

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA.
AND THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET
TODAY IS IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE RELATING TO
ELECTRONIC DISCOVERY.
>> MAY IT PLEASE THE COURT. I'M
KEVIN JOHNSON.
FROM SIZEMORE, GONZALEZ
IN TAMPA, FLORIDA. I'M
HERE ON BEHALF OF THE CIVIL
PROCEDURE RULES COMMITTEE.
WE SUBMITTED AMENDMENTS TO THE
CIVIL RULE TO DRAWS DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION, COMMONLY REFERRED
TO AS ESI.
THESE E-DISCOVERY AMENDMENTS
WERE AS A RESULT OF FIVE
YEARS OF PROCESS BY
OUR COMMITTEE THAT
BEGAN SHORTLY AFTER FEDERAL
RULES WERE AMENDED IN 2006.
LED BY LAWRENCE COHEN.
WHO CHAIRED THE E-SUBCOMMITTEE
IN SEVERAL YEARS.
I TOOK OVER FOR MR.^COHEN IN
2010.
OUR COMMITTEE STUDIED MANY
DIFFERENT THINGS.
WE STUDIED EFFECTS OF THE
FEDERAL RULES.
WE STUDIED THE IMPLEMENTATION
OF OTHER STATE COURT
E-DISCOVERY RULES AND JUDGES
AND E-DISCOVERY EXPERTS.
AND OTHER COMMITTEES OF BAR.
>> I WANT TO COMMEND YOU,
KNOWING THE CIVIL RULES
COMMITTEE ON E-DISCOVERY
THAT YOU HAVE

UNANIMOUS SUPPORT, SPEAKS TO
THE EXCELLENT JOB THAT HAS BEEN
DONE.

I NEVER SEEN ANYTHING THAT IS -
ANYWAY, I JUST WANTED TO GET
THAT OUT. THE VOTES WERE --

>> THAT'S CORRECT YOUR HONOR.

>> I MEAN LOOKED LIKE THERE WAS
ONE PERSON ON A COUPLE OF
THESE BUT THAT AS TO WHAT HAS
BEEN PROPOSED, THAT EVERYONE
FELT THAT IT WAS A GOOD BLEND
OF WHAT OTHER STATES AND THE
FEDERAL COURTS HAVE DONE.

>> YOUR HONOR, WE WERE
UNANIMOUS AND NEAR UNANIMOUS AT
COMMITTEE LEVEL WITH THE BOARD
OF GOVERNORS.

>> MY BIGGEST CONCERN WITH ANY
DISCOVERY, HAVING DONE A LOT OF
DISCOVERY AS A TRIAL LAWYER,
THAT THE RULES DON'T END UP
PREVENTING LEGITIMATE DISCOVERY
OF DOCUMENTS.

I THINK NOW, ALTHOUGH I KNOW
THERE WILL ALWAYS BE CLAIMS OF
BURDENSOME, THERE WERE
DOCUMENTS THAT CAN BE
ELECTRONICALLY SEARCHED THAT
IT IS, SHOULD MAKE DISCOVERY
EASIER, NOT HARDER.

NOW IS THAT, WHAT IS YOUR
THOUGHT ABOUT THAT?

>> IT'S LIKE ANYTHING ELSE,
ELECTRONICALLY STORED
INFORMATION IS A TOOL.

A TOOL CAN BE USED EITHER WAY.
THERE ARE WAYS WHICH IT MAKES
OUR LIFE MORE COMPLICATED
BECAUSE WE HAVE TO TRACK DOWN
VOLATILE INFORMATION IN A BROAD
RANGE OF SITUATIONS.

THERE ARE ALSO WAYS IT MAKES OUR
LIFE EASIER BECAUSE WE CAN GO
BACK IN TIME FIND OUT WHAT IS
IN A COMPUTER AT A GIVEN MOMENT
IN TIME IF THAT INFORMATION IS
STILL THERE.

>> THAT IS MORE THAN THE IDEA
THAT SOMEONE COULD PRODUCE --
THIS IS REALLY NOT ABOUT
PRODUCING DOCUMENTS
ELECTRONICALLY?

THIS IS TO TRY TO SEE IF THERE
ARE, MAYBE, IF YOU COULD JUST

ELABORATE, ABOUT WHAT TYPE OF INFORMATION WOULD BE SOUGHT, THAT IS, ESI.

>> YES.

>> ESI IS WHAT WE'RE CALLING IT.

I THINK THIS RECOGNIZES THERE HAS BEEN ABOUT A CHANGE IN WAY BUSINESSES AND THE WORLD IN GENERAL WORKS.

WE WORK VERY LITTLE WITH PAPER TODAY ALTHOUGH SEEMS A LOT END UP ON MY DESK.

MOST ENDS UP BEING ELECTRONICALLY STORED IN A COMPUTER SOMEWHERE. MOST BUSINESSES FUNCTION THAT WAY.

IF YOU'RE TRYING TO FIND OUT WHAT HAPPENED AND TRYING TO DISCOVER THE INFORMATION YOU WILL HAVE TO DEAL WITH A COMPUTER.

THAT IS THE REALITY OF THE WORLD WE LIVE IN.

WE SEE IT AS A WAY TO TRY TO BALANCE THE RULES AND MEET THE SEVEN GOALS WE DESCRIBED SO THE PARTIES GET ACCESS TO INFORMATION THEY NEED AND THEY'RE NOT TEARING EACH OTHER UP WITH UNNECESSARY BATTLES OVER ACCESS TO THAT INFORMATION.

>> FOR EXAMPLE, IF SOMEBODY IS ASKING IN A PRODUCTS LIABILITY CASE FOR ALL THE COMPLAINTS THAT WERE MADE, A CORPORATION COULD DECIDE AND THEY ROUTINELY HAVE AND HAD IN THE PAST AT LEAST A LONG TIME AGO SAID IT IS BURDENSOME.

I REMEMBER ONCE BEING IN A WHOLE WAREHOUSE AND GOING THROUGH BOXES AND BOXES.

IT SEEMS THAT IS THE ABILITY OF BOTH JUDGES AND LAWYERS TO SAY, LISTEN, IT IS NOT GOING TO BE THE SAME KIND OF BURDENSOME BECAUSE IT'S ELECTRONICALLY STORED?

SO DOES IT CHANGE IT FOR THE BETTER IN THAT REGARD IF WE DON'T MAKE, IF WE RECOGNIZE THAT SOMETIMES BURDENSOME ISN'T

REALLY, IS NOT BEING USED IN THE WAY WE HOPE IT WOULD BE USED?

