

>> ALL RISE.  
HEAR YE, HEAR YE, HEAR YE,  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
DRAW NEAR, GIVE ATTENTION.  
YE 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 THIS  
MORNING IS IN RE AMENDMENTS TO  
THE FLORIDA RULES OF TRAFFIC  
COURT.

>> GOOD MORNING.  
MAY IT PLEASE THE COURT, OPPOSING  
COUNSEL, MY NAME IS WILLIAM  
ABRAMSON AND I'M A MEMBER OF THE  
FLORIDA BAR TRAFFIC RULES  
COMMITTEE AND IT IS A PRIVILEGE  
TO APPEAR BEFORE THIS COURT TODAY  
TO MAKE TWO REQUESTS OF THIS  
HONORABLE COURT.  
THE FIRST ISSUE IS AN AMENDMENT  
TO THE TRAFFIC RULES OF COURT,  
WHICH WOULD ALLOW AN INDIVIDUAL  
WHO IS CHARGED WITH A TRAFFIC  
INFRACTION TO NOT BE COMPELLED TO  
BE A WITNESS AGAINST HIM OR  
HERSELF SIMILARLY AS IN A  
CRIMINAL PROCEEDING.

>> NO.  
YOU SAID SOMETHING -- AND I  
KNOW -- THIS IS A RULE BEING  
PROPOSED BY THE ENTIRE COMMITTEE  
AND YOU SAID IT WOULD GIVE THE  
DEFENDANT THE RIGHT NOT TO BE  
COMPELLED TO GIVE TESTIMONY.  
BUT WHAT MY PROBLEM IS IS THAT  
THAT'S A SUBSTANTIVE ISSUE AS TO  
WHETHER THEY HAVE THAT RIGHT OR  
WHETHER THEY DON'T HAVE THE RIGHT  
AND WHETHER IN THE CONTEXT OF A  
TRAFFIC INFRACTION, THERE ARE  
CASES THAT TALK ABOUT WHETHER  
THERE IS AN IMPENDING  
PROSECUTION.  
SO I DON'T SEE HOW WE IN A RULES  
CASE MAKE A SUBSTANTIVE  
DECISION.

>> I'M GOING TO ASK THE COURT TO  
LOOK AT THE LEVITT'S OPINION, THE

FIRST OPINION ISSUED BY THIS COURT, WHERE THIS COURT HELD THAT EVEN THOUGH IT'S A TRAFFIC INFRACTION, INDIVIDUALS HAVE ALL THE CONSTITUTIONAL DUE PROCESS RIGHTS THAT WERE AVAILABLE TO THEM WHEN THE CASE WAS A CRIMINAL CASE.

>> WAS THAT A CASE -- WELL, AGAIN, IF THE LAW IS THAT THEY HAVE THAT RIGHT, THEN WE DON'T NEED TO PUT IT IN THE RULES. WE DON'T PUT IN THE RULES -- THE RULES ARE ABOUT PROCEDURE, NOT SUBSTANCE.

AND I JUST DON'T -- AND, AGAIN, I DON'T THINK THE LEVITT'S CASE ACTUALLY DEALS WITH THE FIFTH AMENDMENT INCRIMINATION. AND I UNDERSTAND THAT THIS WOULD BE A CONCERN FOR AN UNREPRESENTED LITIGANT WHO MIGHT BE TESTIFYING.

AND I DON'T KNOW THAT ANYTHING PREVENTS A JUDGE FROM GIVING SOME CAUTIONARY STATEMENTS.

BUT THIS WOULD ACTUALLY BE A RULE, A COMMAND THAT -- HOW WOULD IT BE USED IN THE COURTROOM SETTING?

HOW WOULD THAT -- HOW WOULD IT ACTUALLY BE EXECUTED?

>> WHEN THE COURT DOES ITS INITIAL EXPLANATION AT THE BEGINNING OF ALL TRAFFIC PROCEEDINGS, THE COURT GIVES AN EXPLANATION AS TO HOW THE PROCEEDINGS WOULD TAKE PLACE AND ALL THE COURT WOULD NEED TO DO AT THAT POINT IS REMIND INDIVIDUALS REPRESENTING THEMSELVES THAT AS THE DEFENDANT THEY ARE NOT REQUIRED TO BE A WITNESS IN THE CASE.

>> NOW, IS THAT DONE PRESENTLY BY JUDGES?

>> NO.

THAT IS NOT A PART OF THE INITIAL COLLOQUY --

>> SO WE WOULD BE IMPOSING BY RULE A SUBSTANTIVE ADDITION TO A COLLOQUY?

>> WELL --

>> SEE -- AND, AGAIN, YOU KNOW, WE'RE HERE ON A RULES CASE, NOT ON A CASE IN CONTROVERSY. YOU KNOW, I KNOW THERE'S OPPOSITION FROM THE COUNTY COURT JUDGES AND FROM IT SEEMS PRETTY

UNANIMOUSLY FROM THE JUDGES THAT THIS IS NOT SOMETHING THAT THEY DO NOW AND DON'T THINK THAT IT IS SUBSTANTIVELY A REQUIREMENT.

