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## **Inquiry Concerning a Judge: Patricia Kinsey**

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR OF THE FLORIDA SUPREME COURT. THE FIRST MATTER WHICH WE HAVE ON THE COURT'S ORAL ARGUMENT CALENDAR IS THE INQUIRY CONCERNING A JUDGE, PATRICIA KINSEY. MR.^KINSEY. MR.^CHIEF JUSTICE: THANK YOU. MR.^BARKIN OR WHO IS GOING TO PROCEED FIRST IN THIS INSTANCE?

I PRESUME THE RESPONDENT, YOUR HONOR. MR.^CHIEF JUSTICE: YOU MAY PROCEED.

THANK YOU, YOUR HONOR. GOOD MORNING, YOUR HONORS. MY NAME IS ROY KINSEY FROM PENSACOLA. I REPRESENT JUDGE KINSEY. THE FACT THAT OUR LAST NAMES ARE THE SAME IS NOT JUST A COINCIDENCE. I WOULD LIKE TO SAY, AT THE OUTSET, THAT NO ONE INVOLVED IN THIS CASE DISAGREES WITH THE CONCEPT OF JUST HOW IMPORTANT IT IS THAT FLORIDA HAVE AN INDEPENDENT JUDICIARY. ON THE OTHER HAND, THE CITIZENS OF THE STATE OF FLORIDA HAVE DECIDED, ACTUALLY SINCE THIS ELECTION TOOK PLACE, TO CONTINUE TO ELECT THEIR TRIAL JUDGES. AND AS SUCH, THERE IS AN HONEST DEBATE ABOUT THE TYPE OF INFORMATION THAT VOTERS, NOT ONLY SHOULD BUT ARE ENTITLED TO RECEIVE, AS WELL AS HOW THAT INFORMATION CAN BE CONVEYED.

HOW DOES THE INFORMATION WHICH IS UNDER SCRUTINY IN THIS CASE DIFFER FROM THE CAMPAIGN INFORMATION AND WHAT OCCURRED IN THE MacMILLAN CASE?

YOUR HONOR, I THINK THERE ARE SOME VERY GREAT DIFFERENCES. FIRST OF ALL, IN THE MacMILLAN CASE, THE SITUATION WHERE, FOR EXAMPLE, I BELIEVE JUDGE BROWN WAS THE JUDGE THAT WAS DEFEATED IN THAT CASE, IN COURT RECORD, WAS SCRUTINIZED, SUPPOSEDLY BY JUDGE MacMILLAN'S CAMPAIGN, AND THEY, THEN, PUBLISHED FIGURES THAT PURPORTED TO SHOW THAT JUDGE BROWN WAS A PART-TIME JUDGE, WHO DIDN'T SPEND TIME IN THE COURTROOM. IT WAS APPARENT, FROM WHAT LITTLE I KNOW ABOUT THE CASE, THAT THAT WAS PATENTLY UNTRUE AND INCORRECT, AND MAYBE MOST IMPORTANTLY, THAT THE MacMILLAN CAMPAIGN, AS I UNDERSTAND IT, WAS AWARE THAT THIS WAS INCORRECT. AND WENT AHEAD WITH IT, ANYWAY, OR EVEN IF THEY WEREN'T POSITIVE IT WAS INCORRECT, THERE WAS WHAT, AT LEAST IN THE LIABLE CASES MIGHT BE CATAGORIZED AS A RECKLESS DISREGARD FOR THE TRUTH.

IS IT YOUR REPRESENTATION THAT THERE WAS NO MISREPRESENTATION IN THIS CASE?

YES, SIR. THERE WAS NO KNOWING MISREPRESENTATION. AND IF YOU WOULD LIKE, I WILL ADDRESS THAT SPECIFICALLY. I WAS, ALSO, GOING TO MENTION, THOUGH, THAT IN THE MacMILLAN CASE, ONE OF THE THINGS THAT YOU HAD WAS AN APPARENT ATTACK ON THE PERSONAL LIFE OF JUDGE BROWN. I AM REFERRING, HERE, TO THE INCIDENT WHERE THE MacMILLAN CAMPAIGN ALLEGED THAT HE HAD PRESSURED A DEPUTY SHERIFF TO GIVE ONE OF HIS CHILDREN PREFERENTIAL TREATMENT. IN OUR CAMPAIGN, THERE WAS NONE OF THAT. OUR CAMPAIGN FOCUSED ENTIRELY ON JOB PERFORMANCE.

I THINK YOU HAVE PROBABLY POINTED OUT SOME CLEAR DISTINCTIONS BETWEEN THE CASES, BUT I BELIEVE THAT, WITHOUT BEING PRESUMPTIVE, THAT THE CHIEF'S QUESTION MAY BE DIRECTED TO THE PRO-LAW-ENFORCEMENT PROMISES THAT MAY OR MAY NOT HAVE BEEN MADE IN THE CAMPAIGN, INSOFAR AS WHAT THE CONDUCT OF THE JUDGE WOULD BE, THEN, ON THE

BENCH. AS YOU ARE AWARE IN THE MacMILLAN OPINION, WE WERE QUITE CONCERNED THAT THE PROMISES WERE MADE, APPARENTLY THAT THE JUDGE WOULD RULE FAVORABLY TO THE STATE OR LAW ENFORCEMENT, IN MATTERS THAT CAME BEFORE HIM AS A JUDGE, IF HE WAS ELECTED TO THAT POSITION. ARE THERE PARALLELS IN THIS CASE, TO THOSE ISSUES?

THERE ARE THINGS THAT MIGHT BE INTERPRETED AS BEING PARALLEL, BUT I DON'T THINK THEY REALLY ARE.

WOULD YOU HELP US WITH THAT.

YES, SIR. I ASSUME YOU ARE REFERRING, HERE, TO THE -- I WILL REFER TO AS "THE STATE ATTORNEY LETTER", IN THE MacMILLAN CASE.

I AM NOT REALLY REFERRING TO ANYTHING. I AM ASKING YOU TO HELP US WITH THAT.