>> IT DOES CHANGE IT FOR THE BETTER IN THE SENSE WHEREAS BEFORE YOU MIGHT HAVE HAD TO SIT DOWN WITH A TEAM OF LAWYERS TO GO THROUGH TONS OF BOXES IN A WAREHOUSE SOMEWHERE, NOW IF YOU HAVE ACCESS TO ELECTRONICALLY STORED INFORMATION IF YOU HAVE AGREEMENT HOW TO SEARCH IT. YOU COULD HAVE A COMPUTER RUN THAT SEARCH FOR YOU AND PULL BACK RELEVANT SEARCH TERMS AND HOPEFULLY BRING BACK THE DOCUMENTS YOU NEED WITHOUT EXPENDITURE OF TIME AND MONEY. SO THAT EXTENT IT IS AN ADVANTAGE.

WE SEE THAT AS BEING ONE OF THE ARGUMENTS IN FAVOR OF THIS. WE ALSO THINK IS IMPORTANT THAT WE GIVE THE COURTS AND LITIGANTS PREDICTABILITY. THAT WE WANT TO HAVE RULES THAT ARE FAMILIAR TO THEM AND IN THIS CASE THEY ARE BASED ON THE FEDERAL RULES AND THEY WILL PROVIDE PREDICTABLE AND USABLE PRECEDENTS BECAUSE OF THAT. WE THINK IT IS IMPORTANT TO MAKE SURE E-DISCOVERY DOES NOT BECOME OUTCOME DETERMINATIVE. DOESN'T UNDULY FAVOR REQUESTING PARTIES OR UNDULY FAVOR THE RESPONDING PARTIES.

>> WHEN YOU SAY THAT GOAL, WHAT IS THE BASIC GOAL OF THE FLORIDA RULES LIKE THE FEDERAL RULES IS THAT, DISCOVERY IS A OPEN PROCESS.

I MEAN IF SOMETHING IS NOT REALLY RELEVANT IN THE END IT IS NOT GOING TO COME INTO EVIDENCE BUT MY EXPERIENCE HAS BEEN THAT SOMETIMES THAT'S USED, IN OTHER WORDS, IT IS BURDENSOME IF THAT DOCUMENT IS THE DOCUMENT THAT THE, THAT THE PLAINTIFF, BECAUSE IT IS IN THE POSSESSION OF THE DEFENDANT IN MANY CASES, AND MAYBE IN BUSINESS LITIGATION IT'S BOTH

SIDES SO IT'S NOT THE
REQUESTING PARTY BUT IN MANY OF
THE PRODUCTS CASES IT IS
OBVIOUSLY IN THE POSSESSION OF
THE DEFENDANT.

SO IS IT, ARE WE CHANGING WHAT
WE HAVE SAID FOR MANY, MANY
YEARS ABOUT WHAT DISCOVERY IS
SUPPOSED TO BE?

>> THE GOAL IS NOT TO CHANGE IT
AT ALL, YOUR HONOR.

WE ARE CHANGING SOME OF THE
METHODS AND MEANS AND TOOLS
THAT ARE AVAILABLE TO THE
LITIGANTS AND TO THE COURT TO
MANAGE IT BUT WE'RE NOT TRYING
TO CHANGE THE FUNDAMENTAL
BALANCE WHO GETS WHAT, WHEN
THEY GET IT, WHAT IS CONSIDERED
BURDENSOME, WHAT IS CONSIDERED
TO BE TOO COSTLY.

WE WANT TO GIVE THE COURTS THE
POWER TO MANAGE THAT PROCESS
AND WE WANT TO ENCOURAGE THE
LITIGANTS TO SIT DOWN AND DEAL
WITH IT EARLY.

THAT IS FRANKLY ONE OF THE
AREAS WHERE WE CHANGED THE
RULES FROM THE FEDERAL RULES
OF CIVIL PROCEDURE.

THE RULES REQUIRE MEET AND
CONFER.

UNDER OUR STATE SYSTEM THAT IS
NOT A GOOD IDEA.

WE HAVE TOO MUCH VARIETY OF
LITIGATION.

WHAT WE'VE DONE INSTEAD IS GIVE
LITIGANTS THE ABILITY TO USE
PRETRIAL CONFERENCE RULES,
1.200 AND 1.201 TO TRY TO
ADDRESS THAT.

>> VERY PLEASED TO SEE JUDGE
ARTIGLIERE INVOLVED IN THIS.
HE HAS BEEN INVOLVED FOR MANY
YEARS.

GOING TO THAT POINT, WHAT DOES
THE COMMITTEE SEE IMPACT WITH
TRIAL JUDGES WITH REGARD TO
THESE CHANGES?

OUR LINE JUDGES SPEND
AN INORDINANT AMOUNT OF
TIME GOING

THROUGH THESE THAT ALMOST
BECOME SILLY BATTLES.

WHAT IS THE COMMITTEE'S VIEW?

ARE WE THERE? WILL THIS HELP?
I KNOW YOU NEVER GET TO
THE UTOPIA OF ELIMINATING THEM.
ARE WE LOOKING TO HAVE MORE
ADDITIONAL RULES AT SOME POINT
IN TIME?
ARE THESE DESIGNED TO
ACCOMMODATE THAT?
WHERE DOES THE LINE JUDGE FIT
INTO THIS NEW RULE PROCESS AS
YOU SEE IT AND OR COMMITTEE
SEES IT?
>> I WANT TO TAKE A MINUTE TO
THANK JUDGE ARTIGLIERE.
HIS SUPPORT HAS BEEN
INDISPENSABLE.
HE HAS BEEN A MAJOR FACTOR
GETTING IN THE POINTS BECAUSE
OF THAT.
HE WILL SPEAK LATER ABOUT SOME
OF HIS CONCERNS.
I THINK FOR THE LINE JUDGES THE
ANSWER IS THIS SHOULD GIVE THEM
MORE TOOLS, SHOULD GIVE THEM
MORE GUIDANCE HOW TO RESOLVE
THESE ISSUES.
IT WILL GIVE THEM SPECIFIC
RULES-BASED GUIDANCE AND
GUIDANCE IN THE COMMENTS THEY
CAN POINT TO CONTROL THE
LITIGANTS TO TRY TO DEAL WITH
SOME ABUSE OF THE DISCOVERY
PRACTICE AND TRY TO HAVE ENOUGH
FLEXIBILITY TO DEAL WITH ALL
THE SITUATIONS THAT COME UP.
ONE THING YOU KNOW YOU NEVER
KNOW WHAT YOU WILL SEE.
AS A SITTING JUDGE YOU HAVE TO
HAVE THE FLEXIBILITY TO DEAL
WITH THAT SITUATION.
THAT'S BEEN A THEME OF OUR
RULES, TRY NOT TO DRILL DOWN TO
SUCH A PRECISE OUTCOME
SPECIFIC RULE THAT IT IS JUST
INFLEXIBLE AND BREAKS THE FIRST
TIME TECHNOLOGY CHANGES ON YOU.
WE WANT THEM TO BE FLEXIBILE.
WE ANTICIPATE THE RULES WILL
LAST FOR A LONG TIME.
WE DON'T ANTICIPATE MAJOR
CHANGES IN THEM.
THERE ARE SOME THINGS WE'RE
DOING WITH RESPECT TO
GUIDELINES ON TAXATION
OF COSTS WE'LL

HOPEFULLY BRING UP AS PART OF
OUR NEXT CYCLE OR IN SOME
OTHER FILING AFTER THAT IF WE
CAN'T GET IT DONE.