NOW, I DON'T KNOW I AGREE OR DISAGREE WITH THAT, BUT I DON'T THINK THERE'S A CASE CLEARLY ON POINT THAT SAYS IT'S MANDATORY IN ALL CASES.

>> I WOULD JUST ASK THE COURT TO LOOK AT LEVITTS AND THEN STATE VERSUS JOHNSON WHICH INDICATES THOUGH THE PROCESS WAS DECRIMINALIZED, THERE WAS NOT AN INTENT TO DEPRIVE INDIVIDUALS OF RIGHTS, RIGHT TO REMAIN SILENT.

>> HOW IS IT THAT AN ACCUSED IN A TRAFFIC INFRACTION IS COMPELLED TO TESTIFY AGAINST HIMSELF?

>> A HEARING OFFICER WOULD TURN TO THE DEFENDANT WHO'S STANDING THERE AFTER THE STATE, POLICE OFFICER AND ANY WITNESSES THAT THE STATE HAD SUBPOENAED TO BE THERE, WOULD THEN TURN TO THE DEFENDANT, TO ASK THEM IF THEY HAVE ANYTHING TO SAY, IF THEY WANT TO TESTIFY.

BUT THEY SHOULD BE TOLD THEY DON'T HAVE TO.

THIS IS A CRIMINAL STANDARD. AN INFRACTION HAS TO BE PROVED BEYOND A REASONABLE DOUBT. THAT IS A CRIMINAL STANDARD.

>> INFRACTIONS TYPICALLY THERE ISN'T A PROSECUTOR PRESENT.

>> CORRECT.

>> SO ARE THERE INSTANCES IN WHICH JUDGES ENGAGE IN A DIALOGUE OR COLLOQUY OR QUESTION-AND-ANSWER TYPE SITUATION WITH AN ACCUSED?

>> ABSOLUTELY.

AND EVEN MORE SO, THERE HAVE BEEN SITUATIONS WHERE JUDGES HAVE INDICATED YOU HAVE NO CHOICE. YOU HAVE TO TESTIFY.

YOU CANNOT REMAIN SILENT AT THIS HEARING AND YOU COULD BE SUBJECT TO CONTEMPT OF COURT FOR NOT ANSWERING A JUDGE'S QUESTIONS DURING THE CASE.

UNDER THE LAW, BECAUSE IT'S A TRAFFIC INFRACTION HEARING AND THERE ARE NO PROSECUTORS, THE JUDGES ARE OBLIGATED TO ENSURE THE ORDERLY PROCESS OF A TRAFFIC INFRACTION HEARING.

BUT AT WHAT POINT DOES IT BECOME  
AN ORDERLY PROCESS BECOME A  
PROSECUTION WHEN A JUDGE THEN --  
>> HERE'S MY CONCERN.

AND MY CONCERN IS CASES INVOLVING  
AN ACCIDENT OR SAY SOMEBODY RUNS  
A RED LIGHT OR STOP SIGN OR  
SPEEDING, AND THE OFFICER AT THE  
SCENE ISSUES A CITATION FOR  
SPEEDING, RUNNING A RED LIGHT OR  
WHATEVER.

AND THAT'S WHAT'S BEFORE THE  
TRAFFIC INFRACTION OFFICER.  
MEANWHILE, THERE WAS SERIOUS  
INJURIES OR PERHAPS EVEN A DEATH  
IN THE CASE.

THE HIGHWAY PATROL WILL USUALLY  
DO A HOMICIDE INVESTIGATION,  
WHICH MAY TAKE MONTHS, AND  
EVENTUALLY THEY'LL PROVIDE A  
REPORT OF THE HOMICIDE  
INVESTIGATION TO THE STATE  
ATTORNEY, WHO WILL DECIDE  
WHETHER TO PROCEED WITH CHARGES.  
BUT IN THE MEANTIME, WHILE THAT  
INVESTIGATION IS BEING CONDUCTED  
THIS, INFRACTION HEARINGS ARE  
TAKING PLACE.

AND A DEFENDANT, AN ACCUSED, MAY  
COME IN AND MAY MAKE STATEMENTS  
IN DEFENSE OF RUNNING A RED LIGHT  
OR WHATEVER, OR EVEN PLEAD GUILTY  
TO THOSE OFFENSES.

NOW, WOULD THAT BE ADMISSIBLE  
LATER ON IF THAT PERSON IS  
CHARGED WITH MANSLAUGHTER OR  
VEHICULAR HOMICIDE?

>> ABSOLUTELY.

THE PERSON CHOOSES ON THEIR OWN  
TO BE A WITNESS IN THE CASE, THEN  
THAT STATEMENT CAN BE USED.

>> I THOUGHT THERE WAS LAW OUT  
THERE THAT THOSE COULD NOT BE  
USED.

>> ACCIDENT REPORT PRIVILEGES  
CANNOT BE, BUT IF YOU TESTIFY IN  
THE OPEN COURT, THEN THAT WOULD  
BE FAIR GAME.

>> BUT NOT THE PLEA, GOING BACK  
TO THAT.

