GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. THIS IS DECEMBER 9, AND WHILE YOU MAY SCRATCH YOUR HEAD AS TO WONDER THE HISTORICAL SIGNIFICANCE OF THAT DAY, THIS DAY WILL GO DOWN IN HISTORY AS THE LAST DAY OF ORAL ARGUMENT IN THE SUPREME COURT OF FLORIDA THIS YEAR, THIS DECADE, THIS CENTURY, THIS MILLENIUM. AND SO, WITH THAT IN MIND, JUDGE PAD-VAN-, ARE YOU READY -- PADOVANO, ARE YOU READY?

YES, YOUR HONOR. MAY IT PLEASE THE COURT. I AM PHIL PADOVANO, AND WITH ME IS JOHN SKYE OF THE SPECIAL PROJECTS UNIT IN TAMPA. MR. SKYE IS GOING TO ADDRESS THE ISSUE REGARDING THE CLEAR AND CONVINCING EVIDENCE STANDARD. HE HAS FILED A WRITTEN SUBMISSION WITH THE COURT ON THAT ISSUE, AND I HAVE ASKED HIM TO ADDRESS IT AT ORAL ARGUMENT. I AM PREPARED, HOWEVER, TO ANSWER ANY QUESTION ON ANY ISSUE THE COURT MAY HAVE, REGARDING OUR SUBMISSION. LET ME START WITH THE JURY, THE ISSUE CONCERNING THE USE OF THE TERM "SEXUALLY VIOLENT PREDATOR". AS YOU KNOW, FROM READING THE COMMENTS, WE HAVE SOME OBJECTS TO THE USE OF THE TERM "SEXUAL "SEXUALLY VIOLENT PREDATOR", BUT SOME FEEL IT IS UNNECESSARILY INFLAMMATORY AND THAT WE OUGHT TO HANDLE THESE CASES WITHOUT USING THIS TERM. THIS IS AN ISSUE THAT WAS DEBATED IN THE COMMITTEE, AND WE ULTIMATELY CONCLUDED THAT IT WAS NECESSARY TO USE THE TERM, AT LEAST IN OUR VIEW, BECAUSE THIS IS, REALLY, THE OBJECT OF THE PROCEEDING, IS TO DETERMINE THE STATUS OF AN INDIVIDUAL. THIS IS NOT LIKE A CASE, FOR EXAMPLE, WHERE THE JURY IS BEING ASKEDED TO DECIDE WHETHER A DEFENDANT IS -- IS BEING ASKED TO DECIDE WHETHER A DEFENDANT IS GUILTY, WHETHER A DEFENDANT IN A CIVIL CASE IS LIABLE, WHAT THE DAMAGES ARE, BASED ODD A CERTAIN SET OF FACTS. WE ARE -- BASED ON A CERTAIN SET OF FACTS. WE ARE, IN ESSENCE, DETERMINING A PERSON'S STATUS AS AN INDIVIDUAL, THAT IS A STATUS AS A SEXUALLY VIOLENT PREDATOR. UNLESS A JURY UNDERSTANDS THAT THAT IS THE OB, THAT THAT IS THE POINT OF THE -- THAT THAT IS THE OBJECT, THAT THAT IS THE POINT OF THE PROCEEDING, IT SEEMS TO ME THAT IT WOULD BE DIFFICULT FOR THE JURY TO GRASP THE SIGNIFICANCE OF WHAT RESPONSIBILITY IT IS CHARGED WITH FULFILLING.

WILL THE JURY, THEN, KNOW THE CONSEQUENCES OF THE DETERMINATION THAT THE PERSON IS A SEXUALLY VIOLENT --

JUSTICE PARIENTE, THAT, ALSO, IS AN ISSUE THAT HAS BEEN THE SUBJECT OF SOME CONTROVERSY, I THINK, AT LEAST IN THE COMMENTS WE HAVE HERE.

I DON'T MEAN THE PART WHERE THEY TALK ABOUT THE -- WHAT HAPPENS IF THEY ARE NOT ANIMUS. I AM TALKING ABOUT THE STATUS, BECAUSE YOU ARE SAYING THIS IS IMPORTANT THAT THE JURY, BECAUSE YOU SAID THIS IS A STATUS SITUATION. I AM WONDERING DOES THE JURY KNOW THE CONSEQUENCES OF THEIR DETERMINATION OF THE STATUS OF THIS INDIVIDUAL?

I THINK SO. IN THE OPENING LINE OF THE INSTRUCTION, IT SAYS THE STATE ALLEGES THE RESPONDENT IS A SEXUALLY VIOLENT PREDATOR AND SHOULD BE CONFINED IN A SECURE FACILITY FOR LONG-TERM CONTROL, CARE AND TREATMENT, AND SO IN THE VERY FIRST SENTENCE WE ARE TELLING THE JURY WHAT WE ARE ASKING THEM TO DECIDE AND WHAT THE CONSEQUENCE OF THAT WILL BE, SO I WOULD ANSWER YOUR QUESTION YES, THEY WILL. THERE WAS SOME MEMBERS OF THE COMMITTEE WHO THOUGHT THAT IT WAS APPROPRIATE TO USE THIS TERM, BECAUSE IT IS THE TERM THE LEGISLATURE USED, AND THEY DIDN'T REALLY GET MUCH BEYOND THAT. I THINK, THOUGH, FOR REASONS I HAVE GIVEN, THERE ARE EVEN BETTER

REASONS TO USE THE TERM. THIS IS -- BEV -- WE HAVE, IN SOME OF THE COMMENTS, A COMPARISON TO, FOR EXAMPLE, THE VIOLENT CAREER CRIMINAL, AND THE U.S. SUPREME COURT SAID YOU SHOULDN'T USE THAT TERM, BUT THAT WAS DIFFERENT. IT WAS THE CASE WHERE THE DEFENDANT WAS CHARGED WITH POSSESSION OF A FIREARM BY A VIOLENT CAREER CRIMINAL, AND THE OBJECT OF THE TRIAL WAS TO DETERMINE WHETHER THE PERSON POSSESSED THE FIREARM, SO THE COURT REASONED IT WASN'T REALLY NECESSARY TO GO INTO THIS INFLAMMATORY LANGUAGE ABOUT WHETHER THIS PERSON WAS AVAILENT CAREER CRIMINAL, MUCH LIKE THESE OTHER CASES, AND YOU HAD ONE HERE A FEW YEARS AGO, ON POSSESSION OF A FIREARM BY A CONVICTED FELON AND WHETHER IT IS NECESSARY TO GET INTO ALL OF THE INFLAMMATORY LANGUAGE. HERE, THOUGH, THE WHOLE ESSENCE OF WHAT WE ARE ASKING THE JURY TO DO IS TO DETERMINE WHETHER THIS PERSON IS A SEXUALLY VIOLENT PREDATOR, AND I DON'T SEE HOW WE CAN AVOID DESCRIBING IT FOR THEM IN THAT WAY.

IS PREDATOR A TERM OF LEGAL ART? PREDATOR, IT SEEMS TO ME, THAT THE SORT OF INFLAMMATORY -- WHAT IF THE LEGISLATURE SAID WE ARE GOING TO CALL THIS PERSON FRANKENSTEIN'S MONSTER?

