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THE NEXT CASE IS KAREN IRVEN VERSUS THE DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES.

COUNSEL, DON'T TAKE IT PERSONALLY THAT NO ONE WANTS TO HEAR YOUR ARGUMENT.

THERE IS NOT THE SAME INTEREST IN THIS CASE AS THE PRECEDING ONE. NOTICE THAT WE ARE ALL STILL HERE.

AND I APPRECIATE THAT.

MARSHALL, IF YOU COULD PLEASE GET THEM OUT AND CLOSE THE DOOR, PLEASE. YOU MAY PROCEED.

THANK YOU, YOUR HONOR. I AM SYLVIA WALBOLT, AND I AM HERE, DARK, ON BEHALF OF THE PETITIONER KAREN IRVEN, WHO WAS FIRED FROM H.R.S. FOR RETALIATION OF HER WRITTEN COMPLAINT OVER HER CONCERN OVER THE MISHANDLING DEPENDENCY PROCEEDING OF A FOUR-YEAR-OLD VICTIM OF SEXUAL AND PHYSICAL ABUSE. HER CONCERN IS THAT THIS CHILD REMAINED AT-RISK AS A RESULT OF THE ACTIONS THAT SHE COMPLAINED B THE SECOND DISTRICT OVERTURNED THE JURY'S VERDICT, HOLDING THAT THE PUBLIC WHISTLE BLOWER ACT HAD TO BE STRICTLY CONSTRUED, AND THAT MRS. IRVEN'S COMPLAINTS DID NOT DISCLOSE ANY -- THE COURT'S WORDS -- FRAUDULENT OR DISHONEST CONDUCT IN CONNECTION WITH THAT PROCEEDING AND HENCE ALL WERE NOT PROTECTED BY THE ACT, AND IN ITS WORDS, IT, THUS, MADE NO DIFFERENCE, IF SHE HAD BEEN FIRED IN RETALIATION FOR THOSE COMPLAINTS.

WAS HER COMPLAINT UNDER OR THE -- UNDER 5-A VERSUS 5-B, WHICH IS SUSPECTED VIOLATION OF FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION?

I BELIEVE, YOUR HONOR, IT WOULD FALL WITHIN BOTH. IT CERTAINLY FELL WITHIN THE STATUTE FOR A PROVISION, WHICH, I BELIEVE, IS B, WHICH RELATES TO SUSPECTED MISFEASANCE, SUSPECTED MALFEASANCE, WHICH I BELIEVE IS A SECOND SECTION OF THE ACT.

ALL RIGHT. SO THE SECOND DISTRICT ESSENTIALLY DETERMINED, AS A MATTER OF LAW, THAT THE CONDUCT COMPLAINED OF DID NOT FALL WITHIN A OR B.

THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT. AND IT DID SO, BASED UPON ITS RULING THAT THE ACT HAD TO BE STRICTLY CONSTRUED.

I THOUGHT WHAT THEY FOUND WAS, BECAUSE THERE WAS NOTHING ILLEGAL THAT WENT ON, THERE COULDN'T BE ANY VIOLATION OR SUSPECTED VIOLATION OF LAW. THAT THERE WAS NOTHING -- IN OTHER WORDS THAT SORT OF LIKE MISS DIRECTING A VERDICT, THAT AS A MATTER OF LAW, THIS CONDUCT COMPLAINED OF WAS PERFECTLY LEGAL, SO THERE WAS NO BASIS TO THE -- FOR THE COMPLAINING.

IT WAS A TWO-FOLD HOLDING. FIRST, YOUR HONOR, THEY SAID WE HAVE TO STRICTLY CONSTRUE THE ACT, WHICH WE KNOW FROM MARTIN COUNTY AND THE COURT'S RECENT DECISION, IN GULF CHANDLER, IS NOT TRUE. IT IS A REMEDIAL STATUTE, SO IT HAS TO BE LITERALLY THE TRUTH, BUT THEN IT WENT ON TO SAY, BECAUSE THERE WAS NO ACTUAL FRAUDULENT, IN ITS VIEW, AND I WANT TO ADDRESS THAT, BECAUSE I COULD NOT DISAGREE MORE ABOUT ITS CONCLUSION.

I GUESS WHAT I AM HAVING TROUBLE WITH, WHAT WORD ARE WE STRICTLY OR BROADLY CONSTRUEING?

WHAT THE SECOND DISTRICT STRICTLY CONSTRUED WERE THE PROVISIONS, THE PROTECTIONS. WHAT ACTS ARE PROTECTED, AND THOSE ACTS ARE THE ONES IN THE STATUTE, WHICH SAY YOU CANNOT BE FIRED FOR RAISING, IN WRITING, COMPLAINTS ABOUT SUSPECTED MISFEASANCE OR SUSPECTED MALFEASANCE OR VIOLATIONS OF LAW, AND THEY SAID WE ARE GOING TO STRICTLY CONSTRUE THOSE WORDS. AND WE ARE GOING TO SAY THAT IT ONLY EXTENDS, IF YOU PROVE ACTUAL DISHONEST OR FRAUDULENT BEHAVIOR IN CONNECTION WITH THIS.

SO THEY TAKE SUSPECTED -- IT IS REALLY NOT STRICTLY CONSTRUING IT. IT IS TAKING A WORD, SAYS SUSPECTED AND SAYING IT IS NOT SUSPECTED. IT HAS TO BE --

EXACTLY, YOUR HONOR. IT HAS TO BE ACTUAL. IN THE SECOND DISTRICT'S VIEW, THEY HAD -- MRS. IRVEN HAD TO THRILL SHOW, AND IN A LATER VIEW OF THE SECOND DISTRICT, THERE WAS ACTUAL FRAUDULENT OR DISHONEST CONDUCT, AND I WOULD SAY --

SO YOU COULD, STILL, WIN ON THIS BY SAYING WE STRICTLY CONSTRUE IT BUT DON'T PUT WORDS IN THERE THAT AREN'T IN THE STATUTE.

ABSOLUTELY. AND, YOUR HONOR, THEY NOT ONLY TOOK OUT THE WORDS SUSPECTED. THEY TOOK OUT THE WORD MISFEASANCE, BECAUSE MISFEASANCE IS, AS WE EXPLAINED IN OUR BRIEF, MEANS DOING A LAWFUL ACT IN THE WRONG WAY, AND THAT IS EXACTLY WHAT MRS. IRVEN WAS COMPLAINING OF IN THE FIRST INSTANCE. THIS IS IMPORTANT TO REALIZE SHE HAD SEVERAL DIFFERENT COMPLAINTS, AND THE SECOND DISTRICT ONLY FOCUSES ON ONE, IN FINDING THAT THERE WAS NO FRAUDULENT OR DISHONEST ACT, BUT IN THE FIRST INSTANCE, SHE IS COMPLAINING THAT, AND IT IS ON THE FACE OF HER FIRST WRITTEN MEMO. SHE IS COMPLAINING THAT H.R.S. TOLD THE NASSAU COUNTY JUDGE FALSELY, FALSELY TOLD THE JUDGE THAT THIS CHILD, THIS VICTIM OF SEX ABUSE, WAS -- HER USUALLY RESIDENCE WAS IN POLK COUNTY, AND THAT WASN'T TRUE, AND WE KNOW IT WASN'T TRUE, BECAUSE THE H.R.S. LAWYER ADMITTED AT TRIAL IT WASN'T.