>> SO THESE RULES, THEY DON'T
EVEN ADDRESS WHAT KIND OF
MEDIUM YOU WOULD GET YOUR
DISCOVERY IN? IF IT IS A
ELECTRONICALLY-KEPT DOCUMENT,
IT DOESN'T SAY YOU GIVE THEM
ELECTRONICALLY OR YOU GIVE IT
TO THEM IN HARD COPY OR
WHATEVER?

THIS IS ALL LEFT UP TO THE
TRIAL JUDGE AND THE PARTIES TO
DETERMINE?

>> WHAT WE'VE DONE IS IT TRY TO
FOLLOW THE MODEL THAT IS IN THE
FEDERAL RULES IN THAT THERE IS
BASICALLY TWO CATEGORIES WE
START OFF WITH.

ONE IS THE WAY THE INFORMATION
IS ORDINARILY MAINTAINED IN
THAT FORMAT AND THE OTHER
FORMAT WOULD BE A REASONABLY
USABLE FORMAT.

WITHIN EACH OF THOSE BUCKETS
THERE MIGHT BE MYRIAD OF
DIFFERENT WAYS YOU COULD
PRODUCE THE INFORMATION IN
TERMS OF FILE FORMATS, ET
CETERA.

WHAT WE'RE TALKING ABOUT WHEN
YOU GET THAT REQUEST, FIRST OF
ALL AS REQUESTING PARTY HAS
ABILITY TO SPECIFY I WANT THIS
INFORMATION IN REASONABLY
USABLE FORMAT AND COME IN THE
FORMAT IT IS ORDINARILY
MAINTAINED.

IF I'M RESPONDING TO THAT I CAN
OBJECT TO THEIR CHOICE OF ONE
OF THOSE TWO BUCKETS AND CAN
SAY, NO, WE SHOULD BE ABLE TO
USE IT FROM THE OTHER BUCKET.
WE SHOULD BE ABLE TO DO IT WITH
THE OTHER FORMAT.

IF THERE IS STILL DISAGREEMENT
THE JUDGE WILL RESOLVE THAT.

>> DOESN'T THIS REALLY BOIL
DOWN WHO HAS THE BEST EXPERT TO
EXPLAIN IT TO THE LINE JUDGE?
BECAUSE, YOU KNOW, THEY ARE NOT
EXPERTS AND WE AREN'T EITHER.
SO IT GIVES THE ONE WITH THE

BEST EXPERT SOMEBODY TRYING TO
AVOID DISCOVERY TO ABUSE IT BY
HIDING THE BALL, THE ONE WHO
COMES UP WITH THE BEST EXPERT
IN TERMS OF BEING ABLE TO
REALLY COMMUNICATE AND IN TERMS
THAT WE ALL UNDERSTAND SO THAT
THE JUDGE CAN MAKE A RULING
THAT WILL PREVAIL?

>> I THINK THAT IS ACCURATE
TO THE SENSE LIKE ANY OTHER HIGHLY
TECHNICAL AREA WHEN YOU'RE
TALKING ABOUT COMPUTERS,
WHETHER YOU'RE TALKING ABOUT
PRODUCTS LIABILITY OR TALKING
ABOUT SCIENCE OR MEDICINE,
THERE ARE TIMES WHEN WE AS
LAWYERS AND WE AS JUDGES WILL
NEED A LOT OF HELP FROM EXPERTS
IN ORDER TO UNDERSTAND IT
BECAUSE TO THIS DAY I STILL GET
VERY WRAPPED UP AND OFF TRACK
IN SOME OF THESE THINGS AND
HAVE TO HAVE MY EXPERT SET ME
STRAIGHT.

THAT WILL ALWAYS BE THERE.
WE'LL ALWAYS HAVE THE RISK OF
BATTLE OF THE EXPERTS.

>> YOU HAVE TO ASK FOR, YOU
HAVE TO KNOW WHAT YOU'RE ASKING
FOR.

>> YES.

>> BECAUSE I'VE HAD THESE CASES
AND YOU GO THROUGH ALL THIS
ELECTRONIC DISCOVERY, JUST HIT
THE BUTTON AND IT POPS UP BUT
IF YOU ASK FOR THE WRONG BUTTON
AND IT MIGHT POP UP BUT WON'T BE
WHAT YOU'RE LOOKING FOR.

>> IT IS CRITICAL TO KNOW WHAT
YOU'RE LOOKING FOR. IT IS
CRITICAL TO KNOW WHAT YOU HAVE
IF YOU'RE RESPONDING SO YOU CAN
RESPOND ACCORDINGLY SO YOU CAN
PROMISE WHAT YOU CAN DELIVER.
YOU HAVE PROBLEM OF
OVERPROMISING AND UNDERDELIVERING.

I'M INTO MY REBUTTAL TIME.

>> LET ME ASK YOU A QUESTION
BEFORE YOU SIT DOWN.
ALTHOUGH YOU MADE DISTINCTION
WITH THE FEDERAL RULES THESE
DON'T REQUIRE ATTORNEYS TO MEET
AND CONFER AS IN THE FEDERAL

RULES, THERE ARE CERTAINLY NOT ANYTHING TO PROHIBIT A TRIAL JUDGE FROM ORDERING SUCH A THING?

>> NOTHING WHATSOEVER.

WE THINK IT WOULD BE A GREAT IDEA ON CASES THAT REQUIRE ESI FOR THE PARTIES TO MEET WHETHER IT IS VOLUNTARILY OR WHETHER THE COURT TELLS THEM THEY SHOULD REALLY DO IT.

I WANT TO TURN IT OVER TO MR. ^CALDWELL.

>> YOU STILL HAVE THREE MINUTES FOR REBUTTAL.