IT IS A TERM THAT IS USED IN THE STATUTE, AND THAT IS WHY THE COMMITTEE USED IT. IT IS AN INFLAMMATORY TERM, BUT YOU BRING UP A GOOD POINT. I THINK THE HARSHNESS OF CHARACTERIZATION MIGHT ACTUALLY WORK TO THE BENEFIT OF THE DEFENSE LAWYERS WHO OBJECT TO IT. WE ARE NOT TELLING, THE JUDGE IS NOT TELLING THE JURY THAT THIS PERSON IS A SEXUALLY VIOLENT PREDATOR. THE JUDGE IS SAYING THE STATE ALLEGES THIS. NOW, IF WE WERE TO COME UP WITH SOME EUPHEMISM FOR THE TERM, IT MIGHT MAKE IT EASIER FOR THE JURY TO FIND THAT HE MIGHT FIT THAT CATEGORIZATION. IT SEEMS TO ME THAT WE OUGHT TO REALLY CALL IT WHAT IT IS. AT LEAST THAT WAS THE VIEW OF THE COMMITTEE. OF COURSE, IF THE COURT DECIDES IT WANTS TO CHANGE THAT, IT WOULD BE A RELATIVELY SIMPLE MATTER. THERE ARE SEVERAL PROPOSALS HERE BY THOSE WHO OPPOSE IT. IT WOULD EXPLAIN HOW THAT COULD BE CHANGED, BUT IN ANY CASE THE COMMITTEE THOUGHT IT WAS APPROPRIATE AND NECESSARY TO INCLUDE THE TERM, FOR THOSE REASONS. LET ME ADDRESS ONE OTHER POINT, AND THAT IS THE VERDICT. BECAUSE THERE IS A VONLT VERSE -- THERE IS A CONTROVERSY ABOUT WHETHER WE SHOULD BE TELLING THE JURY THE CONSEQUENCES OF THEIR DECISION, IN TERMS OF THE VARIOUS VERDICT FORMS. AND WE DEBATED THIS AT LENGTH IN THE COMMITTEE, TOO, AND I THINK THE ULTIMATE MATT --

-- THE ULTIMATE --

BEFORE YOU GET THERE, ON THE MATTER OF THE USE OF THE TERM THAT IS IN THE STATUTE, "SEXUALLY VIOLENT PREDATOR", WHAT WAS THE VOTE ON THE COMMITTEE ON THAT ISSUE? DO YOU RECALL? WAS THE COMMITTEE DIVIDED ON THAT ISSUE?

I DO NOT RECALL THE PRECISE VOTE, BUT I CAN TELL YOU THAT IT WAS NOT AS MUCH A BONE OF CONTENTION IN THE COMMITTEE AS IT IS HERE. WE HAVE AN ELECTED PUBLIC DEFENDER, AN ASSISTANT PUBLIC DEFENDER AND THREE PRIVATE DEFENSE LAWYERS. AS I RECALL, ONLY ONE ASSISTANT PUBLIC DEFENDER OBJECTED TO THE TERM IN THE COMMITTEE AND SEVERAL OTHERS JOINED IN WITH HER, BUT IT WASN'T -- MOST OF THEM SEEMED TO RECOGNIZE THAT, BECAUSE IT WAS THE TERM USED IN THE STATUTE, IS THE ONE WE OUGHT TO USE, SO IT WAS NOT A -- TO ANSWER YOUR QUESTION, IT WAS NOT A CLOSE VOTE. WITHIN THE COMMITTEE. ALTHOUGH I WOULD SAY IT PROBABLY IS A DEFENSE -- IT IS UNIVERSALLY A DEFENSE POINT OF VIEW. I MEAN IT IS SOMETHING DEFENSE LAWYERS WANT. I DON'T SPEAK FOR THE DEFENSE LAWYERS, BUT I THINK THAT IS WHERE THE OBJECTS ARE COMING FROM.

THANK YOU.

ON THIS OTHER MATTER OF THE VERDICT. WE COULD SIMPLY GIVE THE JURY A CHOICE OF

SAYING WE UNANIMOUSLY FIND THAT THE RESPONDENT IS OR UNANIMOUSLY FIND THAT THE RESPONDENT IS NOT, BUT THAT WOULD NOT BE ACCURATE. THERE ARE -- THERE IS ANOTHER LAWFULLY VERDICT WHICH IS AUTHORIZED BY THE LEGISLATION, ITSELF. THIS IS NOT LIKE A CRIMINAL TRIAL, AND WE CAN'T PRETEND LIKE IT IS A CRIMINAL TRIAL. THE LEGISLATION ALLOWS FOR, REQUIRES THAT, IF THERE IS TO BE A COMMITMENT, IT IS GOING TO BE BY UNANIMOUS VOTE. NOW, A DEFENDANT CAN BE NOT COMMITTED BY AN UNANIMOUS VOTE, BUT A DEFENDANT CAN, RESPONDENT CAN, ALSO, NOT BE COMMITTED BY A VOTE OF THREE OR MORE WHO VOTE NOT TO COMMIT, SO TO SUGGEST TO A JURY THAT THEY HAVE TO HAVE AN UNANIMOUS VERDICT TO RETURN A LAWFULLY VERDICT, AS WE WOULD DO IN A CRIMINAL SAYS, IS SIMPLY WRONG, BECAUSE IF A JURY WERE TO RETURN A VERDICT OF 3-3, THAT WOULD BE A PERFECTLY LAWFULLY VERDICT. IT WOULD BE A VERDICT ADDICT AUTHORIZED BY LEGISLATION, AND THERE IS NO REASON WHY A JURY, NO REASON WHY WE OUGHT TO LET JURORS ASSUME THAT THEY MUST DECIDE THIS CASE, WHEN, IN FACT, ACCORDING TO THE LEGISLATION, THEY NEED NOT.

ON THE ISSUE OF RETRIAL, IF YOU HAVE A MAJORITY WHO DECIDES THAT YOU CAN'T GET AN UNANIMOUS VOTE, BUT YOU HAVE A MAJORITY WHO ARE IN FAVOR OF COMMITMENT, HOW FAR DOES THAT GO?

I AM NOT SURE --

I AM SAYING IF, ON THE SECOND -- ON THE SECOND FILE, YOU HAVE THE SAME KIND OF VOTE, WHAT HAPPENS?

PERHAPS ONE OF MY COLLEAGUES HERE CAN ADDRESS THAT. I DON'T THINK THERE IS ANYTHING IN THE LAW ABOUT THAT, BUT I COULD BE CORRECTED ON THAT. IT IS A DISTURBING QUESTION, IN A WAY, ISN'T IT, BECAUSE SOMEBODY COULD GO ON IN CUSTODY FOR A LONG TIME LIKE THAT, BUT I DON'T THINK THE LAW, PERHAPS WE WILL HEAR A CONTRARY PRESENTATION ON THAT. I AM NOT ABSOLUTELY SURE, BUT I DON'T THINK IT IS ADDRESSED.

SO WHAT HAPPENS, IF IT IS NOT UNANIMOUS, AND IT IS -- BUT IT IS MORE A VOTE THAT THE PERSON IS NOT, THEN WHAT IS THE CONSEQUENCE OF THAT?

IF IT IS THREE OR MORE, THE PERSON IS NOT. THE CONSEQUENCE OF THAT IS THE PERSON IS NOT COMMITTED, AND THE PERSON CANNOT BE RETRIED, AND THE WAY THE LEGISLATION IS SET UP, THAT IS EXACTLY LIKE, EXACTLY LIKE THE UNANIMOUS VERDICT NOT TO COMMIT. SO OUR POINT, AND THIS WAS A DEBATE WE HAD IN THE COMMITTEE, NOT TO INCLUDE THESE OPTIONS IN THE JURY INSTRUCTIONS WOULD BE TO LEAD JURORS TO BELIEVE THAT THE ONLY POSSIBILITIES WERE YERP, AND THAT IS SIMP-- WERE YES OR NO, AND THAT IS SIMPLY NOT CORRECT, SO THAT IS WHY WE PUT THAT IN THERE. IF THERE ARE NO QUESTIONS ON THAT, I WOULD LIKE --

BEFORE YOU SIT DOWN, LET ME RETURN TO THE ISSUE, WITH REFERENCE TO THE TITLE, THE PREDATOR. SEXUAL PREDATOR. WE, OFTENTIMES, HAVE GREAT DIFFICULTY, ESPECIALLY IN THE DEATH PENALTY CASES, WITH REFERENCE TO THE ARGUMENTS OF COUNSEL AND THE RHETORIC THAT IS USED. MY CONCERN HERE IS WHETHER OR NOT USING THIS TERM OFFICIALLY, TO BEGIN WITH, IS GOING TO GIVE RISE TO ABUSE, THEN. THAT IS THAT, IN ALL CRIMINAL CASES, OF COURSE, WE ARE TALKING ABOUT ILLEGAL, UNLAWFUL CONDUCT. IT IS VERY EASY, THEN, TO LET THE RHETORIC GO TO THE EXTREMES. WE ARE TALKING ABOUT THIS IS REALLY A BAD PERSON. AND THAT WE END UP BEING CONCERNED WHETHER SOMEBODY ENDED UP BEING CONVICTED OR NOT, BECAUSE OF THE RHETORIC THAT THEY ARE A BAD PERSON, AS OPPOSED TO THE FINDINGS IN THE PARTICULAR CASE, SO DID THE COMMITTEE DISCUSS THIS? THAT IS THE POTENTIAL FOR ABUSE OF, ONCE YOU HAVE OFFICIALLY INTRODUCED A TERM LIKE THAT BEFORE THE JURY?

