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GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THIS EARLY-MORNING SESSION OF THE FLORIDA SUPREME COURT. WE APPRECIATE YOUR ARRANGING YOUR SCHEDULE TO BE WITH US AT 8 CHRCHB 30. THE FIRST -- AT 8:30. THE FIRST CASE WE HAVE ON THE CALENDAR IS -- I DON'T HAVE ALL OF THE CALENDAR YET. I GUESS OTHER FOLKS HAVE NOT COME, BUT IT IS THE STATE OF FLORIDA VERSUS MATTHEW STEPANSKY. MR. POLIN. THAT'S FINE.

MAY IT PLEASE THE COURT.

YES.

RICHARD POLIN, ATTORNEY GENERAL ON BEHALF OF THE STATE. THIS IS AN APPEAL FROM THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL, WHICH HELD AS UNCONSTITUTIONAL THE SPECIAL FLORIDA MARITIME STATUTE. THE CASE INVOLVED AN ALLEGED ATTEMPTED SEXUAL BATTERY AND BURGLARY ON A FOREIGN-REGISTERED VESSEL APPROXIMATELY 100 MILES OFF THE COAST OF FLORIDA. THIS IS A CRUISE SHIP WHICH ORIGINATED FROM FLORIDA AND WAS INTENDED TO RETURN TO FLORIDA.

DOES THE RECORD SHOW WHETHER THERE WAS AN AMERICAN CORPORATION THAT OWNED THIS VEHICLE? ANOTHER RECORD REFLECTS THAT IT IS FULLY OWNED BY BRITISH CRUISE LINES, LIMITED, OF THE BRITISH WEST INDIES. THE PARTICULAR SECTION OF THE STATUTE THAT IS INVOLVED HERE, AND THIS IS ONLY ONE SECTION OF THE STATUTE, PERMITS, WHEN OVER ONE HALF OF THE PAYING PASSENGERS ORIGINALLY EMBARKED AND PLANNED TO DISEMBARK IN FLORIDA. THAT IS THE ONLY FACTUAL PORTION OF THE STATUTE. THERE ARE OTHER PORTIONS OF THE STATUTE WHICH WOULD SERVE IN OTHER JURISDICTIONS. THIS IS THE ONLY PORTION OF THE STATUTE.

WE ARE DEALING WITH A STATUTE WHICH ALLOWS FLORIDA TO PROSECUTE, ONCE THERE IS OVER HALF OF THE PEOPLE ONBOARD THAT EMBARKED IN FLORIDA AND WILL RETURN TO FLORIDA.

CORRECT.

ANYONE THAT IS ON THIS SHIP, REGARDLESS OF THE FLAG OF THE SHIP, CORRECT?

THAT'S CORRECT.

THIS IS A LIBYAN FLAG?

LIKE EARN. -- LIBERIAN.

LIBERIAN FLAG, AND THESE WERE THE VICTIM, THE ALONG VICTIM, IN THIS INSTANCE, WAS NOT A CITIZEN OF FLORIDA.

NO. BOTH THE DEFENDANT AND THE VICTIM ARE AMERICANS BUT FLORIDA, NO.

WOULD IT MAKE ANY DIFFERENCE IN THIS SITUATION, IN YOUR ARGUMENT, IF THE VICTIM AND/OR THE DEFENDANT WERE FROM ANOTHER COUNTRY?

I DON'T -- I DON'T BELIEVE SO, AND I WOULD SAY THAT FOR A FEW REASONS. FIRST, WE ARE HERE ON A FACIAL ATTACK ON THE STATUTE. REGARDING STANDARDS OF REVIEW GOVERNING FACIAL

ATTACKS ON A STATUTE, THE STATUTE SHOULD BE DECLARED FACIALLY UNACCOUNTEDABLE, IF ONLY THE ATTACK OF THE STATUTE APPLIES. EVEN TURNING TO THAT TYPE OF FACT PATTERN, I BELIEVE THAT JURISDICTION COULD APPROPRIATELY BE ASSERTED, AND THIS HINGES ON WHAT I HAVE REFERRED TO AS THE EFFECTS DOCKRIN AND ESSENTIALLY -- DOCTRINE, AND ESSENTIALLY IS THE ON THE FACE OF IT. AS LONG AS THERE IS A SUBSTANTIAL CONNECTION, A SUBSTANTIAL EFFECT ON THE STATE OF FLORIDA, ONE WHICH IS EITHER ACTUAL OR INTENDED, THE STATE OF FLORIDA, AS PART OF ITS OWN TERRITORIAL JURISDICTION -- THIS IS NOT EXTRA TERRITORIAL INNATE BUT AS PART OF THE STATE'S ONE TERRITORYIAN JUST DICTION, CONSISTENT WITH THE UNITED STATES CONSTITUTION AND INTERNATIONAL LAW, THE STATE OF FLORIDA MAY ASSERT JURISDICTION, AND THE JURISDICTION IN THIS SENSE, THE EFFECT THAT WE ARE TALKING ABOUT, IT IS NOT FACT-SPECIFIC TO THE PARTICULAR OFFENSE, BUT WE ARE CONCERNED WITH SOMETHING THAT AFFECTS THE ENTIRE TOURISM-RELATED INDUSTRY, THE POSSIBLE EFFECT THAT OFFENSES ON CRUISE SHIPS ORIGINATED FROM FLORIDA, POSSIBLE EFFECT THAT, IF THOSE OFFENSES GO UNPROSECUTED, WHETHER BY THE FEDERAL GOVERNMENT, BY THE FLAG STATE OR ANY OTHER STATE, WHAT IS THE EFFECT GOING TO BE ON THE STATE OF FLORIDA, ON THE TOURISM INDUSTRY? IT DOESN'T TAKE MUCH FOR BAD PUBLICITY TO ARISE FROM UNPROSECUTED OFFENSES TO TOTALLY UNDERMINE FLORIDA'S TOURISM INDUSTRY. WE HAVE SEEN THAT.

BUT YOU ARE NOT SUGGESTING THAT THAT TRUMPS CONSTITUTIONAL AND STATUTORY CONSIDERATIONS, ARE YOU?

IT CERTAINLY DOESN'T TRUMP IT. IT IS CONSISTENT WITH IT. AND THIS ENTIRE CONCEPT OF ECONOMIC EFFECTS, IT IS A RECOGNIZED PRINCIPLE OF INTERNATIONAL LAW. I HAVE CITED THE, IN THE STATE'S BRIEFS IN THIS CASE, AND I WOULD SUGGEST THAT THE COURT CAREFULLY READ THROUGH IT, SECTIONS 402 AND 403 ON THE RESTATEMENT OF FOREIGN RELATIONS, ARE PROBABLY THE BEST --

DO WE HAVE DETERMINATIONS FROM THE LOWER COURTS IN THAT REGARD?

DETERMINATIONS AS FAR AS?

ABOUT ECONOMIC EFFECT?

