET WE HAVE A PROCESS AND IF YOU DO NOT SPEAK UP AT THE RIGHT TIME AND I'M SORRY COUNSEL WE ARE MOVING FORWARD.

>> John Eddy Morrison: OKAY, THEN LET ME BACKTRACK AND MAKE IT A MORE AN ARGUMENT THAT MORE PALATABLE TO THE COURT. LET'S NOT MAKE THAT THE FOREFRONT OF THE ROLE. THE CURRENT RULE IS PRETTY GOOD. IT HAS THIS WAIVER IF YOU DON'T BUT THEN THE EXCEPTIONS.

BASICALLY SAVE FOR ANY FUNDAMENTAL OR ANY MOTION WE CARE ABOUT THAT IS WHAT THE JUDGE SAYS YOU DON'T PAY THAT MUCH ATTENTION TO IT BECAUSE THE EXCEPTIONS COVER EVERYTHING TO CARE ABOUT. I THINK THAT IS THE APPROPRIATE RULE.

FOR EVERYTHING WE CAN LET DECIDED ON THE MERITS. THAT IS NOT CREATING A PROCEDURAL FORFEITURE . I APOLOGIZE I'M IN OVERTIME.

>> Justice John Couriel: YOU SAID YOU HAD ONE MORE POINT.

>> John Eddy Morrison: I HAVE ONE MORE POINT LEMME GET TO IT LET'S NOT COUNT ON GOOD CAUSE TO SOLVE THAT GOOD BECAUSE IT GENERALLY JUST ALLOWS SOMEBODY TO DO SOMETHING LATER. IT DOES NOT DECIDE TO SOMETHING ON THE MERITS.

EVERYWHERE ELSE IN THE CRIMINAL RULES I KNOW OF.

IT WOULD ALSO CREATE A REAL PROBLEM WHERE ATTORNEYS, BEGIN TO BELIEVE THAT JUDGES LIKE THEM OR DON'T LIKE THEM . PARTIES BELIEVE THAT JUDGES LIKE THEM OR DON'T LIKE HIM THAT DETERMINES THE GOOD CAUSE AS TO WHETHER THEY HEAR A TIMELY MOTION.

THAT KIND OF LOCAL POLITICS WHO IS IN GOOD WITH THE JUDGE AND WHO IS NOT THAT CREATES A REAL PROBLEM IN THE COURTROOM THE LAW SHOULD BE APPLIED EVENLY TO ALL PARTIES ALL ATTORNEYS.

AS I'M STANDING HERE I'M LOOKING AT THIS.

[UNCLEAR AUDIO] IF RIGHT SOON ENOUGH IF THE MOTION IS MERITORIOUS IT IS SOON ENOUGH THAT IS THE PRINCIPLE I WOULD ASK THIS COURT TO ADOPT.

>> Chief Justice Carlos Muniz: THANK YOU.

>> MAY IT PLEASE THE COURT BRIAN W. HAAS, APPEARANCE OF FLORIDA PROSECUTING ATTORNEY ASSOCIATION THE FPAA SUPPORTS THE CRIMINAL COURTS STEERING COMMITTEE'S PROPOSED AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.190 I HAVE PERSONALLY SEEN ESTATE ATTORNEY THE NEED FOR THIS RULE TO BE AMENDED I THINK IT WILL IN MY OPINION STRENGTHEN THE ABILITY FOR PEOPLE TO USE THE STAND YOUR GROUND LAW PRACTICE IN NO WAY WOULD DIMINISH IT OR TAKE AWAY FROM IT IT'S AN IMPORTANT-OR STATE. I BELIEVE IT'S BEING ABUSED BY FOLKS THAT ARE LOOKING FOR LAST-MINUTE CONTINUANCES WAYS OUT OF CHILD.

AND ASSERTED IN SITUATIONS THAT ARE CLEARLY NOT A STAND YOUR GROUND BUT FOR THE PURPOSE OF DELAY OR TO DRAG UP THE CASE.

WHEN THE CASE GETS SET FOR TRIAL THAT'S A VERY BIG DEAL A LOT OF THINGS HAPPEN SUBPOENAS ARE ISSUED WITNESSES ARE GATHERED. JURORS ARE SUMMONED.

CASES THAT MAY BE ON THE TRIAL DOCKET ARE PUSHED ASIDE BY THE CASE THAT IS SET FOR TRIAL. THEN AT THE LAST MOMENT WHEN A STAND YOUR GROUND MOTION WILL BE FILED THAT TAKES EVERYTHING OFF AND NOW BE LOST THE ABILITY TO TRY OTHER CASES. WHEN IT TALK TO VICTIMS WHEN I TALKED TO FOLKS IN GENERAL ONE OF THE BIGGEST FRUSTRATION WITH OUR CRIMINAL JUSTICE SYSTEM IS THE AMOUNT OF TIME IT TAKES FOR A CASE TO MAKE ITS WAY THROUGH THE SYSTEM.

THINGS LIKE LAST-MINUTE FILINGS OF MOTIONS WHEN THEY DON'T NEED TO BE, I THINK WE CAN LOOK AT A SET OF FACTS AND PRETTY EASILY UNDERSTAND STAND YOUR GROUND MAY BE AN ISSUE HERE. IT DOES NOT TAKE A WHOLE LOT OF INVESTIGATION TO GET THAT TO THE POINT . THE 30 DAY BEFORE THE TRIAL I THINK IS A GOOD PLACE I WOULD PREFER TO 60 DAYS BECAUSE SOMETIMES WE ARE SETTING TRIALS MORE THAN 30 DAYS OUT.