>> UNLESS IT'S A PLEA --

>> WE'RE TALKING ABOUT

CIVIL -- WE'RE TALKING ABOUT A  
CIVIL INFRACTION, AND ISN'T IT  
CLEAR -- THERE'S CASE LAW ON  
THAT -- THAT A PLEA IN A CIVIL  
INFRACTION IS NOT THE SAME AS A  
PLEA IN A CRIMINAL PROCEEDING.

>> ALTHOUGH IN CIVIL CASES IF YOU  
DO PLEAD GUILTY TO THE  
INFRACTION, THEN IT WOULD TAKE  
AWAY YOUR RIGHT TO CHALLENGE THE  
NATURE OF YOUR RESPONSIBILITY TO  
THE ACCIDENT IN A CIVIL TRIAL  
DOWN THE ROAD.  
IF YOU PLEAD GUILTY.  
IF YOU PLEAD NO CONTEST, IT  
CANNOT BE USED AGAINST YOU.  
YOU PLEAD GUILTY TO RUNNING A  
STOP SIGN, CAUSING AN  
ACCIDENT --  
>> IN A CIVIL PROCEEDING  
>> IF YOU PLEAD GUILTY.  
>> WELL, I'LL CHECK.  
I DON'T BELIEVE THAT'S THE CASE.  
>> IF THE BASIS FOR THE VEHICULAR  
HOMICIDE CASE OR MANSLAUGHTER  
CHARGE THAT MAY COME ABOUT LATER,  
IF THE BASIS FOR THAT IS RUNNING  
THE RED LIGHT OR SPEEDING AT A  
HIGH RATE OF SPEED, GOING 95 IN  
A 35 MILE ZONE, IF THE BASIS FOR  
THE HOMICIDE CHARGE LATER ON IS  
THAT SPEEDING, WOULD A GUILTY  
PLEA TO THAT INFRACTION BE  
ADMISSIBLE AS EVIDENCE THAT HE  
COMMITTED THE CRIME?  
>> NOT IN A CRIMINAL PROCEEDING,  
BUT I BELIEVE IN A CIVIL  
PROCEEDING FOR MONEY DAMAGES IT  
WOULD BE.  
>> I THINK, THOUGH, WHAT'S GOING  
ON HERE, AT LEAST FROM MY POINT  
OF VIEW, IS THERE MAY BE A  
DIFFERENCE BETWEEN WHETHER  
YOU'RE TESTIFYING OR PAYING A  
CIVIL PENALTY, WHICH IS A STATUTE  
THAT EXPRESSLY SAYS THAT'S NOT  
USED.  
BUT THE FIRST QUESTION THAT  
JUSTICE LABARGA ASKED YOU IS IS  
SOMEONE REALLY BEING COMPELLED  
TO GIVE TESTIMONY IF NO ONE IS  
CALLING THEM TO THE STAND.  
WHAT YOU'RE SAYING IS THIS NEEDS  
TO BE DONE NOT WHERE A DEFENSE  
LAWYER IS REPRESENTING THE  
DEFENDANT, BECAUSE IN THAT  
SITUATION THE DEFENSE LAWYER  
WILL SAY DON'T TESTIFY OR DO  
TESTIFY, DEPENDING.  
BUT YOU WANT TO MAKE SURE THAT THE  
ADVICE IS GIVEN TO THE  
SELF-REPRESENTED LITIGANT.  
IS THAT WHAT I --  
>> ABSOLUTELY.  
THAT IS A MAJOR COMPONENT.

THE SECOND COMPONENT --  
>> AND I APPRECIATE IT.  
BUT THE WAY THE RULE READS IS IT  
JUST SAYS TESTIMONY OF ACCUSED.  
NO ACCUSED PERSON SHALL BE  
COMPELLED TO GIVE TESTIMONY  
AGAINST HIMSELF OR HERSELF.  
AND I DON'T -- I'M STILL TRYING  
TO UNDERSTAND HOW THAT RULE WOULD  
WORK.  
IT DOESN'T SAY WHO'S SUPPOSED TO  
ADVISE THE TRAFFIC DEFENDANT, AT  
WHAT STAGE.  
IS IT AT THE POINT BEFORE THEY  
PLEAD GUILTY?  
AND SO THAT'S WHY IT SEEMS THAT  
THIS IS JUST NOT THE RIGHT FORUM  
TO TRY TO MAKE THIS DECISION.  
>> I WOULD -- WE WOULD  
RESPECTFULLY DISAGREE, THAT  
THERE IS AN OPENING REMARKS THAT  
ARE MADE BY THE JUDGE, A TRAFFIC  
HEARING OFFICER, EXPLAINS HOW  
THE PROCEEDING IS GOING TO TAKE  
PLACE.  
ALL THEY WOULD HAVE TO DO IS ADD  
ONE MORE SENTENCE.  
>> BUT THE COLLOQUY THAT'S GIVEN,  
IS THAT IN THE RULES?  
>> IT'S IN THE CASE LAW AND I  
BELIEVE IT'S IN THE RULES AS  
WELL, THE EXPLANATION OF HOW THE  
PROCEDURE TAKES PLACE.  
>> ONE OF THE WAYS TO ADDRESS IT  
WOULD BE TO GO TO THE COUNTY COURT  
CONFERENCE AND WORK WITH THEM ON  
A MODEL COLLOQUY.  
BUT IT JUST DOESN'T SEEM -- AND,  
AGAIN, I RESPECT WHAT YOU'RE  
SAYING AND THAT THIS IS SOMETHING  
THAT MAY COME BACK TO HAUNT A  
DEFENDANT BECAUSE THERE ARE  
CASES THAT TALK ABOUT IF THERE IS  
AN IMMINENT THREAT OF  
PROSECUTION.  
BUT THERE IS NO CASE THAT SAYS  
THAT IN ALL TRAFFIC -- CIVIL  
TRAFFIC CASES THAT A DEFENDANT  
CANNOT BE COMPELLED TO GIVE  
TESTIMONY.  
>> ACCORDING TO TRAFFIC RULE OF  
COURTS, 6.340, AN INDIVIDUAL MAY  
OFFER -- I'M SORRY, 6.450 SUB C,  
THE DEFENDANT MAY OFFER SWORN  
TESTIMONY.  
THIS IS THE DEFENDANT'S  
DECISION.  
AND TO NOT INFORM INDIVIDUALS  
THAT ARE NOT EDUCATED OF THE