I DON'T BELIEVE THAT THE COMMITTEE DID. MY RESPONSE TO YOU, THOUGH, WOULD BE THAT CERTAINLY IS A POINT THAT WE SHOULD EXERCISE GREAT CAUTION ABOUT, AND I WOULD HOPE

THAT IT WOULD BE HANDLED PROPERLY BY TRIAL JUDGES, WHO HAVE MAINTAINED SOME DECORUM IN THESE PROCEEDINGS AND NOT ALLOW THAT TO BE USED AS THE PROSECUTOR REFERRING TO THIS MAN EVERY FIVE SECONDS AS A SEXUALLY VIOLENT PREDATOR. I SEE YOUR POINT, AND I THINK SOMETHING PROBABLY OUGHT TO BE SAID OR DONE ABOUT THAT, WHETHER IT IS IN THE JURY INSTRUCTION OR WHETHER WE SIMPLY TRY TO ENCOURAGE TRIAL JUDGES TO MAKE SURE THAT THESE DO NOT GET CARRIED AWAY WITH CHARACTER ASSASSINATIONS.

MAY IT PLEASE THE COURT. JOHN SKYE FROM THE PUBLIC DEFENDER'S OFFICE IN TAMPA. AS JUDGE PADOVANO INDICATE ADD FEW MINUTES AGO, I AM HERE TO ADDRESS THE APPROPRIATE OF AND SUPPORT THE IDEA OF THE INCLUSION OF THE INSTRUCTION ON CLEAR AND CONVINCING EVIDENCE IN THE PROPOSED INSTRUCTIONS, AND TO, PERHAPS, RESPOND TO SOME OF THE COMMENTS FROM THE PROSECUTORS AS TO WHY THEY THINK IT IS AN INAPPROPRIATE INSTRUCTION. THE FIRST THING I WOULD SAY TO THE COURT IS THAT THE REASON THAT I BELIEVE IT IS A CORRECT INSTRUCTION IS BECAUSE, SIMPLY, IT IS A CORRECT AND ACCURATE STATEMENT OF FLORIDA LAW. IT IS EXACTLY THE SAME AS THE DEFINITION OF CLEAR AND CONVINCING EVIDENCE, WHICH THIS COURT APPROVED FOR PUBLICATION IN OCTOBER OF 1998, WITH RESPECT TO THE DEFINITION OF CLEAR AND CONVINCING EVIDENCE IN CIVIL THEFT CASES. IT IS REALLY, AND NOT WORD FOR WORD, BUT IT IS, I THINK, A FAIRLY ACCURATE DISTILLATION OF THIS COURT'S DEFINITION OF CLEAR AND CONVINCING EVIDENCE, OF IN THE CASE OF IN RE DAVEY, A CASE DECIDED IN 1994, DEALING WITH JUDICIAL REPRIMAND AND REMOVAL. THE COURT RECOGNIZED THAT THE CLEAR AND CONVINCING EVIDENCE STANDARD WAS AN INTERMEDIATE STANDARD, HIGHER THAN THE PREPONDERANCE, NOT AS HIGH AS BEYOND A REASONABLE DOUBT, ENUNCIATED THE DEFINITION, WHICH, AS I SAY, IS ESSENTIALLY DISTILLED IN THE PROPOSED STANDARD JURY INSTRUCTION, AND SO, BECAUSE IT IS, IN FACT, A ACCURATE STATEMENT OF FLORIDA LAW EXPRESSLY FORMULATED IN THE DAVEY CASE, AS AN INTERMEDIATE LEVEL OF PROOF, I THINK IT IS ENTIRELY APPROPRIATE.

BUT YOUR POINT WOULD BE, WHATEVER WE ARE GOING TO DO, IF IT IS CLEAR AND CONVINCING EVIDENCE, GOT TO USE THE SAME JURY INSTRUCTION FOR ANY PLACE WHERE IT IS USED.

PRECISELY. MY NEXT POINT WAS GOING TO BE THAT I THINK, IN SUGGESTING, AS THEY HAVE, RESPONSES, THAT THERE SHOULD BE SOME OTHER DEFINITION OF CLEAR AND CONVINCING DEFINITION FOR, I GUESS, JIMMY RYCE CASES. THEY IGNORE THE NUMBER OF CLEAR AND CONVINCING EVIDENCE IS THE STANDARD. IN PREPARING TO COME HERE A COUPLE OF NIGHTS AGO, I WENT TO MY COMPUTER AND TYPED "CLEAR AND CONVINCING EVIDENCE" AND CAME UP WITH EXACTLY 100 HITS IN WHICH CLEAR AND CONVINCING EVIDENCE IS THE STANDARD. PROOF LITIGANT JUDGES, IN HUNDREDS OF TYPES OF PROCEEDINGS, ARE GOING TO BE LOOKING TO THIS COURT FOR GUIDANCE AS TO WHAT THE DEFINITION FOR CLEAR AND CONVINCING EVIDENCE IS. WHEN THEY DO THAT, THEY ARE GOING TO LOOK AT DAVEY AND PRESUMABLY LOOK AT THE PRESENT INSTRUCTION IN CIVIL THEFT FOR DIED ANSWER, AND SO IN AN ATTEMPT TO CARVE OUT SOME KIND OF DIFFERENT, HOWEVER YOU WANT TO DESCRIBE IT, DIFFERENT, WATERED DOWN DEFINITION OF CLEAR AND CONVINCING IN JIMMY RYCE CASES, I WOULD SAY TO YOU, RAISES UNNECESSARY CONSTITUTIONAL QUESTIONS CONCERNING EQUAL PROTECTION. WHY, IN THE WORLD, SHOULD WE DEFINE CLEAR AND CONVINCING EVIDENCE DIFFERENTLY IN JIMMY RYCE CASES THAN ANY OTHER CASE, OR IS THE SUGGESTION THAT WE SHOULD THERE FOR CHANGE THE ENTIRE LAW OF FLORIDA.

CAN YOU TELL US, PERHAPS, JUST ANECDOTALLY HOW MANY OF THESE CASES HAVE BEEN FILED?

FILED? PETITIONED, JUSTICE WELLS? I THINK, I SHOULD HAVE CHECKED THAT BEFORE I CAME, SOMEWHERE BETWEEN 150 AND 200, PROBABLY.

AND DO YOU KNOW WHETHER THERE -- SOME OF THESE ISSUES THAT HAVE BEEN RAISED HERE HAVE BEEN IN THE DISTRICT COURTS FOR A PERIOD OF TIME?

NO, SIR. THERE IS ONLY THREE APPELLATE DECISIONS THAT I AM AWARE OF, AS OF AT LEAST LAST WEEK, THERE ARE ONLY THREE APPELLATE DECISIONS THAT HAVE COME OUT OF THE FOURTH DISTRICT COURT OF APPEAL, BECAUSE OF THE CASES HAVE BEEN HABEAS CORPUS AND ALL OF THESE MEN ARE BEING HELD DOWN IN MARTIN COUNTY. NONE THAT I CAN RECALL HAVE ADDRESSED ANY JURY INSTRUCTION TYPE ISSUES OR ANYTHING WE HAVE TALKED ABOUT SO FAR TODAY.

