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NEXT CASE ON THE COURT'S CALENDAR IS THE STATE OF FLORIDA VERSUS GREGORY McFADDEN. MS. KATZ, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. LINDA KATZ OF THE ATTORNEY GENERAL'S OFFICE.

WOULD YOU MIND PULLING THE MIKE DOWN JUST A LITTLE BIT, PLEASE. THANK YOU.

YOU ARE WELCOME. HERE ON BEHALF OF THE STATE OF FLORIDA, PETITIONNER THIS ACTION. THIS ACTION INVOLVES A DEFENDANT WHO WAS CONVICTED OF DOMESTIC BATTERY AT TRIAL AND APPEALED THAT CONVICTION TO THE THIRD DISTRICT COURT OF APPEAL. THE BASIS OF HIS APPEAL WAS TO ATTACK THE CONVICTION AND THE ALLEGED ERROR WHICH OCCURRED, REGARDING THE TRIAL COURT'S ADMISSION OF THE GUILTY PLEA, WITH ADJUDICATION WITHHELD, FOR THE PURPOSE OF IMPEACHMENT.

COULD I -- I WOULD LIKE TO ADDRESS, FIRST, THE CONFLICT ISSUE. IN THIS CASE, THE JUDGE SPECIFICALLY PROCEEDED TO WITHHOLD ADJUDICATION, AND THAT WAS THE, QUOTE, CONVICTION THAT WAS USED FOR IMPEACHMENT. CORRECT?

YES, THAT IS.

AS I, IN READING OVER THE CASES THAT ARE ALLEGEDLY IN CONFLICT AND THAT JUDGE SCHWARTZ SAID WERE IN APPARENT CONFLICT, ALL OF THOSE CASES APPEARED TO BE CASES WHERE THERE HAD BEEN NO SENTENCING, WHERE THE TRIAL COURT HAD NOT MADE ITS DECISION AS TO WHETHER OR NOT TO ADJUDICATE THE DEFENDANT GUILTY OR WITHHOLD ADJUDICATION. AND IN DICTA, IN FABBER AND IN --

JOHNSON.

JOHNSON, THEY ACKNOWLEDGED THAT, IF THE TRIAL COURT HAD PREEDED TO -- PROCEEDED TO WITHHOLD ADJUDICATION, THEY COULD NOT HAVE IMPEACHED. DO YOU AGREE THAT THAT REALLY APPEARS THAT THERE, REALLY, ISN'T CONFLICT AS TO THE ISSUE THAT McFADDEN IS BASED ON?

THE CONFLICT WOULD NOT BE WITH REGARD TO THOSE CASES. THE CONFLICT, WHICH WOULD BE INVOLVED, WOULD BE SOLELY IN CONNECTION WITH THE FIRST DISTRICT'S LATER CASE OF RADO, AND I REALIZE THAT THIS COURT, DID, IN FACT, QUASH A PORTION OF RADO, WITH CONNECTION TO THE CONSTITUTIONAL ISSUE AND THE PRESERVATION OF THE IMPEACHMENT ARGUMENT, BECAUSE THAT DEFENDANT NEVER TESTIFIED. HOWEVER MRTION IN ALL DUE RESPECT TO THE COURT, THERE WAS A FOOTNOTE IN RADO THAT SAID IT APPEARED AS IF THE FIRST DISTRICT HAD, IN FACT, APPROVED BARBER AND JOHNSON, AND I HAVE READ THROUGH BOTH THE -- RATHER THE FIRST DISTRICT CASE OF RADO, AND IT IS MY INTERPRETATION THAT THERE WAS NEVER ANY APPROVAL OF BARBER OR JOHNSON, I.E. FOR THE PROPOSITION THAT, ONCE ADJUDICATION IS WITHHELD, IT CANNOT BE USED FOR IMPEACHMENT. MY READING OF BARBER AND JOHNSON IS THAT THE COURT CITED, TO EACH OF THOSE CASES, AND THEN THE COURT SUMMARIZED THE CASES. HOWEVER, THE COURT NEVER SAID WE APPROVE THIS CASE. WHAT THE COURT DID, IN THE STATE'S INTERPRETATION, IS THE COURT CARVED OUT A DISTINCTION BETWEEN A 'NOLE-PLEA AND A GUILTY-BETWEEN A NOLO PLEA AND A GUILTY PLEA, AND IT IS REAL REALLY THAT GUILTY THAT IS THE EMPHASIS AND THE FOCUS OF THE SBHERP INTERPRETATION OF THE I AM -- OF THE INTERPRETATION OF THE IMPEACHMENT.

YOU AGREE THERE ARE DICK TAKE CASES.

YES. -- THERE ARE DICTA CASES.

YES.

THERE WOULD BE HELD NO CONVICTION, UNDER SECTION 90.610.

NO. IF THE CASE WERE UPHeld WITH REGARD TO A NOLO PLEA IS WHAT WOULD MAKE IT IRRELEVANT. THE RELEVANCE IS THE GUILTY PLEA, THE CREDIBILITY OF THE WITNESS TESTIFYING AT TRIAL. THAT IS THE PURPOSE OF 90.610. THE GUILT. THE JURY IS ENTITLED TO WEIGH THE FACT THAT THIS WITNESS, BE IT A DEFENDANT OR A WITNESS FOR THE STATE, CAME INTO COURT, TOOK THE OATH TO TESTIFY TRUTHFULLY BUT IN THE PAST HAS DEMONSTRATED A WILLINGNESS TO BE LESS THAN TRUTHFUL AND TO DISOBEY RULES AND LAWS.

BUT DON'T WE HAVE TO ACCEPT THE LANGUAGE THAT IS USED IN THE EVIDENCE CODE, AS TO THE FACT THAT WHAT IS SPECIFICALLY STATED THERE IS CONVICTION? AND IN THE CONTEXT OF THIS WHOLE IDEA OF WITHHOLDING ADJUDICATION, DOESN'T THAT NECESSARILY MEAN THAT, IF I AM FILLING OUT AN APPLICATION FOR THE FLORIDA BAR, AND I HAD SOME TYPE OF PAST TRANSGRESSION THAT, EVEN THOUGH I PLED GUILTY, THE JUDGE DIDN'T ENTER A JUDGMENT OF CONVICTION, THAT I CAN TRUTHFULLY ANSWER THE QUESTION I HAVE NOT BEEN CONVICTED OF A CRIME?