ACTUAL RULES OF COURT AND THEN  
ALLOW A JUDGE THE OPPORTUNITY TO  
BASICALLY TAKE ADVANTAGE OF THAT  
BY TELLING THE INDIVIDUAL, OKAY,  
WHAT DO YOU HAVE TO SAY, WHEN  
CLEARLY THE STATE'S WITNESSES  
HAVE NOT PRESENTED ENOUGH  
EVIDENCE.

AN ACCIDENT CASE, THREE  
WITNESSES SUBPOENAED.  
ONLY ONE APPEARS.  
THE ONE DIDN'T SEE ANYTHING.  
THERE'S NO CASE.  
THEY TURN TO THE DEFENDANT.  
WHAT HAPPENED?

I DID THIS.  
WELL, THEN YOU'RE GUILTY.  
THAT PERSON HAD A RIGHT NOT TO  
TESTIFY --

>> BUT WHERE IS THAT RIGHT?  
DO YOU SAY IT'S IN THE RULES?  
EARLIER YOU SAID IT WAS IN 11.  
I LOOKED AT THAT AND THAT IS VERY  
WEAK GROUNDS FOR YOUR ARGUMENT.  
IF I UNDERSTAND LEVITTS, LEVITTS  
WAS JUST SAYING WHEN CERTAIN  
OFFENSES WERE DECRIMINALIZED,  
THAT THAT DIDN'T VIOLATE DUE  
PROCESS AND THERE'S SOME GENERAL  
STATEMENT IN THERE THAT DUE  
PROCESS RIGHTS STILL APPLY.  
WELL, OBVIOUSLY IN ANY KIND OF  
PROCEEDING DUE PROCESS RIGHTS  
APPLY.

THE QUESTION IS WHAT IS  
DUE -- WHAT PROCESS IS DUE IN THE  
PARTICULAR CONTEXT.

THERE'S NOTHING IN THERE ABOUT  
THIS RIGHT AGAINST  
SELF-INCRIMINATION, IS THERE?  
>> WE BELIEVE THAT IT IS BASED  
UPON THE COURT'S RULING.

THE COURT SAID THERE WAS NO  
ATTEMPT TO LIMIT INDIVIDUALS'  
RIGHTS BY THE DECRIMINALIZATION.  
IT WAS NEVER INTENDED TO  
ELIMINATE RIGHTS THAT AN  
INDIVIDUAL HAD UNDER THE  
CONSTITUTION.

ARTICLE SECTION 9 SPECIFICALLY  
TALKS ABOUT THE RIGHT TO REMAIN  
SILENT AND THE COURT WAS THEN  
TRANSFERRING WHAT WAS A CRIMINAL  
RIGHT EVEN THOUGH IT'S BEEN  
DECRIMINALIZED TO A CIVIL  
INFRACTION HEARING, THAT SAME  
CONSTITUTIONAL DUE PROCESS  
RIGHT.

>> ARE YOU FAMILIAR WITH THE

CASES THAT TALK ABOUT THAT THE PRIVILEGE MAY BE ASSERTED BY A WITNESS DURING A CIVIL PROCEDURE IF THE WITNESS HAS REASONABLE GROUNDS TO BELIEVE THAT HIS OR HER ANSWERS WILL PROVIDE A LINK IN THE CHAIN OF EVIDENCE NECESSARY FOR A CRIMINAL CONVICTION?

THOSE CASES THAT SAY THAT IF THERE IS A SUBSTANTIAL AND REAL THREAT, THAT THAT'S WHEN YOU CAN ASSERT YOUR RIGHT?

>> THE PEOPLE AREN'T TOLD THAT.

>> BUT THAT IS A DETERMINATION A JUDGE WOULD HAVE TO BE -- WOULD HAVE TO MAKE.