HAVE ANY OF THEM ADDRESSED THE CONSTITUTIONALITY OF THE STATUTE?

NOT DIRECTLY, MA'AM. ONE DEALT WITH THE REQUIREMENT WHETHER OR NOT IT WAS CONSTITUTIONALLY REQUIRED TO HAVE AN ADVERSARY PRELIMINARY HEARING. ANOTHER DEALT MARGINALLY WITH WHETHER OR NOT THE 30-DAY TRIAL PERIOD WAS JURISDICTIONAL OR NOT. ANOTHER ONE DEALT WITH WHETHER OR NOT THE STATUTE REQUIRED TWO PSYCHOLOGISTS OR THE ENTIRE MEN OF THE MULTIDISCIPLINARY TEAM TO -- THE ENTIRE MEMBER OF THE MULTIDISCIPLINARY TEAM TO JOIN IN WITH THEM, BUT NONE DEALT WITH THE CONSTITUTIONALITY OF THE STATUTE OR A SEGMENT OF IT, PER SE.

I AM SIMPLY OCCURIOUS. -- I AM SIMPLY CURIOUS. SINCE THIS IS CIVIL, WHY IS THIS BEING HANDLED BY THE CRIMINAL RULES COMMITTEE? I AM JUST CURIOUS.

I UNDERSTAND, JUSTICE SHAW, AND I ACTUALLY HAD ASKED JUDGE PADOVANO THAT JUST THIS MORNING. MY BOSS, EMPLOYER, JULIE HOLT, IS ON THE CRIMINAL JURY INSTRUCTION COMMITTEE, AND I JUST WILL TELL YOU, IF I MAY, AS JUSTICE WELLS INVITED ANECDOTALLY, THAT I KNOW THAT, WHEN SHE SAW THE INVOLUNTARY COMMITMENT OF SEXUALLY VIOLENT PREDATORS ACT, THE JIMMY RYCE ACT COMING, A YEAR AGO IN JANUARY, SHE WAS SIMPLY VERY CONCERNED AND KNEW THAT THE PUBLIC DEFENDER'S OFFICE COULDN'T BE HANDLING THESE CASES. SHE WAS QUITE CONCERNED THAT IT GET DONE, SOMEBODY DO IT, AND SO, AS A MEMBER OF JUDGE PAD ON. VANO'S COMMITTEE, IT IS MY UNDERSTANDING THAT SHE SIMPLY PREVAILED ON HIM AND HIS COMMITTEE TO, WE NEED TO DO IT, BECAUSE THIS IS AN IMPORTANT ISSUE. IT IS COMING. WE ARE GOING TO HAVE TO DEAL WITH IT, AND THAT IS MY UNDERSTANDING OF WHY THE CRIMINAL JUSTICE COMMITTEE DID IT.

ARE THEY BEING TRIED BY CRIMINAL JUDGES?

IN SOME CASES, JUDGE, JUSTICE PARIENTE, THEY ARE. EACH CIRCUIT HAS, IN FACT, MY UNDERSTANDING, IS THAT EACH CIRCUIT IS DOING IT SOMEWHAT DIFFERENTLY. IN HILLSBOROUGH COUNTY, THEY HAVE BEEN ASSIGNED TO A COUPLE OF STRICTLY CIVIL JUDGES, AND OTHER CASES HAVE BEEN ASSIGNED TO JUDGES WHO OTHERWISE DO NOTHING BUT CRIMINAL. AS OF THE FIRST OF THE YEAR, THEY HAVE OL ALL BEEN CONSOLIDATED TO A JUDGE THAT HAS DONE NOTHING BUT CRIMINAL FOR THE LAST SEVERAL YEARS AND IS OTHERWISE DOING NOTHING BUT CRIMINAL.

SO THE PUBLIC DEFENDER'S OFFICE IS STATUTORILY AUTHORIZED TO REPRESENT THOSE?

YES. IT WAS AMENDED TO INCLUDE US, TO INCLUDE THESE AS PART OF OUR CLIENTS. I SEE THAT I AM RUNNING SHORT HERE. LET ME JUST SAY A COUPLE OF OTHER THINGS. I THINK THAT I HAVE SAID BASICALLY WHAT I WANTED TO SAY. I THINK WE CAN'T CARVE OUT AN EXCEPTION IN THE DEFINITION OF CLEAR AND CONVINCING IN JIMMY RYCE CASES. I THINK THAT SOME OF THE OTHER CONCERNS RAISED BY THE PROSECUTORS, THAT THE ISSUES IN JIMMY RYCE CASES AREN'T THE KIND OF ISSUES THAT CAN BE RESOLVED PRECISELY. I WOULD SAY TO THAT, THEY ARE EXACTLY THE SAME SORT OF ISSUES AS IN OTHER CASES IN WHICH CLEAR AND CONVINCING IS THE STANDARD AND THERE IS NO PROBLEM. THE BAKER ACT IS A PERFECT EXAMPLE, INVOLUNTARY COMMITMENT OF PEOPLE FOR MENTAL DISORDERS, ABNORMALITIES, CLEAR AND CONVINCING IS THE MEASURE. THERE IS NO PROBLEM DEALING WITH STANDARDS UNDER THOSE

MEASURES, AND I WOULD ALSO SAY TO YOU THAT MANY OF THE SAME NAUGHTY, DIFFICULT TYPE OF ISSUES ARE WELL DEALT WITH WITHIN THE CRIMINAL JUSTICE SYSTEM, ISSUES EVER INSANITY, ISSUES OF REASONABLENESS, WITH RESPECT TO SELF-DEFENSE, ISSUES OF INTOXICATION, AT LEAST BEFORE THIS YEAR, ALL OF CAPABLE IF NOT PRECISE PROOF BUT NEVERTHELESS DEALT WITH IN THE CRIMINAL SYSTEM, WHERE PROOF IS BEYOND A REASONABLE DOUBT, SO I DON'T THINK THAT IS A REASONABLE CONSIDERATION, AND I SEE MY TIME IS UP, SO THANK YOU VERY MUCH.

THANK YOU. MR. MORRISON, YOU ARE GOING TO SPEAK FIRST?

YES, SIR. MAY IT PLEASE THE COURT. I AM JOHN MORRISON. ON BEHALF OF SEXUALLY VIOLENT PREDATORS WHO HAVE BEEN CONVICTED OF SEXUALLY VIOLENT OFFENSES, THAT IS THE FIRST THING THE JURY WILL HEAR ABOUT MY CLIENTS. THIS MORNING, I HAVE AGREED TO TAKE SIX MINUTES, MR. TRETTIS WILL TAKE SEVEN MINUTES, AND MR. JACOBS WILL TAKE SEVEN MINUTES OF THE RESPONSE.

YOU ARE GOING TO HAVE TO MANAGE YOUR OWN TIME.

I UNDERSTAND THAT, YOUR HONOR. I WAS JUST TRYING TO LET THE COURT KNOW ROUGHLY WHAT WE HAVE AGREED TO, SO THAT EVERYONE IS ON THE SAME PAGE. THE CURRENT JURY INSTRUCTIONS, AS PROPOSED IN VERDICT. IF MY COUNT IS CORRECT, USE THE TERM SEXUALLY VIOLENT PREDATOR AND SEXUALLY VIOLENT OFFENSE 16 TIMES. THAT IS A LOT OF PREJUDICE. THESE STATEMENTS ARE HIGHLY PREJUDICIAL, HIGHLY INFLAMMATORY, AS JUSTICE PARIENTE WAS ALLUDING TO EARLIER, AND THERE IS NO REASON FOR THEM. FIRST, THEY ARE MISLEADING. YOU MIGHT THINK, FROM THIS TERM, THAT THIS INVOLVES PHYSICAL VIOLENCE. THE STATUTE IS MUCH BROADER THAN THAT. IT INCLUDES PHYSICAL VIOLENCE BUT ALSO SIMPLY INAPPROPRIATE SEX, FOR AGE, INAPPROPRIATE SEX. YOU MAY THINK THAT SEX HAD TO BE THE DOMINANT MOTIVATION FOR THESE CRIMES. IT DOES NOT. ANY PART OF THE MOTIVATION THAT WAS AT ALL SEXUAL COUNTS. YOU MAY THINK THAT, FROM A PREDATOR, THAT THE PREDATOR WOULD HAVE HAD MULTIPLE VICTIMS. IT IS NOT A REQUIREMENT -- IT IS A REQUIREMENT IN KANSAS, WHERE WE GOT THIS TERM FROM, BUT IT IS NOT A REQUIREMENT HERE.