INITIALLY THE FPAA ASSERTED A 45 DAY FROM THE ARRAIGNMENT DEADLINE I THINK THAT WOULD BE PREFERABLE BUT WAS MORE SUPPORTIVE OF ANY DEADLINE THAT WILL GET US AWAY FROM WHERE WE ARE RIGHT NOW.

WHICH IS NOT A GOOD SITUATION.

>> Justice John Couriel: WHAT IS YOUR POSITION ON THE FORFEITURE ARGUMENT HOW YOU RESPOND TO THAT.

>> Brian W. Haas:

>> Justice John Couriel: I'LL BE MORE SPECIFIC THIS IS A DIFFERENT KIND OF THING WE ARE ASKING THEM TO FORFEIT IT IS NOT SOMETHING FUNDAMENTAL THAT SHOULD NOT BE WAIVED JUST BECAUSE THE POTENTIAL FOR ABUSE YOU IDENTIFIED.

>> Brian W. Haas: I THINK IT IS VERY IMPORTANT THING IT IS CRITICAL TO THE WHOLE SYSTEM AND WE ARE LOOKING AT THIS LAW FROM THE SECOND WE ARE AWARE OF THE CASE.

SOMETIMES THEY DON'T EVEN MAKE IT INTO THE SYSTEM. BECAUSE OF THE RESPECT AND LEVEL OF IMPORTANCE THAT WE SAY WITH THIS LAW.

IT IS VERY CLEARLY THE LAW OF THE STATE. I THINK I READ A QUOTE FROM THE CRIMINAL PROCEDURAL RULES COMMITTEE, IT TALKED ABOUT IF A DEFENDANT IS MOVING FOR THE DISMISSAL THE DRASTIC RESULT, OF A DISMISSAL OF A CRIMINAL CASE, THEN I THINK IT JUST SHOWS THE LEVEL OF IMPORTANCE HERE. WE ARE TALKING ABOUT NOT EVEN GETTING THIS TO A JURY. NOT HAVING THE ABILITY FOR THE STATE OF FLORIDA TO TAKE THIS CASE BEFORE A JURY OF THEIR PEERS OF THE DEFENDANT JUST IMMUNITY FROM THE BEGINNING. I THINK PUTTING GOALS THAT ARE GOING TO SHORE UP THE PROCESS I THINK STRENGTHENS THE SERIOUSNESS OF THE LAW ITSELF.

I THINK IT HELPS.

IT DOES NOT TAKE AWAY FROM IT.

>> Justice: IT IS NOT FUNDAMENTAL IN THE CONSTITUTIONAL SENSE ANYWAY IT IS JUST A STATUTORY IMMUNITY RIGHT?

>> Brian W. Haas: YES SIR.

>> Justice: IT SEEMS LIKE THE WHOLE PREMISE OF THAT IT SEEMS LIKE IT IS MISAPPLYING THE CONCEPT?

>> Brian W. Haas: IT SEEMS THAT THEY NEED TO HAVE THESE THINGS IN PLACE IS WHAT REALLY IS HELPING THE WHOLE SYSTEM PROCESS ALL OF THE HUNDREDS OF THOUSANDS OF CASES THAT WE HAVE.

IT TAKES AWAY SOME ABILITY I THINK TO ABUSE IT. AND HAVING THE REQUIREMENT TO SWEAR TO THE MOTION I THINK IT SHOWS THE SERIOUSNESS OF IT AND IT IS GOING TO ELIMINATE MOTIONS THAT ARE FILED WITHOUT ANY REAL FACTS. THAT WOULD SUPPORT A STAND YOUR GROUND MOTION.

IT WOULD BE MY POSITION IT'S AN IMPORTANT PART OF WHAT WE ARE DOING AND WE MUST AMENDED THIS RULE TO STRENGTHEN OUR PROCESS THAT WE HAVE.

>> Justice: CAN I ASK YOU A COUPLE OF TECHNICAL QUESTIONS WE ALL KNOW STATE CRIMINAL COURT YOU MIGHT HAVE READY CASES SET FOR TRIAL ON DAY ONE FOR A TRIAL PERIOD EVERYBODY HAS BEEN SUBPOENAED.

IS YOUR IDEA OR THOUGHT OF HOW THIS RULE WOULD WORK IS IT THE FIRST TIME THE CASE GETS SET FOR TRIAL OR THE SECOND OR THE FIFTH?

THESE ARE NOT MOTION TO CONTINUE THEY ARE JUST RACES THAT GET PUSHED BECAUSE OTHER CASES GO.

AND SO IF THE CASE HAS GOTTEN PUSHED SIX TIMES WE ARE NOW SIX MONTHS PAST WHEN IT WAS ORIGINALLY SET FOR TRIAL HELP WITH THIS DEADLINE WORK.

>> Brian W. Haas: I VIEW IT IS WITH THE DATE IT IS SET IF THERE IS NO LONGER A DATE FOR TRIAL THEN.

>> Justice Jamie Grosshans: THE DEADLINE MOVES ALSO.

>> Brian W. Haas: I BELIEVE THAT WOULD BE THE CASE SOMETIMES THE CASE WOULD BE CONTINUED FOR A VARIETY OF REASONS THAT IS JUST A FACT OF OUR SYSTEM. I DO FEEL THE JUDGE'S PLAY SUCH AN IMPORTANT RULE IN THIS IF THERE IS SOMETHING GOING ON FOR THE CASEWORK NEW FACTS ARE DISCOVERED THEN BY ALL MEANS THE JUDGE SHOULD HAVE THE ABILITY TO SAY GOOD BECAUSE HERE THEN WE USE THAT IN OUR SYSTEM MANY TIMES.