LET ME ASK YOU A QUESTION AND GO BROADER, AND LET'S GO PAST ISSUE OF WHETHER THE ACT SHOULD BE LIBERALLY CONSTRUED AND GET TO WHERE I THINK WHERE YOU ARE NOW. IN EVALUATING THESE CASES --

SPEAK INTO THE MIKE, IF YOU WOULD.

THANK YOU.

IN EVALUATING THESE CASES, ONE OF THE ISSUES THAT WE HAVE TO LOOK TO IS WHETHER OR NOT THE ALLEGED MISCONDUCT OR WHATEVER THAT THE WHISTLE IS BEING BLOWN ON IS INCLUDED WITHIN THE STATUTE. NOW, I AM GOING TO USE A HYPOTHETICAL, AND THEN WORK BACK TO THIS CASE AND ASK YOU TO HELP ME WITH THIS. ORDINARILY, OR AT LEAST TYPICALLY WHAT WE SEE IS THAT SOMEBODY GOES TO ANOTHER AUTHORITY OR THEY GO TO THE UP INS OR WHATEVER, AND THEY SAY YOU NEED TO KNOW WHAT IS GOING ON IN THIS AGENCY THAT I WORK FOR. AND WE COULD HAVE THE SCIENTIST WORKING FOR THE TOBACCO COMPANY, FOR INSTANCE, THAT IT BLOWS THE WHISTLE TO THE PRESS OR THE MEDIA OR YOU KNOW, TO A REGULATORY AGENCY OR WHATEVER. BUT USUALLY WE SEE THAT, THOUGH, IN THE CONTEXT OF GOING OUTSIDE THE AGENCY, ITSELF, AND SO I WOULD LIKE YOU TO ADDRESS THAT, AS TO WHETHER OR NOT THAT IS AN ISSUE IN THIS CASE, AND WHETHER OR NOT, IN YOUR VIEW, THE WHISTLE BLOWER ACT, ALSO, EBBS TENDS TO INTERNAL DISAGREEMENTS. IN OTHER WORDS THAT WE HAVE GOT SOMEBODY THAT HAS RESPONSIBILITIES, AND THEY DISAGREE WITH THEIR SPECIFIES OR ABOUT THE -- WITH THEIR SUPERVISOR ABOUT THE CIRCUMSTANCES AND THE WAY TO PROCEED OR WHATEVER, AND AFTER GOING BACK AND FORTH, THE SUPERVISOR ENDS UP SAYING, WELL, WE HAVE A FUNDAMENTAL DISAGREEMENT, BUT IT IS MY VIEW THAT, AS LONG AS YOU HAVE THAT DISAGREEMENT, YOU ARE REALLY NOT GOING TO BE ABLE TO CARRY OUT THE

DUTIES OF YOUR JOB AND OUR POLICIES, YOU KNOW, AS I SEE THEM, WHATEVER, AND SO I AM GOING TO -- YOU ARE OUT OF HERE, BECAUSE WE HAVE TRIED TO DO IT, SO I WOULD LIKE YOU TO ADDRESS THOSE TWO THINGS, AND THAT IS, ONE, WHETHER OR NOT THE ACT CONTEMPLATES THAT YOU HAVE TO BLOW THE WHISTLE ON CONDUCTOR THE AGENCY OR WHATEVER, TO SOMEBODY ELSE, AND SECONDLY HOW REGULATED THESE INTERNAL DISAGREEMENTS ARE, WITHIN THE CONTEMPLATION OF THE --

MY ANSWER TO THAT, JUSTICE ANSTEAD, IS THERE IS NOTHING ON THE FACE OF THIS STATUTE THAT SAYS IT ONLY COVERS GOING OUTSIDE THE AGENCY, AND I WOULD SUGGEST IT WOULD BE VERY BAD PUBLIC POLICY.

SO YOU CAN DISAGREE WITH YOUR SUPERVISOR AND TELL THE SUPERVISOR I DON'T AGREE, AND I THINK THAT YOU ARE NOT DOING THE JOB OF THE AGENCY, AND PERSIST IN THAT, AND THEN IF YOU END UP BEING DISCIPLINED OR DISCHARGED, YOU WOULD HAVE A LEGITIMATE COMPLAINT, UNDER THE WHISTLE BLOWER'S ACT.

YOUR HONOR, IN THIS CASE, THE VERY REASON SHE WAS FIRED WAS NOT JUST BECAUSE SHE HAD A DISAGREEMENT WITH HER SUPERVISOR. IT WAS BECAUSE SHE WENT OVER THE HEAD OF HER SUPERVISOR. SHE TOOK IT UP THE LADDER AT THE H.R.S..

WITHIN THE SAME AGENCY.

WITHIN THE SAME AGENCY, BUT I SUGGEST, AS A MATTER OF PUBLIC POLICY, THAT IS WHAT YOU SHOULD WANT AN EMPLOYEE TO DO. YOU SHOULD NOT WANT TO BE READING THIS STATUTE IN A WAY THAT THEY CAN ONLY BE PROTECTED, IF, INSTEAD OF RAISING THE ISSUES THAT THEY ARE CONCERNED ABOUT WITHIN THE AGENCY AND TAKING THEM UP THE PROPER CHAIN, THEY HAVE TO GO TO THE NEWSPAPERS.

LET'S PASS THAT AND GO TO MY SECOND QUESTION, AND THAT IS WHETHER OR NOT THE CIRCUMSTANCES HERE JUST REFLECT THIS INTERNAL DISAGREEMENT THAT ENDS UP THAT THE EMPLOYEE DOES NOT AGREE AND, IN SOME INSTANCES, YOU KNOW, AS YOU SAY, FACTUALLY, YOU KNOW, IS CORRECT IN SOME OF THE ASEST,S THAT THEY ARE MAKING, BUT -- ASSERTIONS THAT THEY ARE MAKING BUT DOESN'T AGREE WITH THE POLICIES OF THE AGENCY, AS THE SUPERVISOR CONSTRUES THEM, AND IS THIS JUST AN INTERNAL --

ABSOLUTELY NOT, YOUR HONOR. THIS IS A CASE, AND I CAN'T -- I CAN HARDLY THINK, AS I STAND HERE BEFORE THIS COURT, SOMETHING THAT SHOULD BE OF MORE CONCERN TO THE COURT. THIS ISN'T JUST SOME DAY-TO-DAY DISAGREEMENT. THIS IS AN EMPLOYEE WHO CAME TO HER EMPLOYER AND THEN WENT UP THE LINE AND SAID WE ARE TELLING A COURT SOMETHING THAT IS NOT TRUE. WE ARE TRYING TO INFLUENCE A COURT TO TRANSFER THIS PROCEEDING TO A DIFFERENT COUNTY, BASED ON OUR REPRESENTATION TO THAT COURT THAT THIS CHILD LIVES IN THE OTHER COUNTY, AND THAT IS NOT TRUE! AND I AM WORRIED ABOUT IT. I AM WORRIED THAT MY AGENCY IS TELLING THE COURT SOMETHING THAT IS NOT TRUE, SO IT IS NOT JUST A DISAGREEMENT WITH HER SUPERVISOR.