HAVE YOU TRIED ANY OF THOSE CASES?

YOUR HONOR, THERE HAVE NOT BEEN ANY CASES GO TO TRIAL, SO MY ANSWER TO THE QUESTION IS NO. THERE HAVE ONLY BEEN ABOUT SIX CASES STATEWIDE, I BELIEVE.

DO YOU HAVE ANY, THEN, ANECDOTAL INFORMATION THAT YOU COULD GIVE TO US, AS TO WHAT HAS BEEN DONE IN THE CASES THAT HAVE BEEN TRIED, AND WHAT -- THIS ISSUE IS BEFORE THE DISTRICT COURT?

THIS ISSUE IS NOT BEFORE A DISTRICT COURT THAT I KNOW OF, ALTHOUGH I COULD BE INCORRECT ABOUT THAT. OF THE SIX CASES, THE FIRST THREE WERE COMMITTALS. I BELIEVE THE WORD "SEXUALLY VIOLENT PREDATOR" WAS USED IN ALL OF THOSE. THE FOURTH CASE WAS A DECISION BY THE JURY NOT TO COMMIT. THE FIFTH CASE WAS, ALSO, A DECISION, A 6-0 DECISION BY THE JURY NOT TO COMMIT. IN THAT CASE THE JUDGE STRUCK THE SEXUALLY VIOLENT PREDATOR AND REFERRED TO IT AS SEXUALLY VIOLENT OFFENDERS, I THINK, CUTTING OUT AT LEAST PART OF IT. THE LAST ONE, THE JUDGE WOULD HAVE NOTHING OF THIS ARGUMENT AND REFERRED TO THEM AS SEXUAL SEXUALLY VIOLENT PREDATORS. THE JURY HUNG FOR TWO AND THERE WILL BE A RETRIAL. THAT IS, TO THE BEST OF MY KNOWLEDGE, WHAT HAS BEEN GOING ON.

IS IT YOUR POSITION THAT THE TERM THAT SHOULDN'T BE USED AT ALL?

YES, YOUR HONOR.

BECAUSE IT IS MISLEADING, EVEN THOUGH YOU AGREE WITH JUDGE PADOVANO THAT IT IS A STATUS THAT THE JURY IS DETERMINING.

YOUR HONOR, WHAT I WOULD AGREE WITH JUDGE PADOVANO HERE IS THAT THE QUESTION IS STATUS, BUT THE QUESTION OF STATUS IS COMMITMENT. SHOULD THIS PERSON BE COMMITED TO A MENTAL INSTITUTION? THAT DOES NOT REQUIRE THE USE OF THIS INFLAMMATORY TERM.

SO THE QUESTION IS SHOULD THE PERSON BE COMMITTED, BASED UPON THE APPLICABLE CRITERIA?

BASED ON THE APPLICABLE CRITERIA, AND THAT IS EXACTLY THE NEUTRAL WAY I THINK IT SHOULD BE PHRASED. THIS IS AN UNFORTUNATE SPECIES OF LEGISLATION WHICH, FORTUNATELY DOESN'T HAPPEN VERY OFTEN, BUT I CALL IT PRESS CONFERENCE LEGISLATION, WHERE THE TERMS ARE USED TO CUT THROUGH THE CLUTTER OF THE EVENING NEWS AND GET VERY INFLAMMATORY TERMS OUT THERE. THAT MAY BE VERY APPROPRIATE IN POLITICS, BUT IT IS HIGHLY INAPPROPRIATE IN A COURTROOM, AS JUSTICE ANSTEAD'S COMMENTS EARLIER. IF A PROSECUTOR WAS TO STAND UP, IN OPENING OR CLOSING, AND REFER TO MY CLIENT AS A SEXUAL SEXUALLY VIOLENT PREDATOR, I WOULD BE ON MY FEET OBJECTING INSTANTLY. IT IS JUST NOT FAIR TO DO TO SOMEONE. LABELS HAVE POWER, AND WITH ALL DUE RESPECT TO JUDGE PAD ON OVANO, I UNDERSTAND THAT, IF THE LABEL IS SO OVERBLOWN THAT IT DOESN'T MEAN THAT THAT COULD HAVE, IN SOME SMALL FRACTION OF CASES, THAT MIGHT BE SLIGHTLY ADD VAIN TABLE US TO THE -- ADD VAN STAGE US TO THE DEFENDANT -- ADVANTAGEOUS TO THE DEFENDANT, BUT I WOULD SUGGEST A LEVEL PLAYING FIELD AND NOT CUT THROUGH IT. FRANKLY IF SOMEONE WAS TO REFER TO MY CLIENT AS A VICIOUS BASTARD, EVEN IF I HAD THE MARRIAGE CERTIFICATE OF MY CLIENT'S PARENTS IN MY POCKET, I WOULD OB. JUST FACT THAT I CAN'T PROVE THAT HE IS NOT THAT DOESN'T MATTER. THE LABEL HAS POWER, AND THAT IS SIMPLY IT. THE SECOND POINT I WILL COVER VERY BRIEFLY. THIS STATUTE ADOPTED THE DEFINITION OF MENTAL ABNORMALITY FROM KANSAS. THAT, OF COURSE, STATUTE WAS REVIEWED BY THE U.S. SUPREME COURT. IN DOING SOS, JUSTICE THOMAS PUT A VERY SERIOUS GLOSS ON WHAT THAT MEANT: FIVE TIMES HE REFERRED TO UNABLE TO CONTROL THEIR BEHAVIOR, SUFFERED FROM AN IMPAIRMENT RENDERING THEM DANGEROUS BEYOND THEIR CONTROL, DIFFICULT, IF NOT IMPOSSIBLE, FOR A PERSON TO CONTROL DANGEROUS BEHAVIOR, UNABLE TO CONTROL THEIR DANGEROUSNESS AND ADMITTED LACK OF VOLITIONAL CONTROL. THE REASON FOR THIS IS QUITE SIMPLE, AND JUSTICE THOMAS REFERRED THAT USUALLY WE DETER PEOPLE IN A CRIMINAL DEMOCRACY, WE DO THINGS AFTER THE FACT, AS IN THE FIRST AMENDMENT, WITH PRIOR RESTRAINT. THE ONLY TIME THAT DOESN'T WORK IS WHEN SOMEONE IS UNABLE TO CONTROL THEIR BEHAVIOR. THAT IS THE GLOSS THE UNITED STATES SUPREME COURT PUT ON THIS. UNFORTUNATELY, THE DEFINITION, AS IS, DID NOT PICK UP THAT JUDICIAL GLOSS. IT SIMPLY SAYS THAT A PERSON HAS A PREDISPOSITION. PREDISPOSITION IS SIMPLY AN INCLINATION OR A, MIGHT BE SUSCEPTIBLE TO, AS I BELIEVE HOW WEB SISTERS, IN THE -- WEBSTER'S, IN THE AMERICAN HERITAGE DICTIONARY, DEFINED IT. THERE IS A JUDICIAL GLOSS ON THIS LANGUAGE, AND THAT JUDICIAL GLOSS SHOULD BE PICKED UP.