IT'S NOT A BLANKET RIGHT.

IT'S A RIGHT DEPENDING ON THE CIRCUMSTANCES.

>> WE WOULD DISAGREE BASED UPON THE LANGUAGE OF RULE 6.450 THAT SAYS THE DEFENDANT MAY OFFER TESTIMONY.

THE DEFENDANT DOES NOT HAVE TO. IT SAYS IT RIGHT THERE IN THE RULE.

WHEN YOU LOOK AT LEVITTS AND JOHNSON --

>> WHAT SPECIFIC LANGUAGE IN LEVITTS ARE YOU RELYING ON?

>> THE LAST PARAGRAPH THAT IS UNDISPUTED THAT IF ONE CHOOSES TO CONTEST A TRAFFIC CITATION, ALL CONSTITUTIONAL DUE PROCESS RIGHTS ARE AVAILABLE.

AND THEN WE LOOKED AT THE FLORIDA CONSTITUTION.

WE LOOKED AT SECTION 9 WHERE THERE'S THE RIGHT TO REMAIN SILENT.

SO THE COURT TRANSFERRED THESE RIGHTS OVER EVEN THOUGH IT DECRIMINALIZED IT BECAUSE IT WAS NEVER INTENDED TO LIMIT PEOPLE'S RIGHT IN TRAFFIC INFRACTION HEARINGS.

I'D LIKE TO RESERVE THE REST OF MY TIME.

>> ASSUMING YOU'RE RIGHT, IF A PERSON ASSERTS THE RIGHT AGAINST SELF-INCRIMINATION IN A TRAFFIC INFRACTION, BECAUSE IT IS A CIVIL PROCEEDING, THE MAGISTRATE COULD APPLY AN ADVERSE INFERENCE, COULDN'T HE?

>> WE DEFER.

THIS COURT HAS HELD IN JOHNSON THAT THIS IS CIVIL IN NATURE.



THESE ARE NOT CIVIL PROCEEDINGS.  
THEY ARE TRAFFIC PROCEEDINGS.  
WE ARE A SEPARATE WING.  
WE DON'T HAVE THE RIGHT TO  
DISCOVERY.  
IF THIS IS A CIVIL CASE I WANT  
DEPOSITIONS, INTERROGATORIES,  
REQUESTS TO ADMIT, THIRD PARTY  
PRODUCTION AND I DON'T WANT  
SANCTIONS WHEN THEY DON'T  
COMPLY.  
THE ONLY RIGHT YOU HAVE IN  
TRAFFIC COURT IS THE RIGHT TO  
REMAIN SILENT AND THE RIGHT TO  
SEE THE POLICE OFFICER'S  
DOCUMENTS AND TO GIVE CLOSING  
STATEMENTS.  
BUT THESE ARE NOT CIVIL CASES.  
THAT'S THE ONE THING WE'RE HOPING  
THAT THIS COURT WILL TAKE AWAY,  
IS THAT WE'RE RECOGNIZED AS A  
DISTINCT AREA OF THE LAW,  
SEPARATE AND APART FROM CRIMINAL  
AND CIVIL, AS BOTH TYPES OF LAW  
ARE ENCOMPASSED IN TRAFFIC.  
IT'S A CRIMINAL BURDEN OF PROOF.

>> GOOD MORNING.  
MAY IT PLEASE THE COURT, CHIEF  
JUSTICE, JUSTICES, I'M ROBERT  
LEE.  
I'M THE CHAIR OF THE CIVIL  
DIVISION OF COUNTY COURT IN  
BROWARD COUNTY AND I'M SENT HER  
ON BEHALF OF THE JUDGES AND  
HEARING OFFICERS OF THE 17TH  
JUDICIAL CIRCUIT.  
>> CAN YOU TELL US IN THE REAL  
WORLD ALL AROUND THE STATE WHAT  
DO JUDGES DO WHEN YOU HAVE AN  
UNREPRESENTED LITIGANT?  
>> WE -- THIS COURT HAS IMPOSED  
A TRAINING REQUIREMENT ON  
HEARING OFFICERS THAT IS  
ACTUALLY IN THE TRAFFIC COURT  
RULES.  
SO WE DO OURS ABOUT EVERY FIVE  
YEARS.  
IT'S NOT UNIFORM WHEN IT'S DONE.  
WE JOIN WITH PALM BEACH THIS YEAR  
TO DO OURS TOGETHER.  
ONE OF THE THINGS THAT WE DO TELL  
THEM THAT THEY HAVE TO GIVE A  
COLLOQUY, WE HAVE DEVELOPED OUR  
OWN MODEL COLLOQUY THAT WE USE  
BECAUSE THERE IS NOT A MODEL  
COLLOQUY IN THE RULES.  
THERE IS JUST SOME SUGGESTIONS OF  
WHAT WILL FACILITATE.

AND ONE OF THE THINGS, HOWEVER,  
THAT WE DO INSTRUCT OUR HEARING  
OFFICERS, AS WELL AS THE 11  
JUDGES THAT HANDLE CIVIL TRAFFIC  
IN FRACTIONS, IS THAT IF THEY ARE  
TO ASK THE DEFENDANT IF THERE'S  
ANYTHING THEY WANT TO SAY.