AND WHERE IS THE WHISTLE BLOWING GOING ON?

.

I BEG YOUR PARDON?

WHERE IS THE WHISTLE BLOWING GOING ON?

IT IS IN HERE HER -- IT IS IN HER WRITTEN MEMOS THAT SHE TAKES UP THE LADDER, WHICH IS WHAT SHE IS REPMANNEDED FOR. SHE IS NOT REPRIMANDED BECAUSE THESE AREN'T VALID

COMPLAINTS. SHE IS REPRIMANDED AND THEN ULTIMATELY FIRED, BECAUSE SHE WENT UP THE H.R.S. LADDER.

NOW, MOST ORGANIZATIONS HAVE A CHAIN OF COMMAND KIND OF STRUCTURE.

YES. YES.

IN MOST INSTANCES, THAT IS RECOGNIZED AS A LEGITIMATE STRUCTURE TO HAVE. SO ARE YOU, LITTLE RESPECT SAYING THAT -- SO, ARE YOU, ALSO, SAYING THAT THAT IS NOT A LEGITIMATE FACTOR THAT AN AGENCY CAN CONSIDER, IN DISCIPLINING ITS EMPLOYEES, AND THAT IS ARE YOU GOING TO FOLLOW THE CHAIN OF COMMAND OR YOU ARE NOT.

SHE DID FOLLOW THE CHAIN OF COMMAND. THEY WERE JUST UPSET. SHE DID. SHE TOOK IT TO HER SUPERVISOR AND THEN TOOK IT ON UP THE LINE, WHEN NOTHING HAPPENED. THEY WEREN'T SUGGESTING SHE DIDN'T TAKE IT PROPERLY UP THE LINE. THEY SUGGESTED SHE SHOULDN'T HAVE GONE PAST HER SUPERVISOR AT ALL, AND I SUGGESTED, ONCE AGAIN, THAT IF THAT IS GOING TO BE THE RULE, THEN YOU ARE NEVER GOING TO HAVE AN OPPORTUNITY TO CORRECT THESE SITUATIONS, SHORT OF DOING WHAT YOU STARTED WITH, WHICH IS TO GO TO THE MEDIA.

WASN'T WHAT WAS ON THE MIND OF THE SECOND DISTRICT WAS THAT THE DRAWING OF THE LINE OF WHAT IS COVERED BY THE STATUTE, DOES IT HAVE TO BE -- THE AGENCY WAS COMMITTING PERJURY, BY WHAT IT WAS DOING? OR WAS IT -- COULD IT COME BACK TO A JUDGMENT DISAGREEMENT? BY SOMEONE IN THE AGENCY.

AND THAT IS MY ANSWER TO JUSTICE PARIENTE'S QUESTION. I THINK YOU ARE RIGHT. THE SECOND DISTRICT SAID YOU, MRS. IRVEN, AREN'T PROTECTED, BECAUSE WE DON'T FIND THAT THERE WAS ANY ACTUAL FRAUDULENT OR DISHONEST BEHAVIOR.

WHERE DO YOU SUGGEST, IF YOU WERE WRITING THE OPINION, IN THIS CASE, THAT THAT LINE IS PROPERLY DRAWN?

I SUGGEST IT IS PROPERLY DRAWN WITH THE LANGUAGE OF THE STATUTE, THAT THERE MUST BE A DISCLOSURE OF SOME WRONGDOING THAT RISES OVER AND BEYOND JUST A MERE DISAGREEMENT WITH YOUR SUPERVISE ON OR BUT RISES TO THE LEVEL OF SUSPECTED MISFEASANCE, WHICH IS A TERM THIS COURT, AND ALL FLORIDA COURTS DEAL WITH, OR MALFEASANCE, AND IT HAS GOT TO BE SOMETHING MORE THAN JUST A ROUTINE DISAGREEMENT. THERE IS NO ARGUMENT ABOUT THAT. IT HAS GOT TO FOLLOW THE LANGUAGE OF THE STATUTE. YOU HAVE TO -- BUT THAT STATUTE IS BROAD. IT IS NOT MERELY DISHONEST OR FRAUDULENT BEHAVIOR. IT DOES ENCOMPASS MISFEASANCE. THANK YOU. I RESERVE THE REST OF MY TIME.

PLEASE THE COURT, MY NAME IS DAVID McCLAIN. I REPRESENT H.R.S.. THE FIRST QUESTION, I THINK, THAT CAME TO MY MIND THAT WE SHOULD ADDRESS AND, PERHAPS, THIS HAS ALREADY BEEN RESOLVED, BUT THE MARTIN COUNTY CASE, WHICH WAS RAISED TO COME UP HERE, I ASSUME, FOR SERIOUS YEAR -- FOR CERSCIARY CONFLICT CASE. JUSTICE PARIENTE, I BELIEVE IT WAS JUDGE JENKINS' CASE, AND I READ THAT CASE. THAT WAS AN ACCESS CASE. THE IRVEN CASE HAD A CONSTITUTIONAL QUESTION INVOLVED THAT, ALSO, HAD A WAIVER OF SOVEREIGN IMMUNITY INVOLVED, WHICH IS PART OF THE PUBLIC POLICY AND IS IN DEROGATION OF COMMON LAW, AND THERE THE SECOND DISTRICT JUSTICE, JUDGE CAMPBELL, SAID THAT IT HAS TO BE STRICTLY CONSTRUED. WE ARE NOT TALKING ABOUT ACCESS, AS YOU WERE IN YOUR JENKINS CASE, OR AS THE COURT WAS IN THE MARTIN COUNTY CASE. MARTIN COUNTY CASE, YOU REMEMBER THAT WAS THE ASSISTANT ROAD SUPERVISOR THAT TOOK SOME SOD FROM MARTIN COUNTY AND PUT IN HIS FRONT BEYOND A REASONABLE DOUBT AND THEN HIS SUPERVISOR OR THE SUPERINTENDENT'S FRONT BEYOND A REASONABLE DOUBT, AND HE WAS IN PERI DELECTO, AND THE QUESTION WAS COULD HE BRING A WHISTLE BLOWER'S ACT, AND THE QUESTION IS YOU HAVE TO CONSTRUE ACCESS TO THE ACT. THEY ARE NOT TALKING ABOUT CONSTRUING

PROVISIONS OF THE ACT, AND SO YOU KNOW, THE CASES THAT I CITED, I AM NOT GOING TO REPEAT THE SPANGLER --

IT IS NOT TO BE STRICTLY CONSTRUED. DO YOU AGREE WITH THAT, AS A PRINCIPLE OF LAW?

WELL, IF YOU ARE TALKING ABOUT THE SUBSTANTIVE ASPECT OF THE STATUTE, YOUR HONOR, I WOULD HAVE TO HAVE TO SAY SHOULD BE STRICTLY CONSTRUED. IF YOU ARE TALKING ABOUT THE ABILITY TO USE THE STATUTE, ACCESS THE REMEDY, I THINK THAT IS LIBERALLY CONSTRUED, AND I THINK THAT IS PRETTY WELL SAID. IN YOUR OPINION, ALTHOUGH IT WAS A PRIVATE WHISTLE BLOWER'S CASE, THERE IS A DISTINCTION HERE.