IN THE MacMILLAN CASE, FOR EXAMPLE, YOU DID HAVE THE STATE ATTORNEY LETTER. THERE IS NOT ANYTHING LIKE THAT IN PATRICIA KINSEY'S CASE. ONE OF THE THINGS, AND I DON'T KNOW WHAT, TO WHAT EXTENT YOU EXAMINED THE RECORD, BUT ONE OF THE THINGS THAT JUDGE KINSEY TESTIFIED ABOUT, IN THE HEARING, WAS THAT SHE WISHED, NOW, THAT SHE HAD HAD THE OPPORTUNITY TO ATTEND THE FIRST WEEK OF THE JUDICIAL COLLEGE, BEFORE GOING TO THE CAMPAIGN. AND ONE OF THE DIFFICULTIES THAT THE CAMPAIGN EXPERIENCED IS, NUMBER ONE, YOU COME OUT OF AN ADVOCACY POSITION. SHE HAD BEEN AN ASSISTANT STATE ATTORNEY SINCE SHE HAD GRADUATED FROM LAW SCHOOL. IN ADDITION, YOU HAVE AN INTIMATE KNOWLEDGE OF THE ISSUES THAT YOU WANT TO BRING BEFORE THE VOTERS. AND WHEN YOU PUT SOMETHING IN A CAMPAIGN BROCHURE, YOU REALIZE WHAT YOU ARE TALKING ABOUT. THE PEOPLE THAT YOU COMMUNICATE WITH ON A REGULAR, DAILY BASIS, KNOW WHAT YOU ARE TALKING ABOUT, AND AT LEAST AT THAT STAGE OF YOUR CAREER, YOU HAVE A GREAT DEAL OF DIFFICULTY LOOKING AT IT THE SAME WAY YOU WOULD AFTER YOU FINISHED, FOR EXAMPLE, THE FIRST --

IS IT YOUR CONTENTION THAT A FAIR READING OF THE CAMPAIGN LITERATURE IN THIS CAMPAIGN WAS NOT DESIGNED AND INTENDED TO LEAVE THE IMPRESSION THAT MISS KINSEY WAS PRO LAW ENFORCEMENT, PRO VICTIM, AND THAT JUDGE GREEN WAS SOFT ON LAW ENFORCEMENT, ON CRIME, AND ANTI-LAW ENFORCEMENT, AND ANTI-VICTIM? WASN'T THAT THE CLEAR INTENT OF THAT CAMPAIGN LITERATURE?

THAT IS BOTH A YES AND A NO ANSWER, YOUR HONOR. AS FAR AS JUDGE GREEN BEING SOFT ON CRIME, ABSOLUTELY. THAT WAS THE INTENT OF THE LITERATURE. AS FAR AS HIM BEING ANTI-LAW ENFORCEMENT, YES. THAT WAS THE INTENT OF THE LITERATURE, BECAUSE THAT WAS THE FACTS. NOW, AS FAR AS JUDGE KINSEY BEING FAVORABLE OR BIASED TOWARDS LAW ENFORCEMENT, LOOKING BACK AT THINGS, FOR EXAMPLE, THE VICTIM --

HOW IS A TRIAL JUDGE SOFT ON CRIME?

A TRIAL JUDGE --

HOW DOES THAT WORK?

-- IS SOFT ON CRIME, WHEN HE DOES NOT HOLD PEOPLE ACCOUNTABLE. ONE OF THE THINGS THAT I FEEL WE NEED TO KEEP IN MIND IS THERE IS A DIFFERENCE BETWEEN INDEPENDENCE OF THE JUDICIARY AND ACCOUNTABILITY OF THE JUDICIARY. JUDGES, ESPECIALLY COUNTY JUDGES, WHERE THEY DON'T HAVE SENTENCING GUIDELINES, HAVE A TREMENDOUS AMOUNT OF SENTENCING DISCRETION. TWO JUDGES COULD HEAR EXACTLY THE SAME CASE. ONE COULD IMPOSE A FINE. THE OTHER COULD IMPOSE A JAIL SENTENCE. BOTH ARE LEGITIMATE SENTENCES, UNDER THE LAW. HOWEVER, THE CITIZENS HAVE A RIGHT TO EXAMINE WHETHER OR NOT EITHER

OF THOSE JUDGES IS FULFILLING THEIR JUDICIAL DUTIES IN A WAY THAT THE CITIZENS FEEL IS PROPER, WITHIN THAT DISCRETION.

IS IT THE ROLE OF THE JUDICIARY TO HELP LAW ENFORCEMENT, BY, TO PUT CRIMINALS WHERE THEY BELONG, BEHIND BARS? IS THAT --

NO, IT IS NOT, AND THAT WAS A VERY UNFOR THE NATIONAL -- UNFORTUNATE CHOICE OF WORDS, AND THAT, ALONG WITH STATEMENTS, SUCH AS "WOULD BEND OVER BACKWARDS TO PROTECT VICTIMS", WAS AN UNFORTUNATE CHOICE OF WORDS.

IS IT YOUR POSITION, TODAY, THAT THERE WAS A VIOLATION OF THE CANONS OF JUDICIAL ETHICS BUT THE VIOLATIONS DO NOT RISE TO THE LEVEL OF THE RECOMMENDED PUNISHMENT THAT THE JQC HAS RECOMMENDED, THE FINE, OR IT DOESN'T RISE TO THE LEVEL OF REMOVAL FROM OFFICE? IS THAT YOUR POSITION?

BASICALLY THAT IS CORRECT.

SO YOU ARE ACKNOWLEDGING VIOLATIONS OF THE CANONS.

YES.

OKAY. THAT HAS NOT -- THE LAST 15 MINUTES HAS NOT SEEMED -- I AM HEARING YOU SAYING THAT SOMEHOW A LAWYER RUNNING FOR A JUDICIAL POSITION IS TO BE HELD TO A LESSER STANDARD THAN A JUDGE WHO WAS ENGAGED IN A CAMPAIGN.

I THINK TECHNICALLY THERE ARE SOME DIFFERENT STANDARDS, YES.

AND YOU THINK THAT THAT IS SOMETHING THAT THE CANONS ENVISION, THAT SOMEBODY RUNNING AGAINST A SITTING JUDGE SHOULD BE ABLE TO DO THINGS THAT A SITTING JUDGE, RUNNING FOR REELECTION, COULD NOT DO.

THERE MAY BE SOME THINGS THAT ARE DIFFERENT.

YOU THINK THE POLICIES OF THE CANONS WOULD MAKE THAT DISTINCTION IN AN APPROPRIATE ONE?

I THINK A READING OF STRICT CONSTRUCTION OF THE CANONS SHOWS THAT CANON 7 IS APPLICABLE TO ALL CANDIDATES, BE THEY SITTING JUDGES OR BE THEY NONJUDGES. ON THE OTHER HAND, A STRICT CONSTRUCTION OF THE CANONS, LOOKING AT THE DEFINITION SECTION, THE CANONS OTHER THAN CANON SEVEN ARE NOT APPLICABLE TO CANDIDATES. NOW -- TO CANDIDATES. NOW, THERE IS A TREMENDOUS AMOUNT OF OVERLAP AND A LOT OF THINGS THAT WOULD BE PROHIBITED BY CANONS, FOR EXAMPLE, ONE AND TWO, WOULD PROBABLY, ALSO, BE PROHIBITED BY CANON SEVEN. BUT, FOR EXAMPLE, THE CANON DEALING WITH COMMENT ON PENDING CASES, A LAWYER WOULD PROBABLY HAVE MORE FLEXIBILITY, IN COMMENTING ON PENDING CASES, THAN A SITTING JUDGE WOULD. MR. CHIEF JUSTICE: JUSTICE SHAW HAD A QUESTION.