>> BUT, NOW, THE QUESTION, I  
GUESS, IS THIS, IS THAT IF IT IS  
A CASE WHERE IT'S A SERIOUS  
TRAFFIC INFRACTION THAT HAS  
RESULTED IN SERIOUS INJURIES OR  
MAYBE DEATH NOW AND THE PERSON IS  
NOT REPRESENTED, IS  
THERE -- ISN'T THERE A CONCERN  
THAT IF THEY'RE NOT -- IF YOU ASK  
THEM IF THERE'S ANYTHING THAT  
THEY'D LIKE TO SAY, THAT IF YOU  
DON'T SAY THAT AND WHAT YOU SAY  
MAY BE USED AGAINST YOU, YOU'RE  
NOT -- I MEAN, YOU'RE NOT -- ARE  
THEY REQUIRED TO ANSWER  
QUESTIONS?

I GUESS THAT WOULD BE -- IF YOU  
ASK IF THERE'S ANYTHING YOU'D  
LIKE TO SAY, BUT IF THEY SAY, NO,  
THERE ISN'T, WHAT DOES THE  
TRAFFIC INFRACTION OFFICER  
THEN -- WHAT OPTIONS DO THEY  
HAVE?

>> GETTING TO THE FIRST PART OF  
THE QUESTION, THERE IS -- AND OUR  
HEARING OFFICERS AND JUDGES  
RECOGNIZE THERE'S A MAJOR  
DIFFERENCE BETWEEN HAVING A  
CITATION FOR AN OUT TAILLIGHT AND  
CARELESS DRIVING THAT RESULTS IN  
AN ACCIDENT WHERE SOMEBODY IS  
INJURED.

BUT, AGAIN, IN ANY CASE -- AND IT  
DOESN'T HAVE TO BE JUST IN  
TRAFFIC.

IT CAN BE IN GENERAL CIVIL,  
LANDLORD/TENANT, OUR JUDGES AND  
OFFICERS ARE ATTUNED TO THOSE  
ISSUES AND KNOW THAT THIS INQUIRY  
IS GOING TO TRIGGER A CONCERN.  
AND WE SIMPLY DON'T DO IT UNLESS  
WE ADVISE THEM.

I HAVE A QUESTION I'D LIKE TO ASK  
YOU.

>> SAYING I'D LIKE TO ASK YOU  
QUESTIONS.

>> I'D LIKE TO ASK YOU SOME  
QUESTIONS, BUT I'M CONCERNED IF  
YOU DO, YOU MAY BE FACING SOME  
OTHER CRIMINAL SITUATION, SO IT  
MAY BE IN YOUR BEST INTEREST NOT  
TO SAY ANYTHING.

THAT'S COMMON PRACTICE.

>> BUT WOULDN'T THEN -- I DON'T  
THINK THIS RULE IS THE  
SOLUTION.

COULD WE CHARGE THE COUNTY  
CONFERENCE WITH PROPOSING A  
MODEL COLLOQUY THAT COULD BE PUT  
IN THE RULES?

WOULDN'T THAT BE -- YOU KNOW, IN  
DIFFERENT CIRCUMSTANCES?  
BECAUSE THIS SOUNDS LIKE, AGAIN,  
THERE'S A BIG DIFFERENCE BETWEEN  
THE TAILLIGHT THAT'S OUT WHERE  
THE DEFENDANT OR WHATEVER  
THEY'RE CALLED -- WHAT ARE THEY  
CALLED?

>> WE CALL THEM DEFENDANTS.

>> DEFENDANTS, MIGHT WANT TO  
EXPLAIN HIMSELF OR HERSELF, AND  
THE ONE WHERE THAT PERSON IS  
COMING IN, SOMEBODY YOUNG WHO'S  
UNREPRESENTED, YOU'RE SAYING  
THERE ISN'T A ONE SIZE FITS ALL,  
BUT YET HOW DO WE MAKE SURE THEY  
ARE PROPERLY ADVISED?

>> I BELIEVE -- AND THE OTHER  
CONCERN WITH THAT IS ALSO THE  
ISSUE OF THAT ALSO IS GOING TO  
TRIGGER A LEGISLATIVELY CREATED  
PRIVILEGE, THE ACCIDENT REPORT  
PRIVILEGE.

AND, AGAIN, OUR JUDGES AND  
HEARING OFFICERS ARE VERY  
CONSCIENTIOUS ABOUT THAT.  
BUT AS THIS COURT HAS SAID,  
PRIVILEGES CAN BE WAIVED AS WELL.  
SOMETIMES PEOPLE WILL TELL THEIR  
STORY EVEN WHEN YOU ADVISE THEM  
THAT THERE IS THIS PRIVILEGE OUT  
THERE.

>> BUT -- AGAIN, SO THAT'S WHAT  
WE'RE TRYING -- IS THERE --

>> IN THE EXAMPLE YOU JUST GAVE  
THERE IS A PRIVILEGE, THE  
ACCIDENT REPORT PRIVILEGE.