ABSOLUTELY IN THE OUTSIDE WORLD, WHEN YOU ARE RUNNING FOR OFFICE, WHEN YOU ARE SERVING AS A JUROR, WHEN YOU ARE APPLYING FOR A JOB, WHEN YOU WANT TO POSSESS A FIREARM, WHEN YOU WANT TO VOTE, YOU ARE NOT GUILTY. 90.48.01 IS TALKING ABOUT APPLES AND ORANGES. THAT IS THE BEAUTY IS 9048.01 IS NOT TO RELIEF THE INTEGRITY THAT AN UNRELATED TRIAL SHOULD SUFFER IN THE TRUTH-FINDING PROCESS. ON THE OTHER HAND, THE FOCUS BEFORE THIS COURT IN DECIDING THE TERM CONVICTION, IN CONTEXT OF 9048.610, IS GUILT. IT HAS TO DO WITH THAT WITNESSES --- THAT WITNESS'S PAST CONDUCT, AND THE DRAFT OF THIS RULE, WHICH IS 90.610 IN FLORIDA AND THE FEDERAL RULE, WHICH IS VERY SIMILAR, WHICH IS 90.609, IS DAMNING VERACITY AND SOMETHING TO BE CONSIDERED BY THE JURY, AND IN OTHER STATES THAT SUCH WITHHOLD WITH A GUILTY PLEA CAN BE USED FOR IMPEACHMENT AND ALSO HAS STATUTES AND RULES THAT ONLY USE THE WORD CONVICTION. THEY DON'T SAY GUILTY PLEAS CAN COME IN, BUT A GUILTY PLEA IN THIS SAME POSTURE HAS BEEN CONSIDERED A CONVICTION, FOR THE PURPOSE OF IMPEACHMENT, AND IT IS SOLELY FOR THIS PURPOSE THAT CONVICTION CAN, IN FACT, BE IMPLIED BY A GUILTY PLEA, EVEN THOUGH ADJUDICATION HAS BEEN WITHHELD. ADJUDICATION ONLY IMPLIES A SENTENCE IN THIS CONTEXT. IT IS THE GUILT. IT IS THE ESTABLISH PRESIDENT OF PAST CONDUCT THAT IS RELEVANT FOR IMPEACHMENT PURPOSES, AND I REALIZE THAT THIS TERM, CONVICTION, HAS BEEN CONSIDERED A CHAMELEON IN DIFFERENT CONTEXT, HOWEVER, IT HAS PREVIOUSLY BEEN CON STRUCKD -- CON STRUD FOR THIS PURPOSE -- CONSTRUED FOR THIS PURPOSE --

YOU WOULD CARVE OUT, IN CARVING OUT THAT, IF A DEFENDANT PLEAS NOLO, THEN A CONVICTION IN 610 IS NOT COVERED.

ABSOLUTELY.

IF THERE IS A JURY VERDICT OF GUILTY, IT IS COVERED.

AND THERE IS ADJUDICATION IN A NOLO PLEA.

BUT WE ARE TALKING ABOUT THE WITHHOLD ADJUDICATION SITUATION.

RIGHT. WITHHOLD.

OR THAT YOU HADN'T REACHED THE POINT AT WHICH THE JUDGMENT IS ACTUALLY ENTERED.

WELL, ACCORDING TO PAST AUTHORITIES, THEY HAVE SAID THAT, IF ADJUDICATION IS PENDING, IF IT HAS NOT YET BEEN SENTENCED, THEN IT IS OKAY. BARBER AND JOHNSON SAID. BUT IF A SENTENCE IS ULTIMATELY WITHHELD, THEN IS NOT OKAY, BUT WE ARE SAYING IT IS A GUILTY PLEA, BECAUSE THE FACT IS THAT IT DOESN'T MATTER WHERE THE GUILTY HAS COME FROM -- WHERE THE GUILT HAS COME FROM, WHETHER A RUBBER STAMP BY THE COURT OR A CONFESSION BY THE WITNESS, WHO IS IN THE PRIOR CONVICTION, THAT WE ARE CONCERNED WITH, AND I WOULD LIKE TO ADDRESS THAT CONVICTION HAS BEEN DEFINED BY THE SUPREME COURT, TAN THAT DEFINITION HAS BEEN RELIED ON BY THEN JUDGE ANSTEAD, WHO WAS SERVING THE FOURTH DISTRICT COURT OF APPEAL AT THE TIME, TO SAY THAT A CONVICTION FOR THE PURPOSE OF 9610 DOES REQUIRE AN ADJUDICATION. WHY I AM NOW SUGGESTING THAT THAT PREMISE NEEDS TO BE REASSESSED IS THE FACT THAT THE LEGAL CLIMATE AND LANDSCAPE HAS CHANGED VASTLY SINCE SMITH WAS DECIDED BY THE FLORIDA SUPREME COURT IN 1918. AT THAT TIME --

BUT HAS THE PURPOSE FOR WITHHOLDING ADJUDICATION CHANGED SINCE THAT TIME?

YES. I BELIEVE IT HAS.

IN WHAT RESPECT?

IN 1959, 948.01 WAS AMENDED TO PROVIDE THAT YOU COULD, IN FACT, PLACE SOMEBODY ON PROBATION, WHETHER OR NOT ADJUDICATION WAS IMPOSED. IT WAS GIVING MORE LENIENCY TO A DESERVING DEFENDANT, BE IT FOR CONSIDERATION SUCH AS DOCKET EFFICACY OR MANY OR BEHIND-THE-SCENES REASONS, BECAUSE WE ALL REALIZE HOW MUCH THE LANDSCAPE HATS CHANGED SINCE 1918 -- LANDSCAPE HAS CHANGED SINCE 1918.

WAS THE PURPOSE OF WITHHOLDING ADJUDICATION WAS TO GIVE THE DEFENDANT AN OPPORTUNITY TO NOT HAVE A RECORD, TO NOT HAVE A PRIOR CONDUCT WHERE HE HAS BEEN REHABILITATED USED AGAINST HIM, THEN HOW WOULD THAT BE SERVED BY ALLOWING THIS KIND OF EVIDENCE TO BE USED AS IMPEACHMENT?

THE DEFENDANT WHO WAS GRANTED THE ERASE OF PROBATION CAN GO OUT AND FIND A JOB AND VOTE AND RUN FOR PUBLIC OFFICE. THAT HAS NOT BEEN INFRINGED UPON WHATSOEVER. IT IS AN UNRELATED TRIAL THAT HAS NOTHING TO DO WITH THAT DEFENDANT.

I AM HAVING A HARD TIME UNDERSTANDING WHY, IN ALL OTHER SITUATIONS THIS WITHHOLD OF ADJUDICATION IS TRULY BEING USED THE WAY WE INTENDED, YET IN THIS ONE SITUATION, WHY IS IMPEACHMENT SO DIFFERENT FROM SOMEONE GETTING A JOB OR APPLYING FOR THE FLORIDA BAR OR ANY OF THESE OTHER THINGS?