COULD WE RETURN, BRIEFLY, TO THE ISSUE OF INTENTIONAL MISREPRESENTATION? WILL YOU COMMENT ON THE REPRESENTATIONS THAT OPPOSING JUDGE, HER OPPOSITION DOES NOT REVOKE A DEFENDANT'S BOND, WHEN, IN FACT, THE BOND WAS REVOKED.

YOUR HONOR, YOU ARE REFERRING TO THE HELLER CASE.

AND THAT HE RELEASED THE DEFENDANT ON -- A DEFENDANT ON BOND, WHEN, IN FACT, HE WAS FACING A MURDER CHARGE, WHEN, IN FACT, THOSE CHARGES HAD NOT BEEN FILED YET.

OKAY. THAT WOULD BE --

WERE THOSE NOT MISREPRESENTATIONS OF THE FACTS?

THEY WERE NOT KNOWING MISREPRESENTATIONS, NO, SIR. YOU ARE REFERRING TO THE JOHNSON CASE. MR. JOHNSON WAS THE INDIVIDUAL WHO --

WHEN YOU SAY "KNOWING MISREPRESENTATIONS", EXPLAIN THAT PART OF THE STATEMENT. SHE JUST --

UNFORTUNATE --

-- MADE WITHOUT CHECKING THE FACTS? IS THAT WHAT YOU ARE TALKING ABOUT?

UNFORTUNATELY THE CASE LAW AND THE CANONS DON'T GIVE US AS MUCH GUIDANCE AS WE WOULD LIKE TO HAVE. IN DOING THE RESEARCH, PROBABLY THE BEST ANALOGY WOULD BE TO USE THE "RECKLESS DISREGARD FOR THE TRUTH" STANDARD THAT YOU SEE IN LIBEL CASES. I WAS TRYING TO THINK OF THE CASES, OVER THE LAST WEEK. ONE MIGHT BE, IF THE CAMPAIGN HAD PUBLISHED A NOTE THAT JUDGE GREEN HAD BEEN CONVICTED OF DUI. SAY SOMEONE HAD COME IN AND SAID JUDGE GREEN HAD BEEN ARRESTED FOR DUI IN BILOXI, MISSISSIPPI AND YOU CHECK THE COMPUTER AND THERE IS NO RECORD OF THAT, BUT YOU GO AHEAD AND DO IT ANYWAY, AND IT IS SORT OF A RECKLESS DISREGARD FOR THE TRUTH OF A STATEMENT. CLEARLY THAT WOULD BE A KNOWING MISREPRESENTATION. IN THIS PARTICULAR CASE, MR. JOHNSON HAD BEEN ARRESTED, AFTER BREAKING INTO HIS ESTRANGED WIFE'S HOUSE IN THE MIDDLE OF THE NIGHT. HE HAD CUT THE TELEPHONE LINES. HE HAD TAPED THE WINDOWS TO PREVENT THE GLASS FROM MAKING NOISE. HE HAD TAPED LENGTHS OF DUCT TAPE TO THE PORCH RAILING, SO HE COULD BIND HER AFTER HE PULLED HER OUT OF THE HOUSE. JUDGE KINSEY HANDLED THAT CASE AS A PROSECUTOR, AND HE WAS CHARGED WITH ATTEMPTED FIRST-DEGREE MURDER, AMONG OTHER THINGS, AND AS SHE TESTIFIED DURING THE HEARING, THAT IS THE WAY SHE ALWAYS THOUGHT OF THIS CASE. NOW, DURING THE CRUSH OF THE CAMPAIGN, WHEN THINGS ARE BEING PUT TOGETHER VERY QUICKLY, FAXES ARE GOING BACK AND FORTH BETWEEN THE OFFICE AND THE CAMPAIGN CONSULTANT, THAT WAS MISSED. ON THE OTHER HAND, IN EXAMINING IT, THE MOST IMPORTANT THING TO LOOK FOR AND TO TRY TO DETERMINE INTENT, WAS WHETHER THERE WAS ANY ADVANTAGE TO BE GAINED, AND I THINK IT IS CLEAR, FROM LOOKING AT THAT BROCHURE, THAT IT WOULD HAVE BEEN EVERY BIT AS EFFECTIVE, IF IT HAD SAID "WHO WAS CHARGED WITH BURGLARY OF A DWELLING."

BUT THE PROBLEM IS IT FELL INTO A PATTERN OF DEPICTING THE OPPOSITION AS SOFT ON CRIME AND LETTING PEOPLE GO.

WELL, IS THAT WRONG?

MISREPRESENTATION FELL INTO THAT PATTERN.

ONE OF THE REASONS THE JOHNSON --

IT SEEMED TO BE THE GIST OF THE CAMPAIGN.

WELL, THE GIST OF THE CAMPAIGN WAS DEFINITELY TO CRITICIZE THE INCUMBENT'S JOB PERFORMANCE.

BUT CAN YOU DO IT WITH MISREPRESENTATIONS? I GUESS THAT --

YOU CAN CERTAINLY NOT DO IT WITH KNOWING MISREPRESENTATIONS. AND I THINK EXAMINING THE TESTIMONY, AND EXAMINING THE BROCHURES AND ANALYZING WHAT RISK THERE WAS,

WHAT ADVANTAGE MIGHT BE GAINED, IT IS CLEAR THERE WAS NO REASON TO DO IT. I MEAN, HAD THIS BEEN A KNOWING MISREPRESENTATION, IT WOULD HAVE BEEN VERY SIMPLE TO FIX THE PROBLEM, BY SAYING STEVEN JOHNSON, WHO WAS LATER FORMALLY CHARGED WITH ATTEMPTED FIRST-DEGREE MURDER, AND THAT WOULD HAVE SOLVED THE PROBLEM. ON THE OTHER HAND, WHEN YOU LOOK AT IT AND SEE THAT ON A BROCHURE.

WOULD HAVE BEEN JUST AS EFFECTIVE WITH THE BURGLARY, THERE WAS NO REASON FOR A KNOWING MISREPRESENTATION. MR.^CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL TIME.

I HAD ADDED A LITTLE PAD THERE, SO I WILL FINISH WITH ONE THOUGHT. ONE OF THE REASONS THAT THE JOHNSON CASE WAS USED WAS BECAUSE, NUMBER ONE, THEY WERE RECENT CASES. WE DIDN'T GO BACK AND PICK SOMETHING JUDGE GREEN HAD DONE EARLY IN HIS CAREER. WE TRIED TO BE FAIR, BY USING A RECENT CASE. IN ADDITION, FOUR DIFFERENT CIRCUIT JUDGES HAD LOOKED AT THOSE TWO CASES. THE TWO THAT LOOKED AT THEM BEFORE ISSUED NO-BOND ARREST WARRANTS. THE TWO THAT LOOKED AT THEM AFTER JUDGE GREEN SET BONDS, REVOKED THOSE BONDS AND ORDERED THE DEFENDANTS HELD ON NO BOND.