>> Justice Jamie Grosshans: EXTREMELY TECHNICAL QUESTION THERE WAS A POINT RAISED AT THAT TRAVERSE IN THE MIRROR OF THE STATE DID NOT HAVE A STRAIGHT DEADLINE JUST AS WITHIN A REASONABLE TIME WHEREAS ALL OF THE OTHER THINGS HAVE DAY DEADLINES. IF WE WERE TO PUT A DEADLINE IN THERE WHAT YOU THINK IS THE APPROPRIATE BEFORE THE HEARING?

>> Brian W. Haas: THAT DEADLINE WOULD NOT UPSET ME AT ALL I THINK I APPRECIATE IT.

FOR MY ASSISTANT STATE ATTORNEY'S WE WOULD HAVE A DATE TO WORK TOWARDS. WHATEVER THAT WOULD BE IN ADVANCE OF A HEARING TIME 15, 30 DAYS OR SOMETHING LIKE THAT I THINK WOULD BE TOTALLY APPROPRIATE.

>> Justice: FROM A PRACTICAL STANDPOINT FOLLOWING UP ON THAT I'VE BEEN

ASSUMING MOST PLACES UNFAMILIAR MORE WITH SOME CIRCUITS AND OTHERS I'M ASSUMING SOME CIRCUITS HAVE PRETRIAL ORDERS IN THESE CASES BY THE COURT DEADLINE FOR FILING MOTIONS AND THAT SORT OF THING WITH CHILD BEING MOVED IS IT YOUR EXPENSE IF THERE ARE PRETRIAL ORDERS MANAGING WHEN THESE HEARINGS ARE GOING TO BE HELD WHEN MOTIONS NEED TO BE FILED THAT SORT OF THING FROM A PRACTICAL STANDPOINT THOSE DEADLINES AND NOW IN THE RULE IS THAT A SIGNIFICANT DIFFERENCE FROM A DAILY PRACTICE PERSPECTIVE IF THE TRIALS ARE MOVED THEN YOU WOULD EXPERIENCE UNDER A PRETRIAL ORDER INSTEAD OF A RULE?

>> Brian W. Haas: I THINK THIS RULE WOULD HELP WITH SOME INCONSISTENCIES IN MY COUNTY OF POLK COUNTY THERE ARE SIX SEPARATE FILING DIVISION SIX SEPARATE JUDGES AND THEY TRY TO BE CONSISTENT BUT ONE MAY OFFER THE REQUIREMENT OF A PRETRIAL ORDER OF A SCHEDULE ONE MAY NOT. YOU HAVE TO KNOW ALL OF THAT OBVIOUSLY. WHEN YOU HAVE A SPECIFIC TIME IN THE ROLE, IT PROVIDES EVERYBODY WITH A STARTING POINT TO WORK FROM. I THINK THERE IS A CERTAIN BENEFIT TO THAT. I GUESS I'M OUT OF TIME SO THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU.

>> MAY IT PLEASE THE COURT LUKE NEWMAN, APPEARANCE FOR FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN THE GENERAL THE OVERALL APPROACH THIS PROPOSED RULE CHANGE FACTORS AS OPPOSED TO ADDING A MYRIAD OF DIFFERENT DEADLINES THAT CAN VARY FREQUENTLY AS A NUMBER FLORIDA CIRCUIT JUDGES HANDLE CRIMINAL CASES AND POTENTIALLY BLACKOUT ON THE MERITS RULINGS ON THE MERITS OF THESE IMPORTANT CRIMINAL ISSUES.

>> Justice John Couriel: CAN WE ADDRESS THE FIRST THINGS THAT I'M NOT SURE I UNDERSTAND WHY THAT MATTERS WE REQUIRE PARTIES TO BE AWARE AND TO ABIDE BY THE COURT ORDERS IN EVERY CASE. I'M NOT SURE I UNDERSTAND WHAT THE PARTICULAR HARDSHIP IS OF A SAYING OH GOODNESS THIS COURT THIS JUDGE HAS ENTERED THE SCHEDULING ORDER I HAVE TO ABIDE BY IT . YOU HAVE TO ABIDE BY THE COURTS PRETRIAL RULING SERVED REMEMBER IF THE COURT SAID WE ARE NOT LETTING YOU INTRODUCE 4B EVIDENCE OR SOME OTHER PIECE OF EVIDENCE YOU OR PROFFERED YOU TO REMEMBER IN THIS CASE ARE NOT ALLOWED TO MAKE THAT ARGUMENT. WHY IS THIS HARDSHIP?

>> Luke Newman: BECAUSE IT WOULD PRECLUDE RULING ON THE MERITS OF THE ISSUES.

>> Justice John Couriel: THAT'S A SEPARATE ARGUMENT AGAINST THE ARGUMENT I HAVE A HARD TIME UNDERSTANDING IS THE FIRST PART OF YOUR ARGUMENT WHICH YOU ARE MAKING IN YOUR PAPERS WHERE IT IS GOING TO BE HARD FOR DEFENSE LAWYERS TO REMEMBER THAT THIS COURT HAS SAID THAT THE DEADLINE FOR FILING PRETRIAL MOTIONS TO DISMISS IS 15 DAYS BEFORE THE TRIAL.

>> Luke Newman: I JUST FEEL THAT WOULD CERTAINLY COULD CREATE HARDSHIP IF AN ATTORNEY PRACTICES IN FRONT OF SEVERAL DIFFERENT JUDGES.

>> Justice John Couriel: EVERY ATTORNEY PRACTICES AND FROM SEVERAL DIFFERENT

JUDGES IF HE OR SHE IS GOOD.

>> Justice Jamie Grosshans: LET ME RESPOND TO THAT BRIEFLY I GUESS WE ARE GOING TO GET ON A SIDE A LOT OF TIMES THAT IS NOT THE CASE WITH STATE ATTORNEYS AND PUBLIC DEFENDERS WERE SENT WHEN THE VISION I HAVE ONE TRIAL JUDGE.