BECAUSE THE INTEGRITY OF THE TRUTH-FINDING PROCESS REQUIRES US TO TEST THE VERACITY OF THOSE PERSONS WHO ARE TESTIFYING. WE ARE NOT DAMNING THE DEFENDANT WITH A PRIOR CONVICTION. WE ARE NOT REVOKING THE PROBE AGENCY. -- THE PROBATION. WE ARE NOT INFRINGING ON CIVIL RIGHTS. THE RIGHT TO TESTIFY AT TRIAL IS NOT A CIVIL RIGHT. WE PROMISED THIS DEFENDANT, WHEN WE GAVE HIM PROBATION, THAT HIS CIVIL RIGHTS WOULD NOT BE INFRINGED UPON. IF HE IS ALLOWED TO TESTIFY, AND WE USE THAT FOR CONVICTION FOR IMPEACHMENT, WE ARE NOT RENEGEING ON THAT PROMISE. HIS CIVIL RIGHTS ARE STILL INTACT, BUT THIS HAS TO DO WITH --

WHAT ARE WE TELLING THE JURY, THE COURT, WHEN WE ASK SOMEONE, IN AN IMPEACHMENT SITUATION, ABOUT THEIR PRIOR CONVICTIONS?

WE ARE TELLING THE JURY AND THE COURT THAT THIS PERSON HAS, IN THE PAST, BEEN

INVOLVED IN CRIMINAL ACTIVITY AND THEREFORE THE CONCLUSION CAN BE DRAWN THAT, AT THAT TIME, HE VIOLATED A LAW, AND THERE MAY, IN FACT, BE A CORRELATION BETWEEN THAT AND HIS PRESENTABILITY OR WILLINGNESS TO ABIDE BY THE OATH TO TELL THE TRUTH. THE COMMENTARY IN 9610, AS WELL AS 609 AND OF COURSE OTHER STATES WHO HAVE INTERPRETED SIMILAR RULES, CONSIDER THAT TO BE VERY RELEVANT TO THE TRUTH-FINDING PROCESS.

AREN'T YOU, REALLY, THOUGH, TALKING ABOUT AMENDING THE RULE OF EVIDENCE? AND CHANGING THE PRESENT RULE THAT WE HAVE THERE? AND LET ME TAKE YOU BACK TO IN OUR CULTURE RIGHT NOW, WE ARE EVEN VERY PRECISE, ARE WE NOT, ABOUT WHAT THE LAWYER CAN ASK A WITNESS IN THIS REGARD, AND WHAT DO WE SAY THE LAWYER CAN ASK THE WITNESS?

THE LAWYER CAN ASK THE WITNESS IF HE HAS EVER BEEN CONVICTED OF A CRIME IN EXCESS -- STOP RIGHT THERE. WE REQUIRE THAT THE WORD "CONVICTED" BE USED. DO WE NOT?

YES, WE DO.

SO WHAT YOU ARE ASSERTING NOW IS THAT WE REALLY SHOULD EXPAND THAT AND INCLUDE NOT ONLY CONVICTED BUT, ALSO, IF THEY HAVE EVER ENTERED A PLEA OF GUILTY, IN WHICH A CONVICTION, REALLY, WAS WITHHELD, THAT IS A WITHHELD OF ADJUDICATION, OR IF THERE HAS BEEN A FINDING BY A JUDGE OR A JURY OF GUILT AND A CONVICTION WAS LATER WITHHELD, AREN'T WE TALKING ABOUT, REALLY, SO THAT THE QUESTION, THEN, WOULD BE VERY YOU EVER BEEN CONVICTED OR HAVE YOU EVER ENTERED A PLEA OF GUILTY OR HAS A FACT-FINDING BODY EVER MADE A FINDING OF GUILT WITH REFERENCE TO A FELONY CHARGE AGAINST YOU? I MEAN ISN'T THAT, REALLY, WHAT THE QUESTION, THEN, WOULD ENCOMPASS, IF WE ACCEPT YOUR POSITION?

THE IMPLICATION OF CONVICTION WOULD ENCOMPASS THAT, BUT I AM NOT STATING THAT AN AMENDMENT WOULD NECESSARILY BE REQUIRED. I HAVE SUGGESTED IN MY BRIEF THAT IT IS POSSIBLE THAT AN AMENDMENT AMENDMENT MIGHT BE NECESSARY, IN ORDER TO -- AN AMENDMENT MIGHT BE NECESSARY, IN ORDER TO ALLOW REHABILITATION, SO THAT THE WITNESS COULD, THEN, EXPLAIN THE NATURE OF THE CONVICTION, BUT PRIOR CASES WHICH I HAVE CITED IN MY SUPPLEMENTAL AUTHORITY, BOTH OUT OF FEDERAL CIRCUIT COURTS AND OUT OF OTHER STATES, HAVE CONSTRUED THE TERM TO INCLUDE A GUILTY PLEA BUT HAVE NOT AMENDED THEIR STATUTES. THEIR STATUTES --

HOW IS IT THAT THE WITNESS IS TO BE KNOWLEDGEABLE ABOUT THAT THIS? -- ABOUT THIS ? THAT IS THAT, WHEN THE WITNESS IS TOLD, ALL RIGHT, ALTHOUGH WE ARE MAKING A PLEA BARGAIN NOW AND YOU ARE TRADING OFF AN ENTRY OF A GUILTY PLEA TO A LESSER CHARGE THAT YOU MAY NOT BELIEVE YOU ARE ACTUALLY GUILTY OF, BUT IN THE BARGAINING PROCESS YOU ARE GOING TO ENTER A GUILTY PLEA THERE, KNOWING, THOUGH, THAT ON THE OTHER SIDE THAT THE STATE HAS AGREED THAT THE COURT WILL WITHHOLD ADJUDICATION ON THIS, SO THAT YOU WILL NOT HAVE A CONVICTION ON YOUR RECORD. NOW, WE KNOW THAT IS THE EXACT LANGUAGE THAT IS USED IN THESE, SO HOW IS A WITNESS, THEN, LATER, THAT IS SITTING ON A WITNESS STAND THAT HAS BEEN TOLD THAT THIS IS WHAT IS GOING TO HAPPEN, AND THEY ARE NOT GOING TO HAVE A RECORD, AND THEY HAVEN'T BEEN CONVICTED, AND NOW THEY ARE ASKED THIS QUESTION, AND THEY SAID, WELL, I HAVE BEEN TOLD THAT I DON'T HAVE A CONVICTION. NOW, WHAT IS THE WITNESS? BECAUSE THIS, NOW, IS GETTING EVEN MORE COMPLICATED, BECAUSE A WITNESS THAT SAYS THAT, WELL, NO, I HAVEN'T BEEN CONVICTED, BECAUSE I WAS TOLD THAT I WOULDN'T BE CONVICTED, AND YOU HAVE A WITNESS LIKE THAT, IT ALMOST SEEMS UNFAIR, IF YOU TURN AROUND AND SAY, WELL, EVEN THOUGH YOU WERE TOLD THAT, FOR PURPOSES OF THIS QUESTION, AND TESTING YOUR VERACITY BEFORE A JURY, WE ARE GOING TO GET TO GO BEHIND THAT AND GO A LITTLE FURTHER. HOW IS THAT WITNESS THAT HAD THIS PREVIOUS EPISODE, WHEN IS THAT WITNESS TO BE TOLD THAT THERE ARE MORE THAN ONE