LET ME ASK YOU THIS. AS I UNDERSTAND IT, YOUR DISAGREEMENT WITH A FINE IS ON THE BASIS OF THE AMOUNT, AS OPPOSED TO THE AUTHORITY.

THE COURT CLEARLY HAS THE AUTHORITY TO IMPOSE A FINE. MR.^CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. MARVIN BARKIN, TOM MacDONALD, MIKE GREEN FOR THE JQC. MR.^CHIEF JUSTICE: MR.^BARKIN, LET ME START YOU OFF BY, I THINK YOU NEED TO HELP ME WITH WHAT ARE THE BOUNDARIES THAT YOU SEE A POLITICAL SPEECH, IN THESE ELECTIONS? OBVIOUSLY WHERE WE ARE ELECTING TRIAL COURT JUDGES, THERE IS A, THE RAMIFICATIONS OF LIMITATION OF POLITICAL SPEECH ARE GRAVE, AND SO I THINK THAT WE HAVE HAD, NOW, THIS IS THE THIRD CASE IN WHICH WE ARE GRAPPLING WITH THIS ISSUE, AND WE NEED TO ACCEPT SOME, HAVE SOME UNDERSTANDING OF WHAT THE BOUNDARIES ARE.

YOUR HONOR ASKED ME THE SAME QUESTION IN MacMILLAN, AND I STRUGGLED WITH IT THEN. PERHAPS THE START IS TO REMIND THE COURT THAT YOUR OWN CANONS, WHICH ARE LEGITIMATE CONSTITUTIONAL, CAREFULLY PARSED, PROSCRIBED MAKING OF PLEDGES OR CONDUCT IN OFFICE. THEY PROSCRIBE TO COMMIT ON ISSUES THAT ARE LIKELY TO COME BEFORE THE COURT. WHAT I THINK THAT MEANS IS THAT THE CANDIDATE CANNOT MAKE EXPLICIT PROMISES TO ANOTHER. I THINK A CANDIDATE CANNOT MAKE KNOWING MISREPRESENTATIONS OF FACT WITH REGARD TO HIMSELF OR HERSELF OR THE INCUMBENT. I THINK THE CANDIDATE HAS TO BE PERFECTLY CLEAR THAT, WHATEVER POLITICAL POSITION THEY TAKE, IT IS NOT A POLITICAL POSITION THAT IS A MESSAGE OF PARSIALITY, WHERE YOU ARE SENDING THE WORD THAT, IF ELECTED, YOU WILL BE A TRIAL LAWYER'S JUDGE, A CRIMINAL PROSECUTION JUDGE, A CRIMINAL DEFENDANT'S JUDGE. UNDERSTANDABLY THOSE ARE GENERAL PROPOSITIONS, BUT THEY ARE NOT SO GENERAL THEY CAN'T BE MEASURED AGAINST THE FACTS IN THIS CASE.

BUT THAT IS KIND OF HARD TO APPLY. FOR INSTANCE, LET'S TAKE THE STATEMENT "I AM SUPPORTED BY LAW ENFORCEMENT." THAT WOULD NOT GO BEYOND THE BOUNDS, WOULD IT?

YOUR HONOR IS QUITE RIGHT. ENDORSEMENTS ARE ONE THING COMMITMENTS FOR PROCEDURE ARE ANOTHER. LET ME SHOW YOU ONE INSTANCE OF WHAT WAS DONE IN THIS CASE THIS. IS ONE OF THE BROCHURES IN THE RECORD. THE INCUMBENT, EXCUSE ME, THE CANDIDATE, JUDGE KINSEY, WITH TEN S.W.A.T. TEAM MEMBERS, AND A HEADLINE WHICH SAYS WHO DO THESE GUYS COUNT ON TO BACK THEM UP? NOW, THAT IS SOMETHING MORE THAN ENDORSEMENT. THAT IS A REPRESENTATION IMPLICIT, AT LEAST, THAT SHE WILL, IN FACT, BE A PROSECUTION JUDGE. NOW, THERE IS A DISTINCTION. IF SHE HAD RUN A STORY WHICH SAID I AM ENDORSED BY LAW ENFORCEMENT, AND SHE DID, SHE SAID I AM ENDORSED BY LAW ENFORCEMENT, AND SHE DID, AND WHAT ELSE DID SHE NEED? I THINK ANYTHING MORE IS INAPPROPRIATE FOR A JUDGE.

I AM GOING TO SEE THAT ALL CRIMINALS ARE LOCKED UP.

THAT SHOWS A MESSAGE OF PARTIALITY, A DISTINCTION BETWEEN A DEFENDANT WHO IS ACCUSED OF BEING GUILTY AND SOMEONE WHO HAS GONE THROUGH THE PROCESS AND PROVEN GUILTY. IT IS NOT THE JOB OF A JUDICIAL CANDIDATE TO BE A PROSECUTOR. THEY ARE GOING THROUGH THE PROCESS TO JUDGE CRIME AND REALLY NOT TO FIGHT CRIME, AND TO THE EXTENT THAT CANDIDATES HOLD THEMSELVES OUT AS BEING SOMETHING BEYOND BEING PEOPLE THAT ARE ENDORSED BY THE LAW ENFORCEMENT COMMUNITY, AN IMPORTANT COMMUNITY WITH EVERY RIGHT TO BE A CANDIDATE, BUT TO SAY I WILL BE THEIR DOG, IF YOU WILL, IT IS WRONG, BECAUSE IT SENDS SENDS A MESSAGE TO THE COMMUNITY THIS IS A PARTIAL JUDGE.

IS IT WITHIN THE BOUNDS OF POLITICAL SPEECH FOR A CANDIDATE, RUNNING AGAINST AN INCUMBENT, TO LIST CASES THAT THE INCUMBENT JUDGE HAS RULED ON, FOR INSTANCE, IN BAIL, AND SET OUT A SERIES OF CASES IN WHICH A JUDGE HAS RELEASED A PERSON ON THEIR OWN RECOGNIZANCE. WOULD THAT BE WITHIN THE BOUNDS OF POLITICAL --

JUDGE, I SUBMIT THAT IS DUBIOUS, IN TERMS OF ITS PROPRIETY, FOR A VERY SIMPLE REASON. WHEN YOU SET THAT BENCHMARK, YOU ARE TELLING THE PUBLIC "I AM GOING TO BE DIFFERENT." YOU ARE TELLING THE PUBLIC, "HERE IS HOW I AM GOING TO ACT, FACED WITH DISCRETION," IN A VERY DIFFERENT WAY.