>> GOOD MORNING, I'M DOUG CALDWELL FROM RUMBERGER, KIRK AND CALDWELL IN TAMPA, APPEARING ON BEHALF OF THE FLORIDA DEFENSE LAWYERS ASSOCIATION AND LAWYERS FOR CIVIL JUSTICE.

FIRST OF ALL WE APPLAUD THE COMMITTEE FOR ITS PROACTIVE APPROACH TO THE PROBLEMS OF E-DISCOVERY FOR ALL THE REASONS THAT YOU HEARD AND THAT YOU READ.

WE SUBMIT, HOWEVER, THERE ARE THREE SPECIFIC AREAS IN WHICH THE COMMITTEE DID NOT GO FAR ENOUGH.

ONE IS COST SHIFTING UNDER PROPOSAL 1.280-B.

ANOTHER IS PRESUMPTIVE LIMITS FOR DISCOVERY ON CERTAIN CATEGORIES OF ELECTRONIC DISCOVERY WHICH ARE INACCESSIBLE BY ORDINARY MEANS. THIRD, ARE RESTRICTING SANCTIONS UNDER RULE 1.380.

>> WHAT WAS THE THIRD ONE?

>> RESTRICTING THE IMPOSITION OF SANCTIONS UNDER 1.380 TO INSTANCES INVOLVING WILLFUL MISCONDUCT AND REAL PREJUDICE.

>> DOESN'T, DON'T THESE PROPOSED AMENDMENTS TRACK THE FEDERAL RULES?

>> YES, YOUR HONOR, I'M GLAD YOU BROUGHT THAT UP.

ONE OF THE ARGUMENTS AGAINST THE COMMENT OF THE FDLE AND LCJ ARE THAT THE FEDERAL RULES HAVE

NOT SEEN FIT TO GO IN THE
DIRECTION THAT WE HAVE
RECOMMENDED.

TWO RESPONSES TO THAT.
ONE, THE FEDERAL RULES
THEMSELVES, THE DISCOVERY RULES
ARE NO MODEL OF EFFICIENCY AND
FAIRNESS.

THE PROCEEDINGS OF THE CIVIL
RULES ADVISORY COMMITTEE OF THE
FEDERAL COURTS, THE DUKE
CONFERENCE, SEDONA CONFERENCE
ALL ARE REplete WITH
SUGGESTIONS THAT THE FEDERAL
DISCOVERY SYSTEM IF NOT BROKEN
IS AT LEAST IN NEED OF SEVERE
REPAIR.

THERE ARE ACTIONS GOING IN THE
ADVISORY COMMITTEE TO REMEDY
THOSE.

WE HAVE SOME HOPES THAT WILL
APPLY QUICKLY.

THE PROPOSALS OF THE LCJ AND
FDLE DO NOT TILT THE PLAYING
FIELD IN FAVOR OF THE PRODUCING
PARTIES AS HAS BEEN COMMENTED.
FOR EXAMPLE, WE AGREE WITH
MR. ^TRAWICK'S COMMENT THAT THE
REQUESTING PARTY SHOULD BE
REQUIRED TO PAY FOR THE
EXTRAORDINARY EFFORTS INVOLVED.
>> A QUESTION.

I READ YOUR COMMENTS AND
APPRECIATE THOSE CONCERNS.
WHAT AREA, BECAUSE WE'RE
TALKING FROM EVERYTHING FROM
BUSINESS LITIGATION TO
MALPRACTICE CASES.

WHERE ARE THE AREAS WHERE THIS,
THE CONCERN THAT THE DEFENSE
LAWYERS HAVE COME UP THE MOST?
WHAT TYPE OF CASES?

>> THE CONCERN IS ACROSS THE
BOARD, YOUR HONOR.

THERE IS A MISPERCEPTION THAT
THIS IS AN INDIVIDUAL PLAINTIFF
VERSUS A LARGE CORPORATION
DICHOTOMY.

THIS IS NOT THE CASE.
JUST AS AN EXAMPLE, A
MOM-AND-POP STORE NOW THAT IS
EQUIPPED WITH AN iPhone AND A
LAPTOP HAS THE STORAGE
CAPABILITY OF THE EQUIVALENT OF
HUNDREDS UPON HUNDREDS IF NOT

THOUSANDS OF FILE BOXES OF MATERIAL.

SOMEBODY COMES TO MOM-AND-POP ANDSAYS, GIVE ME ALL OF THIS. IT IS GOING TO BE CHAOS.

OF COURSE THAT --

>> WHAT WOULD BE HELPFUL?

I DON'T KNOW IF THERE'S A WAY TO DO THIS.

IF WE PASSED THE RULE AS BEEN PROPOSED, SEEMS TO ME THE HELP WOULD BE TO PRESENT REAL-LIFE EXAMPLES ON BOTH SIDES OF THE FENCE.

LIKE, HERE IS, WHETHER IT'S THE WORST EXAMPLE OR THE BEST EXAMPLE OF HOW IT'S WORKED IN A WAY THAT'S NOT CHAOTIC FOR THE MOM-AND-POP STORE.

AGAIN, I'M THINKING CAN'T YOU PUT IN A, YOU JUST DO A DISK AND THE DISK IS PRODUCED AND THEN THE INFORMATION IS PRODUCED?

SO I DON'T, I KNOW THAT THERE ARE PEOPLE THAT CAN, KNOW HOW TO DO THIS BUT SOMETIMES I JUST WONDER WHETHER IT IS BECAUSE OF THE, THAT IT'S, MAKES, SOUNDS MORE COMPLICATED THAN IT IS OR IS IT MORE COMPLICATED THAN IT SOUNDS?

I GUESS THAT'S, AND THAT'S WHAT I WOULD LOVE TO HAVE MORE OF AN UNDERSTANDING.

I KNOW JUSTICE PERRY HAS DONE THIS KIND OF --

>> I CAN GIVE YOU A COUPLE OF EXAMPLES.

IN THE PROCEEDINGS BEFORE THE CIVIL RULES ADVISORY COMMITTEE THERE WAS A STUDY SPONSORED BY THE AMERICAN COLLEGE OF TRIAL LAWYERS AND ANOTHER ONE, A MICROSOFT REPORT, WHICH INDICATED THAT FOR EXAMPLE, THE PERCENTAGE OF DOCUMENTS ACTUALLY INTRODUCED IN EVIDENCE TO DOCUMENTS PRODUCED IS LESS THAN .1 OF 1%.

>> IS IT THAT, IS IT BECAUSE, AND THIS IS THE QUESTION.