WHY SHOULD THERE BE ANY DISTINCTION? I AM NOT SURE I UNDERSTAND THIS THING ABOUT SUBSTANTIVELY. YOU HAVE GOT A WORD IN THE STATUTORY SCHEME THAT CAN BE GIVEN A BROAD MEANING OR IT COULD BE GIVEN A VERY NARROW MEANING.

THAT'S CORRECT.

ARE YOU SAYING THAT, IN THIS REMEDIAL SCHEME HERE, THAT IS TRYING TO ENCOURAGE WHISTLE BLOWING AND IS TRYING TO DISCOURAGE EMPLOYERS, INCLUDING PUBLIC EMPLOYERS, FROM DISCIPLINING PEOPLE FOR DOING THAT, THAT -- HOW IS THAT WORD, NOW, TO BE CONSTRUED BY THE COURT?

WELL, OF COURSE, IN THE MARTIN COUNTY CASE, I THINK THE SUPREME COURT WAS SAYING ACCESS TO THE ACT SHOULD BE LIBERAL, AND IN THIS PARTICULAR CASE, THEY WEREN'T CONSTRUING ANY SPECIFIC PROVISION. THERE IS JUST NO PROVISION IN THERE THAT PROHIBITS MR. EDDENFIELD --

ISN'T SOVEREIGN IMMUNITY SORT OF A RED HERRING IN THIS CASE? WHAT DOES THAT HAVE TO DO WITH THIS STATUTORY SCHEME? IS IT GOING TO BE ONE STANDARD FOR A PRIVATE EMPLOYER AND ANOTHER STANDARD FOR A PUBLIC EMPLOYER? IS THAT WHAT YOU ARE SAYING?

JUSTICE ANSTEAD, I WOULD SAY THAT WAIVER OF SOVEREIGN IMMUNITY, AS FAR AS THE SUBSTANTIVE ASPECT OF WHAT IT MEANS, WHEN IT SAYS SHOULD BE STRICTLY CONSTRUED, AND WHAT JUSTICE -- JUDGE CAMPBELL SAID WAS THAT YOU DON'T MAKE IMPLICATIONS.

MY QUESTION TO YOU IS THERE TO BE ONE STANDARD FOR A PRIVATE EMPLOYER AND A DIFFERENT STANDARD FOR A PUBLIC EMPLOYER?

YES, I THINK SO.

AND HOW ARE WE TO DRAW THAT STANDARD?

WELL, IF YOU ARE PROHIBITED --

WE SAY WE ARE GOING TO STRICTLY CONSTRUE THE STATUTE, WHEN IT IS A PUBLIC EMPLOYER, AND WE ARE GOING TO LIBERALLY CONSTRUE IT, WHEN IT IS A PRIVATE EMPLOYER. IS THAT THE WAY YOU WOULD DO IT?

I DON'T KNOW HOW I WOULD SAY IT THAT WAY, BUT IT IS A GOOD ANALOGY AND A GOOD WAY TO PHRASE IT. I WOULD SAY, IF YOU ARE TALK ABOUT THE ABILITY TO BRING THE ACTION, AS ED INFIELD WAS TRYING TO DO, WHERE YOU HAVE GOT A SUMMARY JUDGMENT AGAINST HIM, THE COURT SIMPLY SAID YOU HAVE GOT TO GIVE THESE PEOPLE ACCESS. WHETHER THEY ARE GOING TO WIN OR NOT IS A HORSE OF A DIFFERENT COLOR.

YOU CAN WIND UP WITH THE SAME FACTS WITH A GOVERNMENT AGENCY AND THE SAME FACTS WITH A PRIVATE EMPLOYER, AND WE WOULD HAVE TWO DIFFERENT OUTCOMES.

NO. I DON'T THINK, IN THE IRVEN CASE, ACCESS WAS EVER AN ISSUE. SHE WENT ON AND BROUGHT HER ACTION. THERE WAS NO NO CONDITION PRECEDENT. THERE WAS NO NOTICE REQUIREMENT. AND JUSTICE PARIENTE'S CASE, AS FAR AS DISCLOSURE, THERE WAS, REMEMBER, THERE WAS THIS WRITER NOTICE UNDER OATH THAT YOU HAD TO HAVE TO DISCLOSE, WHEREAS TO, FOR INVESTIGATIVE PURPOSES, THERE WAS NO NOTICE REQUIREMENT.

I AM STILL HAVING PROBLEMS WITH THE QUESTION THAT I WAS ASKING BEFORE, WHICH IS LET'S JUST, WHETHER IT IS STRICT OR NARROW, WHAT TERM ARE WE IN DISAGREEMENT ABOUT? IS IT MALFEASANCE AND MISFEASANCE? ARE WE CONSTRUEING THAT TERM?

WHAT THE LOWER COURT SAID AND WHAT I URGE THIS COURT IS THAT THESE MEMORANDUMS, YOU ARE TALKING ABOUT A MEMORANDUM OF FEBRUARY 7, AND THAT PARTICULAR MEMORANDUM, SHE RAISED, SHE SAYS --

I KNOW WHAT THE CONDUCT WAS. THE QUESTION IS CAN A COURT, ISN'T WHAT THE SECOND DISTRICT DID, REALLY, IS TAKE -- MAKE A DIFFERENT DETERMINATION ABOUT AN ISSUE OF FACT THAT THE JURY HAD ALREADY DECIDED, WHICH IS THAT, IN THE -- THE JURY, IN ORDER TO FIND EITHER MALFEASANCE OR MISFEASANCE, WOULD HAVE HAD TO FIND THAT THERE WAS, IN FACT, INFORMATION THAT H.R.S. SHOULD HAVE GIVEN TO THE COURT? AND ISN'T ALL THAT THE SECOND DISTRICT IS SAYING THAT WE DIDN'T FIND THAT THAT WAS INFORMATION THAT NEEDED TO GO TO THE COURT?

WELL, THE QUESTION, OF COURSE, YOU HIT THE NAIL ON THE HEAD, WAS WHETHER THESE DOCUMENTS, WHICH YOU HAVE BEFORE YOU, THE FEBRUARY 7 MEMORANDUM, IS WHISTLE BLOWING. WE ARE NOT TRYING THE H.R.S..

SINCE WE ARE UP HERE NOT TO DETERMINE THIS PARTICULAR CASE BUT TO SAY THAT, WHAT IS -- WHICH TERM ARE WE, THEN, EITHER BROADLY OR NARROWLY CON STRAWING IN CONTRADICTION OR IN AGREEMENT WITH THE SECOND DISTRICT? DO YOU UNDERSTAND WHAT I AM -- WITHIN THE STATUTE. WHICH -- IS IT -- DO YOU DISAGREE WITH WHAT MS. WAHLBOT TALKED ABOUT, AS FAR AS THE DEFINITION OF MISFEASANCE ANIMAL FEASANCE?

IT SAYS GROSS MISMANAGEMENT, MISFEASANCE, MALFEASANCE, AND GROSS NEGLECT.

HOW DO YOU DEFINE MISS FEASANCE AND-HE MISFEASANCE ANIMAL FEASANCE?

THE DICTIONARY HAS SEVERAL, REALLY. IT DEPENDS ON WHICH WAY YOU ARE LOOKING AT IT, REALLY.