MEANING TO THE WORD CONVICTION, AND SO BE VERY CAREFUL, WHEN YOU ARE FILLING OUT YOUR EMPLOYMENT APPLICATION OR YOUR ADMISSION TO THE BAR, YOU CAN SAY YOU HAVE NEVER BEEN CONVICTED. BUT IF YOU ARE EVER ASKED ON A WITNESS STAND WHETHER YOU HAVE EVER BEEN CONVICTED, YOU HAVE TO GIVE A DIFFERENT ANSWER, SO THAT YOU DON'T FOUL YOURSELF UP IN FRONT OF A JURY?

THE ANSWER IS TWOFOLD. IN TERMS OF THE PLEA PROCESS, THAT WOULD BE CONSIDERED A COLLATERAL CONSEQUENCE, AND THE COURT, REALLY, ISN'T REQUIRED TO GO INTO EVERY COLLATERAL CONSEQUENCE. IN TERMS OF THEIR DAILY LIFE, THEY CAN RELY ON WHAT THE COURT HAS REPRESENTED. HOWEVER, THAT IS WHY I HAVE SUGGESTED THAT IT MAY BE NECESSARY FOR AN AMENDMENT TO BE ALLOWED FOR REHABILITATION, AS IN THE CASE AFTER PENDING APPEAL, SO THAT IF THE WITNESS DOES NOT HAVE AN ATTORNEY AND DOES ANSWER HONESTLY, BASED ON HIS BELIEF THAT HE WAS NOT CONVICTED, BECAUSE HE DOESN'T UNDERSTAND THE DISTINCTION OF THE TERM "CONVICTED "GO THIS REALM, THEN HE CAN SAY I UNDERSTAND I WASN'T CONVICTED, BECAUSE IT WAS MY UNDERSTANDING THAT WHEN I ENTERED THIS PLEA OF GUILTY, MY ADJUDICATION WAS WITHHELD, AND THAT WOULD BE THE PURPOSE FOR ALLOWING FOR CLARIFICATION AND REHABILITATION, BUT IN TERMS OF THIS COURTROOM, AND I HAVE SAID, BEFORE, IT IS A MATTER OF THE OUTSIDE WORLD, EVERYTHING HE HAS BEEN TOLD IS STILL INTACT, BUT THIS IS THE INTEGRITY OF AN UNRELATED TRUTH-FINDING PROCESS THAT IS ENTITLED TO HAVE THIS INFORMATION CONSIDERED.

YOU ARE IN YOUR REBUTTAL TIME, IF YOU WISH TO SAVE SOME TIME. YOU MAY.

OKAY. I WOULD LIKE TO RESERVE THE BALANCE OF MY TIME FOR REBUTTAL.

THANK YOU.

MS. LAUREDO.

MAY IT PLEASE THE COURT. MARIA LAUREDO, ASSISTANT PUBLIC DEFENDER ON BEHALF OF MR. McFADDEN. ALL OF THE FLORIDA CASES THAT HAVE ADDRESSED THIS ISSUE HAVE UNIFORMLY WITHHELD THAT WITHHOLD OF ADJUDICATION IS NOT TO BE USED FOR IMPEACHMENT CASES. BEGINNING 80 YEARS AGO, BEGINNING WITH THIS COURT, IN SMITH, WHERE THIS COURT HAS USED THAT THE WORD IS USED IN A STATUTE THAT PERMITS IMPEACHMENT FOR PRIOR CONVICTIONS, THAT CONVICTION REFERS TO THE ACTION OF THE COURT, AND WHEN THE LEGISLATURE ENACTED 9610, IT MUST BE ASSUMED THAT THEY WERE AWARE OF THAT DEFINITION THAT WAS LAID OUT IN SMITH, AND WHEN THIS COURT ADOPTED THE RULES OF EVIDENCE AS RULES OF THE COURT, IT MUST BE ASSUMED THAT THIS COURT WAS AWARE OF ITS OWN DEFINITION IN SMITH. SINCE SMITH, ALL OF THE DISTRICT COURTS OF APPEAL HAVE ALL HELD THAT A WITHHOLD OF ADJUDICATION IS NOT A CONVICTION. JOHNSON, IN THE FIRST FIRST DISTRICT, BARBER IN THE SECOND, AND, OF COURSE, ROBERTS AND PARKER IN THE FOURTH AND THE FIFTH.

WHAT IS THE PURPOSE OF ALLOWING THE STATE TO CROSS-EXAMINE A DEFENDANT ABOUT HIS PRIOR CRIMINAL HISTORY?

YOUR HONOR, THE PURPOSE AND, REALLY, THE RATIONALE BEHIND THE IMPEACHMENT STATUTE IS THAT, IF A PERSON WITH A CRIMINAL RECORD OF CONVICTION HAS DEMONSTRATED THAT THEY HAVE VIOLATED THE LAW IN THE PAST AND THEY MAY VIOLATE THE OATH IN THE PRESENT, NOW, WHERE YOU HAVE A --

WHY ISN'T -- WHY WOULDN'T THE BETTER RULE TO BE TO HAVE, WHERE A DEFENDANT HAS ADMITTED HIS GUILT AND YOU ENTER A GUILTY PLEA, YOU ARE ADMITTING THAT YOU HAVE ACTUALLY COMMITTED THAT CRIME, WELL, WHY WOULD NOT THE ALLOWING THE STATE TOMORROW PEACH YOU THROUGH USE OF A GUILTY -- STATE TO IMPEACH YOU THROUGH THE USE OF A GUILTY PLEA SERVE THE SAME PURPOSE?

YOUR HONOR, WHERE THE COURT HAS WITHHELD ADJUDICATION, 948.01 IS VERY CLEAR THAT THAT COURT MUST MAKE A FINDING THAT THAT PERSON IS NOT LIKELY TO AGAIN VIOLATE THE LAW.

BUT THAT FINDING DOES NOT SAY YOU COMMITTED THE CRIME, DOES IT?