THERE IS NO FACTUAL DETERMINATION. THE LOWER COURT'S OPINION, IN THE FIFTH DISTRICT, DID NOT EVEN ADDRESS THE EFFECTS DOCTRINE, EVEN THOUGH IT WAS RAISED IN THE STATE'S PLAIEINGS. WHEN THE CASE WAS IN THE STATE -- IN THE STATE'S PLEADINGS. WHEN THE CASE WAS IN THE STATE TRIAL COURT, THE ONLY ISSUE THAT WAS EVEN RAISED BY THE DEFENSE IN THE STATE TRIAL COURT WAS THE FEDERAL PREEMPT IN THE FEDERAL STATUTE. IT DIDN'T ADDRESS VIS-A-VIS LAW, SO THIS DIDN'T EVEN COME UP FOR TRIAL PURPOSES, WITH EXPRESSING ANY NEED FOR EXPLORING THE EFFECTS, BUT I DON'T THINK IT IS TRUE THAT IT IS A FACTUAL QUESTION THAT YOU HAVE TO ESTABLISH FACTUAL EVIDENCE IN SUPPORT OF THE EFFECTS. THIS IS A FACIAL VALIDITY OF THE STATUTE WE ARE DEALING WITH, AND I THINK THE ONLY QUESTION IS COULD THE LEGISLATURE REASONABLY CONCLUDE THAT THERE COULD BE A SUBSTANTIAL EFFECT ON THE --

TELL ME THIS. HOW DOES A PERSON ONBOARD SHIP KNOW WHETHER FLORIDA APPLIES WHEN THE SHIP IS UP SAILING, SAY, BETWEEN MANILA AND JAPAN? HALF THE PEOPLE HAVE GOTTEN ON IN FLORIDA. THEY GET OFF IN SYDNEY, AUSTRALIA. HALF OF THEM. HALF OF THEM REMAIN ONBOARD. WE TAKE A CENSUS AT THAT POINT, TO KNOW WHETHER FLORIDA LAW APPLIES? THEN ANOTHER HALF GETS -- AND YOU DROP BELOW, DOWN TO 49% IN MANILA. YOU GET BACK ON IN TOKYO, AND YOU GO BACK UP OVER 51%. I ASSUME THAT, BETWEEN MANILA AND TOKYO, IT WOULDN'T APPLY, BUT IN TOKYO TO SAN FRANCISCO, IT WOULD APPLY. IS THAT HOW IT WORKS?

I THINK, AS A PRACTICAL MATTER, MOST OF THE CRUISES TO WHICH SITUATIONS ARE GOING TO

ARISE WHERE CRIMES WILL ULTIMATELY BE PROSECUTED IN FLORIDA ARE GOING TO BE THOSE OF RELATIVELY SHORT DURATION.

BUT WE DON'T KNOW THAT, UNDER THIS STATUTE, DO WE?

NO.

THEY COULD BE APPLIED TO A SHIP THAT WAS SAILING BETWEEN SIDNEY AND MANILA.

I SUSPECT THAT SOME OBSCURE FACT PATTERN SUCH AS THAT COULD BE CONCEIVED, WHERE THE CONNECTION WOULD BE DEEMED TENUOUS, AND I WOULD SUGGEST TO THE COURT THAT THAT IS NOT THE FACT PATTERN THAT IS APPLICABLE IN THE INSTANT CASE, AND, TWO, SINCE WE ARE TALKING ABOUT THE VALIDITY OF THE STATUTE, THE MERE FACT THAT YOU CAN COME UP WITH A HYPOTHETICAL, OBSCURE SITUATION WHICH IS NOT AT ISSUE, DOES NOT RENDER THE STATUTE FACIALLY UNCONSTITUTIONAL, IN ORDER TO REYNOLDER THE STATUTE FACIALLY UNCONSTITUTIONAL, YOU WOULD HAVE TO FIND THAT THERE ARE NO FACT PATTERNS TO WHICH THE CONSTITUTION COULD REASONABLY APPLY, AND I THINK THAT THE MAIN POINTS HERE ARE THAT, IN ORDER TO FIND THE STATUTE UNCONSTITUTIONAL, YOU WOULD HAVE TO FIND THAT THERE WAS AN EXPRESS PROHIBITION IN THE UNITED STATES CONSTITUTION THAT PROHIBITS THE STATE OF FLORIDA FROM DOING THIS. THIS IS ESSENTIALLY A QUESTION OF FEDERALISM, AND IN OUR FEDERAL CONSTITUTION, OUR STRUCTURE IS SUCH THAT, UNLESS SOMETHING IS SPECIFICALLY PROHIBITED TO THE STATES, THE POWER REMAINS WITHIN THE STATE TO UNDERTAKE SOMETHING.

DO WE HAVE ANY LAW IN OTHER AREAS OF POTENTIAL STATE REGULATION? I AM THINKING, NOW, LIKE GAMBLING. IN OTHER WORDS, DO WE HAVE ANY -- THERE IS VIRTUALLY NO CASE LAW, PRECISELY ON THIS ISSUE, RIGHT, THAT IS CRIMINAL LAW IN THE OPEN SEAS ENACTED BY A STATE. YOU HAVEN'T BEEN ABLE TO COME UP WITH ANYTHING, REALLY, TO COME TO THAT?

NO.

HOW ABOUT SOMETHING LIKE GAMBLING? WHAT IS THE AUTHORITY OF THE STATE IN THE OPEN SEAS, TO REGULATE GAMBLING, BASED ON A PREMISE SUCH AS THE PREPPIES OF THIS STATUTE HERE? DOES THE STATE HAVE THAT AUTHORITY?

OUR STATUTE SPECIFICALLY SAYS THAT IT WILL NOT APPLY TO GAMBLING. IT SPECIFICALLY IS EXEMPTED FROM THE COVERAGE OF THIS STATE.

WELL, IN YOUR VIEW DOES THE STATE HAVE AUTHORITY, THOUGH, TO REGULATE SOMETHING LIKE THAT? LET'S SAY THAT WE HAVE A BOAT THAT COMES FROM BERMUDA, AND COMES TO FLORIDA, AND PICKS UP PASSENGERS. MORE THAN 50%. AND THEN GOES OUT INTO THE OPEN SEAS AND HAS GAMBLING. AND THEN RETURNS THOSE PASSENGERS TO FLORIDA. IS IT YOUR VIEW THAT THE STATE OF FLORIDA COULD MAKE GAMBLING ON THOSE SHIPS ILLEGAL AND MAKE IT A VIOLATION OF FLORIDA LAW?

PROBABLY NOT. PROBABLY NOT.

WHY?

THE REASON BEING THAT, AS THE STATUTE OPERATES, IN ORDER -- FLORIDA CANNOT TAKE ANY OBSCURE OFFENSE, ANY KIND OF DOM I KNOW MUST OFFENSE -- DOMINIMOUS OFF OWNS, ANY KIND OF -- OFFENSE, ANY KIND OF OFFENSE AT THE LOCAL LEVEL. THE ONLY TYPES OF OFFENSES WHICH FLORIDA CAN PURSUE UNDER THIS STATUTE ARE THOSE FOR WHICH THERE IS A SUBSTANTIALLY SIMILAR FEDERAL COUNTERPART, FOR WHICH THE FEDERAL STATUTE PERMITS THE FEDERAL GOVERNMENT TO ASSERT PROSECUTIONS FOR CRIMES OCCURRING ON AMERICAN

VESSELS ON THE HIGH SEAS, WHICH BASICALLY MEANS THAT IT HAS TO BE A FAIRLY SERIOUS TYPE OF OFFENSE WHICH IS GOING TO QUALIFY FOR IT, AND GAMBLING IS, THEREFORE, NOT GOING TO BE COVERED, EVEN IF FLORIDA WERE TO ATTEMPT TO DO SO.

HOW WOULD YOU DEVISE A TEST, THOUGH, TO HELP US TO DETERMINE, THEN?

THE TEST IS WRITTEN INTO THE STATUTE, AND THE TEST SAYS YOU LOOK TO THE FEDERAL STATUTES AND FIND IF THERE IS A FEDERAL PENAL LAW WHICH PERMITS THE FEDERAL GOVERNMENT TO PROSECUTE CRIMES OCCURRING ON AMERICAN VESSELS ON THE HIGH SEAS, AND IF YOU HAVE SUCH A STATUTE IN THE UNITED STATES CODE, TIGHTS TITLE 18, WHICH PERMITS PROSECUTIONS,, SO, TOO, FEDERAL, WITH A SUBSTANTIALLY SIMILAR STATUTE, PERMIT PROSECUTION.