WHAT IS THE BASIS WITH WHICH THE PUBLIC IS TO EVALUATE WHETHER THEY ARE GOING TO CAST AT VOTE FOR OR AGAINST ONE CANDIDATE AGAINST ANOTHER IN A JUDICIAL ELECTION?

JUDGE, I THINK AT THE LEAST, IT IS THE CHARACTER AND BIOGRAPHY OF THE CANDIDATES. BEYOND THAT, I THINK IT CAN GO INTO PHILOSOPHY, BUT I THINK THE PHILOSOPHY HAS TO BE A GENERALIZED PHILOSOPHY, BECAUSE TO THE EXTENT THAT THE PHILOSOPHY BECOMES MORE SPECIFIC, YOU NECESSARILY RUN INTO THE PROPOSITION THAT YOU ARE COMMITTING, DIRECTLY, INDIRECTLY, EXPRESSLY, IMPLICITLY, TO A POSITION ON MATTERS THAT WILL COME BEFORE YOU. IF A JUDICIAL CANDIDATE SAID I WILL NEVER ALLOW BAIL IN CERTAIN KINDS OF CASES, AND THEY ARE GOING TO BE RECUSED IN EVERY CASE THAT COMES THAT WAY, BECAUSE YOU HAVE ELECTED SOMEBODY WHO HAS A PARTIAL POSITION BEFORE THEY GET TO THE BENCH P IN TERMS OF REQUIRING PROBATION AFTER A SENTENCE, ONCE AGAIN THAT, IS A PERSON WHO IS, I THINK, RECUSEABLE, BECAUSE THEY ARE COMMITTED TO A POSITION, WITHOUT REFERENCE TO THE MERITS AFTER PARTICULAR CASE.

IF A SITTING JUDGE, SAY WE HAD A REVERSE SITUATION, AND THIS WAS SOMEBODY WHO HAD HAD A PROSECUTORIAL BACKGROUND WHO WAS ON THE BENCH, COULD THEY, AND WAS A DEFENSE LAWYER RUNNING AGAINST THEM, COULD THE JUDGE WHO IS IN OFFICE, THE PLAYING FIELD HAS TO BE LEVELED, WHAT LEEWAY DO THEY HAVE TO SAY, YOU KNOW, I HAVE, OUT OF 100 CASES, I HAVE NEVER LET A DEFENDANT OUT OF JAIL. WHAT --

YOUR HONOR, I THINK THAT IS EQUALLY INAPPROPRIATE.

THEY PUT THEM IN A POSITION OF, REALLY, COMMENTING ON THEIR PENDING, OR ON CASES.

IT WOULD BE AS INAPPROPRIATE IN THIS CASE, FOR JUDGE KINSEY TO RUN FOR REELECTION AS "JUDGE LOCK-'EM-UP KINSEY", BECAUSE ONCE AGAIN THAT, IS A STATEMENT IN A JUDICIAL CAMPAIGN, THAT THERE IS A FIXED PHILOSOPHY, WITH REGARD TO CERTAIN TYPES OF CRIME.

WHAT IF THE JUDGE HAS BEEN OVERRULED BY THE APPELLATE COURT "X" NUMBER OF TIMES? IN OTHER WORDS, LET'S GO BACK TO WHAT IS THE FAIR COMMENT, AND THIS, WE HAVE COMMENTS HERE THAT CERTAINLY WENT BEYOND IT, BUT I THINK IN TERMS OF TRYING TO GIVE GUIDANCE

FOR THE FUTURE, THERE IS OBVIOUSLY CONCERN ABOUT THAT.

MY INCLINATION, YOUR HONOR, WOULD BE TO SAY THAT IT IS APPROPRIATE TO SPEAK TO THE INCUMBENT'S COMPETENCE, AND OF COURSE THE REVERSAL RECORD MAY OR MAY NOT SPEAK TO COMPETENCE, BUT IT CERTAINLY SPEAKS TO JUDICIAL REVIEW.

WOULD SHELF BEEN ABLE TO SIMPLY SAY, LISTEN, LET'S LOOK AT THE BACKGROUND OF THE CANDIDATES. THE JUDGE IS NOW IN OFFICE SPENT HIS WHOLE LIFE AS A DEFENSE LAWYER. I HAVE SPENT MY WHOLE LIFE AS A PROSECUTOR. JUST COMPARE THOSE QUALIFICATIONS.

WE HAVE THAT SPECIFIC FACT IN THIS CASE BUT THE OTHER SIDE OF THE COIN IS THAT THE MESSAGE, FROM CASES LIKE THIS, HAS TO BE A MESSAGE THAT IS THERAPEUTIC, AS FAR AS FUTURE JUDICIAL CAMPAIGNS ARE CONCERNED. WE DO NOT DENY THE FACT THAT THE PEOPLE OF THIS STATE HAVE OPTED FOR ELECTIONS, BUT THAT HAS NOT BEEN A PROBLEM, AS FAR AS OTHER COURTS ARE CONCERNED, IN DETERMINING THAT THERE ARE STILL STANDARDS THAT APPLY, AND THE STANDARDS ARE DIFFERENT FOR JUDICIAL ELECTIONS THAN THEY ARE FOR COUNTY COMMISSIONER, LEGISLATOR, AND THE REASON THEY ARE DIFFERENT IS BECAUSE THE JUDGE IS NOT RUNNING FOR OFFICE ON A PLATFORM OF HOW HE OR SHE WILL PERFORM, BUT THE VOTERS ARE ENTITLED TO SEEK A PERFORMANCE OF COMPETENCE AND FAIRNESS. YOU CANNOT HAVE A CANDIDATE RUN FOR OFFICE WHO DEMEANS THE SYSTEM.

WOULD YOU HELP US A LITTLE BIT WITH THAT. IF OUR GOAL IS FOR PUBLIC TRUST AND CONFIDENCE IN A FAIR, OPEN, JUDICIAL SYSTEM, HOW HAVE WE CORRECTED THAT, BY THE IMPOSITION OF A FINE, IT SEEMS TO ME THAT THAT REEKS OF "I CAN BUY A POSITION BUT STILL ENGAGE IN THE SAME BEHAVIOR." WHERE DOES THE JUSTIFICATION COME IN, WITH THIS CONCEPT? I AM A LITTLE TROUBLED BY THAT.

WELL, THE COURT PLEADS IT IS OBVIOUSLY A QUESTION OF DEGREE. IN THIS PARTICULAR INSTANCE, THE HEARING PANEL CONCLUDED THAT THE APPROPRIATE PUNISHMENT WAS A SUBSTANTIAL FINE, IF IN ADDITION TO REPRIMAND, BECAUSE THEY FELT THAT WAS THE WAY THAT A MESSAGE COULD BE SENT THAT, AS YOUR HONOR IS REALLY POINTING OUT, YOU CAN HARDLY MAKE A SMALL FINE JUST AN ADDITIONAL FILING FEE OR THE COST OF SEEKING THE OFFICE. THERE HAS TO BE SOME PUNISHMENT OR A METHOD OF SENDING TO THE BAR OR JUDICIARY THAT THIS CONDUCT IS UNACCEPTABLE. MacMILLAN WAS EASIER, BECAUSE MacMILLAN'S CONDUCT ON THE BENCH WAS REPREHENSIBLE.