>> Justice John Couriel: YOU ARE TALKING ABOUT THE HARDSHIP ON YOUR.

>> Luke Newman: IF YOU PRACTICE IN FRONT OF SEVERAL DIFFERENT TRIAL JUDGES ANY OF SEVERAL DIFFERENT POLICIES RELATED TO PRETRIAL MOTIONS IT WILL VARY DEPENDING ON WHICH COURTS READ INTO THAT ONLY CREATES AT LEAST A POTENTIAL FOR A PITIFUL WHERE YOUR CLIENT IS NOT COHABIT HIS OR.

>> Justice John Couriel: THE PRACTICE OF LAW IS FULL OF POTENTIAL PITFALLS 16 I AGREE WITH YOU THERE SIR YES SIR WE ARE IN THE SAME PAGE THERE SEPARATE I DON'T KNOW THAT WE SHOULD WRITE THAT INTO THE ROLE.

>> Justice John Couriel: I DON'T KNOW HOW TO WRITE A RULE WITHOUT PITIFUL I DON'T THINK THAT ARGUMENT IS A WINNER.

>> Justice: IS IT YOUR UNDERSTANDING AND IN YOUR PRACTICE THAT THESE TYPE OF SORT OF STRICT PRETRIAL ORDERS ARE NOT AS COMMON IN CRIMINAL LAW AS THEY WOULD BE IN CIVIL COURT OR FAMILY OR ANY OF THE OTHER CIVIL SIDE WHERE THEY ARE MUCH MORE FLEXIBLE TO BE.

>> Luke Newman: I WILL ACCEPT THAT I HAVE NO TROUBLE SAYING THAT THAT IS MY EXPERIENCE AND PRACTICE OF LAW. LET ME BRING UP A COUPLE OF OTHER ASPECTS THAT MAKE THE PERIOD OF THE DATE DEADLINE AND HARD TO MANAGE IN A CRIMINAL CASE THE FIRST ONE WE'VE NOT TALKED ABOUT THIS BUT IS NOT UNCOMMON TO READ AN APPELLATE RECORD IN A CRIMINAL CASE AND SEE A DEFENDANT IS IN A SERIES ASSIGNED DIFFERENT APPOINTED COUNSEL MAY BE PUBLIC DEFENDERS OFFICE AT FIRST. THEN REGIONAL CONFLICT COUNSEL LATER IF THE MOVIE IF THERE'S ANOTHER CONFLICT THEN MOVING ON TO AN ATTORNEY WHO IS WORKING ON A CONFLICT LIST. IN EFFECT IS THERE IS NO GUARANTEE THAT THAT DEFENDANT WILL BE REPRESENTED BY THE ATTORNEY WHO IS GOING TO BE HANDLING THE MERITS OF THE CASE. WITHIN 45 DAYS OF THE ARRAIGNMENT. I THINK THAT REALITY OF CRIMINAL PRACTICE NEEDS TO BE ADDRESSED TO. YOU CAN EASILY HAVE A DEFENDANT WHO SHOWS UP WITH FINALLY GETS A LAWYER WHO CAN HANDLE HIS OR HER CASE. ON THE MERITS WHO DOES NOT HAVE A CONFLICT AND YOU ARE AT 45 DAYS PAST ARRAIGNMENT.

>> Justice John Couriel: YOU STILL HAVE THE GOOD CAUSE OUT DON'T YOU.

>> Luke Newman: I AGREE THERE IS A GOOD CAUSE OUT.

>> Justice John Couriel: I'M BRAND NEW ON THIS CASE CAN HAVE A PLEASE HAVE AN EXTRA WEEK TO LOOK AT THIS.

>> Luke Newman: THAT IS HOW THE PROPOSED RULE IS WRITTEN HERE IS THE FEAR. I'M BEARING TO FEAR THE FEAR IS THEY ARE ARGUING ABOUT GOOD CAUSE. THE POSITION WE SHOULD NOT ARGUE ABOUT BECAUSE WE SHOULD ARGUE ABOUT THE FACTS AND LAW THAT APPLY TO THE MOTION.

THAT IS THE FEAR. THAT WOULD BE MY RESPONSE YES WE CAN TALK ABOUT

BECAUSE WHAT SHOULD WE TALK ABOUT GOOD CAUSE OR SHOULD WE TALK ABOUT THE LAW AND THE FACTS THAT APPLY TO THE MOTION THAT THE DEFENDANT WAS TO PUT FORWARD?

I PLAN TO SUBMIT ANOTHER.

>> Justice: IF YOU ACCEPT THE PREMISE THAT THE NATURE OF THESE THINGS IS JUST AS A MATTER OF EFFICIENCY AND COMMON SENSE THAT THERE SHOULD BE SOME KIND OF DEADLINE IN ADVANCE OF THE TRIAL SO YOU DON'T ESSENTIALLY PUT A HALT TO EVERYTHING AND HAVE ONE OF THESE HEARINGS. IF YOU DON'T LIKE WHAT THE COMMITTEE IS PROPOSING WHAT WOULD BE A REASONABLE ALTERNATIVE?

>> Luke Newman: LET ME CLARIFY IF I MIGHT ARE WE TALK ABOUT THE STAND YOUR GROUND OR TECHNICAL DEFECTS.

>> Chief Justice Carlos Muniz: STAND YOUR GROUND. THAT IS WHAT GOT THIS WHOLE THING STARTED.

>> Luke Newman: THERE IS THE STAND YOUR GROUND PROPOSAL THERE'S THIS DISCUSSION ABOUT TECHNICAL DEFECT MOTIONS I THINK THE PROPOSED RULE ALSO BUT ADDRESSED NO.