THAT IS AN AMERICAN VESSEL. THIS ISN'T AN AMERICAN VESSEL THOUGH.

TRUE, BUT FLORIDA PATTERNS ITS, THE SCOPE OF FLORIDA'S CRIMINAL JURISDICTION, IS PATTERNED ON THOSE STATUTES THAT ARE EXPRESSLY WRITTEN FOR AMERICAN VESSELS ON THE HIGH SEAS, PURSUANT TO AMERICAN LAW. THAT IS THE STANDARD THAT THE STATE HAS ADOPTED, TO ENSURE THAT THESE ARE RECOGNIZED, WELL-KNOWN, SUBSTANTIALLY SERIOUS OFFENSES.

THERE IS NO QUESTION HERE, THAT THE FEDERAL FEDERAL GOVERNMENT COULD PROSECUTE THIS CRIME, WITH AN AMERICAN VICTIM AND AN AMERICAN DEFENDANT. CORRECT?

WELL, I WOULD SAY TWO THINGS THERE. I BELIEVE THAT, PURSUANT TO CURRENT FEDERAL STATUTES, FEDERAL COURTS CAN. I FILED A NOTICE OF SUPPLEMENTAL AUTHORITY WITHIN THE PAST WEEK, WITH ONE SUCH RECENT CASE, ANALYZING THE EFFECTS DOCTRINE AND SOME OTHER EFFECTS OF THIS. ALTHOUGH I WOULD POINT OUT THAT ONE PORTION OF THE DEFENDANT'S ARGUMENT BEFORE THIS COURT, WHERE THEY ASSERT THE FLAG STATE PRINCIPLE AS PRECLUDING PROSECUTION. IF THERE WERE ANY MERIT TO THE FLAG STATE PRINCIPLE, AS THE DEFENSE HAS ARGUED IN THIS CASE, THAT, TOO, AS DOCTRINE OF INTERNATIONAL LAW, WOULD PRECLUDE THE FEDERAL GOVERNMENT FROM PREEMPTING THE FLAG STATE, TOO, SO IF THEY ARE RIGHT ON THIS, THEY CANNOT, ALSO, BE RIGHT ON THE FEDERAL GOVERNMENT RIGHT TO PROSECUTE.

WHAT HAPPENS IN A FEDERAL MATTER, WHAT HAPPENS IS THIS IT VESSEL DEPARTED FROM A PUERTO THE COAST OF FLORIDA AND RETURNED TO THE SAME PORT? AND THEN THE CRIME WAS REPORTED TO LOCAL POLICE AGENCIES. DO WE HAVE THAT IN THE RECORD?

NO. IT IS NOT IN THE RECORD, BUT THAT IS THE LIKELY SCENARIO.

AND THEN THERE IS A DEFINITELY. IF THE FEDERAL GOVERNMENT WOULD HAVE TAKEN THE RESPONSIBILITY TO PROSECUTE THIS CRIME, THEN FLORIDA WOULD DEFER TO THE FEDERAL GOVERNMENT. THAT IS HOW THE STATUTE IS WRITTEN?

NOT JUST DEFER. EVEN STRONGER THAN THAT. IF ANY OTHER STATE, BE IT THE FEDERAL GOVERNMENT, THE FLAG STATE OR ANY OTHER STATE ASSERTS JURISDICTION AND TRYS THE -- AND TRIES THE CASE, FLORIDA, BY STATUTE, LOSES THE RIGHT, STATUTORILY, TO TRY THE CASE. THIS IS NOT PRIMARY JURISDICTION. WE ARE NOT TRYING TO TAKE AWAY ANYTHING FROM ANYONE ELSE. THIS IS A STOPGAP MEASURE, TO FILL IN THE GAPS.

SO THE DEFENDANT IS FROM WHAT STATE?

I DON'T THINK THE RECORD REFLECTS, OTHER THAN THAT THEY WERE -- THAT BOTH THE DEFENDANT AND VICTIM WERE AMERICANS BUT NONFLUORIDEIANS.

BUT THERE IS NO ASSERTION THAT THAT STATE OR THAT THIS DEFENDANT IS SUBJECT TO MULTIPLE PROSECUTIONS FOR THIS CRIME.

NO, AND CERTAINLY IF ANYONE ELSE UNDERTOOK THIS, FLORIDA COULD NOT AND WOULD NOT.

BUT THE PREEMPTION DOCTRINE, WHICH IS THE ONLY GROUND THAT THE DEFENDANT RAISED BELOW, WOULD STATE THAT THE FEDERAL GOVERNMENT INTENDED TO PREEMPT THIS AREA AND NOT ALLOW ANY OTHER STATE LAW TO TAKE EFFECT IN CRIMES THAT OCCUR OUTSIDE OF THE THREE-MILE LIMIT.

THAT IS ONE OF THE ARGUMENTS THAT WAS PRESENTED BY THE DEFENSE, ALTHOUGH, AS FAR AS THREE MILES, I THINK IT MAY BE 12 MILES. THERE IS A LITTLE LACK OF CLARITY ON THIS, BUT THIS IS 100 MILES.

WHEN YOU SAY THE PREEMPTION DOCTRINE, MEANING THE STATES COULD NOT LEGISLATE IN THIS AREA, BECAUSE THE FEDERAL GOVERNMENT HAS MADE A DETERMINATION THAT IT IS SOLELY AND EXCLUSIVELY TO HAVE JURISDICTION.

THAT WAS ONE OF THE DEFENSE ARGUMENTS, AND IN BRIEF RESPONSE THOUGH THAT, I WOULD SUGGEST A COUPLE OF THINGS. FIRST INNING THE SIMPLEST ANSWER TO THAT IS IF THE COURT WOULD TAKE A LOOK AT 18 US CODE, SECTION 3231. WHAT THAT SAYS IS IT FIRST SAYS THAT FEDERAL DISTRICT COURTS HAVE ORIGINAL JURISDICTION TO PROSECUTE ALL FEDERAL CRIMES. THEN GOES ON TO SAY THAT NOTHING IN THIS TITLE, TITLE 18, SHALL BE HELD TO TAKE AWAY OR IMPAIR THE JURISDICTION OF THE COURTS OR THE SEVERAL STATES UNDER THE LAW THERE OF. WHAT THAT IS SAYING THAT NOTHING IN THAT, NOTHING IN THE FEDERAL COURT'S JURISDICTION TO PROSECUTE FEDERAL CRIMES UNDER TITLE 18, SHALL TAKE AWAY FROM THE STATE THE RIGHT TO PROSECUTE CRIMES UNDER THEIR OWN STATE LAWS AS TO THE SAME TYPE OF MATTERS, AND FEDERAL MAYOR TIME JURISDICTION FOR CRIMES ALL -- MARITIME JURISDICTION FOR CRIMES ALL DEARRIVES -- DERIVES UNDER TITLE 18, WHICH SAYS THAT NOTHING SHALL IMPAIR THE SEVERAL JURISDICTIONS OF THE STATES UNDER THE LAW THEREOF. YOU HAVE STATUTORY DISCLAIMER THAT THERE IS NO PREEMPTION HERE, BUT GOING ABOVE AND BEYOND THAT, AS TO THE FEDERAL DOCTRINE OF PRESEMIINGS, THE -- PREEMPTION, THE FEDERAL QUESTION OF PREEMTHS IN ADMIRALITY AND MARITIME MATTERS SAYS THAT ONLY WHEN THERE IS A CONFLICT BETWEEN THE FEDERAL AND STATE LEGISLATION WILL THE PREEMPTION DOCTRINE APPLY, AND YOU DO NOT IS HAVE THAT THERE, BECAUSE THE -- YOU DO NOT HAVE THAT THERE, BECAUSE IT SAYS THE FEDERAL LAW APPLIES. B, OUR STATUTE IS SAYING THAT THERE CANNOT POSSIBLY BE A CONFLICT, BECAUSE WE ARE LIMITING PROSECUTION TO THE SAME TYPE OF OFFENSES, WHICH CAN BE PROSECUTION PURSUANT TO FEDERAL LAW. WE ARE NOT ADDING ANY TO IT, AND WE ARE SAYING IF THE FEDERAL GOVERNMENT STEPS IN, WE ARE NOT GOING TO BE DOING ANYTHING, SO THERE IS NOT POSSIBLE CONFLICT WHICH IS DESIGNED TO PROVIDE COOPERATION BETWEEN ALL DIFFERENT GOVERNMENTS AND DIFFERENT STATE, FOREIGN GOVERNMENTS AS WELL.