BUT IT SEEMS TO ME THAT THE GOAL IS THAT THE SYSTEM, ITSELF, BE PROTECTED.

YES, YOUR HONOR.

AND HOW IS THE SYSTEM, IF, IN FACT, IT IS CONCLUDED THAT THESE THINGS ARE SO EGREGIOUS, THAT WE CAN SAY, WELL, IT IS OKAY, AS LONG AS YOU PAY A BIG AMOUNT OF MONEY.

YOUR HONOR, I WOULD SAY THAT THE HEARING PANEL STRUGGLED WITH THAT, ALSO, AND THE DIFFERENCE BETWEEN THE MAJORITY OF THE HEARING PANEL AND THE ONE DISSENTER ON THIS PARTICULAR POINT, WAS WHETHER A SMALL FINE, A SLAP ON THE HAND, IF YOU WILL, SENT THE MESSAGE THROUGHOUT THE STATE, THAT THIS WAS INAPPROPRIATE CONDUCT. THE MAJORITY FELT THAT A SUBSTANTIAL FINE WAS NECESSARY, TO BE SUFFICIENT TO SEND THAT MESSAGE, AND THE MAJORITY COUPLED THAT BY CONCLUDING THAT THERE WAS NO PROBLEM, INSOFAR AS HAD COME TO THEIR ATTENTION, WITH JUDGE KINSEY'S PERFORMANCE ON THE BENCH. NEVERTHELESS THEY CONCLUDED SHE SHOULD NOT BE ALLOWED TO BE ON THE BENCH, WITHOUT A PENALTY THAT HOPEFULLY WOULD DRAW THE ATTENTION OF OTHERS WHO SOUGHT THE BENCH. NOW, ASKING ME TO DISTINGUISH IT, IF THE COURT PLEASE, IT IS DIFFICULT, BUT I THINK THAT BASICALLY ONE OF THE THINGS THAT YOU ASK A HEARING PANEL OR THE BOARD OF BAR EXAMINERS OR THE FLORIDA BAR DISCIPLINARY TO DO IS TO MAKE THE PUNISHMENT

COMMENSURATE WITH WHAT WAS WRONG.

I AM BEFUDDLED, AS TO HOW THIS FINE BUSINESS CAN WORK. I REALIZE THAT AN AMENDMENT TO THE CONSTITUTION PUT IT IN, BUT DOES IT WORK ON THE BASIS THAT, IF A FINE IS THE PUNISHMENT, PART OF THE PUNISHMENT, THAT THE JUDGE CANNOT CONTINUE TO PERFORM, UNTIL THE FINE IS PAID, OR CAN A JUDGE JUST PUT OFF THE PAYMENT OF THE FINE, OR WHAT IS THE JQC'S POSITION ON HOW THIS WORKS?

I THINK, YOUR HONOR PLEASE, THAT THE COST BE THAT THE FINE SHOULD BE PAID AND PAID NOW. IN TERMS OF THE IMPOSITION OF A FINE, PERHAPS IT WOULD BE HELPFUL, IF I REMIND THE COURT WHAT HAPPENED IN MacMILLAN. IN MacMILLAN, THE INVESTIGATIVE PANEL STIPULATED TO A SIX-MONTH SUSPENSION WITHOUT PAY AND A REPRIMAND FOR JUDGE MacMILLAN. THAT RECOMMENDATION WAS SENT BACK FOR RECONSIDERATION, BY THE HEARING PANEL, AND AFTER A TRIAL, THE HEARING PANEL CAME TO A MORE DRACONIAN CONCLUSION, WHEN THIS COURT APPARENTLY HAS SUSTAINED. THAT WAS THE SIX-MONTH SUSPENSION WITHOUT PAY, WAS WHAT WAS ON THE TABLE, AT THE TIME THAT THE KINSEY CASE WAS TRIED, AND THE HEARING PANEL HAD OCCASION TO REACH ITS DECISION. THE FINE HERE IS A SUBSTANTIAL EQUIVALENT, IF YOU WILL, A SIX-MONTH SUSPENSION WITHOUT PAY.

THE PROBLEM WITH ADMINISTRATION OF THE COURTS WITH A SUSPENSION, IS THAT THAT ONLY PUTS PRESSURE ON OTHERS WHO HAVE TO TAKE THE LOAD, AND WE HAVE A TREMENDOUS PROBLEM, RIGHT NOW, IN FLORIDA, WITH THE FACT THAT WE ARE FACING SUCH FISCAL STRAITS THAT WE DON'T HAVE EXTRA --

YOUR HONOR, I UNDERSTAND AND I AGREE, AND YET THE CONSTITUTION WAS AMENDED IN THE LAST FEW YEARS, WITH REGARD TO ARTICLE V SECTION 12, TO PRESCRIBE THAT THE JQC COULD RECOMMEND, TO YOUR HONORS, FINES AND SUSPENSIONS, AND YOUR HONORS, OF COURSE, NOW HAVE THE UNBRIDLED RIGHT, AS YOU DID NOT HAVE IN ALI, TO IMPOSE WHAT YOU THINK IS A MORE APPROPRIATE DISCIPLINE.

HAS A FINE OF THIS MAGNITUDE EVER BEEN APPROVED BEFORE?

I DO NOT KNOW OF ONE OF THIS SIZE. IN OHIO THERE HAVE BEEN A NUMBER OF CASES WITH SUBSTANTIAL FINES, INCLUDING A CASE CALLED HILDEBRAND, WHERE THE FINING COST WAS IN THE RANGE OF \$25,000, AND I CAN GIVE THE COURT THE CITATION ON THAT, IF THEY WOULD WANT IT, BUT THE ANSWER IS THAT, IN A LARGE WAY, WE ARE IN UNCHARTED WATERS, IN TERMS OF ADMINISTERING THIS STATE'S DISCIPLINARY SYSTEM FOR JUDGES AND WHAT IS AN APPROPRIATE PUNISHMENT, BUT, AGAIN, I SAY TO YOU THAT PART OF WHY WE ARE WHERE WE ARE IN THIS CASE HAS TO BE THE CONTEXT IN WHICH THIS CASE CAME UP.

THEORETICALLY, AS FAR AS THE CHARGES ARE CONCERNED, IS YOU HAVE A BIASED JUDGE. THAT IS YOUR ALLEGATION. A JUDGE THAT IS REPRESENTED THAT SHE WOULD BE BIASED. IS THAT YOUR CHARGE?

THAT'S CORRECT, YOUR HONOR.