IF I ASKED A CORPORATION, GIVE ME -- THERE WAS THE FORD PINTO CASE MANY YEARS AGO, GIVE ME

THE DOCUMENT THAT SAYS IT WAS TO CHANGE WHERE THE GAS TANK IS WOULD ONLY COST, WHATEVER IT WAS BUT IF WE'RE NOT DOING IT. YOU KNOW THE DOCUMENT I'M REFERRING TO, THAT SAID THEY DID A COST BENEFIT ANALYSIS OF THE, OF THE MANUFACTURE. GIVE ME THAT DOCUMENT.

SO IT IS, THERE'S A PROBLEM IF YOU DON'T, YOU CAN NARROW IT BUT YOU CAN'T SAY GIVE ME EVERYTHING THAT IS BAD, YOU KNOW, THAT, THAT YOUR CLIENT WOULDN'T WANT ME TO PRODUCE.

I MEAN THAT WOULDN'T BE -- ISN'T THAT THE PROBLEM THOUGH WITH SAYING THERE'S A LOT MORE PRODUCTION THAN WHAT IS INTRODUCED IN EVIDENCE BECAUSE THE SCOPE OF DISCOVERY IS BROADER?

>> SCOPE OF DISCOVERY IS BROADER, YOUR HONOR. BRING UP A POINT THAT YOU RAISED A BIT EARLIER. TRICKLE OF INFORMATION IS IN ONE SENSE EASIER ELECTRONICALLY.

THE CORRESPONDING BURDEN TO THAT IS THE AMOUNT OF INFORMATION WHICH HAS BEEN PRESERVED HAS INCREASED EXPONENTIALLY.

WE'RE TALKING TERABYTES. WE'RE TALKING PETABYTES.

>> WHY IS THE BURDEN ASPECT COVERED UNDER THE PROPOSED AMENDED RULE UNDER 1.280-b WHERE THE, WHERE THE PERSON WHO RECEIVES THE REQUEST CAN FILE A MOTION FOR PROTECTIVE ORDER OF SOME TYPE AND THEN THE COST AND BURDENSOME ASPECT BE CONSIDERED BY THE TRIAL JUDGE AND ACTUALLY MAY ORDER THAT THE COST OF DISCOVERY BE PAID BY THE PERSON SEEKING THE DISCOVERY?

WHY IS IT CONSIDERED A -- THERE?

>> BETTER PROPOSAL, YOUR HONOR, WE'RE TALKING CLARITY. THE LINE JUDGES NEED CLARITY. OUR PROPOSAL WE FEEL CLARIFIES THE EXPECTATION THAT UNDER

NORMAL CIRCUMSTANCES,
EXTRAORDINARY EFFORTS SHOULD BE
BORNE BY THE REQUESTING PARTY.
THE REQUESTING PARTY AFTER ALL
IS THE PARTY IN A LAWSUIT WHO
HAS THE POWER TO CUT DOWN
THE EXPENSE AND BURDEN OF --
>> BUT IT SEEMS WHAT YOU'RE
ASKING FOR IN THE RULE,
I DON'T UNDERSTAND THE
DISTINCTION BETWEEN WHAT
YOU'RE, WHAT YOU WANT AND
WHAT'S IN THE RULE?
>> WE PROPOSE A MODIFICATION OF
THE RULE PROPOSED BY THE
COMMITTEE AGAIN TO MAKE IT
CLEAR THAT THE NORMAL --
>> HOW WOULD YOU DO THAT?
>> REQUESTING PARTY PAYS.
>> WHAT WOULD YOUR
MODIFICATION LOOK LIKE OR READ
LIKE?
>> THE PROPOSED MODIFICATION --
>> THE TEXAS MODEL?
>> THE WORDING IS IN THE --
>> DIDN'T THE FEDERAL COURT,
THE FEDERAL COURT REJECT
THAT?
>> I BELIEVE THAT WAS IMPLEMENTED
PRIOR TO THE FEDERAL RULES AND
THEY LOOKED AT IT AND THEY
REJECTED IT.
AND I BELIEVE WE LOOKED AT IT
AND AT LEAST THE COMMITTEE
REJECTED IT BECAUSE, THEY
WANTED TO GIVE THE JUDGE AS
MUCH FLEXIBILITY AS POSSIBLE ON
A CASE-BY-CASE BASIS INSTEAD OF
LOCKING IT IN CONCRETE WHERE
YOU WOULDN'T HAVE ANY
DISCRETION AT ALL.
THAT IS THE WHOLE PURPOSE OF IT.
YOU CAN WEIGH, YOU CAN BALANCE
THE FACTORS AND CONDITIONS AND
DETERMINE WHETHER OR NOT THE
PLAINTIFF SHOULD PAY VERSUS THE
PARTY WHO MORE OR LESS GIVING
THE DISCOVERY.
>> DISCRETION IS IMPORTANT,
YOUR HONOR, HOWEVER CLARITY OF
GUIDELINES IS ALSO IMPORTANT
AND THIS WE FEEL IS WHAT OUR
PROPOSAL ACCOMPLISHES THAT THE
COMMITTEE'S WORDING DOESN'T.
I'M OUT OF TIME.

THANK YOU VERY MUCH.

>> I UNDERSTAND. THANK YOU.

>> PLEASE THE COURT.

I'M RALPH ARTIGLIERE.

I'M HERE IN TOTAL SUPPORT WHAT THE RULES COMMITTEE IS DOING. ON YOUR POINT, JUSTICE POLSTON, ADDING THE WORD EXTRAORDINARY RAISES TO A LEVEL LIKE PRIVILEGE.

THEY'RE TAKING THE ACCESS TO INFORMATION TO A HIGHER LEVEL WHICH, I THINK THAT OUR RULES ON BURDENSOMENESS JUST AS YOU HAVE SAID TAKE FULL CARE OF THAT AND LET THE JUDGE MAKE A DETERMINATION.

>> I WANT TO ASK JUST A QUESTION ABOUT JUDGES AND THEIR OWN BURDENS.

THE FEDERAL COURTS THAT HAVE EXPERIMENTED WITH OR HAVE USED THIS RULE, THEY HAVE GOT MAGISGTRATES WHO WERE FULL JUDGES REALLY.