>> Chief Justice Carlos Muniz: LET'S FOCUS AND STAND YOUR GROUND SPECIFICALLY STAND YOUR GROUND IT NEEDS TO STICK WITH THE THAT THERE CANNOT BE THE CASE LAW I CANNOT PRONOUNCE THE NAME OF THE DISTRICT COURT CASE TO CASE LAW SAYS IT NEEDS TO BE MADE BEFORE TRIAL. THAT IS THE POSITION AND MAKE THAT POSITION NOT FLIPPANTLY. BUT BECAUSE OF THIS IMPORTANCE THAT THE FLORIDA LEGISLATURE HAS ATTACHED TO THE STAND YOUR GROUND.

>> Chief Justice Carlos Muniz: LET'S ASSUME WE ARE PERSUADED DOES NOT MAKE ANY SENSE FOR SOMEONE TO BE ABLE TO COME IN AT THE 11TH HOUR AND FILE ONE OF THE THINGS YOU DON'T LIKE THE 30 DAYS IN ADVANCE DEADLINE CORRECT.

>> Justice John Couriel: INCORRECT!
WHAT IS AN ALTERNATIVE.

>> Luke Newman: I THINK WE GO WITH WHAT THE DISTRICT COURT OF TOLD US! THE DISTRICT COURTS ARE JUST INTERPRETING PAROLE. WHICH THE WHOLE POINT OF THIS IS TO DECIDE WHETHER TO CHANGE THE RULE.

>> Luke Newman: UNDERSTOOD.

>> Chief Justice Carlos Muniz: IT IS EITHER BASICALLY YOU'RE SAYING THERE IS NO REASONABLE NO WAY TO ACCOMMODATE THIS CONCERN.

>> Luke Newman: IN AT THE STAND YOUR GROUND CONTEXT MAYBE THE WAY TO ACCOMMODATE ICM OVER MY FAMILY FINISH ANSWERING THE QUESTION IF THERE IS AN ABUSE OF PRACTICE I THINK THAT IS A CONCERN TO BE THAT IS THE CONCERN THAT SPARKED THE PROPOSAL TO AMEND THE RULE THE DEFENSE COUNSEL IN SOME CASE FILED THIS STAND YOUR GROUND MOTION AT THE 11TH HOUR, THE NIGHT BEFORE TRIAL SOMETHING ALONG THOSE LINES. I THINK THE CIRCUIT JUDGES HAVE THE ABILITY TO ADDRESS ABUSIVE PRACTICES WITHOUT HARMING THE DEFENDANT OR REMOVING A POTENTIAL DEFENSE FROM THE DEFENDANT. I UNDERSTAND THAT IS A CONCERN AND MAYBE THAT'S THE IMPETUS BETWEEN OR

BEHIND THE PROPOSAL TO AMEND THE RULE. I THINK THE CIRCUIT JUDGES HAVE CLUBS IN THEIR GOLF BAG THAT THEY CAN USE TO ADDRESS ABUSIVE PRACTICES FRIVOLOUS MOTIONS THAT DON'T INVOLVE TAKING AWAY POTENTIALLY MERITORIOUS MOTIONS FROM A CRIMINAL DEFENDANT AND SUBJECTING HIM OR HER TO INCARCERATION.

>> Chief Justice Carlos Muniz: OKAY YOU CAN HAVE TWO MORE MINUTES TO MAKE WHATEVER POINTS WANT TO MAKE

>> I WANT TO GO BACK TO SOMETHING YOU MENTIONED MR. CHIEF JUSTICE EARLIER ABOUT HEALTH MOTION DEADLINES THEIR ISSUE TODAY DID NOT ADDRESS CONSTITUTIONAL MATTERS OR FUNDAMENTAL CONSTITUTIONAL MERIT.

>> Chief Justice Carlos Muniz: I WAS TALKING ABOUT THE STAND YOUR GROUND.

>> Luke Newman: MY UNDERSTANDING THE PROPOSED AMENDMENT WOULD ADD A POTENTIAL FOR MOTION DEADLINES UNTO SUPPRESSION ISSUES AND MATTERS THAT WERE CONSTITUTIONAL THAT WAS MY UNDERSTANDING.

. WITH THAT I THINK WE COVERED WHAT I NEED TO COVER IN SUPPORTING THE COMMENT IF THERE ARE NO QUESTIONS AGAIN I'M OVER MY TIME. I WILL YIELD.

>> Chief Justice Carlos Muniz: THANK YOU.

>> GOOD MORNING MADE AS THE COURT MY NAME IS.

[LISTING NAMES] I'M HERE TODAY ON BEHALF OF THE CRIMINAL PROCEDURE RULES COMMITTEE DAY I'M A STATEWIDE PROSECUTOR TODAY I'M HERE ON BEHALF OF THE COMMITTEE. THE COMMITTEE REVIEWED THE CRIMINAL COURT STEERING COMMITTEE PROPOSAL AND BY AND LARGE SUPPORTED. THERE WERE TWO ISSUES THE TRUTH THE MOST ATTENTION I THINK FROM OUR COMMITTEE AS REFLECTED IN THE COMMENTS NUMBER ONE WAS A TIME LIMIT AS IT RELATES TO WHEN THESE MOTIONS NEED TO BE FILED PRIOR TO TRIAL THE MAJORITY OF OUR COMMITTEE FELT LONGER DEADLINE WAS NECESSARY OF 60 DAYS DEADLINE. JUST DUE TO THE NATURE OF HOW CRIMINAL CASES WORK PROCEEDS. A MINORITY THOUGHT 45 DAYS BUT THE FPA SUGGESTION WOULD BE MORE APPROPRIATE BUT NOBODY REALLY RAISED TOO MUCH ABOUT WHETHER TO IMPOSE A DEADLINE.