SO HOW IS A FINE GOING TO REMEDY THAT, NECESSARILY?

EXCEPT TO SAY THAT A FINE IS SUBSTANTIAL SENDS A MESSAGE, SUCH AS A FINE IN A CRIMINAL CASE SENDS A MESSAGE. NOT EVERY CASE WINDS UP WITH THE DEFENDANT BEING LOCKED UP. NOT EVERY CASE IS THE DEFENDANT LOCKED UP FOR A PERIOD OF TIME. THEY ARE ALWAYS AMELIORATED CIRCUMSTANCES. THIS PARTICULAR CASE CAME UP WITH THE HEARING PANEL COMING UP WITH A FINE IN THE RANGE OF \$50,000, WOULD SEND A MESSAGE, AND I WOULD HOPE YOUR HONORS WOULD AGREE.

OPPOSING COUNSEL INDICATED THAT THE CLIENT WISHED SHE HAD ATTENDED THE FIRST WEEK OF THE JUDICIAL COLLEGE BEFORE THE CAMPAIGN. AFTER OUR OPINION IN ALI, IT SEEMS THAT THERE WAS A GROUP ESTABLISHED FOR THE PURPOSE OF EDUCATING PEOPLE WHO WERE RUNNING FOR JUDGE IN CONTESTED ELECTIONS, TO ATTEND. IS THERE ANYTHING IN THIS RECORD TO INDICATE, ONE, WHETHER THAT WAS IN EFFECT IN 1998, AND, SECONDLY, WHETHER OR NOT JUDGE KINSEY TOOK PART IN THAT?

I THINK THE RECORD DOES ESTABLISH THAT JUDGE KINSEY AND, PERHAPS, JUDGE KINSEY WITH HER COUNSEL, MR. ROY KINSEY, WERE WELL AWARE OF WHAT THE ALLY CASE AND WHATEVER THE ALLY CASE HAD PLACED UPON THE CAMPAIGN AND SECONDLY THEY HAD ATTENDED A PRESENTATION BY JUDGE HAWK, AND THEY DID A CAMPAIGN WITH A POLITICAL CONSULTANT AND THEY DID A DELIBERATE CAMPAIGN AND WRAPPED THEMSELVES IN A CLOAK OF LAW ENFORCEMENT AND KNEW THAT WOULD SELL IN THAT PART OF THE COUNTRY. THAT IS WHAT THE EXPERT WITNESS ON THE MATTER TESTIFIED TO, AND IT WORKED. THEY MIGHT HAVE BEEN ELECTED WITHOUT IT, BUT THE POINT IS THAT THEY WERE ELECTED WITH IT, AND SECOND THOUGHTS THAT THEY NOW HAVE DON'T JUSTIFY THE WAY THAT CAMPAIGN WAS CONDUCTED AT THE TIME.

I AM CURIOUS, WHY DID THE JQC NOT RECOMMEND REMOVAL OF THE JUDGE IN THIS INSTANCE, AS OPPOSED TO THE \$50,000 FINE?

YOUR HONOR, I AM COUNSEL FOR THE INVESTIGATIVE PANEL. I WAS NOT PRESENT AT THE DELIBERATIONS. WE ASKED FOR A SPECIFIC PUNISHMENT AND LEFT IT TO THE DISCRETION OF THE HEARING PANEL AS TO WHAT PENALTY THEY WOULD IMPOSE, AND AS I SUGGESTED BEFORE, THAT WAS IN LARGE PART IN CONTEXT TO WHERE WE WERE, AT THAT TIME. WE HAD JUST STIPULATED TO A MONTH WITHOUT PAY FOR MacMILLAN AND WE RECOGNIZED SUBSEQUENTLY THAT MacMILLAN WAS A MORE SERIOUS CASE THAN WE THOUGHT IT WAS, TO START WITH.

IF WE TAKE THAT OUT AND TAKE OUT MISCONDUCT, WOULD YOU GIVE US YOUR TAKE WHETHER THE CAMPAIGN, IN TERMS OF PRO LAW ENFORCEMENT, "I AM GOING TO BE YOUR PRO LAW ENFORCEMENT PERSON ON THE BENCH."

"LAW ENFORCEMENT SPEAKS OUT. THE INCUMBENT WAS NEVER A FRIEND TO LAW ENFORCEMENT. I WILL GO TO BAT FOR LAW ENFORCEMENT. I WILL ALWAYS HAVE HEART FOR THE PROSECUTOR, AND THE DEFENSE ATTORNEYS WILL NOT MEASURE THAT WITH ME." MEASURE THAT, IF YOU WILL, AGAINST THE CAMPAIGN HERE. SHE SAID POLICE OFFICERS EXPECT JUDGES TO SAY TAKE THEIR TESTIMONY AND GIVE IT WEIGHT, TO HELP LAW ENFORCEMENT PUT CRIMINALS BEHIND BARS. SHE SAID, IF YOU ARE A CRIMINAL, YOU PROBABLY WON'T WANT TO READ THIS. SHE SAID A JUDGE MUST PROTECT VICTIMS' RIGHTS AND JUDGES MUST WORK WITH LAW ENFORCEMENT, BY PLACING CRIMINALS BEHIND BARS AND NOT BACK ON OUR STREETS. SHE SAID, AS A PROSECUTOR, "I AM DIFFERENT FROM A DEFENSE ATTORNEY." BILL GREENE, BEFORE HE WENT ON THE BENCH, WAS A DEFENSE ATTORNEY. SHE INDICATED THAT BILL GREENE WAS STILL IN THAT DEFENSE MODE. SHE SAID, "LAW ENFORCEMENT IS BEGGING TO HOLD CRIMINALS ACCOUNTABLE." SHE SAID, "JUDGES HAVE THE RIGHT TO PROTECT VICTIMS WITH BONDS." SHE SAID, "I AM NOT VICTIMIZED BY THE LEGAL SYSTEM." SHE SAID, "IF YOU ARE A CRIMINAL, YOU PROBABLY WON'T WANT TO READ THIS." ABOVE ALL, PAT KINSEY IDENTIFIES WITH THE VICTIMS OF CRIME AND PAT KINSEY BELIEVES THE JUDGE SHOULD PROTECT THE VICTIMS OF CRIME. SHE CHARACTERIZED SOME DEFENDANTS AS PUNKS AND THUGS. SHE SAID, "OFFICERS KNOW PAT KINSEY WILL HELP THEM KEEP VIOLENT CRIMINALS OFF OUR STREETS."

SO YOU ARE SAYING THAT A COMPARABLE --

I AM SAYING, IF YOUR HONOR PLEASE, IT IS WORSE, AS FAR AS THE CAMPAIGN --

JUSTICE SHAW HAD A QUESTION.

KEEP IN MIND THE TRANSGRESSION, HERE, WAS NOT AS GRAVE AS IT WAS IN MacMILLAN?