THEY'RE PAID, CERTAINLY LIKE JUDGES AND THEY'RE JUDGES. AND KNOWING, AT LEAST ON THE OLD-FASHIONED WAY, WHAT, TO GET A JUDGE THAT COULD DEVOTE TWO OR THREE HOURS TO JUST DISCUSS WHAT WAS BEING PRODUCED OR NOT BEING PRODUCED WHEN IT WAS PAPER, HOW AS A PRACTICAL MATTER WITH CASELOADS OUR JUDGES HAVE AND CUTTING BACK OF ALL ANCILLARY RESOURCES CAN JUDGES DO THIS ESPECIALLY IF IT ENDS UP WHERE YOU EACH SIDE ENDS UP HAVING TO GET THEIR OWN EXPERT TO EXPLAIN TO THE JUDGE IF IT IS BURDENSOME OR NOT BURDENSOME?

>> THIS IS A REAL PROBLEM AND I'M ACTUALLY TEACHING NEW JUDGES NEXT WEEK AND WE'RE GOING TO TALK ABOUT THIS. THE ONLY WAY NOW YOU CAN GET A MAGISTRATE OR SPECIAL MASTER IS BY AGREEMENT OF THE PARTIES. AND IF THE PARTIES ARE OF AN ECONOMIC MEANS TO BE ABLE TO DO THAT, THAT WOULD BE APPROPRIATE. YOU CAN GET SOMEBODY LIKE, JOE HAMILTON OR, WELL, I'M NOT

ASKING FOR ANYMORE ACTIVITY.
I HAVE, MY WIFE SAYS I'M DOING
PLENTY RIGHT NOW.
BUT THEY CAN GET SOMEBODY LIKE
BILL HAMILTON OR RALPH LOSEY,
SOMEBODY TEACHING AND WHO
UNDERSTANDS THIS STUFF AND HIRE
THEM AND ALLOW THEM ON A
ECONOMIC BASIS TO GET THROUGH
THIS BUT I THINK WE'RE, YOUR
EARLIER POINT, DOES IT SOUND
MORE COMPLICATED THAN IT IS?
I THINK IT DOES.

>> BUT ISN'T THAT THE PROBLEM?
WHAT I'M CONCERNED ABOUT IS
THAT IT IS VERY EASY FOR THIS
TO SOUND COMPLICATED WHEN SOME
OF US THAT HAVE NOW SEEN THE
ADVANTAGES OF THINGS ELECTRONIC
FORMATS, YOU CAN SEARCH
DOCUMENT, ALL YOU HAVE TO DO IS
PRESS A LITTLE BUTTON AND
SEARCH.

>> THAT IS EXACTLY RIGHT AND
JUDGES WILL NEED SOME GUIDANCE
ON WHAT THEY SHOULD DELVE INTO
AND NOT DELVE INTO.

>> WOULDN'T IT BE I GUESS, AND
THIS IS SOMETHING I REALLY JUST
WONDER.

WE HAVE CERTAIN PLACES THAT
HAVE BUSINESS DIVISIONS AND
THEY'RE PROBABLY DEALING WITH
IT A LOT.

WHAT WOULD BE THE BEST THING IS
TO HAVE THE JUDGES THAT, MAYBE
YOU'RE DOING IT, THAT HAVE DONE
IT TO KIND OF SAY, WHEN THEY
SAY THIS, THIS IS, THIS IS NOT
REALLY BURDENSOME BECAUSE IT
CAN BE DONE THAT WAY.

IS THAT --

>> THAT IS EXACTLY RIGHT.
AND YOU CAN HAVE BUSINESS COURT
RULES THAT WILL PUT A FINE TUNE
ON SOME OF THESE THINGS AND
GIVE A LITTLE MORE CLARITY THAT
THE DEFENSE LAWYERS ARE ASKING
FOR THAT CAN GIVE, SORT OF A
PRESUMPTIVE WAY THAT THEY WILL
GO THROUGH THEM.

BUT FOR THE VAST AMOUNT OF
CASES THIS ISN'T GOING TO BE AS
BIG AN ISSUE.
THE AMOUNT OF DOCUMENTS ARE NOT

GOING TO BE THAT MUCH.
IT IS A CULTURAL CHANGE FOR
LAWYERS AND JUDGES.
AND IT'S AN EDUCATION ISSUE AND
ONE THAT WE'RE DEALING WITH.
WE'RE SPENDING A LOT OF TIME,
YOU KNOW, I'M TEACHING AT AJS
AGAIN THIS SUMMER.
WE HAD IT LAST YEAR AT AJS.
JUDGES NEED TO UNDERSTAND THAT
BUT THESE RULES -- YOU REMEMBER
WHEN YOU DID THE STRASER
VERSUS YALAMANCHI CASE IN THE
FOURTH DCA. YOU HAD TO COBBLE
AN APPROACH THROUGH THE RULES TO
ACCOMMODATE E-DISCOVERY.
THAT BECAME A CASE THAT IS
CITED NATIONWIDE THE WAY TO DO
THAT.
NOW JUDGES DON'T HAVE TO COBBLE
RULES.
THIS GIVES THEM A PATHWAY TO
DEAL WITH IT.
THE BIGGEST ISSUE I SEE AND THE
ONE THAT I ADDRESSED IN THE
BRIEF ALONGWITH RALPH LOSEY AND
BILL HAMILTON IS THE FACT THAT
PRESERVATION IS THE PROBLEM.
THAT'S THE BIG ELEPHANT IN THE
ROOM FOR THE DEFENSE LAWYERS.
THAT'S THE BIG PROBLEM.
HOW MUCH DO I KEEP OF ALL OF
THIS INFORMATION?
>> AT WHAT POINT?
DO YOU MEAN, YOU CAN'T TELL
PEOPLE TO KEEP THINGS BEFORE
THE LAWSUIT'S FILED?
>> WELL THAT'S THE, YOU KNOW,
THAT'S THE BIG QUESTION.
IN FEDERAL COURT, IN FEDERAL
COURT, THEY SAY IF YOU
ANTICIPATE, ANTICIPATE
LITIGATION YOU HAVE A DUTY TO
PRESERVE. SO PRESERVE WHAT?
HOW MUCH?
IF WE COULD HAVE SOME CLARITY
IN FLORIDA ABOUT
PROPORTIONALITY ON THE AMOUNT
THAT NEEDS TO BE KEPT, OR
PRESERVED.
RIGHT NOW WE'RE DEALING WITH --
>> HOW CAN WE, I GUESS WHAT I'M
QUESTIONING AND MAYBE I JUST
NEED TO LOOK AT THIS MORE, I
UNDERSTAND THERE IS EXFOLIATION

ISSUES BUT HOW CAN THE COURT
WHEN THERE IS NOT A LAWSUIT SAY
TO A POSSIBLE DEFENDANT, YOU
BETTER KEEP, DON'T, YOU KNOW, I
MIGHT BE AS A LAWYER SAYING TO
MY CLIENT, KEEP EVERYTHING
BECAUSE, YOU KNOW, WE DON'T
WANT TO EVER BE ACCUSED OF
DELETING SOMETHING IN BAD FAITH
BUT HOW DO THE COURT IN RULES
DO THAT?