THAT'S CORRECT, YOUR HONOR. THAT FINDING DEALS WITH PROPENSITY. IT IS A FINDING THAT THAT PERSON WILL NOT, AGAIN, VIOLATE THE LAW, AND, OF COURSE, PERJURY IN A COURT OF LAW IS A VIOLATION, AND WHERE THE COURT, IN A WITHHOLD, IS MAKING THE AFFIRMATIVE FINDING THAT THAT PERSON WILL NOT AGAIN VIOLATE THE LAW, THEN, OF COURSE, THE WITHHOLD OF ADJUDICATION IS NOT RELEVANT FOR IMPEACHMENT, BECAUSE THE RATIONALE FOR IMPEACHMENT HAS TO DO WITH THAT VERY PROPENSITY THAT THE COURT IS FINDING DOES NOT EXIST, SO IT WOULDN'T MAKE ANY SENSE.

ALSO THE RATIONALE FOR WITHHOLDING ADJUDICATION IS THAT THE PERSON IS A GOOD CANDIDATE FOR REHABILITATION AND WE ARE GOING TO GIVE HIM THIS OPPORTUNITY, YET HERE WE ARE IN THE SECOND CRIMINAL SITUATION, AND SO THIS PERSON HAS, ASSUMING THAT THEY ARE GUILTY, DEMONSTRATED THAT THEY, REALLY, WERE NOT REHABILITATED.

WELL, YOUR HONOR, WHEN A PERSON IS -- ASSUMING THAT THE WITNESS IS THE DEFENDANT, AND, OF COURSE, THIS RULE --

I HIM TALKING ABOUT WHEN THE DEFENDANT IS THE WITNESS.

THEY ARE IN TRIAL AND HAVE NOT BEEN FOUND GUILTY OF A SUBSEQUENT OFFENSE YET, AND THEY ARE PRESUMED INNOCENT AND ARE ENTITLED TO WHAT THE COURT HAS FOUND TO BE A WITHHOLDING OF ADJUDICATION. THERE HAS NOT BEEN A FINDING OF A SECOND OFFENSE.

WOULD YOU ADDRESS THE WITHHOLDING AND THE PROPENSITY, ALL ADDRESSED TO THIS INDIVIDUAL, AND THE STATE HAS INDICATED THAT WE ARE TALKING ABOUT A PROCEEDING WITH RIGHTS AND RESPONSIBILITIES OF INDEPENDENT INDIVIDUALS, WHY IS THAT PHILOSOPHICAL DIFFERENCE NOT IMPORTANT, IN AN UNDERSTANDING OF THE ISSUE WE ARE TALKING ABOUT?

WELL, YOUR HONOR, THE PURPOSE OF THE WITHHOLD STATUTE IS TO AFFORD A PERSON WHO HAS SHOWN THAT THEY ARE LIKELY TO BE REHABILITATED THE OPPORTUNITY TO DO SO, WITHOUT BEING FORMALLY AND JUDICIALLY BRANDED A CONVICTED FELON, AND THEY ARE TOLD, WHEN THEY ENTER A PLEA TO A WITHHOLD OF ADJUDICATION, THAT THEY WILL NOT SUFFER THE STATUS OF A CONVICTED FELON AND WILL NOT SUFFER ALL OF THE DISABILITIES THAT ARE RELATED WITH BEING VIEWED AS A CONVICTED FELON, AND ALL THOSE DISABILITIES ARE RELATED. THE -- WHEN YOU APPLY FOR A JOB, WHEN YOU APPLY FOR CERTAIN LICENSES, YOU CAN TRUTHFULLY REPRESENT THAT YOU ARE NOT A CONVICTED FELON, AND, OF COURSE, WHAT IS BEING JUDGED AT THE TIME IS WHAT THAT PREVIOUS ACT HAS TO DO WITH YOUR CURRENT CHARACTER, AND THAT IS EXACTLY WHAT WE ARE ADDRESSING, IN THE CONTEXT OF A TRIAL, WHEN YOU ARE SERVING AS A WITNESS, AND THEREFORE ALL THOSE -- THAT PERSON HAS BEEN TOLD, WHEN THEY ENTER THE PLEA, THAT THEY ARE NOT A CONVICTED FELON AND WILL NOT SUFFER THE DISABILITIES THAT ARE ASSOCIATED WITH THAT STATUS, AND THAT IS EXACTLY WHAT WE HAVE HERE, WHEN A PERSON IS SERVING AS WITNESS IN A TRIAL.

WHAT ABOUT OUR OTHER, BROADER USES OF A GUILTY PLEA? FOR INSTANCE WE ALLOW THE ADMISSION OF A GUILTY PLEA IN A CIVIL PROCEEDING, DO WE NOT?

THAT'S CORRECT, YOUR HONOR.

UNDERLYING ISSUE IS RELATED AND RELEVANT. WOULDN'T THAT BE INCONSISTENT WITH THE BROAD RULE THAT YOU ARE ADVOCATING THAT HAS BEEN IMPOSED HERE? THAT IS THAT WE ALLOW, IN A CIVIL PROCEEDING, IF IT IS AN AUTOMOBILE ACCIDENT, FOR INSTANCE, AND SOMEBODY HAS PLED GUILTY, TO CAUSING THE ACCIDENT, WE ALLOW THAT PLEA OF GUILTY, NOT THE CONVICTION ENTERED BUT THAT PLEA OF GUILTY, AS EVIDENCE OF GUILT IN THE CIVIL PROCEEDING. DO WE NOT?

THAT'S CORRECT, YOUR HONOR. AND THE LAW OF EVIDENCE IS VERY CLEAR AND DRAWS A DISTINCTION. WHEN A PLEA IS BEING OFFERED FOR THE TRUTH OF THE MATTER, IN A SUBSEQUENT CIVIL TRIAL ON THE SAME MATTER THAT DEALT -- THAT WAS DEALT WITH IN THE CRIMINAL, THEN THAT PLEA IS AN ADMISSION BY A PARTY OPPONENT AND CAN BE USED AS AN ADMISSION, BECAUSE IT IS OFFERED FOR THE TRUTH, AND IN THAT SCENARIO, THE CONVICTION WOULD NOT BE ALLOW, BECAUSE IT WOULD BE HEARSAY, SO WHEN AND WHERE IT IS OFFERED FOR OF THE MATTER, THE LAW OF EVIDENCE DRAWS A DISTINCTION BETWEEN THAT PLEA WHICH IS OFFERED FOR PURPOSE OF CONVICTION, AND IT IS IMPEACHMENT, BECAUSE WE ARE DEALING WITH COLLATERAL ISSUES, AND THEREFORE FOR IMPEACHMENT, WE WILL ALLOW THAT ACTION BY THE COURT, THE CONVICTION, TO BE ALLOWED FOR IMPEACHMENT BUT NOT A PLEA.