LET ME ASK YOU A QUESTION. WE ARE HERE, OF COURSE, ON JURY INSTRUCTIONS, RATHER THAN THE CONSTRUCTION OF THE STATUTE AS BEING, MAKING IT CONSTITUTIONAL OR A CONSTITUTIONAL CHALLENGE. ISN'T THERE A DANGER, IF WE START TO VARY TERMS THAT ARE USED IN THE STATUTE AND IN IN ACCORDANCE -- AND IN ACCORDANCE WITH WHAT WE MIGHT PERCEIVE MIGHT BE THE CONSTITUTIONAL MANNER, THAT WE ARE REALLY MAKING DECISIONS ABOUT THE SUBSTANCE OF THE STATUTE?

I UNDERSTAND THAT CONCERN. I WOULD ONLY SAY THAT, BECAUSE THE SUPREME COURT HAS PUT THAT JUDICIAL GLOSS ON AND THE LEGISLATURE IS PRESUMED TO DON'T JUDICIAL GLOSSES THAT ARE PUT ON STATUTES WHEN THEY DON'T THEM. I THINK IT WOULD BE A FAIR COMMENT AT

THIS POINT. IT IS DEFINITELY SOMETHING THIS COURT WOULD HAVE TO DEAL WITH AT THIS POINT IN TIME. I THINK IT WOULD BE APPROPRIATE NOW. I UNDERSTAND YOUR HONOR'S POINT. I AM RUNNING OUT OF MY TIME, AND SO I WOULD YIELD TO MR. TRETTIS.

THANK YOU.

MAY IT PLEASE THE COURT. GOOD MORNING, YOUR HONOR. MY NAME IS BLAISE TRETTIS. I WOULD LIKE TO FOCUS MY COMMENTS IN THE VERDICT. AND SUBMITTING THE CASE TO THE JURY. THE SUBMISSION BY THE COMMITTEE TELLS THE JURY JUST WHAT WILL HAPPEN TO THE RESPONDENT, WITH THEIR VOTE. IT TELLS THEM THAT THERE WILL BE A COMMITMENT. IF IT IS UNANIMOUS, IT TELLS THEM THERE COULD BE A RETRIAL. IF IT IS A MAJORITY, IT DOESN'T REALLY TELL THEM WHAT WILL HAPPEN, IF IT IS A VOTE OF 4-2 AGAINST COMMITMENT OR SOMETHING LIKE THAT. I SUBMIT THAT THERE SHOULD SIMPLY --

YOU SAY IT DOESN'T, BUT IT DOES. IT TELLS THEM THAT, IF THREE OR MORE JURORS DETERMINE THAT THE RESPONDENT IS NOT THIS --

THAT'S CORRECT, YOUR HONOR. YOU ARE RIGHT. I SUBMIT THAT --

ISN'T THAT -- I WAS, FIRST, AS I WAS READING THIS, I WAS TRYING TO BE PERSUADED THIS WAS WRONG TO INSTRUCT. ON THE OTHER HAND, ISN'T THIS VERY DIFFERENT THAN A CRIMINAL CASE, BECAUSE THERE IS LEGAL SIGNIFICANCE TO DIFFERENT VERDICTS, THAT IT DOESN'T HAVE TO BE UNANIMOUS. THERE IS DIFFERENT CONSEQUENCES, AND HOW DO YOU GET AROUND THAT, AS FAR AS WHAT THE JURY IS SUPPOSED TO DO? YOU CERTAINLY CAN'T GO AND GIVE THEM AN ALLEN CHARGE, IF THEY SAY WE DIDN'T REACH AN UNANIMOUS VERDICT, BECAUSE THEY DON'T HAVE TO.

MY PROPOSAL, YOUR HONOR, IS I HAVE MADE IT IN MY COMMENTS, WHICH IS THAT THE JURY BE POLLED. THEY SIMPLY VOTE YES OR NO, WHETHER THE STATE HAS PROVEN THEIR CASE, AND IF THEIR VOTE IS 6-0 FOR COMMITMENT, THEN THE PERSON WILL BE COMMITTED. IN EVERY CASE, THEY WILL SIMPLY BE POLLED, AND THAT IS THE APPROPRIATE THING TO DO, BECAUSE AS THIS COURT DECLARED, IN THE EARLY 1980s, IT IS IMPROPER AND IMMATERIAL FOR A JURY TO REALLY BE CONCERNED WITH THE CONSEQUENCES OF THEIR VOTE. IN CRIMINAL CASES --

I AM NOT SURE I UNDERSTAND ABOUT THE POLLING. TRADITIONALLY JURORS GO BACK IN THE JURY ROOM, AND THEY DISCUSS THE CASE. AND THEY, REALLY, SHAPE THEIR OWN WAY. -- OF VOTING, BEFORE THEY COME TO A NET CONCLUSION AND RETURN TO THE COURT. ARE YOU SUGGESTING THAT WE CHANGE THAT PROCEDURE HERE, AND THAT WE SAY YOU DON'T GO BACK AND DISCUSS IT? YOU JUST GO BACK AND VOTE INDIVIDUALLY, AND THAT IS THE END OF THE THING. IS THAT WHAT YOU ARE --

THIS WOULD BE ANALOGOUS TO --

NS MY QUESTION FIRST. IS THAT -- ANSWER MY QUESTION FIRST. IS THAT WHAT YOU ARE SUGGESTING?

NOT QUITE. IN MY PROPOSAL, THE INSTRUCTION WOULD TELL THE JURY THAT, UNLIKE OTHER CIVIL AND CRIMINAL CASES, YOUR VERDICT DOES NOT HAVE TO BE UNANIMOUS. HOWEVER, THAT YOU SHOULD NOT TAKE THIS AS AN INDICATION THAT YOUR DECISION IS TO BE DONE LIGHTLY. YOU SHOULD CONSIDER OTHER PEOPLE'S POINT OF VIEW. THE INSTRUCTION THAT I, MY COMMENT, IS PATTERNED AFTER, IS THE DEATH PENALTY RECOMMENDATION INSTRUCTION IN DEATH PENALTY CASES. THAT IS THE ONLY OTHER JURY VERDICT I AM AWARE OF, IN THE LAW, THAT IS A LAWFULLY VERDICT, EVEN THOUGH IT IS NOT UNANIMOUS, AND THAT IS THE TYPE OF INSTRUCTION THAT A JURY IS BEGIN AN IN -- IS GIVEN IN A DEATH PENALTY CASE, NOT PATTERNED AFTER THE INSTRUCTION. I BELIEVE THAT IS THE RIGHT THING TO DO, BECAUSE THE

STATE'S COMMENT THAT THIS IS GOING TO RESULT IN A LOT OF RETRIALS BECAUSE THEY ARE NOT UNANIMOUS. THIS IS WHAT THE LEGISLATURE HAS DRAFTED, A VERDICT THAT DOESN'T HAVE TO BE UNANIMOUS. IT IS A LAWFULLY VERDICT, EVEN THOUGH IT IS NOT UNANIMOUS, SO THAT IS THE WAY IT SHOULD READ.

WHAT WOULD BE WRONG WITH INSTRUCTING THE JURY THAT, IN ORDER TO COMMIT, THAT YOUR VERDICT HAS TO BE UNANIMOUS, AND ONLY IF THE JURY COMES BACK SAYING THAT THEY CANNOT REACH AN UNANIMOUS VERDICT. WOULD YOU POLL THE JURY, AND THEN YOU CAN DETERMINE WHETHER OR NOT THERE IS A POSSIBILITY OF RETRIAL OR THE PERSON IS NOT COMMITTED.