WE INVITED THE UNITED STATES GOVERNMENT TO FILE A BRIEF IN THIS CASE. THEY DECLINED. SO ARE WE TO ASSUME THAT THEY ARE NOT TAKING A POSITION, THAT THIS STATUTE IS UNCONSTITUTIONAL?

I AM NOT SURE WHAT TO READ INTO THAT, OTHER THAN WHETHER IT IS A POLICY DECISION, JUST A PRACTICAL DECISION. I, MYSELF SELF, I, MYSELF, HAD INVITED THE UNITED STATES GOVERNMENT TO PARTICIPATE IN THIS CASE. AT THE END OF THE FIFTH DISTRICT COURT OF APPEAL PROCEEDINGS, I HAD MADE THE REQUEST TO THE JUSTICE DEPARTMENT, WHICH THEY TOOK THE SAME APPROACH AS YOUR HONOR HAS SEEN MORE RECENTLY, SO I AM NOT SURE WHAT TO READ INTO THAT. THE LAST POINT, BEFORE I SIT DOWN FOR THE REBUTTAL ARGUMENT THAT I WOULD LIKE TO MAKE IS ON THE FLAG STATE PRINCIPLE, WHICH HAS BEEN A LARGE PART

OF THE ARGUMENT RAISED BY THE DEFENSE. IT IS THAT, WHILE I BELIEVE THAT THE EFFECTS DOCTRINE THAT I HAVE ENUNCIATED IS A RECOGNIZED PRINCIPLE OF INTERNATIONAL LAW, THAT CONTROLS, OVER THAT, AND I HAVE CITED THE APPROPRIATE AUTHORITY FOR IT, I WOULD, ALSO, POINT OUT THAT THERE IS SUBSTANTIAL CASE LAW, INCLUDING THE MOST RECENT NOTICE OF SUPPLEMENTAL AUTHORITY WHICH I HAVE FILED WHICH SAYS THAT INDIVIDUAL CRIMINAL CASES DO NOT HAVE STANDING TO ASSERT THE FLAG STATE PRINCIPLE. IT IS A TREATY WHICH PARTIES MAY ALONG BUT INDIVIDUALS MAY NOT. THANK YOU FOR YOUR TIME.

THANK YOU. YOU MAY PROCEED.

GOOD MORNING, YOUR HONORS. MY NAME IS ROBIN LEMONIDIS, AND I AM JOINED, HERE, BY BOB CHERRY, AND IT IS OUR PLEASURE TO BE HERE, DARK, ON BEHALF OF MATTHEW STEPANSKY. WE WOULD LIKE TO THANK THE COURT FOR INVITING US HERE TODAY. IT IS A PERSONAL HONOR FOR BOTH OF US AND FOR MR. STEPANSKY IN THIS CASE. THE QUESTION IS WHAT AUTHORITY DOES THE STATE OF FLORIDA HAVE TO ENACT A CRIMINAL STATUTE, PURPORTING TO EXERCISE JURISDICTION OVER A NONFLORIDA RESIDENT ON A FOREIGN FLAG VESSEL, UPON THE HIGH SEAS. THE FIFTH DISTRICT COURT OF APPEAL HELD THAT THE STATE OF FLORIDA HAD NO SUCH AUTHORITY.

IF THE VICTIM WAS A FLORIDA RESIDENT, WOULD THERE BE SUCH AUTHORITY?

IF THE VICTIM WERE A FLORIDA RESIDENT, YOUR HONOR, IT WOULD BE A MUCH MORE DIFFICULT CASE.

AND WHY WOULD THAT BE? WHAT PRINCIPLE OF LAW -- A FEDERAL PREEMPTION, THEN, IS NOT REALLY WHAT IS AT ISSUE HERE?

NO. AND I SUBMIT THAT IT IS A LITTLE -- IT IS ACTUALLY A COMPLICATED, FAIRLY TWISTED AREA OF LAW. IF MR. STEPANSKY WERE A FLORIDA RESIDENT, THEN UNDER SCIRIOTIS AND THE COURT'S HOLDING IN THE LIVINGS CASE, PERHAPS, PERHAPS, THE STATE WOULD HAVE A LITTLE BIT MORE OF AN ARGUMENT. I THINK THEY, STILL, COULD NOT SURE MOUNT THE ISSUE OF THE -- SURMOUNT THE ISSUE OF THE FOREIGN FLAG VESSEL.

BUT YOU RAISED PREEMPTION, CORRECT?

YES.

PREEMPTION WOULD MEAN WHETHER THE DEFENDANT WAS A FLORIDA RESIDENT, WHETHER THE VICTIM WAS A FLORIDA RESIDENT, NO MATTER WHAT THE SITUATION WAS, IF IT OCCURRED OUTSIDE THE TERRITORIAL LIMITS AND THE FEDERAL GOVERNMENT WOULD BE THE SOLE PROSECUTOR OF THESE CRIMES, THEN FLORIDA COULD NOT ASSERT ANY ABILITY TO PROSECUTE THAT CRIME. CORRECT?

YES, AND WHAT IS CONSISTENT WITH BOTH OUR PREEMPTION ARGUMENT IN THE FIFTH AND ON THE MOTION TO DISMISS, AND THE POSSIBILITY THAT IT WOULD BE A MORE DIFFICULT CASE -- I AM STILL NOT SAYING THAT THE STATE WOULD CARRY THE DAY ON THIS STATUTE, IF THE COMPLAINING WITNESS IN THIS CASE WERE A FLORIDA RESIDENT. I AM SAYING IT MIGHT TAKE A LITTLE DIFFERENT TACT. HERE, SINCE IT IS A FOREIGN FLAG VESSEL AND A NONFLORIDA RESIDENT AND A NONFLORIDA COMPLAINING WITNESS --

LET'S GO BACK. PREEMPTION WOULD MEAN THAT WHAT YOU ARE SAYING IS THERE IS A STATUTE THAT EXISTS IN THE UNITED STATES CODE THAT SAYS, THAT THIS THE FEDERAL GOVERNMENT IS THE ONE TO PROSECUTE THESE CRIMES.

YES. AND THOSE WOULD BE --

YOU ARE NOT REALLY SAYING, UNDER THE FLAG STATE, YOU WOULD BE SAYING THAT LIBERIA WOULD BE THE ONE TO PROSECUTE THIS? CERTAINLY YOUR CLIENT WOULD NOT WANT TO BE PROSECUTED IN LIBERIA, I WOULD ASSUME.

NO, YOUR HONOR, BUT THE FIVE INTERNATIONALLY RECOGNIZED EXCEPTIONS TO THE FLAG STATE RULE, WHICH ARE PROTECTIVE, NATIONALITY, PASSIVE PERSONALITY, UNIVERSAL, THOSE EXCEPTIONS GIVE THE UNITED STATES THE OPTION OF PROSECUTING UNDER 18 US CODE SUBSECTION 7.