DOESN'T IT GO, REALLY, ON THE QUESTION OF HOW WE DEFINE MISFEASANCE ANIMAL FEASANCE?

YES. BUT -- AND MALFEASANCE?

YES. BUT TO GET INTO THE SUSPICION ACT, YOU HAVE TO HAVE A REASONABLE SUSPECT. WHEN YOU READ THE FEBRUARY 20 LETTER TO THE SUPERVISOR AND THE FEBRUARY 7 MEMO, THERE IS NOTHING THAT AMOUNTS TO MISFEASANCE, MALFEASANCE, OR SUSPECTED. SHE IS MERELY RECOUNTING WHAT WAS GOING ON IN JUDGE CAMPBELL CAMPBELL'S CASE, WITH THE PROGRESS OF THE CASE. THE INTERAGENCY DISAGREEMENT OR COMPLAINT --

EVEN SO, SHE IS SAYING THAT THERE WAS A MISREPRESENTATION BY HER AGENCY TO THE COURT. NOW, WHAT CATEGORY WOULD YOU PUT THAT IN?

WELL, SIR, I HAVE TO GO BACK TO THE DOCUMENTS, BECAUSE THE DOCUMENTS SPEAK TO WHAT CONSTITUTES WHISTLE BLOWING, AND THERE IS NOTHING IN THE FEBRUARY 7 DOCUMENT THAT, THE MEMORANDUM, THAT SAYS ANYTHING H.R.S. DID WRONG. THEY ARE JUST COMMENTS.

LET ME ASK YOU THIS: WHAT DO YOU SEE AS THE ALL OVER PURPOSE OF THE WHISTLE BLOWER ACT?

I THINK, WHEN YOU GET INTO AREAS LIKE IN THE EDDENFIELD CASE, WHERE THERE WAS THEFT, WHERE YOU GET INTO AREAS AS, IN ANOTHER CASE, WHERE SOME INSURANCE PEOPLE DEFRAUDED THE SHERIFF'S OFFICE AND SOMEBODY BLEW THE WHISTLE, THAT WAS TOTALLY FRAUD AND DISHONESTY. EVERY INTERAGENCY OR INTRA AGENCY DISAGREEMENT OR COMPLAINT, IF IT IS THE BASIS FOR WHISTLE BLOWING, THERE IS NO END TO IT.

IF THIS WAS PRIVATE, A PRIVATE COMPANY, WOULD YOU SEE IT IN ANY DIFFERENT EYES?

WELL --

WOULD THIS BE SUBJECT TO THE EYE?

I THINK IT WOULD DEPEND ON WHAT THE DOCUMENT SAID.

WELL, WE HAVE EVERYTHING HERE. SO WE HAVE IT ALL BEFORE US. JUST A YES OR NO ANSWER.

I -- I AM SORRY, JUDGE. I MAKE A DISTINCTION BETWEEN WAIVER OF SOVEREIGN IMMUNITY, WHICH IS DEROGATION OF COMMON LAW AND IS A MATTER OF PUBLIC POLICY OF THIS STATE. PRIVATE ENTITIES DON'T HAVE SOVEREIGN IMMUNITY. THEY ARE NOT A PART OF THE PUBLIC POLICY OF THE STATE, AS SOVEREIGN IMMUNITY DID. EVEN IN THOSE CASES, I CITED SPANGLER, METROPOLITAN DADE. THESE ARE CASES OUT OF THE COURT. LEVINE CASE.

THAT WOULD NECESSARILY FOLLOW, THEN, THAT WE WOULD HOLD THAT THE WHISTLE BLOWER ACT, ACTS, ARE NOT AVAILABLE AS TO THE GOVERNMENT, BY REASON OF THE FACT THAT THERE HAS NOT BEEN A REMOVAL OF SOVEREIGN IMMUNITY. I DON'T SEE HOW THAT IS A LIBERAL OR A STRICT CONSTRUCTION. THAT IS A CONSTRUCTION THAT WOULD HAVE TO BE THAT SOVEREIGN I AM UNITE IS NOT -- IMMUNITY IS NOT WITHDRAWN BY THE WHISTLE BLOWER ACTS. THAT IS WHERE YOU ARE GOING. RIGHT?

WELL, I DON'T SAY. THAT I JUST SIMPLY SAY, WHEN YOU LOOK AT THE DOCUMENT, SHE SAYS ARE WHISTLE BLOWING, AND YOU KNOW, I CAN GO OVER THE DOCUMENT, BECAUSE SHE TALKS ABOUT, YOUR HONOR, SHE TALKED ABOUT VENUE. MR. REESE, IN THE LEGAL DEPARTMENT, SAID THAT HE CALLED JUDGE DAVIS'S OFFICE. JUDGE DAVIS SAYS HE WASN'T GOING TO BOUNCE THE CASE BACK. JUDGE WILLIAMS IN NASSAU COUNTY HAD TRANSFERRED IT. HE HAD THE CASE. TWO JUDGES HAD THIS CASE. CIRCUIT JUDGES. AND THEY -- NONE OF THEM WANTED TO DO ANYTHING ABOUT VENUE, AND MS. FUKES, THE SPRSTS OR FOR MS. -- THE SUPERVISOR FOR MS. IRVEN, CALLS OVER TO THE JA AND SAYS --

WOULD YOU AGREE WITH YOUR OPPONENT THAT, IF WE ASSUME FACTS THAT THIS AGENCY HAD, WITHIN IT, THAT VENUE WAS PROPERLY IN NASSAU COUNTY, BUT THEY DECIDED THAT IT REALLY WOULD WORK OUT BETTER FOR THE AGENCY, IF THIS CASE WAS TRANSFERRED TO POLK COUNTY, THAT, THEN, WE WOULD GO AND CONCOCT A REPRESENTATION TO THE COURT AND MAKE A REPRESENTATION TO THE COURT THAT ACTUALLY IT WAS IN NASSAU COUNTY OR WHATEVER COUNTY, THAT THAT WOULD COME WITHIN THE DEFINITION OF MISFEASANCE?

IF THAT, YOUR HONOR, IF THAT WERE THE CASE, BUT WHEN YOU READ THE DOCUMENTS, THE ONLY REFERENCE THERE TO WHAT WE HAVE REPRESENTED IS THAT THE MOTHER, IN HER MOTION TO DISMISS, SHE WAS REPRESENTED BY COLLIDE DAVIS UP THERE, IT SAID THAT THE USUALLY

RESIDENCE OF THE CHILD, WHEN IN CUSTODY OF THE MOTHER, WAS POLK COUNTY.

DOESN'T IS THAT BOIL DOWN TO WHAT INFERENCES ARE DRAWN FROM THE DOCUMENTS AND, REALLY, QUICKLY TURNS INTO A QUESTION OF FACT?

WELL, YOU COULD SAY THAT, BUT I THINK IF YOU READ THESE, THERE IS NOTHING THAT -- FOR INSTANCE THE FIVE DAYS THAT SHE POINTS OUT IN THAT FEBRUARY 7 -- THAT IS A CLERICAL FUNCTION. THAT IS NOT AN H.R.S. FUNCTION. THERE IS NOTHING IN THERE THAT FAULTS H.R.S., IN HER MEMO.