WELL, I THINK THE PROBLEM WITH THAT IS YOU WOULD GO BACK TO THE JURY ROOM WITH A VERDICT THAT HAS ONE LINE: UNANIMOUS. OR WE HAVE TO GO AND SPEAK TO THE JUDGE. THAT IS THE FIRST PROBLEM I SEE WITH IT. AND THE SECOND PROBLEM WITH IT IS THAT IT INJECTS INTO THE JURY DELIBERATION THE ISSUE OF WHAT ARE WE GOING TO DO WITH THIS PERSON, INSTEAD OF HAS THE STATE PROVEN THE ELEMENTS THAT THEY HAVE TO PROVE? AND THAT IS EXACTLY WHY THIS COURT ELIMINATED THE MINIMUM MAXIMUM PENALTIES IN THE EARLY 1980, BECAUSE IT WAS DECLARED THAT IS IMMATERIAL AND IRRELEVANT AND ONLY DETRACTS THE JURY FROM THEIR OBLIGATION TO DETERMINE WHETHER THE STATE HAS PROVEN THEIR CASE.

SO UNDER YOUR PROPOSAL, YOU WOULD NOT TELL THE JURY ANYTHING. YOU WOULD SIMPLY POLL THEM AT WHAT POINT?

THE -- MY COMMENT HAS A VERDICT, A PROPOSED VERDICT. AND THEY WOULD SIMPLY CHECK OFF YES OR NO TO AN ANSWER HAS THE STATE PROVEN THAT HE HAS A PREDICATE CONVICTION AND AN ABNORMALITY OR DEFECT THAT ALLOWS HIM TO COMMIT THESE ACTS.

AT WHAT POINT WOULD YOU DECIDE THAT IT IS GOING TO GET FIXED? IN OTHER WORDS THAT THE VOTE IS THEN --

THEY WOULD MAKE THEIR VOTE ON THE VERDICT. EACH JUROR WOULD VOTE, SO THEY WOULD COME BACK INTO THE COURTROOM WITH A 3-3 TIE OR A 6-4 COMMITMENT OR AGAINST COMMITMENT, AND THIS WAS DONE IN WEST PALM BEACH, IN A CASE THAT WAS A VERDICT FOR THE RESPONDENT, AND IT WAS 6-0 FOR THE RESPONDENT, AND FIRST OF ALL, THE JUDGE FIRST WANTED THE JURY TO GO BACK WITH A POLL THAT I HAVE PROPOSED OR JUST LIKE I PROPOSED, AND THEN THE COURT FINALLY GAVE THEM, INSTEAD, TO KEEP SOME ANONYMITY TO THE JURY VERDICT, LIKE IN A DEATH PENALTY CASE, THIS MANY VOTE FOR COMMITMENT AND THIS MANY VOTE FOR NOT COMMITMENT, AND THAT IS WHAT RESULTED IN THAT TRIAL. I ONLY HAVE A COUPLE MOVE MINUTES, YOUR HONOR.

-- A COUPLE MORE MINUTES, YOUR HONOR.

HAS THAT BEEN DONE IN THE CASES THAT WERE TRIED?

I MY UNDERSTANDING -- MY UNDERSTANDING IS THAT THAT HAS NOT BEEN DONE IN THOSE CASES WITH COMMITMENT. I HAVE HEARD, WORD OF MOUTH, THAT IT WAS THAT SAME TYPE PROCEDURE WHERE COMMITMENT WAS USED. IT WAS NOT THIS PROPOSAL. IT WAS THE PROPOSAL OF THE JURY PROPERLYING. ONE FINAL COMMENT IS THE STATE SUGGESTS THIS IS NOT FINALITY. IF THE JURY WERE POLLED, FIVE OUT OF SEVEN OPTIONS WILL RESULT IN A FINAL VERDICT. THERE IS ONLY SEVEN POSSIBILITIES, SEVEN OPTIONS THAT THE JURY CAN RETURN, AND FIVE OF THEM OF -- FIVE OF THEM WILL RESULT IN A FINAL VERDICT. IT HAS BEEN SUGGESTED THAT THE LEGISLATURE AMEND 394.17, TO READ THAT THE JUDGE IS SUPPOSED TO SEND THEM BACK TO SEE IF IT IS UNANIMOUS, AND IF IS NOT DECLARE A MISTRIAL AND POLL THE JURY. THAT DOESN'T MAKE ANY SINCE, BECAUSE ONCE THE JUDGE DECLARES A MISTRIAL, IT IS OVER. THE JUDGE CAN'T LAWFULLYLY POLL THE JURY. SO THE STATUTE DOESN'T MAKE ANY SENSE. I SEE I AM OUT

OF TIME. IF THERE ARE NO FURTHER QUESTIONS, I WOULD CONCLUDE. THANK YOU.

THANK YOU.

GOOD MORNING. I AM ARTHUR JACOBS, ALSO KNOWN AS BUDDY TO SOME FOLKS, GENERAL COUNSEL FOR THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION. I WANT THE COURT TO UNDERSTAND THAT, BECAUSE I AM SEATED OVER HERE, I DON'T NECESSARILY AGREE WITH THESE PEOPLE. I AGREE WITH THESE FOLKS ON EVERYTHING, I THINK, EXCEPT TWO ISSUES THAT WE WOULD LIKE TO RAISE WITH YOU THIS MORNING. JUST BECAUSE OF MY PLACEMENT, I ALMOST HAD TO HAVE TWO CHAIRS AND RUN BACK AND FORTH, BUT I AM HERE TO TALK ABOUT TWO THINGS THAT WE HAVE, SOME HEARTBURN ABOUT, ABOUT THE WORK OF THIS COMMITTEE. THE STATUTE VERY CLEARLY SAYS, IF THE JURY IS UNABLE TO REACH UNANIMOUS VERDICT, THE COURT MUST DECLARE A MISTRIAL AND POLL THE JURY. IF A MAJORITY OF THE JURY WOULD FIND THE PERSON AS SEXUALLY VIOLENT PREDATOR, THE STATE MAY RETRIAL FOOIL A PETITION AND PROCEED -- MY FILE A PETITION AND PROCEED. IF WE ELECT TO GO FORWARD, WHAT WOULD WE DO, AS JURORS, IF WE WERE SEAT THERE HAD AND WE HAVE AN ALTERNATIVE TO GET OUT OF THIS RESPONSIBILITY? IN OTHER WORDS WE CAN KEEP THE GUY PUT AWAY, IF WE VOTE ONE WAY, BUT WE DON'T HAVE TO FIND HIM NECESSARILY GUILT. I THINK THAT THE TALK ABOUT -- GUILTY. THANK THE TALK ABOUT THIS PHRASEOLOGY OF THESE PEOPLE AS VIOLENT SEXUAL PREDATORS IS PREJUDICIAL. THIS IS WHAT THIS TRIAL IS ALL ABOUT, SO I WOULD SUBMIT TO YOU THAT, UNLESS WE HAVE SOME FINALITY ABOUT THIS, JUSTICE QUINCE, YOUR COMMENT ABOUT THIS COULD GO ON AND ON AND ON AND ON. I THINK IF THE JURORS KNOW ABOUT THAT, THAT DOES LEAVE THAT DOOR QUITE OPEN.

YOU JUST READ FROM THE STATUTE.

YES, MA'AM.

THE STATUTE SAYS THAT, IF THEY DON'T REACH UNANIMOUS VERDICT, THAT THE JUDGE DECLARES A MISTRIAL AND THEN POLLS? IS THAT WHAT YOU JUST READ?

THAT'S CORRECT.

WELL, THEN, HOW, JUST FOLLOWING UP ON WHAT MR. TRETTIS SAID, HOW IS THAT -- COULD A NONUNANIMOUS VERDICT, WHICH WOULD BE MORE IN FAVOR OF NOT COMMITTING, BE A LAWFULLY VERDICT, IF THE -- A LAWFUL VERDICT, IF THE MISTRIAL HAS ALREADY BEEN DECLARED? YOU TALK ABOUT IT AS A MISTRIAL. THIS IS NOT NECESSARILY A MISTRIAL. THIS IS A STATUTORY THING THAT IS PUT INTO THE LAW, AND SO IF YOU FIND AM NOT TO HAVE BEEN PROVEN TO BE A SEXUAL PREDATOR, THEN HE IS SET FREE. THAT IS BY THREE OR MORE VOTES GOING IN THAT DIRECTION. IF YOU FIND 4-2 THAT HE IS A SEXUAL PREDATOR, THEN THE STATE HAS THE OPPORTUNITY TO RETRY THE CASE. THAT IS WHAT THE LAW SAYS.