IF THE PERSON ADMITTED TO THE  
OFFICER THEY WERE DRIVING THE CAR  
AND THEN I WANT TO QUESTION THEM  
ON THAT AS A JUDGE, THE ACCIDENT  
REPORT PRIVILEGE WOULD PROTECT  
THAT.

>> THAT'S --

>> THAT'S A TOTAL SEPARATE ISSUE  
THAN WHAT WE'RE HERE ON TODAY,  
WHERE A JUDGE -- AND I DO WANT  
TO -- IF I CAN BRING BACK TO THE  
JOHNSON CASE, WHICH IS A  
PRONOUNCEMENT OF THIS COURT BACK  
IN 1977, ONLY TWO YEARS AFTER THE

LEGISLATURE DECRIMINALIZED MOST TRAFFIC INFRACTIONS, THAT SETS FORTH THE REASONS WE HAVE DONE IT.

GEORGIA STILL HAS ONLY CRIMINAL TRAFFIC THERE.

>> IS THERE A REAL PROBLEM OUT THERE -- I'M TRYING TO SEE WHAT WE'RE TRYING TO FIX HERE.

AND IS THERE A REAL PROBLEM WITH UNREPRESENTED DEFENDANTS COMING INTO A TRAFFIC INFRACTION HEARING AND THEN SOMETHING THAT THEY SAY IN THOSE HEARINGS BEING USED AT A LATER DATE AGAINST THEM?

>> I'M NOT AWARE OF ONE CASE. I'VE BEEN ON THE BENCH IN 15 YEARS.

I WAS IN THE CRIMINAL DIVISION FOR EIGHT.

AND SINCE HAVE BEEN IN THE CIVIL DIVISION.

AND I SUPERVISE THE CIVIL TRAFFIC IN MY CIRCUIT.

I'M NOT AWARE OF ONE.

BUT THAT'S -- AND IT MAY ALSO BE BECAUSE IN OUR CIRCUIT IF THERE IS AN ACCIDENT THAT MAY TRIGGER CRIMINAL, THAT IS GOING TO GO WITH THE CRIMINAL INVESTIGATION AND NOT BE FILED AS A CIVIL TRAFFIC INFRACTION UNTIL A DECISION IS MADE THAT IT'S NOT GOING TO BE FILED AS A CRIMINAL MATTER.

>> AND IS THAT -- DO YOU KNOW IF THAT'S DONE IN OTHER CIRCUITS?

>> I'LL BE HONEST WITH YOU. I DON'T KNOW.

>> WE KNOW THERE'S NO CASES OUT THERE THAT ACTUALLY ADDRESS IT, SO WHETHER EVERYBODY HAS JUST BEEN FORTUNATE THAT THEY HAVEN'T BEEN CAUGHT IN HAVING THEIR TESTIMONY USED AGAINST THEM OR IS JUST IS BEING -- THERE IS SOME PROTECTIONS THAT IS BUILT IN IN AN INFORMAL WAY.

>> RIGHT.

THERE ARE THREE MAIN AREAS WHERE THIS COMES UP OFTEN.

ONE IS -- KEEP IN MIND IN TRAFFIC COURT WE DEAL WITH JUVENILES.

SO WE HAVE JUVENILES AND ADULTS.

AS THIS COURT SAID IN 1977, WHEN YOU'RE TRYING TO MAKE AN INQUIRY AS TO THE BEST WAY TO CHANGE BEHAVIOR, I BELIEVE THAT'S THE

LANGUAGE YOU USED, SOMETIMES YOU HAVE TO TALK TO THE TEENAGER AND THE PARENT ABOUT WHAT CAN WE DO.  
>> AND SO -- BUT IN THOSE CIRCUMSTANCES WHAT, IF ANYTHING -- I MEAN, WE -- I SEEM TO RECALL AT SOME POINT YOU COULDN'T USE WHAT GOES ON IN A TRAFFIC INFRACTION HEARING AT A LATER DATE.  
BUT WHAT CAN IN FACT BE USED IF THE DEFENDANT ACTUALLY GIVES SOME TESTIMONY AT A TRAFFIC INFRACTION HEARING, CAN THAT BE USED IN A LATER PROCEEDING?  
>> AND, AGAIN, I -- TO A CERTAIN EXTENT I AGREE WITH MR. ABRAMSON.  
I BELIEVE IF THEY PLEAD AN OUT AND OUT GUILTY, BECAUSE IT IS THE SAME BURDEN OF PROOF, YOU COULD ARGUE THAT A PLEA OF GUILTY WOULD BE.  
BUT --  
>> TELL ME HOW WE GET THERE, THOUGH, BECAUSE AS I UNDERSTAND IT, IT USED TO BE FOR ALL THE YEARS YOU WOULD HAVE AT THE SCENE YOU WOULD RECEIVE A PIECE OF PAPER THAT WE REFER TO AS A TICKET.  
AND ON THE BACK OF IT IT HAS A BOX TO CHECK, CORRECT?  
>> OKAY.  
>> AND IT HAS SOMETHING THAT'S CALLED GUILTY.  
IF SOMEONE CHECKS GUILTY, SENDS IN THEIR MONEY, IT'S CONSIDERED A GUILTY PLEA.  
THE STATUTE SAYS IT'S NOT ADMISSIBLE.  
>> THE CITATION IS NOT.  
>> THE ADMISSION IS NOT.  
WHAT AM I MISSING?  
>> I GUESS THE BEST EXAMPLE IS WHEN YOU PLEAD GUILTY AND NOW THREE YEARS LATER THE ISSUE IS WHETHER YOU'RE GOING TO BE HABITALIZED.  
THERE ARE INSTANCES WHERE IT CAN BE.  
BUT IT'S NOT --  
>> THAT'S NOT THE ISSUE I'M TALKING ABOUT.  
THAT'S A TOTALLY DIFFERENT ISSUE.  
THE ISSUE IS WHETHER THE ADMISSION CAN COME IN IN CONNECTION WITH THIS EVENT.