WHAT ABOUT THE SITUATION THAT WAS IN BARBER, WHERE YOU HAD THE -- A VERDICT OF GUILTY THE WEEK BEFORE, AND THEY JUST HADN'T HAD TIME TO GET THE CONVICTION ENTERED. NOW, DOESN'T YOUR ARGUMENT, NATURALLY, FLOW, IF YOU DON'T ALLOW SOME LATITUDE IN THE TERM OF WHAT A CONVICTION IS? THAT WE WOULD BE ERASEING THE SITUATION IN BARBER?

WELL, THE SITUATION IN BARBER, AGAIN, AND THE ONLY CONFLICT THAT EXISTS AMONG THE DISTRICT COURTS HAS TO DO WITH THAT VERY LIMITED AND NARROW ISSUE OF DURING THE TIME PERIOD THAT IT IS PENDING, WILL WE ALLOW THAT TO BE DEEMED A CONVICTION? AND I WOULD AGREE WITH THE REASONING THAT WAS LAID OUT IN ROBERTS BY JUSTICE ANSTEAD THAT WE SHOULD DEFINE THE WORD CONVICTION CONSISTENTLY THROUGHOUT, TO REQUIRE THAT ACTION BY THE COURT, BUT, OF COURSE, THAT IS NOT THE ISSUE THAT WE HAVE IN THIS CASE.

IN THE NORMAL SITUATION THAT WE EXIST IN OUR METROPOLITAN CRIMINAL COURTS TODAY, A FELLOW COMES IN, AND HE PLEADS GUILTY IN THE MORNING, AND THE COURT IS -- TAKES THE GUILTY PLEA BUT DOESN'T GO AHEAD AND ENTER THE CONVICTION, BECAUSE SENTENCING HAS GOT TO BE DETERMINED. TRYING HIM ON THE NEXT CHARGE THIS AFTERNOON. THEN, AND, HE TESTIFIES, HE IS GOING TO BE ABLE TO TESTIFY THAT HE HASN'T BEEN CONVICTED OF A CRIME, EVEN THOUGH THAT VERY MORNING HE PLED GUILTY?

I THINK THAT THE RULE REQUIRES THAT THERE BE A CONVICTION, AND CONVICTION SHOULD BE INTERPRETED CONSISTENTLY THROUGHOUT, TO REQUIRE THAT JUDGMENT. THIS COURT MAY FIND THAT, DURING THAT SHORT PERIOD THAT SOMETHING IS PENDING, WE SHOULD STATE THAT THAT THE PERSON HAS BEEN CONVICTED, BUT OF COURSE THAT IS NOT THE EVIDENCE BEFORE US HERE, BECAUSE WE KNOW IN THIS CASE WE KNOW THAT THE JUDGE HEARD THAT MATTER AND WITHHELD ADJUDICATION, AND WHERE THE ADJUDICATION HAS ALREADY BEEN WITHHELD, ALL DISTRICT COURTS AGREE THAT THERE IS NO CONVICTION, FOR PURPOSES OF IMPEACHMENT.

ONE OTHER QUESTION. AREN'T YOU SUBJECTING THE SYSTEM TO A SITUATION IN WHICH THERE IS GOING TO BE AN INCREASING RELUCTANCE ON THE PART OF THE STATE AND TRIAL COURTS TO GET INVOLVED IN THIS ISSUE OF WITHHOLD ADJUDICATION, WHICH IS, REALLY, FOR THE INTEREST OF THE DEFENDANT, BECAUSE THERE IS GOING TO BE SUCH A RESTRICTIVE USE OF THE FACT THAT IF, THEN, THERE IS A SUBSEQUENT CHARGE, THAT COMES UP, THAT THEN THE PLEA OF GUILTY, REALLY, IS NOT ABLE TO BE USED OR THE VERDICT OF GUILTY?

I DON'T BELIEVE SO, YOUR HONOR.

YOU DON'T THINK THAT IS GOING TO HAVE A CHILLING EFFECT ON THE USE OF WITHHOLD ADJUDICATION?

ABSOLUTELY NOT, YOUR HONOR. I THINK, IF THE TRIAL COURT, HAVING HEARD THE MATTER, HAS DETERMINED THAT THIS PERSON IS DESERVING OF THE WITHHOLD OF ADJUDICATION, IT WOULD NOT BE A CHILLING EFFECT, THAT THAT WITHHOLD COULD, IN FACT, NOT BE USED AGAINST THEM. NOW, I WOULD LIKE TO ADDRESS THE POINT ABOUT CONFLICT. THERE IS NO CONFLICT ON THIS ISSUE OF WITHHOLD ADJUDICATION. WHAT THE FIRST DISTRICT, IN RADO HELD WAS THEY WERE ADDRESSING A NO CONTEST PLEA THAT WAS PENDING ADJUDICATION, AND IN RADO, THE COURT HELD THAT A SEPARATE PROVISION OF THE EVIDENCE CODE, 9410, WHICH ADDRESSES NO CONTEST PLEAS, APPLIES, AND THEREFORE THE NO CONTEST, WITHOUT ADD YUD INDICATION, WOULD NOT BE ADMISSIBLE. OF COURSE THE NO CONTEST PLEA WITH ADJUDICATION, THAT ACTION BY THE COURT WOULD BE ADMISSIBLE TO IMPEACH, AND I DON'T BELIEVE THAT THE STATE IS CONTESTING THAT.

WOULD YOU AGREE THAT, IF THERE IS A NO CONTEST PLEA, AND THEN THERE IS AN ADJUDICATION BY THE COURT, OF GUILT, THAT THAT CAN BE USED AS A CONVICTION?

THAT'S CORRECT, YOUR HONOR.

BUT, REALLY, UNDER THE THEORY THAT WE ARE ALL GOING UNDER, THAT WOULD NOT -- WE WOULD GO THE OPPOSITE WAY. WE WOULD JUST LOOK AT WHAT THE UNDERLYING BASIS OF THE GUILT, WHETHER IT WAS A GUILT PLEA OR GUILTY VERDICT, AND ONLY ALLOW THOSE TWO FOR IMPEACH SNMENT.

THAT'S CORRECT -- FOR ITCH PEACHMENT -- FOR IMPEACH SNMENT.

THAT IS CORRECT, YOUR HONOR.

IT WOULD REQUIRE IT TO BE CHANGED?

THAT'S CORRECT, YOUR HONOR.

WHERE JUSTICE WELLS TALKED ABOUT WHERE YOU HAVE A SITUATION WHERE SENTENCING HASN'T TAKEN PLACE, THERE A PROCEDURE, IF THE JUDGE KNOWS FOR SURE THAT HE OR SHE IS NOT GOING TO WITHHOLD ADJUDICATION, SAY, IT IS AN ARMED ROBBERY THAT HAS JUST TAKEN PLACE, IS THERE A WAY TO GO AHEAD AND ADJUDICATE THE DEFENDANT GUILTY AND JUST NOT PROCEED TO SENTENCING, OR DO THOSE TWO HAVE TO HAPPEN TOGETHER?