SO YOU ARE ALLEGING THAT THE FEDERAL GOVERNMENT CAN PROSECUTE YOUR CLIENT.

ABSOLUTELY. I HAVE SAID, ALL LONG THAT, THE FEDERAL GOVERNMENT CAN LIKELY PROSECUTE MR. STEPANSKY.

SO HOW DOES THE FEDERAL GOVERNMENT DOCTRINE APPLY, AND THERE ARE MANY CASES THAT SAY THAT AN INDIVIDUAL DEFENDANT CANNOT RAISE --

I RECOGNIZE THAT, YOUR HONOR, IN THE ROBERTS CASE, WHICH THE STATE APPLIED RECENTLY. I DO RECOGNIZE THAT THEY, I DON'T WANT TO SAY DISAPPEAR PROVED, BUT THEY WOIPT APPOINTMENT YOU HAD OUT THAT THE FLAG STATE RULE IS NOT SELF EXECUTING, AND I STILL DON'T THINK THAT CHANGES THE FACT THAT THE INTERNATIONALLY RECOGNIZED EXCEPTION OF NATIONALITY WOULD CARRY THE DAY, IF THE FEDERAL GOVERNMENT INTENDED TO PROSECUTE.

SO IF THE FEDERAL GOVERNMENT, IN THE MIDDLE DISTRICT, HAD INSTITUTED A -- HAD FILED OR WHATEVER THEY DO FOR AN INDICTMENT, THEN THAT WOULD BE YOUR CLIENT WOULD BE PROSECUTED WITHIN THE STATE OF FLORIDA BUT IN THE FEDERAL COURTS.

YES. WE WOULD FIGHT THE CASE ON THE FACTS AND WE WOULD WIN. SO I HAVE NO CONCERN ABOUT WHETHER THE FEDERAL GOVERNMENT CHOOSES TO GO FORWARD. OUR CONCERN IS THAT THE FLORIDA CONSTITUTION GIVES THE STATE OF FLORIDA JURISDICTION OVER ITS GEOGRAPHIC AREA, AND THAT WILL INCLUDE, ON THE ATLANTIC SEA COAST THE, THREE GEOGRAPHIC MILES INTO THE OCEAN FROM THE SHORELINE.

BUT IF THE DEFENDANT, WHO IS A FLORIDA RESIDENT, COULD BE PROSECUTED, YOU SAY YOU ARE NOT CONCEDING THAT BUT THERE ARE CERTAINLY CASES, AND IF SOMEONE WHO IS A FLORIDA VICTIM, IF THE STATE OF FLORIDA COULD PROSECUTE, THEN REALLY WHAT YOU ARE TALKING ABOUT IN THOSE SITUATIONS IS WHETHER THE EFFECTS DOCTRINE ALLOWS A STATE TO BE ABLE TO PROSECUTE A CRIME THAT CURSE OUT SIDE OF ITS TERRITORIAL JURISDICTION.

NO, YOUR HONOR. NO.

IS THAT WHAT GIVES -- WHAT GIVES RISE TO THE ABILITY OF THE STATE TO PROSECUTE, IF A DEFENDANT IS THE -- A RESIDENT OR A VICTIM IS A RESIDENT, YET THE CRIME CURSE OUT SIDE OF ITS TERRITORIAL JURISDICTION?

WELL, IF WE START FROM THE UNITED STATES SUPREME COURT CASE. SCIRIOTIS, WHICH CAME FROM THIS COURT, THAT, ALTHOUGH I MAY POINT OUT THAT THE FACTS IN THAT CASE INDICATED THAT MR. SCIRIOTIS WAS INSIDE THE BOUNDRIES OF FLORIDA WHEN FLORIDA DECIDED TO PROSECUTE, BUT THE UNITED STATES GOVERNMENT SAID SINCE THAT ISN'T A PIECE OF FLOATING FLORIDA SOIL AND THAT ISN'T A FLORIDA VESSEL, AND THE RESIDENTS, WE FIND THAT FLORIDA CAN CONTROL HER OWN RESIDENTS, AND THAT IS A PARTICIPATORY FINDING, THEN JUSTICE SHAW, IN HIS FINDING WITH THE LIVINGS CASE, FOUND WITH THE SCIRIOTIS CASE AND FOUND THAT THE MADISON FISHERIES ACT DID NOT PREEMPT THIS AREA AND THAT FLORIDA

COULD CONTROL HER OWN VESSELS OUTSIDE THE GEOGRAPHIC BOUNDARIES. AGAIN, HOWEVER, IT WAS UNCLEAR WHETHER ANYONE HAD BEEN ARRESTED IN THAT CASE OUTSIDE THE GEOGRAPHIC BOUNDARIES. THIS COURT JUST HELD THAT, BECAUSE IT WAS A FLORIDA VESSEL, IT COULD OPERATE OUTSIDE THE FLORIDA BOUNDARIES. I WOULD LIKE TO POINT OUT, THOUGH, INJUSTICE SHAW'S OTHER CASE THAT CAME JUST YEAR BEFORE LIVINGS, SOUTHEASTERN FISHERIES, THERE WAS A POINT THAT I THINK IS AN IMPORTANT POINT TO MAKE HERE, AND, YOU KNOW, THE CLARITY THAT ALWAYS COMES UPON ONE AS THE WITCHING HOUR GETS CLOSER, AS I WAS PREPARING FOR THIS ARGUMENT THIS WEEKEND, WE REALIZED THAT ONE OF THE MAIN REASONS THAT THE SOUTHEASTERN FISHERY CASE, THAT THIS COURT HELD THAT THAT STATUTE COULD NOT BE APPLIED EXTRA TERRITORIALY, IS BECAUSE NOWHERE IN THE STATUTE DOES IT STATE THE LEGISLATURE'S INTENTION THAT THAT PARTICULAR STATUTE APPLIED, BE APPLIED EXTRA TERRITORIALY. IN THIS STATUTE THAT WE ARE DEALING WITH, MATTHEW STEPANSKY WAS CHARGED UNDER 794, WHICH IS SEXUAL BATTERY, AND 810, WHICH IS BURGLARY. NOWHERE IN 794 OR 810 DOES IT STATE THE INTENTION TO CHARGE MR. -- THAT THESE STATUTES BE APPLIED EXTRA TERRITORIALY. 18 UCS, THE ROBERTS CASE SPEAKS TO THAT, TOO. 18 USC, 2241, WHICH IS THE SEXUAL BATTERY STATUTE THAT WOULD APPLY ON THE FEDERAL SIDE, DOES STATE THAT THAT STATUTE COULD BE APPLIED IN THE SPECIAL MARITIME TERRITORIAL JURISDICTION OF THE UNITED STATES, SO THE NOTICE PROBLEM THAT THIS COURT ADDRESSED IN SOUTHEASTERN FISHERIES AND THE NOTICE PROBLEM THAT WAS ANALYZED IN THE ROBERTS CASE VERY RECENTLY BY THE EASTERN DISTRICT OF LOUISIANA, EXISTS HERE. JUST BECAUSE FLORIDA SETS, DEFINES MARITIME AND TERRITORIAL JURISDICTION IN 910, DOES NOT PROVIDE SUFFICIENT NOTEIES THAT THESE STATUTES ARE INTENDED TO APPLY OUTSIDE THE JURISDICTION, JUST AS JUSTICE WELLS WAS SUGGESTING. HOW DOES ANYBODY WHO GETS OFF A BOAT FOR SHORE LEAVE IN MANILA SUPPOSED TO KNOW THAT FLORIDA LAW IS GOING TO APPLY THERE? IT JUST DEFIES LOGIC. CHIEF JUSTICE MARSHALL, IN 1818, FACED A SIMILAR QUESTION, IN THE BEVINS CASE, AND HE WROTE, FOR THE COURT, WHAT, THEN, IS THE EXTENT OF JURISDICTION WHICH A STATE POSSESSES? WE ANSWER, WITHOUT HESITATION, THE JURISDICTION OF THE STATE IS COEXTENSIVE WITH ITS TERRITORY. THE NOTION THAT TOURISTS THAT FIND THAT THEY HAVE A BAD TIME ON A CRUISE WILL, INSTEAD, COME TO FLORIDA AND SPEND THE WHOLE WEEK AT DISNEY THE NEXT TIME OR SPEND THE WHOLE WEEK IN PANAMA CITY OR SPEND THE WHOLE WEEK ON MIAMI BEACH. IT IS JUST AS LIKELY THAT THEY WILL NOT GO BACK TO THE CRUISE AND THEY WILL, INSTEAD, SPEND ALL OF THEIR VACATION MONEY HERE. SO I THINK, BASED ON THE FACTS DOCTRINE ALONE, IT FAILS. BASED ON THE FACT THAT IT IS ON A FOREIGN FLAG VESSEL, IT STILL FAILS, AND EVEN IF IT WERE A FLORIDA RESIDENT, IT WOULD NOT SAVE IT, BECAUSE IT IS A FOREIGN FLAG VESSEL.