>> WELL, WHAT YOU HAVE ALREADY
DONE IT AND THE COURTS HAVE
DONE IT.

YOU'VE DONE IT IN THE WAL-MART
CASE.

THE COURTS HAVE DONE IT IN
OTHER CASES.

JUST LIKE A LADDER.

YOU HAVE AN ACCIDENT WHERE
SOMEBODY FALLS OFF OF A LADDER.
THE EXPLODING BOTTLE AT PUBLIX,
THEY TAKE THAT BOTTLE AND THEY
PRESERVE IT.

THERE IS NO CASE AT THAT POINT
BUT THEY EXPECT THERE IS GOING
TO BE A CASE.

NOW IF THEY INTENTIONALLY GOT
RID OF THE LADDER, THE BOTTLE
OR WHATEVER ELSE AND THE OTHER
SIDE CAN'T MAKE THE CASE THAT
IS EXFOLIATION.

THE DIFFICULTY AS ALL THE CASES
WERE DEVELOPED FOR LADDERS,
BOTTLES, BRAKE PARTS AND OTHER
THINGS AND THE JUDGES WEREN'T
THINKING ABOUT ELECTRONIC
DISCOVERY.

SO THEY'RE ALL OVER THE PLACE.
THE DCAs ARE ALL OVER THE
PLACE.

>> IN A MEDICAL MALPRACTICE
CASE SOMETHING HAS HAPPENED BUT
THE RECORDS, THOSE RECORDS HAVE
TO BE KEPT.

>> THERE IS STATUTE THAT YOU'RE
REQUIRED TO KEEP THEM.

SO MEDICAL MALPRACTICE IS A
LITTLE DIFFERENT.

IN THOSE CASES THEY HAVE TAKEN
LIKE VALSINO WHERE YOU
DESTROYED THAT MEDICAL RECORD
SOMEBODY NEEDED AND
INCORPORATED, SOME OF THE DCAs

INCORPORATED INTO THE EXFOLIATION
AND PRESERVATION ARGUMENT WHERE
IT MAY NOT EXACTLY FIT.

>> SOUNDS LIKE IT WOULD BE A
CASE AS OPPOSED TO A RULE?

>> YES.

THAT'S WHY THE CIVIL RULES
COMMITTEE DID NOT PUT IT IN
BECAUSE WE DON'T HAVE --

>> HOW COULD WE PUT IT IN?

>> YOU HAVE, I THINK YOU CAN
DIRECT THEM TO FIND SOME
CLARITY ON THIS.

YOU CAN GIVE THEM SOME
DIRECTION IN A CASE, IF YOU GET
A CASE IN FRONT OF YOU THAT IS
GOING TO DEAL WITH PRESERVATION
PRIOR TO THE LITIGATION
STARTING. YOU KNOW --

>> THE PROBLEM IS THOSE CASES
DON'T FIND THEIR WAY UP HERE.
I THINK WE'VE HAD ONE IN MY 13
YEARS.

>> THE WAL-MART CASE.

>> WITH EVIDENCE.

SO THAT'S, IT DOES BECOME VERY
DIFFICULT TO HAUL OFF AND START
RIGHTING REGULATIONS WHICH IS
NOT REALLY IN THE NATURE OF
WHAT WE DO.

>> HERE'S WHAT IT COMES DOWN
TO, JUSTICE LEWIS.

LAWYERS ARE GOING TO HAVE TO
CHANGE THEIR CULTURE AND
UNDERSTAND, THEY'RE GETTING
PAID THE BIG BUCKS AND THEY
WILL HAVE TO TELL THEIR CLIENT
WHAT TO KEEP AND WHAT NOT TO
KEEP AND STAND BEHIND IT.

IN ORDER TO DO THAT THEY WILL
HAVE TO UNDERSTAND WHAT THEIR
CLIENT HAS AND WHAT THEY DON'T
HAVE AND WHEN A COURT LOOKS
BACK ON IT, THEY'RE GOING TO
SAY WAS THAT REASONABLE OR NOT?

I MEAN THE FACT THEY CONTINUED
WITH THEIR ROUTINE DESTRUCTION
MAY BE A PROBLEM IN ONE CASE
AND NOT ANOTHER CASE.

>> SOUNDS LIKE YOUR EDUCATION
NEEDS TO GO TO THE FLORIDA BAR?

>> IT IS AND I'M TEACHING AT
THE FLORIDA BAR MEETING THIS
YEAR AND WE'RE TRYING TO GET
THEM, LAWYERS HAVE TO STOP

RUNNING AWAY FROM THIS PROBLEM.
THE LAWYERS HERE ARE NOT A
PROBLEM.

THEY SEE THOSE THINGS UP THERE
ARE A LOT OF LAWYERS WHO ARE
NOT, WELL, IT'S A DIFFICULT
THING, I UNDERSTAND.

>> WE KNOW THE SAME THING ON
THE MINIMIZATION RULES.

WE'RE TRYING TO GET
EDUCATION ON THAT AND IT'S --

>> ALL THIS ELECTRONIC STUFF,
THIS IS ONE MORE STEP IN ALL
THE THINGS YOU'RE DOING ON
TECHNOLOGY WITH COURT RECORDS
AND EVERYTHING ELSE.

LAWYERS NEED TO ADAPT WHAT THEY
PUT IN THE RECORD AND THEY NEED
TO ADAPT ON THIS AS WELL.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> FIRST OF ALL I FIRMLY
SUPPORT EVERYTHING THAT HE
SAYS. PRESERVATION IS A VERY
BIG PROBLEM BUT I THINK HE'S
CORRECT AND I DON'T KNOW HOW WE
DEAL WITH IT.

IT WILL TAKE A CASE THAT
REACHES YOU ALL SO WE DEVELOP
COMMON LAW ON THE SUBJECT OR IT
WILL TAKE STATUTORY CHANGE.

>> BECAUSE YOU HAVE HAD THE
UNANIMITY IN PRESENTING THIS
RULE, THAT THE COMMITTEE WHICH
IS MADE UP OF, I ASSUME BOTH
SIDES, COULD TAKE A LEAD IN,
YOU KNOW, GIVING EDUCATION,
PROVIDING EDUCATION TO THE BAR,
NOT ONLY ON THIS ISSUE BUT ON
THE ISSUE OF PRIVACY CONCERNS?
BECAUSE THIS REALLY IS A BIG
HOLE AND IT IS SOMETHING THAT
WE, YOU KNOW, I THINK WE WOULD
BE VERY GRATEFUL FOR WITH THE,
WITH YOUR COMMITTEE.