THEY DON'T HAVE TO HAPPEN TOGETHER. IN FACT, I THINK, VERY OFTEN, THE PERSON IS ADJUDICATED RIGHT AFTER THE VERDICT. THAT IS THE COMMON PRACTICE.

SO, IF THE JUDGE HAS THE WAY TO STOP THAT SITUATION FROM HAPPENING, IF THE JUDGE IS -- HAS MADE UP HIS OR HER MIND OR, AGAIN, THE CRIME IS SUCH THAT THERE REALLY WOULD NOT BE ANY WAY THAT THIS WOULD BE ONE THAT WOULD BE ELIGIBLE FOR PROBATION, THAT THAT COULD OCCUR BY ADJUDICATING THEM AT THE TIME?

YES. I THINK THAT IS THE WAY IT IS MOST COMMONLY DONE.

THE QUESTION I HAVE FOR YOU ON GUILTY PLEAS, YOU WERE ANSWERING JUSTICE ANSTEAD'S QUESTION ABOUT, IN A CIVIL CONTEXT, BUT AREN'T THERE SITUATIONS, EVEN IN THE CRIMINAL CONTEXT, WHERE A PLEA OF GUILTY CAN CONSTITUTE ADMISSION AND BE UTILIZED, SAY, IF WE ARE TALKING ABOUT PRIOR MISCONDUCT OR A WILLIAMS RULE SITUATION, WHERE, UNDER A



SEPARATE ISSUE OF IT BEING AN ADMISSION, THAT A PLEA OF GUILTY COULD BE POTENTIALLY USED IN A CRIMINAL TRIAL?

CERTAINLY, AND BECAUSE IT WOULD BE INTRODUCED FOR THE TRUTH OF THE MATTER ASSERTED, BUT THE LAW OF EVIDENCE IS VERY CLEAR FOR THAT PURPOSE. YES, IT IS AN ADMISSION. FOR IMPEACHMENT, YOU NEED A CONVICTION. WE DO NOT LOOK TO THE UNDERLYING PLEA.

IN THOSE SITUATIONS, A VERDICT OF GUILTY WOULD NOT BE ABLE TO BE USED FOR OTHER PURPOSES, BECAUSE THAT WOULD NOT BE AN ADMISSION OF GUILT.

THAT'S CORRECT. THE VERDICT OF GUILTY OR THE CONVICTION WOULD BE HEARSAY, AND THEY WOULD NOT COME IN FOR THE TRUTH OF THE MATTER, BUT AN IMPEACHMENT, WE ARE LOOKING AT THE COURT ACTION. WE ARE LOOKING AT THE CONVICTION, AND, AGAIN, IN RADO, WHERE THE COURT, THE LANGUAGE THAT THE STATE SEIZES UPON, AS A BASIS FOR JURISDICTION IN THIS CASE, IS THE LANGUAGE IN RADO, WHICH IS DICTA, WHERE, IN RADIO THE DEFENDANT SAYS THAT -- WHERE THE COURT SAYS THAT THE DEFENDANT MAY BE IMPEACHED WITH EITHER THE EQUIVALENT OF A GUILTY VERDICT OR A JURY VERDICT, AND WHAT THE COURT WAS REFERRING TO, THERE, WAS THE SITUATION WHERE ADJUDICATION IS PENDING, NOT WHERE YOU HAVE -- PENDING, NOT WHERE YOU HAVE A WITHHOLD OF ADJUDICATION THAT HAS ALREADY BEEN ENTERED.

ISN'T THERE GENERALLY, IN THE METROPOLITAN COURTS AROUND THIS STATE, A DELAY OF SOME PERIOD OF TIME BEFORE THE WRITTEN ORDER OR JUDGMENTS ARE ENTERED? BETWEEN THE TIME THAT THE JUDGE MAKES A PRONOUNCEMENT FROM THE BENCH? I MEAN, DIDN'T WE JUST AMEND THE RULES, TAKING CARE OF THE FACT THAT THAT WAS COMMONLY HAPPENING?

I AM NOT AWARE OF HOW OFTEN THERE IS A DELAY BETWEEN THE WRITTEN JUDGMENT AND THE ORAL PRONOUNCEMENT. I KNOW THAT, USUALLY, WHEN THERE IS A VERDICT, YOU HAVE IMMEDIATE ADJUDICATION AT THAT TIME.

SO ARE YOU TALKING ABOUT THAT THE JUDGE PRONOUNCING IT FROM THE BENCH?

THAT'S CORRECT, YOUR HONOR.

AND SO THAT WOULD BE SUFFICIENT?

I BELIEVE THAT WOULD BE SUFFICIENT. YOUR HONOR. BECAUSE YOU HAVE THE COURT ENTERING THAT FINDING.

SO IT WOULDN'T HAVE TO BE A WRITTEN ORDER ENTERED?

I DON'T BELIEVE SO. I THINK THAT THAT WOULD BE SUFFICIENT. BUT, AGAIN, HERE WE HAVE THE COURT AFFIRMATIVELY WITHHOLDING ADJUDICATION, AND AS TO THAT ISSUE, THERE IS NO CONFLICT MONKT DISTRICT COURTS OF APPEAL, AND THERE IS, REALLY, NO BASIS FOR JURISDICTION IN THIS CASE. AGAIN, THE PURPOSE OF 948.01 IS FOR A PERSON WHO IS LIKELY TO BE REHABILITATED, TO BE GIVEN THE OPPORTUNITY TO DO THAT, WITHOUT BEING FORMALLY JUDICIALLY BRANDED A CONVICTED FELON, AND WHEN THE PLEA IS ENTERED, THAT IS WHAT THE DEFENDANT IS TOLD BY COUNSEL, BY THE COURT. YOU WILL NOT BE A CONVICTED FELON, FOR PURPOSES OF A JOB APPLICATION, FOR VOTING, LICENSES. THE PERSON CAN TRUTHFULLY ANSWER NO, AND IT WOULD BE INCONSISTENT TO REQUIRE THAT PERSON TO ANSWER THAT QUESTION DIFFERENTLY, WHEN THEY ARE SERVING AS A WITNESS IN ANY TRIAL, CIVIL OR CRIMINAL, AND THEY HAVE BEEN TOLD THAT THEY WILL NOT SUFFER THE DISABILITY THAT IS ASSOCIATED WITH BEING VIEWED AS A CONVICTED FELON. AND IT WOULD BE INCONSISTENT WITH THE PURPOSE AND THE RATIONALE OF THE IMPEACHMENT STATUTE, AND THEREFORE THAT

IS WHY IT MAKES -- IT WOULD REQUIRE A CHANGE IN THE RULE. WE DON'T NEED A CHANGE IN THAT RULE. THE LAW IS VERY CLEAR IN THE STATE OF FLORIDA THAT A WITHHOLD OF ADJUDICATION IS NOT A CONVICTION IN THE CONTEXT OF IMPEACHMENT. THERE IS NO CONFLICT, AND THEREFORE THIS COURT SHOULD AFFIRM THE DECISION OF THE THIRD DISTRICT. THANK YOU VERY MUCH.