I WILL NOTE ALMOST ALL OF THESE ASSOCIATIONS YOU HEARD FROM TODAY ARE ALSO REPRESENTED IN CRIMINAL PROCEDURE RULES COMMITTEE.

THE SECOND ISSUE THAT THE RULES COMMITTEE.

>> Justice: CAN ASK A QUICK QUESTION WAS THE 60 DAYS FOR ANY TYPE OF CASE EVEN A MISDEMEANOR?

>> Attorney: THE 60 DAY PROPOSAL WAS BROUGHT UP IN THE CONTEXT OF MISDEMEANORS THERE WAS ENOUGH CONCERN THAT IT WOULD TO GREATLY AFFECT MISDEMEANOR COURT PROCEEDINGS AND A SHORTER SPEEDY TRIAL SCENARIO THEN I THINK THE COMMITTEE BELIEVES THE CRIMINAL COURT STEERING COMMITTEE'S RESPONSE TO THAT IS THE MORE APPROPRIATE ONE. HOWEVER I WILL POINT OUT THE RECENT DECISION ADVICE TO SPEEDY TRIAL RULES MAY ACTUALLY ALLEVIATE MUCH OF THAT CONCERN.

THE SECOND ISSUE THAT THE COMMITTEE TOOK UPON ITSELF TO REALLY DEBATE WAS THE ISSUE OF WHETHER OR NOT THE MOTION SHOULD BE SWORN.

THE MAJORITY OF THE COMMITTEE THOUGHT IT SHOULD BE AND THE REMAINDER OF THE CRIMINAL COURT STEERING COMMITTEE PROPOSALS WERE.

>> Justice: WHAT ADMITTED THAT WAS IT WHAT JUSTICE CANADY WITH ASKING YOUR COLLEAGUE ABOUT EARLIER ABOUT THE SORT OF PRACTICAL REALITY IF IT IS NOT SWORN THEN IT IS MORE LIKELY TO BE A VECTOR FOR AMBUSH?

>> Richard Mantei: IT WAS NOT SO MUCH THAT ALTHOUGH I WILL SAY THAT DID COME UP IN CONVERSATION.

COMMENT THAT IS BEEN PREVIOUSLY REFERENCED FROM OUR REPORT EXIT DOWN SAYS IF YOU ARE PREPARED TO ADMIT THIS UNDER OATH THAT HEARING YOU SHOULD BE ABLE TO PREPARED TO ADDRESS IT UNDER OATH PRIOR TO HEARING THERE SHOULD BE NO REASON YOU SHOULD NOT BE ABLE TO.

>> Justice John Couriel: IPODS AS IT SHOULD BE CONDITIONALLY SUPPORTED BY THIS IT IS NOT, BUT IN ANY COLLOQUY WITH YOUR COLLEAGUES. THAT IS SUBSECTION H IS THE DEPOSITION ON: THE USE OF FUMIGATION TECHNOLOGY DO YOU HAVE AN INTERVENTION TO THE CONFRONTATION CLAUSE ISSUES RAISED BY DEFENSE COUNSEL.

>> Richard Mantei: ON BEHALF OF THE COMMITTEE WE DO NOT ADDRESS THAT ISSUE SPECIFICALLY.

>> Justice John Couriel: I WILL COME BACK TO JUDGE BULONE ON THAT ONE.

>> Richard Mantei: I WOULD POINT OUT THAT THE COMMITTEE ALSO ASKED THAT THEY DID EXPRESS A PREFERENCE RULINGS WHICHEVER WAY THEY GO ON IMMUNITY MOTIONS BE DONE IN WRITING SIMPLY FOR PURPOSES OF CLARITY AND FOR PURPOSES OF APPEAL.

I KNOW THAT THE STEERING COMMITTEE DISAGREED WITH THAT BUT THAT WAS ONE OF THE PROPOSALS FROM OUR COMMITTEE. I WOULD ALSO POINT OUT THAT IT DID COME UP DURING DISCUSSION AND DEBATE THAT WHILE THIS IS A SORT OF IMMUNITY IN PARTICULAR IS ESPECIALLY CONFERRED BENEFIT FROM THE LEGISLATURE IT IS NOT KNOW IS THAT THIS COURT HAS NOT HISTORICALLY BEEN REQUIRED TO CIRCUMSCRIBE PURSUE REALLY FUNDAMENTAL THINGS SUCH AS INSANITY SUCH AS ALIBI.

THOSE ARE SUCH A SELF-REPRESENTATION CLOSER CONSTITUTIONAL GUARANTEES AND SOME SEMINARIES. THEY STILL NEED TO BE PROCEDURALLY IMPLEMENT IN RIGHT NOW THERE IS NO RULE TO PROCEDURALLY IMPLEMENT THEM THOSE THOSE OF THE PRIMARY ISSUES THAT ARE COMMITTEE REST I WILL STAND BY FOR ANY QUESTIONS OTHERWISE PRODUCED AND PRIMARILY IN SUPPORT OF THE STEERING COMMITTEE PROPOSAL.

>> Justice: IT SEEMS LIKE WE OFTEN HAVE IN THIS CASE IT SEEMS LIKE THERE WAS A DECISION ABOUT STAND YOUR GROUND IMMUNITY WHICH LEADS PEOPLE TO LOOK US UP THEM BEGIN A RULE PROPOSAL PETITIONS THESE DIFFERENT THINGS EVERYTHING FROM DEADLINES FOR THAT PLUS DEADLINES THAT AFFECT ALL KINDS OF OTHER MOTIONS AND PERPETUATING TESTIMONY AND HAVING THESE MOTIONS BEING SWORN IN EVERYTHING.