SO YOU ARE SAYING THE USE OF THE TERM "MISTRIAL" IS NOT THE WAY THIS JUDICIAL DEFINITION OF MISTRIAL?

THERE IS NOTHING ABOUT THIS. IT IS LIKE ANYTHING ELSE WE HAVE SEEN, TO BE HONEST WITH YOU. YOU TALK ABOUT THIS IS A CIVIL, AND YET WE HAVE A CRIMINAL COMMITTEE THAT CAME UP WITH THE RULES. THEY ARE USING ACROSS THE STATE THE CIVIL RULES OF DISCOVERY. THIS HAS CAUSED QUITE A QUAGMIRE IN SOME OF THE PLACES BECAUSE OF THESE RULES. SOME PEOPLE WOULD SAY THAT THE DEFENSE IN CIVIL CASES IS DELAY, SO A LOT OF THOSE RULES ARE BEING APPLIED AND NOT THE CRIMINAL RULES OF DISCOVERY, WHERE WE HAVE OPEN FILES, AND THE STATE WOULD GIVE THE FILE, THE ENTIRE FILE TO THE DEFENSE, AND IF THEY WANT RECIPROCITY, THEY HAVE TO EXCHANGE INFORMATION, SO THERE IS A LOT OF THINGS ABOUT THIS. IT IS A NEW CREATURE. IT IS NOT SOMETHING WE HAVE SEEN BEFORE, AND SO WHEN WE HAVE TO DO THINGS LIKE TO ABIDE BY THE STATUTE THAT I JUST READ TO YOU, BY SAYING TO

THE JURY THAT YOU KNOW, YOU CAN FIND THEM, IF YOU ARE GOING TO BE CONFINED, IT HAS TO BE AN UNANIMOUS VERDICT. I DON'T KNOW THAT IT IS NECESSARY, THEN, TO GO, AND THE STATUTE DOESN'T REQUIRE THAT YOU GO ABOUT AND SAY, WELL, IF YOU VOTE 4-2, THEN THEY CAN RETRY THE CASE, AND THEN, AFTER THAT, EVERYBODY GOES FREE.

BASICALLY YOU AGREE WITH THE PUBLIC DEFENDERS, AS FAR AS NOT HAVING EXPLANATIONS IN THE VERDICT.

YES, MA'AM.

SO IN THAT WAY YOU ARE IN AGREEMENT. YOU JUST DISAGREE, AS TO, THEN, WHAT THE JURY IS TOLD TO DO.

THAT'S CORRECT. AND IT IS UNUSUAL FOR ME TO AGREE WITH PUBLIC DEFENDERS BUT I DO. ALSO I WOULD LIKE TO MOVE TO THE PART THAT WE ARE CONCERNED ABOUT AS WELL, THAT DEALS WITH THE EVIDENCE STANDARD. WE CERTAINLY DON'T DISAGREE WITH IT BEING CLEAR AND CONVINCING. THAT IS FINE. BUT WHENEVER YOU SAY "WITHOUT SAYS HESTATION" IT -- WITHOUT HESITATION" IT SEEMS TO THAWS THAT GOES IN DAVEY AS THE WITNESSES MUST BE CREDIBLE AND THE MEMORY MUST BE CLEAR AND WITHOUT CONFUSION AND THERE MUST BE SUFFICIENT WEIGHT TO CONVINCE THE TRIER OF FACT WITHOUT HESITANCY IS WHAT THEY SAY, IN THE FOURTH CASE, IN THE FOURTH DCA, BUT THEN IF YOU LOOK AT ADDINGTON VERSUS TEXAS, WHICH IS A CASE THAT JUSTICE BERGER COMMITTED ABOUT, HE SAID THAT, HOWEVER THE DETERMINATION OF THE PRECISE BURDEN ARE EQUAL TO OR GREATER THAN THE CLEAR AND CONVINCING STANDARD, WHICH WE HOLD AND REQUIRE TO MEET THE PROCESSES OF A MATTER OF STATE LAW, HE GIVES IT SOME LATITUDE, BUT HE TALKS ABOUT CLEAR AND CONVINCING AS BEING CLEAR, COGENT AND CONVINCING, CLEAR, AND CONVINCING.

VERY CLEAR. EYE SUBMIT TO YOU THAT WITHOUT HESITATION GOES TO THE BEYOND AND TO THE SECLUSION OF EVERY REASONABLE DOUBT CONVINCING.

JURIES HAVE BEEN USED FOR CIVIL THEFT AND THAT, A COUPLE OF OTHERS, AND THEY ARE USED THROUGHOUT THE CASE LAW, SO YOU AGREE THAT, WHATEVER WE HAVE TO DO, WE HAVE TO BE CONSISTENT IN THE JURY INSTRUCTIONS.

I UNDERSTAND WHAT YOU ARE SAYING, BUT, AGAIN, THIS IS NOT LIKE ANYTHING ELSE WE HAVE SEEN, AND I THINK "WITHOUT HESITANCY" REALLY PUTS ON THEM AN IMAGINARY OR FORCED DOUBT, NOT A REAL DOUBT, AND THAT IS WHAT THE LAW OR INSTRUCTION IS WITH BEYOND AND TO THE SECLUSION OF EVERY REASONABLE DOUBT. I SEE MY RED LIGHT IS ON. I WISH YOU WELL IN THIS PROPERTIES HE -- IN THIS PROCESS AND THANK FOR YOU BEING WITH US THIS MORNING.

WHO IS GOING TO EXPIRE?

ONE TENTH OF A MINUTE.

I AM JUST CONCERNED ABOUT THE STATUTE AND THE MISTRIAL. DID YOU DISCUSS THIS? AS FAR AS IT BEING A -- YOU KNOW, A PROBLEM, AS FAR AS IS IT A LAWFUL VERDICT OR NOT, AFTER THIS MISTRIAL?

I DON'T KNOW IF THIS WILL ANSWER YOUR QUESTION, BUT I THINK ONE WAY OF LOOKING AT THIS OUT OF QUANDRY IS TO SAY THAT THE POLLING IS NOT NECESSARILY INCONSISTENT AT ALL. BECAUSE OF THE UNIQUE NATURE OF THE STATUTE, A MISTRIAL IS A LAWFULLY VERDICT IN SOME CIRCUMSTANCES, SO I WOULD ENVISION A SITUATION WHERE THE COURT TAKES THE MISTRIAL VERDICT AS A LAWFUL VERDICT AND THEN POLLS THE JURY AND SAYS THIS VOTE, 3-3, MRS. JONES IS THIS YOUR VERDICT, MRS. SMITH, IS THIS YOUR VERDICT? TO VERIFY THAT THAT WAS, IN FACT, THE VERDICT, SO I DON'T THINK THAT IS WHAT THE POLLING IS. IT IS UNLIKE

ANYTHING I HAVE EVER SEEN, BUT I DON'T THINK IT IS INCONSISTENT. IF I CAN JUST ANSWER JUSTICE SHAW'S QUESTION, WE DID THIS ONLY BECAUSE THE CASES WERE BUILDING UP AND IT DIDN'T APPEAR THAT ANYBODY ELSE WAS DOING ANYTHING ABOUT IT. WE CERTAINLY DO NOT MIND, IF YOU WISH TO PUT THIS IN THE CIVIL BOOK OR SEEK ADVICE. IT IS PERFECTLY ALL RIGHT. OUR GOAL WAS SIMPLY TO GET SOMETHING TO THE COURT FOR THE COURT TO LOOK AT. THAT IS ALL. WE HAVE NO INTEREST IN WHERE YOU PUT IT OR WHAT CATEGORY IT IMPOSE IN.

THANK YOU VERY MUCH. THANK YOU TO ALL OF YOU, COUNSEL, FOR YOUR PARTICIPATION IN THIS.