WHAT KIND OF TEST WOULD YOU APPLY FOR THE EFFECTS DOCTRINE TO BECOME APPLICABLE?

THE EFFECTS DOCTRINE THAT APPEARS TO HAVE APPLIED IN THE FISHING CASES, FOR EXAMPLE, THEY, ALL OF THE CASES THAT THIS COURT HAS ADDRESSED AND NOT NECESSARILY CALLED IT BY NAME, THE EFFECTS DOCTRINE, HAVE BEEN IN THE CONSERVATION AREA, WHERE, FOR EXAMPLE, IN LIVINGS, JUSTICE SHAW WROTE, FOR THE COURT, THAT FLORIDA HAS AN INTEREST IN CONSERVATION, AND FLORIDA HAS AN INTEREST IN PRESERVING THE WILDLIFE AND MARINE LIFE THAT SURROUNDS OUR STATE. THE TEST WOULD BE IS THERE A SIGNIFICANT, LET ME THINK, IT WOULD HAVE TO BE A SIGNIFICANT, DIRECT, AND NONSPECULATIVE. IT WOULD HAVE TO BE A DIMINISH DIMINISHABLE RESOURCE, AND I SUBMIT THAT SAYING PEOPLE WON'T COME, IF THERE ARE CRIMES, IS PURELY SPECULATIVE, AND IT IS NOT TRUE. THERE HAS BEEN CRIME IN FLORIDA FOR A LONG TIME, AND TOURISM IS BOOMING. SO --

YEAH, BUT, ISN'T THAT A FUNDAMENTAL ASSUMES THAT EVERYBODY MAKES -- ASSUMPTION THAT EVERYBODY MAKES, AND THAT IS THAT, IF THERE IS A CRIME, THERE WILL BE A RESORT, AN OPPORTUNITY, FOR PROSECUTION?

YES, YOUR HONOR, CERTAINLY IF EVERYONE --



THAT IS A VERY FUNDAMENTAL PRINCIPLE, AND WE WOULD ASSUME A VALID ASSUMPTION ON EVERYONE'S PART, CERTAINLY ANYONE THAT GETS ON A CRUISE SHIP IN STATE OF FLORIDA, IT WOULD SEEM LIKE THEY COULD VALIDLY ASSUME, IF A CRIME IS COMMITTED AGAINST THEM, THAT THEY COULD MAKE THE VALID ASSUMPTION THAT THAT CRIME WILL BE PROSECUTED.

ABSOLUTELY.

IF THE END RESULT HERE, APPARENTLY, WILL BE THAT THERE WILL BE NO PROSECUTION OF CRIME. GRANTED THERE HAS TO BE A DETERMINATION OF GUILT OR INNOCENCE OR WHATEVER. HOW MUCH SHOULD WE TAKE INTO CONSIDERATION OUR SORT OF UNIQUE FORM OF FEDERALISM HERE, IN THE UNITED STATES, AND THAT IS THAT IN MOST COUNTRIES AROUND THE WORLD, EVEN IF THEY HAVE A FEDERAL SYSTEM, IT STILL IS A CENTRALIZED SYSTEM, AND INSOFAR AS THE CRIMINAL LAWS ARE CONCERNED, AND SO IF THIS WAS OFF THE COAST OF ITALY OR WHATEVER, IT WOULD BE THAT THE FEDERAL GOVERNMENT IN ITALY THAT WOULD BE PROSECUTING, EVEN IF IT WAS A LOCAL PROSECUTION, WHEREAS WE HAVE THIS UNIQUE SITUATION IN FLORIDA OF OUR FEDERALISM, WHERE BASICALLY WITH REFERENCE TO CRIMINAL LAWS, THE FEDERAL GOVERNMENT HAS DEFERRED TO THE STATES. AND THE FEDERAL GOVERNMENT DOESN'T HAVE AN EXTENSIVE SCHEME OF CRIMINAL LAWS, AND SO WHEN A CRIME IS COMMITTED, WE DON'T HAVE THAT CENTRALIZED RESPONSE LIKE WHAT HAPPENED IN THE FEDERAL REPUBLIC OF GERMANY OR SOMEPLACE ELSE, WHERE THE -- IT IS, REALLY, A BRANCH OF THE FEDERAL GOVERNMENT THAT PROSECUTES NEW BAVARIA OR WHEREVER. HOW MUCH SHOULD WE TAKE THAT INTO CONSIDERATION, THAT THERE HAS BEEN A TRADITIONAL DEFERENCE TO THE STATE IN THE UNITED STATES TO PROSECUTE CRIMES THAT OCCUR IN THE STATES, AS OPPOSED TO FEDERAL PROSECUTION? IN APPLYING THAT, THEN, TO THE FACT THAT YOU CAN SEE THAT ONE ONE THAT YOU CONCEDE THAT THE FEDERAL GOVERNMENT CAN PROSECUTE THIS. DO YOU UNDERSTAND MY QUESTION?

I THINK, YOUR HONOR, THAT I DO UNDERSTAND YOUR QUESTION, AND PLEASE CORRECT ME IF I AM NOT ANSWERING THE QUESTION, IF -- THAT YOU REALLY WOULD LIKE TO HEAR. LET ME POINT OUT TWO THINGS. FIRST OF ALL, THE ISSUE OF A PERSON HAVING A REASONABLE EXPECTATION THAT CRIMES WILL BE VINDICATED AND THAT OFFENDERS WILL BE PUNISHED. THAT IS A VERY REASONABLE EXPECTATION FOR ANYONE IN OUR SOCIETY TO HAVE, AND THIS SUMMER, THE CRUISE INDUSTRY PASSED AN INDUSTRY-WIDE RESOLUTION THAT THE -- ALL CRIMES THAT -- OR OFFENSES THAT ARE COMMITTED ON SHIPS SHOULD BE REPORTED IMMEDIATELY TO THE FBI, WHEN THEY COME BACK TO PORT. PREVIOUSLY THAT HAD NOT BEEN THE CASE. AND SO NOW THE FEDERAL GOVERNMENT HAS TAKEN CARE OR RATHER THE CRUISE INDUSTRY HAS TAKEN CARE OF THE NOTICE ASPECT, SO THAT NOW THE FEDERAL GOVERNMENT WILL HAVE NOTICE. THEY DIDN'T IN THIS CASE.