LET ME ASK YOU THIS. IN YOUR INTERPRETATION OF THE WHISTLE BLOWER ACT, IF AN EMPLOYEE KNEW THAT HER EMPLOYER, HER SUPERVISOR, RATHER, WAS DOING SOMETHING WRONG, AND SHE REPORTED IT, TO THE CEO, OVER THE SUPERVISOR, AND THE SUPERVISOR CAME BACK THE NEXT DAY AND FIRED HER, WOULD THAT FALL WITHIN THE WHISTLE BLOWER ACT?

OBVIOUSLY THAT SHOULD BE. I MEAN I AGREE WITH YOU, JUSTICE SHAW, ON SOMETHING LIKE THAT.

IN PRINCIPLE, ISN'T THAT WHAT WE HAVE HERE?

I DON'T THINK SO. IF YOU GO TO THE WHISTLE BLOWING DOCUMENTS, IF I MIGHT JUST VERY BRIEFLY, HERE IS ANOTHER DOCUMENT SHE CLAIMS IS WHISTLE BLOWING.

WHAT IS IT -- GOING BACK TO WHAT JUSTICE SHAW SAYS, IF A PERSON HAS A REASONABLE BASIS FOR A COMPLAINT, AND AFTER THE FACT, SAY, THE SAME EMPLOYEE COMPLAINS TO THE CEO, GETS FIRED FOR IT, AND THE JURY DETERMINES THAT IT WAS -- SHE WAS FIRED BECAUSE OF COMPLAINING ABOUT SUSPECTED MALFEASANCE, DO WE WANT APPELLATE COURTS TO GO AFTER THE FACT AND LOOK AND SAY, YOU KNOW, IT REALLY, THAT CONDUCT THAT SHE THOUGHT WAS FRAUDULENT, REALLY, WE HAVE GOT -- THERE IS AN INNOCENT EXPLANATION FOR IT. THAT IS NOT WHAT IS SUPPOSED TO BE HAPPENING IN THESE WHISTLE BLOWER ACTS. IT IS ENCOURAGING EMPLOYEES TO COME FORWARD AND COMPLAIN ABOUT WHAT THEY, IN GOOD FAITH, BELIEVE IS IMPROPER CONDUCT BY A COMPANY OR AN AGENCY.

WELL --

DO WE WANT TO ENCOURAGE COURTS TO TRY TO, BACKWARD LOOKING AND WITH HINDSIGHT, LOOK AT THE WHOLE PICTURE AND THEN MAKE A DETERMINATION THIS REALLY -- SHE REALLY SHOULDN'T HAVE COMPLAINED ABOUT THIS, IF SHE ACTED IN GOOD FAITH AT THE TIME?

THERE HAS TO BE A RATIONAL BASIS FOR THE COMPLAINT. IF YOU READ --

NOW, THAT IS NOT -- IS THAT WHAT THE SECOND DISTRICT FOUND, THAT THERE WAS NO RATIONAL BASIS FOR THE COMPLAINT?

THEY JUST SAID THAT SHE COMPLAINED AND HAD DISAGREEMENTS, BASICALLY, OVER THE VENUE ISSUE, WHICH WAS DECIDED BY JUDGE WILLIAMS AND JUDGE DAVIS, AND SHE WAS TOLD BY THE LEGAL DEPARTMENT --

REALLY ALL THE SECOND DISTRICT DID WAS FIND THAT THIS CONDUCT, AS A MATTER OF LAW, DID NOT CONSTITUTE MALFEASANCE OR MISFEASANCE, CORRECT?

THEY, ALSO, SAID THAT EVERY AGENCY ORGANIZATION THAT YOU HAD, IS THAT GOING TO FORM A BASIS FOR, AS YOU SAY, MALFEASANCE OR MISFEASANCE? IF YOU READ CYNTHIA HALLARD'S DEPOSITION, EVERYTHING IN THERE, YOU WILL SEE EVERYTHING THAT HAPPENED IN NASSAU COUNTY AND YOU WON'T SEE ONE THING THAT CAN BE CALLED MALFEASANCE.

ISN'T THAT WHAT YOU ARGUED TO THE JURY?

CERTAINLY I ARGUED IT TO THE JURY.

THEY DISAGREED WITH YOU.

EVERYTHING GOT IN HERE. I AM NOT SURE THE JURY --

IS THERE AN INSTRUCTION THAT THE JURY GOT THAT WAS NOT A CORRECT STATEMENT IN THE LAW?

JUSTICE, LET ME SAY AT THE TRIAL, EVERYTHING, H.R.S. WAS ON TRIAL. THINGS THAT CAME OUT THAT WERE NEVER IN THESE WHISTLE BLOWER DOCUMENTS. SHE RAISED THE SEVEN-DAY ISSUE AT THE TRIAL. SHE RAISED PERJURY. THERE WAS NEVER ANY PERJURY IN THIS CASE. THERE WAS NEVER ANY PERJURY MENTIONED IN THESE DOCUMENTS. IF YOU WANT TO GO BACK TO THE DOCUMENTS, THAT IS ONE THING. IF YOU WANT TO LOOK AT EVERYTHING H.R.S. DOES, GOOD, IN DIFFERENT OR BAD, THEN I SUPPOSE YOU COULD JUST SAY, WELL, ANY COMPLAINT WITHIN AN AGENCY --

ISN'T THAT ABOUT WHETHER IRRELEVANT EVIDENCE CAME IN AT TRIAL, WHICH, AGAIN, WE ARE NOT HERE B THE SECOND DISTRICT DIDN'T EVEN ADDRESS IT?

ALL I AM SAYING TO YOU IS, IF YOU READ CAREFULLY THE FEBRUARY 7 MEMO AND THE FEBRUARY 20 LETTER AND YOU READ SOME OF THE THINGS SHE IS ASSERTING OR WHISTLE BLOWING, LIKE HERE IS ONE SHE ASSERTS IN HER REPLY BRIEF AS WHISTLE BLOWING, SIMPLY SAYS SS NEEDS TO HAVE THERAPY AND HAVE PHYSICAL EVALUATION, A PSYCHOLOGICAL EVALUATION. SHE, ALSO, NEEDS TO BE PLACED IN DAYCARE. IS THAT BLOWING THE WHISTLE? THAT IS THE ISSUE. IS SHE BLOWING THE WHISTLE? I SIMPLY SAY TO YOU THAT, IF YOU READ THESE DOCUMENTS, THE MOTHER FILED A MOTION TO DISMISS, SAYING THE USUALLY RESIDENCE OF THE CHILD WAS IN POLK COUNTY. IT WASN'T H.R.S.. THE FIVE-DAY REQUIREMENT IS A CLERICAL REQUIREMENT. SHE GOES OVER, IN HER FEBRUARY 20 LETTER, SHE TALKS ABOUT THE SAME THING OF THE SHE WAS TOLD THAT JUDGE DAVIS WAS NOT GOING TO BOUNCE THE CASE BACK, AND SHE STILL COMPLAINED ABOUT IT.

LET ME ASK YOU THIS. IF WE CONCLUDE THAT H.R.S.'S ACTS WERE FALL FEASANCE OR MISFEASANCE, COULD YOU STILL PREVAIL?

I JUST DON'T THINK -- YOU KNOW, THE JUDGE CAN -- THE COURT CAN CONCLUDE ANYTHING IT WANTS. IT IS THE SUPREME COURT OF FLORIDA. I AM SIMPLY SAYING TO YOU --.