TO THE EXTENT WE ARE JUST TRYING TO KIND OF FIX TAKE THINGS ONE ATTEMPT

AND FIX IT A DISCRETE PROBLEM.

BUT COMES UP.

WHAT WOULD YOU SAY IS SORT OF THE MISCHIEF WE ARE TRYING TO ADDRESS?

IT SEEMS LIKE THIS THINK OUT OF METASTASIZED A LITTLE BIT.

I DON'T WANT TO BIAS THE WHOLE THING.

WHAT IS THE PROBLEM THAT LED TO US EVEN NEEDING TO LOOK AT THIS RULE?

>> Richard Mantei: I THINK THE PROBLEM GIVEN THIS STAND YOUR GROUND IMMUNITY SORT OF EXAMPLE PIES WHAT WAS NOT THE SOLE REPRESENTATIVE OF THE ISSUE. BUT THE PROBLEM IS THAT THE SYSTEM TENDS TO COLLAPSE UNDER ITS OWN WEIGHT IF LEFT UNATTENDED AND LEFT TO BE MANIPULATED.

WHAT GETS MEASURED GENERALLY GET THE COMPOST IN THE CRIMINAL JUSTICE SYSTEM IF THERE ARE CALENDAR ORDERS IF THERE ARE CASE MANAGEMENT ORDERS. THIS IS AN EFFECTIVE TOOL TO ENCOURAGE AND INFECT MANDATE THAT. WHEN TOOLS EXIST THAT HAVE THE NUCLEAR CAPABILITY THAT AN IMMUNITY RULING DOES THAT TENDS HE CANNOT HELP BUT TEND TO DISRUPT THE SYSTEM. AND TO REIGN IN THE CHAOS I THINK IS THE GOAL OF THE STEERING COMMITTEE AS A REALLY READ THE REPORT.

>> Chief Justice Carlos Muniz: YOU ARE TALKING ABOUT THE STAND YOUR GROUND THING.

>> Richard Mantei: PRIMARILY THAT IS WHAT PICKED IT UP IT IS NOT AS THOUGH THEY ARE NOT OTHER ROLES MOTIONS TO DISMISS THE FAULTS OF THAT SAME ISSUE.

>> Chief Justice Carlos Muniz: DO FEEL THERE IS A SIGNIFICANT PROBLEM IN GENERAL RIGHT NOW WITH THE SYSTEM DO KNOW WHAT I'M SAYING.

I UNDERSTAND ONCE PEOPLE START LOOKING AT THINGS EVERYBODY HAS A DIFFERENT IDEA WE CAN FIX THIS WE CAN FIX THAT.

DO YOU KNOW WHAT I'M SAYING IT SEEMS LIKE THIS STARTED OFF AS A NARROW THING A COMMONSENSE WISE NEEDS TO BE ADDRESSED NOW THERE IS ALL THESE OTHER ISSUES THAT ARE ON THE TABLE.

>> I DO THINK WHERE THE COURT HAS ATTEMPT TO PROVIDE STRUCTURE AND DEADLINES THAT IS BEEN USEFUL THE CASE COUNTS ARE BURGEONING EVERYWHERE AND MANAGEMENT TOOLS ARE EXTREMELY IMPORTANT IN THAT REGARD SO YES, TO ANSWER YOUR QUESTION DIRECTLY YES I DO.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Hon. Joseph A. Bulone: ANY QUESTIONS OF THE JUSTICES?

>> Chief Justice Carlos Muniz: MY CONFRONTATION CLAUSE QUESTION.

>> IF YOU LOOK AT THE DEPOSITION TO PERPETUATE TESTIMONY THERE IS LOT OF QUALIFYING LANGUAGE IN THEIR THERE HAS TO BE A JUDICIAL FINDING OF GOOD CAUSE FOR THAT.

AND MAKE SURE THAT THE DEFENDANT'S CONSTITUTIONAL RIGHTS ARE NOT VIOLATED AND THE WITNESS AND THE DEFENDANT MUST BE ABLE TO SEE EACH OTHER DURING THE EXAMINATION MUST THE DEFENDANT WAIVED SAID I THINK THERE'S MORE PRODUCTION HERE THAN THERE USED TO BE IN THE OLD DAYS IF THERE WAS AN ELDERLY VICTIM IN THE HOSPITAL OR SOME SORT OF ALF OR

SOMETHING LIKE THAT WE WOULD TAKE A VIDEO CAMERA AND HAVE IT DONE THERE. IF THE DEFENDANT IS IN CUSTODY HE IS NOT EVEN THERE BUT NOW WITH THE TECHNOLOGY THAT WE HAVE LEASED THEY WILL BE ABLE TO SEE THAT WITNESS OR THAT VICTIM OBVIOUSLY WE ARE USING SUMMA FOR A LOT OF THINGS A WHOLE LOT MORE THAN WE USED TO.

>> Justice: PERHAPS WE SHOULD NOT GET INVOLVED THAT THE CONCERNS ABOUT WITNESS COACHING ARE NOT INSIGNIFICANT . ONE OF MY PET PEEVES ABOUT ZOOM AND ITS USE IN COURT IS THAT COUNSEL OFTEN HAS A SCREEN NEXT TO THE SCREEN THEY ARE LOOKING AT WHERE THEY HAVE A CHAT OPEN WITH SOMEONE WHO WAS FEEDING THEM ANSWERS.

OR GOOGLE. OR ANY OTHER NUMBER OF THINGS WHERE I CANNOT TELL ON A ZOOM CALL WHAT THEY ARE LOOKING AT.

IF THEY ARE ALONE IN THE ROOM THERE IS NO WAY TO QUALITY CONTROL THAT I WORRY ABOUT THAT FROM ME CONFRONTATIONAL CLAUSE STANDPOINT.