IS THERE A FEDERAL STATUTE THAT PARALLELS EVERY FLORIDA CRIMINAL STATUTE, FOR INSIDE? OR EVERY GEORGIA -- FOR INSTANCE, OR EVERY GEORGIA CRIMINAL STATUTE? CLEARLY THERE IS NOT.

CLEARLY THERE IS NOT. ALL OF THE LOCAL ORDINANCES WOULD NOT BE COVERED, BUT CERTAINLY SIGNIFICANT CRIMES, PERSONAL CRIMES AND THEFT.

DO YOU AGREE THAT THE ESSENTIAL SCHEME OF FEDERALISM IN THE UNITED STATES IS FOR THE STATES TO TAKE CARE OF THE CRIMINAL LAW.

YES. YES. NOW, LET ME RETURN TO THE SECOND PART OF YOUR HONOR'S QUESTION, WHICH IS HOW CAN WE RECONCILE OUR SYSTEM OF FEDERALISM WITH WHAT IS OUR POSITION THAT A SINGLE FORCE SHOULD PROSECUTE IN THIS ARENA? AND I THINK THAT WE HAVE TO LOOK TO THE POLICY CONSIDERATIONS THAT DRIVE THE NEED FOR ONE VOICE IN THE INTERNATIONAL ARENA, AND THAT WOULD BE IN THE ADD MILES AN HOURALITY AND MARY -- IN THE ADMIRALITY AND

MARITIME ARENA. I THINK WE CAN LOOK TO THE UNITED STATES CONSTITUTION, WHICH DISCUSSES CONGRESS SHALL HAVE THE POWER TO PUNISH PYRE AS I AND FELONIES -- PIRACIES AND FELONIES ON THE HIGH SEAS. THAT IS NOT EXCLUSIVELY TO THE FEDERAL GOVERNMENT, BUT IF WE READ THE OTHER CLAUSES IN SECTION 18, WE SEE POWERS SUCH AS COINING MONEY, INSTITUTING POST OFFICES, DECLARING WAR, SO I THINK IF WE READ CLAUSE 10, DEFINING PIRACIES AND FELONIES UPON THE HIGH SEAS, WITH THE OTHER CLAUSES, WE CAN SEE THAT THESE ARE INTENDED TO BE EXCLUSIVE POWERS. I THINK THAT WE, ALSO, HAVE TO LOOK -- I KNOW THAT THE STATE BELIEVES THE TENTH AMENDMENT SOMEHOW HAS ALLOWED THE STATES TO RETAIN THE POWER, BUT WHEN WE GO INTO THE INTERNATIONAL ARENA, AGAIN, THE POLICY CONSIDERATIONS BECOME, I SUBMIT, TREMENDOUS.

DOESN'T THIS RELATE, THOUGH, TO THE ISSUE OF STANDING, TOO? THAT IS HAVING CONCEDED THAT THE UNITED STATES CAN PROSECUTE YOUR CLIENT, THEN WHERE DO YOU HAVE STANDING TO CHALLENGE THE FACT THAT THE PROSECUTION IS DONE THROUGH A STATE PROSECUTION?

BECAUSE THERE IS NOTHING IN THE FEDERAL LAW, IN ALL OF THE CASES, FOR EXAMPLE, IN THE LIVING CASE, IN THE MAGNISON FISHERY CONSERVATION ACT, SPECIFICALLY SAYS, STATES, YOU HAVE OUR BLESSING TO GO AHEAD AND SUPPLEMENT THESE LAWS AS YOU SEE FIT AND PROSECUTE OFFENDERS IN YOUR COURTS AS YOU SEE FIT. DEATH ON THE HIGH SEAS. JONES ACT CASES ARE THE SAME. THEY SAY, STATES, YOU HAVE OUR BLESSINGS TO ALLOW THE PEOPLE TO BRING SUIT IN THE STATE COURTS. THERE IS NOTHING IN THE FEDERAL STATUTORY SEEM. THERE IS NOTHING IN THE -- SCHEME. THERE IS NOTHING IN THE FEDERAL CONSTITUTION OR THE FLORIDA CONSTITUTION THAT WOULD ALLOW THE STATE OF FLORIDA JURISDICTION 100 MILES OUT IN, INTO THE OCEAN ON A FOREIGN FLAG VESSEL ON A NONFLORIDA RESIDENT. NOTHING.

HAVE ANY OTHER STATES PASSED SIMILAR STATUTES?

NONE THAT WE COULD FIND, YOUR HONOR, AND WE HAVE SEARCHED EXHAUSTIVELY. HAWAII HAS THE COAST-WISE TRADE ACT, WHICH REALLY ANYPLACE THIS WHOLE PROBLEM IN THE BUD, BY REQUIRING THAT HAWAIIAN -- REQUIRING THAT ALL SHIPS THAT DOCK AND SAIL AMONGST THE ISLANDS BE REGISTERED THERE AND BY DOING THAT, THEN IT BECOMES A HAWAIIAN VESSEL, AND THAT IS THE END OF IT. HAWAII GETS JURISDICTION. I WOULD LIKE TO RETURN, FOR JUST A MOMENT, TO SOME OF THE POLICY CONSIDERATIONS. THE FIFTH DISTRICT COURT OF APPEAL POINTED OUT THAT, IN THE JOURNIGV MILLER, UNITED STATES SUPREME COURT CASE, POINTED OUT WHY THE UNITED STATES MUST SPEAK WITH ONE VOICE IN SOME AREAS. JUSTICE DOUGLAS WROTE FOR THE COURT IN THAT CASE, AND HE STATED THAT -- HE SPOKE OF THE PERSISTENT AND SUBTLE WAY THAT THE OREGON LAW AFFECTS INTERNATIONAL RELATIONS, AND CONCLUDED THAT EXPERIENCE HAS SHOWN THAT INTERNATIONAL CONTROVERSIES OF THE GRAVEST MOMENT SOMETIMES EVEN LEADING TO WAR, MAY ARISE FROM REAL OR IMAGINED WRONGS TO ANOTHER SUBJECT'S INFLICTED OR PERMITTED BY A GOVERNMENT. I SUBMIT THAT THIS FACTUAL SCENARIO CAN APPLY HERE, AS WELL, BECAUSE IMAGINE THIS. THE STATE IS SAYING THAT THIS WILL SCARE TOURISTS AWAY. IMAGINE IF WE HAVE A YOUNG CUBAN ATHLETE WHO COMES FROM CUBA TO VISIT HIS GRANDMOTHER IN MIAMI AND THEY GO ON A CRUISE TOGETHER. THEY LEAVE MIAMI, JUST LIKE MATTHEW STEPANSKY. THEY GO TO NASSAU, AND JUST LIKE MATTHEW STEPANSKY, HE IS WRONGFULLY ACCUSED OF A CRIME 100 MILES OUT TO SEA. WHEN HE COMES BACK, THE DADE COUNTY PROSECUTOR SAYS WE ARE GOING TO PROSECUTE. FLORIDA HAS JURISDICTION, AND FIDEL CASTRO, WHO DECIDES HE IS NOT AT ALL HAPPY ABOUT THIS, TURNS HIS GUNS AT FLORIDA. OR WORSE YET, OPENS -- EMPTIED HIS JAILS ON TO THE STATE OF FLORIDA. THAT IS AN INCIDENT THAT COULD BE AVERTED OR AVOIDED COMPLETELY, IF THE UNITED STATES GOVERNMENT WAS THE ONE TO DEAL WITH IT, THROUGH PROPER DIPLOMATIC AND ESTABLISHED CHANNELS. IMAGINE ANOTHER WRINKLE, AND I BELIEVE I AM SHORT ON TIME HERE, AM I, YOUR HONOR?