BY YOUR DEFINITION, COULD YOU STILL PREVAIL?

WHAT IT HAS TO BE, YOUR HONOR, THE ONLY THING I CAN SAY AND MAYBE I AM NOT ANSWERING YOUR QUESTION, SURE, MALFEASANCE AND MISFEASANCE AND THAT SORT OF STUFF, IF, IN FACT, H.R.S. DID --

THAT IS WHAT WE ARE DEALING WITH, THAT KIND OF STUFF, SO YOU CAN'T JUST SLOUGH IT OFF IN A VERY CAVALIER FASHION.

IF YOU CONSIDER WHAT THESE WHISTLE BLOWING DOCUMENTS ARE CONSTITUTE MALFEASANCE AND MISFEASANCE, AND WHEN YOU READ THE TRANSCRIPT AND READ CPI, HOW THE CHILD PROTECTIVE INVESTIGATOR'S DEPOSITION OF WHAT HAPPENED UP IN NASSAU COUNTY, LISTEN, WE ARE DEALING WITH TWO CIRCUIT JUDGES THAT REFERRED THIS CASE. THE CASE WAS TRANSFERRED BY JUDGE WILLIAMS IN NASSAU COUNTY. HE KNEW THE MOTHER. HE KNEW THE GRANDMOTHER. THE MOTHER HAD BEEN BEFORE HIM, YOUR HONOR, ON CRIMINAL MATTERS,

AND OFF THE THINGS THAT HALLARD TESTIFIED TO IS THAT SHE DIDN'T THINK SHE COULD GET A FAIR TRIAL UP THERE BECAUSE SHE HAD BEEN BEFORE THE JUDGE ON CRIMINAL MATTERS. THE RULE 8.205 DEALS WITH TRANSFERING CASES AND VENUE AND THE JUVENILE JUSTICE SYSTEM, IN THE INTEREST OF JUSTICE AND PROPER JUDICIAL ADMINISTRATION. JUDGE WILLIAMS HAD EVERY RIGHT TO TRANSFER IT. HE HAD EVERY LEGAL RIGHT. WHEN IT GOT DOWN TO POLK COUNTY, JUDGE DAVIS, HE KNEW EVERYTHING. THE CASE WASN'T LOST. THE CASE WAS WON, JUSTICE PARIENTE. WE DIDN'T LOSE THE CASE.

MR. McCLAIN, REALLY, WHAT THIS ALL BREAKS DOWN TO, YOUR WHOLE ARGUMENT, REALLY, IS THAT YOU ARE ARGUING THAT THERE WAS NOT SUBSTANTIAL COMPETENT EVIDENCE. THE JURY COULD COME TO ITS CONCLUSION. WAS THAT EVEN AN ISSUE IN THIS CASE?

I, YOU KNOW, ARGUING TO A JURY, ARGUING TO A JUDGE, ARE TWO DIFFERENT THINGS AND TWO DIFFERENT LEVELS OF COMPREHENSION. BUT THE ONLY THING I AM SAYING, JUDGE, MY LAST WORD, IS READ THE DOCUMENTS. IF YOU THINK H.R.S., THESE INTERAGENCY DISPUTES, GIVE AND TAKE IN THE AGENCY AMOUNTS TO WHISTLE BLOWING, THEN SHE WINS. IF THAT IS WHAT YOU THINK.

IS THAT A POINT ON YOUR APPEAL TO THE SECOND DISTRICT. THAT IS, IS ONE OF YOUR POINTS THAT THERE WAS NO SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT THE JURY'S VERDICT?

NO. I THINK, AS A MATTER OF LAW, THIS CASE SHOULD NEVER HAVE GONE TO THE JURY ON THESE DOCUMENTS. IF YOU READ THESE DOCUMENTS CAREFULLY THAT I HAVE OUTLINED AND THE ADDITIONAL ONE SHE WANTS TO, WHERE SHE IS ASKING THIS COURT, IN ITS WISDOM, SAYS, TO THE H.R.S., A LONG TIME AGO, WE ARE GOING TO HAVE LEGAL MATTERS HANDLED BY LICENSED ATTORNEYS IN FLORIDA. TYPICAL OF HER ATTITUDE WAS SHE WAS GOING TO CONTROL WHAT WAS GOING TO BE DONE IN THE CASE, NOT LEGALS. YOU HAD TWO JUDGES INVOLVED IN THIS CASE. YOU HAD H.R.S. LEGAL COUNSEL INVOLVED IN THIS CASE. THEY TRIED TO SEE IF THE JUDGE WOULD TRANSFER THE CASE BACK TO NASSAU COUNTY. HE SAID NO. WE ARE GOING TO KEEP T AND THEY WENT ON AND PREPARED IT AND TRIED IT SUCCESSFULLY. BUT THESE DOCUMENTS THAT SHE IS SAYING ARE NOT WHISTLE BLOWING DOCUMENTS, WHEN YOU READ THEM CAREFULLY. IF YOU HAVE ANY DOUBT ABOUT THIS CASE, I URGE YOU --

BUT IF THE JUDGE WAS NOT GIVEN THE CORRECT FACTS --

WELL, THE MOTHER WAS RESIDING.

-- COULD THAT HAVE AFFLUENCE?

GOOD POINT. THE MOTHER WAS RESIDING IN POLK COUNTY. I AM NOT FAMILIAR WITH POLK COUNTY. SOME OF YOU ARE, PERHAPS. THE MOTHER WAS LIVING THERE WITH HER PARRAMORE.

NOT LIVING IN NASSAU COUNTY.

THE JUDGE KNEW THAT. HE SHELTERED IT. HE KNEW THAT.

YOU SAY THAT EVERYBODY KNEW. THAT ARE YOU SAYING TO THIS COURT THAT THAT WAS THE REPRESENTATION OF H.R.S.?

H.R.S.'S PETITION FOR, I THINK THE SHELTERING PETITION OR AT LEAST THE AFFIDAVIT GOING TO THE RESIDENCE, SAID THAT THE CHILD WAS LIVING WITH HER GRANDMOTHER. THE GRANDMOTHER VOLUNTARILY TOOK THE CHILD, BECAUSE THE MOTHER HAD NOWHERE TO LIVE.

THANK YOU, COUPS HE WILL. YOUR TIME IS CONCLUDED -- THANK YOU, COUNSEL. YOUR TIME IS CONCLUDED.

VERY BRIEFLY, YOUR HONOR, PICKING UP WITH JUSTICE SHAW'S COMMENT THAT SEVERAL OTHER PEOPLE HAVE MADE. IT IS IMPORTANT FOR THIS COURT TO REALIZE THAT IT WAS NOT JUST MOTHER REPRESENTING TO THIS NASSAU COUNTY COURT THAT THE USUALLY RESIDENCE OF THE CHILD WAS IN NASSAU COUNTY. THAT IS SIMPLY NOT TRUE, AND, AGAIN, I WOULD URGE YOU TO READ THE PAPERS, BECAUSE WHEN YOU READ H.R.S.'S PAPERS, YOU WILL SEE IN THERE THE SAME REPRESENTATION, THAT THE CHILD'S USUALLY RESIDENCE IS IN NASSAU COUNTY, AND SO THERE IS NOTHING SURPRISING ABOUT THE FACT THAT A NASSAU COUNTY JUDGE WITH A STATE AGENCY, STANDING BEFORE IT AND SAYING MOVE THIS TO NASSAU COUNTY, BECAUSE THAT IS THE USUALLY RESIDENCE OF THE CHILD, DID IT, AND I SUGGEST YOU CAN'T REALLY ON --

DID THE AGENCY MAKE A MOTION FOR DIRECTED VERDICT IN THE TRIAL COURT AND PRESERVE THAT?