THANK YOU.

REBUTTAL.

JUST A FEW BRIEF STATEMENTS. WITH REGARD TO THE JURISDICTION OF THIS COURT ON THE BASIS OF CONFLICT, IT IS THE STATE'S POSITION THAT THE READING OF RADO OUT OF THE FIRST DID NOT DON'T BARBER AND JOHNSON -- DID NOT ADOPT BARBER AND JOHNSON, FOR THE PROPOSITION THAT IT IS ONLY THAT TIME PERIOD IN BETWEEN THE PLEA AND THE ADJUDICATION THAT MAKES A DIFFERENCE.

LET ME ASK YOU TWO QUESTIONS. ONE IS DO YOU AGREE THAT, IF WE DON'T YOUR THEORY -- IF WE ADOPT YOUR THEORY, WHAT IS CRITICAL IS WHAT THE PREDICATE WAS ON THE CONVICTION, RATHER THAN FOR THE CONVICTION THAT, FOR THOSE DEFENDANTS THAT PLEAD NOLO AND THEY ARE CONVICTED, THAT THAT SHOULD NOT COUNT, THEN, AS A CONVICTION?

NO THAT IS NOT THE THEORY. THE THEORY IS THAT THE PREDICATE IS GUILT. WHEREVER THE SOURCE OF GUILT COMES FROM, BE IT A FORMAL ADJUDICATION BY A COURT OF LAW OR BE IT A CONFESSION BY THAT PARTICIPANT IN THE CRIMINAL TRANSACTION, THE FORM OF GUILT MUST BE CONSIDERED, AND THAT IS AN IMPORTANT DID DISTINCTION. IT IS GUILT, GUILT, GUILT. THAT IS NOT SOMETHING THAT IS CONCLUSORY BUT AS TO THE DEFENDANT, IF THE DEFENDANT ADMITS TO THE COURT I DID THIS. I AM SAVING THE EFFORT OF JUDDISHLY BRANDING ME. I AM CONFESSING IT, AND I KNOW THAT YOU ARE GOING TO, IN TURN, GIVE ME THE BENEFIT AND THE GRACE OF PROBATION, THAT IS IT. IT IS ALMOST CUMULATIVE FOR THE COURT TO ACTUALLY ADJUDICATE A PERSON IN THAT SENSE.

WOULD YOU AGREE THAT THE KINDS OF QUESTIONS, FIRST OF ALL, THAT THE QUESTION WOULD HAVE TO BE CHANGED, BECAUSE IT WOULDN'T BE WHERE THEY HAVEN'T BEEN ADJUDICATED. THEY WOULD HAVE TO BE DID YOU EVER PLEAD GUILT. CORRECT? THE QUESTION WOULD HAVE TO BE CHANGED.

I DO NOT AGREE. I AM SORRY.

BUT THE DEFENDANT WOULD BE ABLE TO EXPLAIN, WELL, I REALLY WASN'T, I DIDN'T PLEAD GUILT. THE JURY FOUND ME GUILTY BUT THE JUDGE DIDN'T THINK I WAS GUILT, BECAUSE -- GUILTY, BECAUSE THE JUDGE WITHHELD ADJUDICATION.

I RETRACT. THAT THE RULE DOES NOT HAVE TO BE CHANGED. I BELIEVE THE PROSECUTOR'S RESPONSIBILITY IS TO DIRECT THE QUESTION IN THE PROPER. BUT I DO NOT BELIEVE THE RULE HAS TO BE CHANGED, AND IN THE CASE WHERE WE NEED TO LOOK FOR GUIDANCE TO OTHER JURISDICTIONS, BE IT FEDERAL OR OTHER STATES, THE RULE WAS NEVER CHANGED. THE RULE STILL USED THE WORD CONVICTION. THERE ARE A FEW RULES THAT SAID "GUILTY PLEAS". BUT THERE ARE MANY RULES THAT SAY A GUILTY CONVICTION SHOULD COME IN FOR IMPEACHMENT BUT NEVER MENTION A GUILTY PLEA. THAT IS THE QUESTION FOR THIS COURT, WITHIN THE SCOPE OF THE TERM "CONVICTION" FOR THE PURPOSE OF THE RULE, MAY INCLUDE A GUILTY PLEA, WHERE ADJUDICATION IS WITHHELD.

BUT A CERTAINLY COMFORTABLE CONSISTENCY IN THE LAW NOW, THAT WOULD BE SACRIFICED, IF WE ADOPTED YOUR POSITION?

NOT REALLY. I THINK WHAT WE DO HAVE IS A MATTER OF ASSOCIATION, AND AS A KNEE JERK REACTION WHEN YOU HEAR CONVICTION, AND THAT IS WHAT WE ARE PROTECTING THE PERSON AGAINST IN THE OUTSIDE WORLD, BUT THERE ARE DIFFERENT MATTERS, AND THIS COURT HAS, IN AGGRAVATING FACTORS, IN REGARDS TO CAPITAL SENTENCING, THEY HAVE INCLUDED GUILTY PLEAS, SO THEY HAVE RECOGNIZED THAT A BRORD INTERPRETATION IS SOMETIMES REQUIRED -- THAT A BROADER INTERPRETATION IS SOMETIMES REQUIRED, AND I KNOW MY TIME IS COMING TO AN END, SO I WOULD LIKE TO JUST REMIND THE COURT THAT THE ANALYSIS HAS TO BE BASED ON THE PURPOSE OF THE RULE. THIS COURT --

IS THERE A PRACTICE IN THE TRIAL COURTS, NOW, FOR PEOPLE TO PLEAD GUILTY FOR CONVENIENCE, TO AVOID A TRIAL, WITH THE ASSURANCE OF WITHHOLD OF ADJUDICATION?

NO. THAT WOULD BE A NOLO PLEA. I BELIEVE THERE IS A SIGNIFICANCE WHICH THE GENERAL COMMUNITY AT LARGE ATTACHES TO A GUILTY PLEA. IF YOU HAVE A VICTIM SITTING IN THAT COURTROOM, IT IS A INSULT.

THANK YOU. YOU ARE SAYING THE ANSWER IS NO.

CORRECT.

THANK YOU VERY MUCH. YOUR TIME HAS EXPIRED.