YES. IF YOU WOULD BRING IT TO A CLOSE, WE WOULD APPRECIATE IT.

IF I MAY, POLICY CONSIDERATIONS IN THIS CASE DEMAND THAT THE UNITED STATES SPEAK WITH ONE VOICE IN THE INTERNATIONAL AREA, AND THIS VOICE MUST BE THE ONE THAT HAS THE GREATEST ARRAY OF RESOURCES AT ITS DISPOSAL, AND THE GREATEST POWER IN THE INTERNATIONAL ARENA, AND I SUBMIT THAT, IN THIS SITUATION, IT IS THE VOICE OF THE UNITED STATES GOVERNMENT NOT ONE OF AN INDIVIDUAL STATE. WE URGE THE COURT TO AFFIRM THE FIFTH DISTRICT'S DECISION. THANK YOU.

THANK YOU, MS. LEMONIDIS. MR. POLIN.

ONE OF THE APPELLEE'S BIGGEST POINTS APPEARS TO BE THE CONCEPT OF GEOGRAPHICAL TERRITORIALITY THAT CANNOT EXTEND BEYOND FLORIDA'S STATE PARAMETERS, AND THIS IS A MISS CON EPINGS, BECAUSE THE EFFECTS DOCTRINE IS PART OF THE STATE'S ONE TERRITORIALITY. TO READ FROM SOME OF THE COMMENTS IN THE RESTATEMENT ON FOREIGN RELATIONS, THIS IS DISCUSSING THE STATE'S PRINCIPLE, RESTATING THE COMMENTS, JURISDICTION WITH RESPECT TO ACTIVITY OUTSIDE THE STATE BUT HAVING OR INTENDED TO HAVE SUBSTANTIAL EFFECT WITHIN THE STATE'S TERRITORY IS AN ASPECT OF JURISDICTION, BASED ON TERRITORIALITY. TERRITORY GOES WITH THE EFFECTS. THE EFFECTS GO WITH TERRITORY. IT IS NOT DIVORCING THEM. SO IT IS PART OF THE STATE OF FLORIDA'S OWN TERRITORIAL JURISDICTION. THE OTHER SIGNIFICANT POINT THAT I THINK BEARS EMPHASIS OUT OF THE RESTATEMENT IS THAT INTERNATIONAL LAW IS NOT CONCERNED WITH WHO, WITHIN A PARTICULAR NATION, WHETHER IT IS FEDERAL COURTS OR STATE COURTS, FEDERAL LEGISLATURE OR STATE LEGISLATURE, TAKES ACTION? THERE IS NO GUARANTEE THAT ANY STATE, WITHIN THE -- THAT ANY RECOGNIZED STATE WOULD HAVE ANY PARTICULAR TYPE OF FEDERAL CONSTITUTION OR OTHERWISE. INTERNATIONAL LAW CANNOT DICTATE THESE THINGS. THUS, AS STATEMENT OF INTERNATIONAL LAW, IT IS RECOGNIZING THAT, AND THIS IS FROM THE COMMENTS AND THE RESTATEMENT AGAIN, INTERNATIONAL LAW IS NORMALLY NOT CONCERNED WITH HOW AUTHORITY TO EXERCISE JURISDICTION IS ALLOCATED WITHIN A STATE'S DOMESTIC CONSTITUTIONAL ORDER. THAT IS PURELY A QUESTION OF FEDERAL CONSTITUTIONAL LAW.

HOW WOULD THE EFFECTS DOCTRINE PLAY OUT, IF FLORIDA, IF ANOTHER STATE HAD A LAW SIMILAR TO FLORIDA'S, AND THE CRIME OCCURRED 100 MILES OUT AT SEA? HOW WOULD IT PLAY OUT THEN?

THE RESTATEMENT DEALS WITH THAT IN SECTION 403, AND THIS TIES INTO JUSTICE LEWIS'S QUESTION, BEFORE, ABOUT HOW YOU EVALUATE THE EFFECTS, AND THERE ARE VARIOUS FACTORS THAT ARE TAKEN INTO CONSIDERATION, AND THEY ESSENTIALLY EMPHASIZE WHAT YOU WOULD HAVE TO CALL SUBSTANTIALIALITY OF EFFECTS, AND IF THERE ARE TWO OR MORE JURISDICTIONS WHICH COULD, CONCURRENTLY AT THE SAME TIME POSSIBLY BE THE SUBJECT OF THE SAME EFFECTS, IT EASY ESSENTIALLY BECOME AS BALANCING TEST TO WEIGH THE SIGNIFICANT INTERESTS OF THE TWO RESPECTIVE STATES IN ANY GIVEN CASE.

BUT ISN'T THAT AN ALMOST IMPOSSIBLE TEST? YOU HAVE A CRIME THAT HAS OCCURRED. HE GOES ON THE SHIP IN FLORIDA AND HE GETS OFF IN CALIFORNIA, AND THE CRIME OCCURS 1 ON 0 MILES OUT, SO WHERE IS YOUR PAL ANSWER IN THAT?

A COUPLE -- WHERE IS YOUR BALANCE IN THAT?

A COUPLE OF THINGS. FIRST HAD, THAT IS THE REASON WHY 51% WAS CHOSEN AS THE CUTOFF, THAT IT CONNECTS FLORIDA, ECONOMICALLY, MORE SUBSTANTIALY, TO THE CRUISE MORE THAN ANYONE ELSE. SECOND, AND, AGAIN, I WOULD EMPHASIZE THAT I THINK THE EXAMPLE THAT YOU HAVE JUST PICKED, SIMILAR TO THE EXAMPLE THAT JUSTICE WELLS HAD PICKED EARLIER, THESE HYPOTHETICALS, WHICH GO EXTREMELY FAR DISTANCES ABROAD, ARE NOT THE LIKELY SCENARIOS THAT ARE GOING TO ARISE UNDER THIS ACT. MOST OF THE CRUISES THAT ARE

GOING TO BE AFFECTED ON THIS, THE CONCERN WITH THE LEGISLATURE WAS WITH --

WE CAN'T SET UP HERE AND RENT AREA OPINION AND SAY THIS IS UNLIKELY TO -- AND RENDER AN OPINION AND SAY THIS IS UNLIKELY TO OCCUR IN MANY CASES AND THAT WOULDN'T BE COVERED AT ALL.

NO, YOUR HONOR, THAT IS NOT LIKELY AND THE PRINCIPLE IS WE ARE DEALING WITH THE FACIAL VALIDITY OF A STATUTE, AND WHEN YOU ARE ATTACKING THE FACIAL VALIDITY OF A STATUTE, THE STATE MUST ATTACK, UNLESS THE CONSTITUTIONALITY CANNOT BE APPLIED IN ANY CIRCUMSTANCE, SO THE EXAMPLE THAT GOES PRETTY FAR ABROAD AND STRETCHES IT TO THE LEMENT LIMENT AND RAISES THE QUESTION, THAT DOES NOT DEAL WITH THE STATUTE AND RENDER IT UNCONSTITUTIONAL. YOU DEAL WITH THAT WHEN THE PARTICULAR CASE COMES UP AND THEN YOU SAY THAT THE STATUTE HAS GONE TOO FAR. THAT HAS NOT OCCURRED IN THIS CASE. I SEE THAT MY TIME IS UP, SO UNLESS THERE ARE ANY FURTHER QUESTIONS, I CONCEDE TO THE COURT.

THANK YOU BOTH FOR ASSISTING US. WE WILL TAKE A TEN-MINUTE RECESS.