YES.

THEY DID.

MS. WAHLB ON OT, IT SEEMS -- MS. WAHLBOT, IT SEEMS AS THOUGH YOUR OPPONENT SAYS LOOK AT THE DOCUMENTS. THE FEBRUARY 23 TRANSMISSION ARGUES THE FACTS, AND THE ARGUMENT SEEMS TO FLOW THAT THIS IS NOT AN ARGUABLE CASE FORM THE SECOND DISTRICT USED A LOT OF EXTRA LANGUAGE THAT WAS UNNECESSARY TO REACH THE FUNDAMENTAL ISSUE IN THE CASE. HOW DO YOU RESPOND TO THAT, THAT HE MAY BE CORRECT, AS FAR AS THIS CASE, BUT THE SECOND DISTRICT PROCEEDED A LITTLE FURTHER AND BEYOND, BY DISCUSSING THE ACTUAL ILLEGALALITY OR IMPROPRIETY ASPECT.

BUT JUSTICE LEWIS, THAT WAS THE BASIS UPON WHICH IT MADE ITS RULING, AND WE, NOW, HAVE A DECISION, SITTING ON THE BOOKS, THAT IS DIRECTLY CONTRARY TO THIS COURT'S DECISION IN MARTIN COUNTY AND THIS COURT'S VERY RECENT DECISION IN GULF CHANNEL, AND WE HAVE A DECISION THAT IS NOT ONLY CONTRARY TO THOSE COURTS BUT IS CONTRARY TO THE SPECIFIC LANGUAGE OF THE STATUTE, BECAUSE AS YOU SAY, THE SECOND DISTRICT SAYS I AM GOING TO LOOK AT THIS, AND WHEN THEY LOOK AT IT, THEY SAY I AM NOT GOING TO LOOK AT ALL THESE OTHER MEMOS. I AM JUST GOING TO LOOK AT THE FIRST TWO, AND THEN IT SAYS I AM ONLY GOING TO LOOK AT WHAT I VIEW AS ITS PRIMARY COMPLAINT, WHICH IS THE VENUE, AND THEN ITS ANALYSIS RESTS ON EXACTLY THE FALSE ASSUMPTION THAT MRS. IRVEN WAS TRYING TO POINT OUT, WHICH IS THEY ASSUME, IN THE FACE OF THEIR DECISION, THAT THIS CHILD'S USUALLY RESIDENCE IS, IN FACT, IN NASSAU COUNTY, AND THAT IS NOT TRUE, AND THAT IS WHAT SHE IS TRYING TO BRING TO THE ATTENTION OF THE COURT. AND I WOULD SIMPLY SUGGEST TO THIS COURT THAT, WITH RESPECT, YOU CAN'T LIBERALLY CONSTRUE A STATUTE AND STRICTLY CONSTRUE IT AT THE SAME TIME. WE HAVE CITED, IN OUR BRIEF, A NUMBER OF DECISIONS, FROM OTHER JURISDICTIONS, IN WHICH THEY HAVE MADE THAT EXACT POINT, AND I WOULD COMMEND THOSE TO YOU. FINALLY, JUDGE, JUSTICE PARIENTE, I WOULD LIKE TO RETURN TO THE QUESTION THAT YOU HAVE RAISED WITH BOTH ME AND WITH COUNSEL, AND POINT OUT THAT PUBLIC WHISTLE BLOWER ACT THAT WE ARE DEALING WITH HERE IS, ON ITS FACE, MUCH BROADER THAN THE PRIVATE ACT, AND PERHAPS THAT ANSWERS YOUR QUESTION BETTER THAN I DID THE FIRST TIME, BECAUSE THE PRIVATE ACT, ON ITS FACE, ONLY APPLIES TO ACTUAL VIOLATIONS. IT DOES NOT HAVE THE WORD SUSPECTED IN IT. IT DOES NOT HAVE THE WORDS MISFEASANCE. IT DOESN'T HAVE THE WORD MALFEASANCE. AND SO --

AND SO IS SUSPECTED THE IMPORTANT WORD? AND HOW DOES A JURY GET INSTRUCTED ON WHAT IS SUSPECTED AND WHAT IT MEANS? DOES IT HAVE TO, AS MR. McLAIN -- MR. McCLAIN SAID, HAVE A REASONABLE BASIS IN FACT? THAT IS A REASONABLE CAVEAT TO PUT ON, SUSPECTED?

IN THIS CASE, YOUR HONOR, THE JURY WAS SIMPLY, AND THIS WAS WITHOUT SUGGESTION, AND I

WOULD SUGGEST H.R.S. HAS HAD EVERY OPPORTUNITY TO ASK FOR OTHER INSTRUCTIONS AND THEY DIDN'T. IN THIS CASE THE JURY WAS INSTRUCTED ON THE PRECISE LANGUAGE OF THE STATUTE, WHICH INCLUDED THE WORDS "SUSPECTED MISFEASANCE".

SO IF SOMEBODY WHO WAS AN EMPLOYEE WHO HAS A MENTAL DISORDER WHO IS PARANOID AND JUST THINKS THERE IS MALFEASANCE AND MISFEASANCE GOING AROUND AND KEEPS ON COMPLAINING AND SUSPECTS IT, THAT MIGHT BE A CASE, IN A GIVEN CASE, THAT A JUDGE MIGHT DIRECT A VERDICT FOR THE AGENCY, BECAUSE IT WOULD BE NO REASONABLE BASIS, IN FACT, FOR THOSE KTS.

CERTAINLY. YOUR HONOR -- FOR THOSE COMPLAINTS.

CERTAINLY, YOUR HONOR. THE COURTS ARE GOING TO HAVE TO DRAW LINES, AND THAT IS WHAT COURTS DO EVERS EVERYDAY, PARTICULARLY WHAT COURTS DO EVERYDAY IN EMPLOYMENT DISCRIMINATION CASES, BUT IN THIS CASE IT WENT TO THE JURY. IT WENT ON THE JURY ON INSTRUCTIONS THAT WERE NOT OBJECTED TO BY H.R.S., AND THE JURY FOUND SHE WAS FIRED NOT BECAUSE SHE WANTED TO TAKE CONTROL, BECAUSE SHE WAS A POOR PERFORMER OR ALL OF THE OTHER EXCUSES THAT H.R.S. OFFERED AT TRIAL. THEY REJECTED THAT. THE JURY FOUND IT WAS AN EXPRESS INTERROGATORY FINDING. THE JURY SAID SHE WAS FIRED BECAUSE SHE MADE COMPLAINTS THAT WERE PROTECTED BY THE STATUTE. THANK YOU, YOUR HONOR.

THANK YOU, COUNSEL. THANKS TO BOTH OF YOU.