IT IS NOT, YOU DON'T HAVE TO DO
IT AND WE CAN'T DIRECT YOU TO
DO IT BUT IT WOULD BE REALLY I
THINK AN IMPORTANT PART OF THIS
PROCESS.

>> THE PROBLEM IS THAT WE AS A
COMMITTEE HAVE NO BUDGET.

>> OH.

>> UNFORTUNATELY.

WE CAN --

>> THE COURT HAS NO BUDGET.
>> I WOULD SAY THAT THERE ARE
SECTIONS THAT HAVE THE BUDGETS.
>> YES.

>> AND THAT WOULD BE A QUESTION
OF TALKING TO --.

>> THAT IS WHAT I WAS GOING TO
SAY.

WE HAVE A LOT OF SUPPORT FROM
THE BUSINESS LAW SECTION, IN
PARTICULAR THEIR COMPUTER LAW
COMMITTEE, DOUG SHERRY, WE
PARTNER WITH PEOPLE LIKE THAT.
BILL HAMILTON.

RALPH LOWSSY, PEOPLE THAT TALK
ABOUT THE SUBJECT TRY TO PUT
THE WORD OUT THERE.

>> DOES IT SEEM FROM THE
LAWYERS PERSPECTIVE THAT WE
REALLY NEED TO HAVE NOT
OPTIONAL EDUCATION FOR OUR LINE
JUDGES. WE NEED TO HAVE
MANDATORY SO THAT ALL THE
JUDGES WILL KNOW WHAT THEY NEED
TO KNOW ABOUT THIS ELECTRONIC
STUFF?

ISN'T THAT REALLY WHAT WE NEED
TO DO?

>> I THINK JUDGES NEED A LOT
MORE EDUCATION ON IT AND
THERE'S A NUMBER OF GREAT
JUDGES OUT THERE THAT KNOW IT
WELL BUT THERE ARE SOME JUST
NEVER HAD A CASE.

I THINK IT WOULD HELP THEM A
LOT TO HAVE THAT BASIC
EDUCATION SO WHEN THAT FIRST
CASE COMES IN AND DEAL WITH IT
AND KNOW WHAT THEY'RE DOING.

>> ONE OF THE WAYS AGAIN TO
HELP IS NOT SATISFACTORY
COMPLETELY BUT THERE ARE
DISTANCE LEARNING OPPORTUNITIES
AND IF AGAIN THE BAR WORKING
WITH THE JUDGES COULD HELP
DEVELOP SOMETHING AND WE COULD
HAVE THAT AVAILABLE WITH
JUSTICE LABARGA'S LEADERSHIP ON
COURT EDUCATION. I THINK THAT
WOULD BE VERY IMPORTANT SO THAT
THEY KNOW WHEN THESE EXPERTS
ARE COMING IN ON BOTH SIDES,
WHAT ARE THEY SUPPOSED TO BE
LOOKING FOR?

>> EXACTLY.

OUR COMMITTEE IS HAPPY TO PARTNER WITH THE COURT AND WITH ANY COMMITTEE OR ANY SECTION WILLING TO PROMULGATE THAT EDUCATION.

WE TRIED TO GIVE JUDGES SOME FEEDBACK AND SOME GUIDANCE IN THE COMMENTS TO TELL THEM LOOK, IF YOU'RE NOT GETTING ENOUGH FROM THE LAWYERS, SEND THEM BACK.

GET MORE INFORMATION ABOUT THE COSTS AND BURDENS OF DISCOVERY. WE TRIED TO BURY THINGS IN THOSE COMMENTS, NOT BURY BUT PLACE THEM IN THE COMMENTS SO THEY HAVE SOME GUIDANCE AND THEY CAN DEAL WITH SOME OF THE THINGS WE KNOW THEY ARE GOING TO COME UP.

REAL BRIEFLY WANT TO ADDRESS A COUPLE ISSUES THAT CAME UP IN THE COMMENTS FROM THE DEFENSE LAWYERS ASSOCIATION.

FIRST OF ALL THE ISSUES THEY IDENTIFY ARE VERY REAL ISSUES. THEY ARE THE THINGS WE FIGHT ABOUT ON DAILY BASIS IN E-DISCOVERY WORLD.

MY PROBLEM I DON'T KNOW WE CAN DEAL WITH THEM ON RULES LEVEL. WE MAY HAVE TO CONTINUE TO FIGHT THEM OUT ON CASE-BY-CASE BASIS.

THE PROBLEM IS WHEN WE GET VERY SUBSTANTIAL, GET VERY SPECIFIC CATEGORY-BASED LIMITATIONS WHAT CAN'T BE PRODUCED OR WHAT CAN BE PRODUCED THAT CAN BREAK WHEN YOU START GETTING TECHNOLOGICAL ADVANCES TO WHERE WE'RE SAYING IT IS TOO BURDENSOME BUT REALITY IT IS NOT BECAUSE TECHNOLOGY ADVANCED AND CAUGHT UP WHERE IT IS NOT A BURDEN ANYMORE.

SECOND THING ON PROPOSAL HAVING REQUESTING PARTY PAY, FDIA LANGUAGE REQUESTING PARTY SHALL PAY WHICH MAKES IT MANDATORY AS OPPOSED TO HAVING A JUDGE DECIDE AND REASONABLE COST OF EXTRAORDINARY STEPS. THAT LIMITS THE COST TO BE ASSESSED ACTUALLY.

I WOULD HAVE THE JUDGE SAY YOU
WILL PAY EVEN ORDINARY COSTS
BECAUSE IN THIS CASE IS THAT IS
WHAT IS JUSTIFIED.

I DON'T FEEL LIKE THE JUDGE HAS
TO FIND THAT EXTRORDINARY
STEPS ARE JUSTIFIED REQUIRED TO
JUSTIFY COST OF PRODUCTION.
WE TRIED TO STRIKE THE BALANCE
TO THE RIGHTS OF THE PARTIES
AND TRY TO GIVE THE JUDGES
ENOUGH DISCRETION TO
RESOLVE THESE CASES IN REAL
LIFE.

WE HOPE WE STRUCK THE BALANCE.
IF NOT WE'LL BE BACK HERE AGAIN
IN A FEW YEARS.

THANK YOU VERY MUCH.

>> THANK YOU.

WE THANK YOU ALL OF YOU FOR
YOUR CONTRIBUTION TODAY, THANK
YOU.