>> Hon. Joseph A. Bulone: I'M NOT A HUGE ZOOM FAN EITHER IN A SITUATION WHERE A WITNESS CANNOT BE THERE BECAUSE THE WITNESS IS INFIRM THERE HAS TO BE GOOD CAUSE FOR THAT.

IF THE WITNESS REALLY CANNOT BE THERE THAT I THINK ZOOM IS A LOT BETTER ALTERNATIVE THAN NOT HAVING ZOOM WHERE A DEFENDANT HAS LESS CONFRONTATION THAN THEY WOULD OTHERWISE UNDER THE RULE.

ANY OTHER QUESTIONS. I WILL SAY THIS I DON'T AGREE OUR PROPOSAL WOULD MAKE THIS INTO A C4 MOTION. HERE IS THE THING NOBODY HAS PICKED UP ON I'VE SEEN THAT IS A C4 MOTION BY THE WAY IS NOT GOING TO BE A B3 MOTION THE REASON WE DID THAT KNOW THAT IS GOING TO CONFUSE SOME PEOPLE AFTER ALL OF THESE YEARS BUT THE REASON WE DID THAT WAS BECAUSE UNDER C, THAT WAS IN REGARD TO DEADLINES THEN B, IS THE MOTION ITSELF WE THOUGHT IT REALLY SHOULD BE UNDER B, INSTEAD OF C THAT MAY CONFUSE SOME PEOPLE BUT WE LIVE IN A SOCIETY THAT WHERE THINGS ARE RAPIDLY CHANGING ANYTHING PEOPLE CAN ADAPT TO THAT.

IN REGARD TO THE TRIAL JUDGE BEING ABLE TO SET THESE DEADLINES.

I HAVE A LOT MORE CONFIDENCE IN THE DEFENSE THAN THEY HAVE IN THEMSELVES THEY CAN ONLY THEATER IT'S GOING TO BE AN ORDER OF THE JUDGE.

THE JUSTICES ARE CORRECT IN CRIMINAL COURT THERE ARE A LOT LESS OF THESE DEADLINES THAN IN CIVIL COURT. BASICALLY WE DEAL WITH THE RULES.

THAT IS WHY WE ARE ASKING THAT THESE RULES BE MODIFIED SO AT LEAST PEOPLE CAN FILE THIS IN GOOD FAITH THAT WE CAN HAVE SOME ASSURANCE THAT PEOPLE ARE DOING THIS IN GOOD FAITH AND RELIABLE NOT JUST DOING IT TO GET A CONTINUANCE OR TO TRY TO HARASS THE WITNESSES.

I DON'T THINK IT'S A SOLUTION LOOKING FOR A PROBLEM I THINK THERE IS AN ISSUE. TO BE QUITE HONEST WE UNDERSTAND THAT THERE IS A GOOD CAUSE EXCEPTION WE ALSO UNDERSTAND ON THE APPELLATE LEVEL THERE IS AN ABUSE OF DISCRETION.

STANDARD THE CHANGES ARE WE ARE GOING TO ALLOW THEM TO DO IT ANYWAY.

AT LEAST WE CAN DO THIS. AT LEAST WE CAN ADMONISH THEM FOR NOT FOLLOWING THE RULE.

WE CAN MAKE THEM SWEAT A LITTLE BIT WE CAN MAKE THEM LOOK NOT SO GOOD IN FRONT OF THEIR CLIENTS AND THEN MAYBE NEXT TIME, THEY WILL FOLLOW THE RULE NOT PLAY THE GAMES THAT WE TALKED ABOUT. OF COURSE I NOT INFERRING OR IMPLYING THAT ALL DEFENSE LAWYERS DO THIS BECAUSE THEY DON'T. BUT SOME DO SOME OF THE TIME. IT REALLY DOES CREATE HAVOC IN THE SYSTEM.

>> Justice: IF WE WERE TO PUT A DEADLINE ON THE TRAVERSE FOR THE STATE WHAT WOULD YOU SUGGEST RATHER THAN VISIBLE TIME THAT SEEMS VERY VAGUE?

>> Hon. Joseph A. Bulone: IT REALLY ALL DEPENDS ON WHEN THE DEFENSE FILES THE B3 MOTION FORMALLY KNOWN AS A C4 MOTION.

IF YOU SAY IT IS 15 DAYS AND THEY FOLLOWED IN THE LAST 10 DAYS AND THEY CALLED AND ASKED FOR.

>> Justice: [UNCLEAR AUDIO]

>> Hon. Joseph A. Bulone: I WOULD SAY YES.

I WOULD SAY AT LEAST WITHIN 48 HOURS THE REASON I SAY THAT IS BECAUSE THERE'S REALLY NOT ALL THAT MUCH THAT THE DEFENSE CAN DO ONCE THE STATE DOES THAT. BY THE WAY, THEY HAVE TO SWEAR TO IT THEMSELVES.

IF THEY SWEAR TO IT THE FACTS OR SOMETHING DIFFERENT AND WE DON'T AGREE THAT THESE ARE THE FACTS.

AND I SWEAR PAREN THEN THERE IS REALLY NOTHING THE DEFENSE CAN DO ANYWAY. THEY CAN YELL IT WAS NOT FILED REASONABLY BUT IT WAS FILED REASONABLY WHAT ARE YOU GOING TO DO ABOUT IT THE ANSWER IS THERE'S REALLY NOTHING YOU CAN DO ABOUT IT AND WE JUST HAVE A CHILD. AND WE SEE WHAT HAPPENS.

THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU SO MUCH TO YOU AND THE COMMITTEE FOR YOUR WORK ON THIS WE APPRECIATE IT.