I SYSTEM SAYING THAT THE CAMPAIGN PROMISES WERE WORSE. MISREPRESENTATIONS ARE THERE AND THERE WERE KNOWING MISREPRESENTATIONS. YOUR HONOR ASKED ABOUT HELLER AND JOHNSON. IN HELLER, THE RECORD WILL SHOW THAT JUDGE KINSEY HAD REVIEWED THE RECORD FORM SHE WELL KNEW WHAT THE FACTS WERE, WHEN SHE MADE THE STATEMENT IN THE BROCHURE. IN JOHNSON, SHE WAS THE PROSECUTOR. SHE WAS THE ASSISTANT STATE ATTORNEY WHO KNEW THAT THIS CASE HAD NOT BEEN CHARGED WITH ATTEMPTED MURDER, AT THE TIME THAT THE BOND WAS GRANTED. MR.^CHIEF JUSTICE: YOUR TIME IS UP. THANK YOU VERY MUCH. MR.^KINSEY.

MR.^KINSEY, WHAT DID YOUR CLIENT LEARN IN THE FIRST WEEK OF THE JUDICIAL COLLEGE, THAT WAS NOT TAUGHT IN JUDGE CONN'S COURSE?

FIRST OF ALL, YOUR HONOR, SHE DID NOT ATTEND JUDGE CONN'S COURSE.

WAS SHE GIVEN THE OPPORTUNITY TO?

SHE HAD THE OPPORTUNITY TO, BUT SHE WAS IN A TRIAL OR A HEARING AT THE TIME AND DID NOT ATTEND. I DID ATTEND. NOW, WHAT SHE DID LEARN, IN THE FIRST WEEK OF JUDGE SCHOOL, IS THE IMPORTANCE OF MAINTAINING THE APPEARANCE THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY. I THINK IT IS A FOREGONE CONCLUSION THAT THE IMPORTANCE OF ACTUALLY MAINTAINING IT IS GREAT.

DID SHE WISH SHE HAD?

IN RETROSPECT, SHE REALIZED IT WAS NOT DONE NEARLY AS WELL AS IT SHOULD HAVE BEEN, AND SHE HAS A GREAT DEAL ABOUT THAT. FOR INSTANCE IT WAS MENTIONED MR.^BARKIN WOULD PROTECT VICTIMS OF CRIME. PERHAPS WHAT SHE SHOULD HAVE SAID IS "WOULD PROTECT VICTIMS OF CRIME OR SO-AND-SO". OR "JUDGE KINSEY IS OBLIGATED TO PROTECT VICTIMS OF VIOLENT CRIME, BY FLORIDA STATUTE," AND I DON'T RECALL FROM MEMORY.

WHAT DO YOU THINK WE OUGHT TO DO IN THIS CASE?

I THINK THERE ARE A COUPLE OF VERY IMPORTANT THINGS. ONE IS I THINK FUTURE CANDIDATES NEED TO BE GIVEN MUCH MORE GUIDANCE. AS GOOD AS JUDGE CONN'S WRITINGS ARE, THE SHORT COURSE AND THE MATERIALS GIVEN DON'T BEGIN TO DESCRIBE THE MINE FIELDS THAT YOU FACE DURING A CAMPAIGN. IT MIGHT BE --

WHAT ABOUT IN THIS CASE?

IN THIS CASE, I THINK THERE OUGHT TO BE A REPRIMAND. I THINK THAT IS THE APPROPRIATE PUNISHMENT.

COUNSEL, IF YOU HAD A SON OR DAUGHTER THAT HAD BEEN ERRONEOUSLY CHARGED WITH A CRIME, A SERIOUS CRIME, AND THAT SON OR DAUGHTER WAS GOING TO WALK INTO A COURTROOM OF A JUDGE THAT HAD ENGAGED IN THE KIND OF PUBLICITY THAT IS INVOLVED HERE, WOULD YOU HAVE SUBSTANTIAL CONCERN ABOUT WHETHER YOUR SON OR DAUGHTER WAS GOING TO RECEIVE A FAIR AND IMPARTIAL HEARING?

IF YOU ARE ASKING ME AS A LAWYER, KNOWING WHAT I KNOW, ABSOLUTELY NOT. I HAVE NO CONCERNS AT ALL. IF YOU ARE ASKING ME, AS AN ORDINARY CITIZEN, AS ONE OF THE WITNESSES, CHRIS ROSS, A RETIRED MARINE OFFICER WHO WORKED, WHO WORKS AS AN ASSISTANT PUBLIC DEFENDER AND SPENT A GREAT DEAL OF TIME WITH JUDGE KINSEY, ASSIGNED

TO HER COURT, HE WOULD SAY ABSOLUTELY NO CONCERNS AT ALL. HAVING WATCHED THE WAY SHE HANDLED CASES AS A PROSECUTOR FOR MANY YEARS, THERE ARE PEOPLE WHOSE CHARGES WERE DISMISSED BECAUSE SHE DID BACKGROUND INVESTIGATION THAT OTHER LAWYERS WOULD NOT DO.

BUT IF SHE WAS A MEMBER, IF YOU WERE A MEMBER OF THE PUBLIC, HAVING READ HER CAMPAIGN MATERIAL, AND YOU WERE GOING BEFORE HER, OR HAD YOUR CHILD, AS JUSTICE LEWIS SAYS, GOING BEFORE HER, AND HAD POLICE OFFICERS ALL TESTIFYING ON THE OTHER SIDE, WOULDN'T THERE BE SOME GROUNDS TO HAVE SOME CONCERNS, AFTER KNOWING THE CAMPAIGN LITERATURE THAT HAD GONE OUT?

THERE MAY WELL BE. THERE MAY WELL BE. BUT I AM NOT SURE THAT THOSE CONCERNS WOULD BE ALLEVIATED BE CHANGE THE LITERATURE, WHICH, I THINK TO MAKE IT CLEARLY COMPLY, WERE, FOR EXAMPLE, WHETHER THE STATEMENT "POLICE OFFICERS EXPECT JUDGES TO TAKE THEIR TESTIMONY SERIOUSLY." THAT, IN AND OF ITSELF MAY CAUSE CONCERN. IT IS A TRUE STATEMENT. I DON'T THINK ANYONE WOULD DISAGREE WITH THAT. BUT AFTER GOING THROUGH THE FIRST WEEK OF JUDGE SCHOOL, JUDGE KINSEY REALIZES IT SHOULD HAVE BEEN FOLLOWED WITH SOMETHING LIKE "JUDGE KINSEY UNDERSTANDS THAT EACH CASE HAS TO BE JUDGED ON ITS FACTS AND THE APPLICABLE LAW. SHE WILL TAKE --" MR. CHIEF JUSTICE: MR. KINSEY, YOUR TIME IS UP. THANK YOU VERY MUCH. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.