NOW, DO PEOPLE HAVE HEARINGS JUST  
TO COME IN AND PLEAD GUILTY WHEN  
THEY COULD HAVE MAILED IT IN?  
IS THAT WHAT HAPPENS?

>> YES.

>> OKAY.

AND YOU EXPLAIN TO THEM WHAT IT  
IS THAT HAPPENED.

THEY DIDN'T THINK THEY VIOLATED  
THE LAW.

BUT YOU TALK TO THEM SAY, YES,  
THAT'S TECHNICALLY A VIOLATION.  
OKAY.

I'M GUILTY.

IS THAT HOW THIS COMES DOWN?

>> WE HAVE ABOUT 5,000 OF THESE  
A WEEK.

THERE'S OVER 2 MILLION A YEAR IN  
THE STATE OF FLORIDA.

IN ALL HONESTY, THERE IS A VIEW  
FROM MANY PEOPLE THAT YOU ARE  
GOING TO GET A BETTER BREAK IF YOU  
GO BEFORE THE JUDGE BECAUSE THE  
SCHEDULE FINE IS SO HIGH.

>> OKAY.

>> AND THAT FREQUENTLY DOES IN  
FACT HAPPEN.

>> SO AS A MATTER OF FACT IT DOES  
HAPPEN THAT THEY DO NOT MAIL IT  
IN, THEY LOSE THE PROTECTION.  
THAT CANNOT BE USED AS AN  
ADMISSION, GO IN FOR A HEARING  
WHERE IT CAN BE USED AND PLEAD  
GUILTY.

>> IF YOU MAIL IT IN, YOU GET  
POINTS.

IF YOU SEE THE JUDGE, THE JUDGE  
MAY SAY NO POINTS.

>> THAT'S INTERESTING BECAUSE  
THE STATUTE SAYS IF THEY ELECT TO  
PAY A CIVIL PENALTY, IT'S DEEMED  
TO HAVE ADMITTED THE INFRACTION,  
IT PRECLUDES THOSE ADMISSIONS  
FROM BEING USED AS EVIDENCE.

BUT WE REALLY DON'T HAVE THEN  
THAT IF THEY DO SOMETHING ELSE,  
THAT THE LEGISLATURE HAS NOT SAID  
IT CAN'T BE USED, CORRECT?

>> CORRECT.

>> BUT THIS IS WHY, GOING BACK  
TO -- AND IT'S REALLY A QUESTION  
THAT I HAVE.

I DON'T SEE HOW WE PASS SOMETHING  
THAT SAYS NO ACCUSED PERSON SHALL  
BE COMPELLED TO GIVE TESTIMONY  
AGAINST HIMSELF OR HERSELF,  
WHICH IS TALKING ABOUT  
TESTIMONY, WHEN WE'RE TALKING

ABOUT THE FACT THAT THEY MAY SAY  
I PLEAD GUILTY.  
SO HOW -- BUT YOU'RE SAYING WHAT  
HAPPENS IN THE REAL WORLD IS THAT  
THE HEARING OFFICER IS TAUGHT TO  
LOOK AT WHAT THE NATURE IS OF THE  
INFRACTION AND MAKE A  
DISCRETIONARY DECISION AS TO  
WHETHER OR NOT THAT CASE MAY GO  
FURTHER AND HAVE OTHER  
IMPLICATIONS.  
>> RIGHT.  
>> NOW, WOULD THEY DO THAT ALSO  
BECAUSE THERE'S MANY TIMES THAT  
THIS MAY NOT BE A CRIMINAL CASE,  
BUT IT MAY BE A PERSONAL INJURY  
CASE.  
THERE MAY BE INJURIES.  
AND, YOU KNOW -- I REMEMBER WAY  
BACK WHEN SAYING HAVE SOMEONE GO  
IF THAT PERSON TESTIFIES, WE WANT  
TO USE THAT TESTIMONY IN THE  
CIVIL CASE.  
DOES THAT -- WHAT HAPPENS IN  
THOSE SITUATIONS?  
>> WELL, IN THAT INSTANCE, TWO  
THOUGHTS COME TO MIND.  
ONE, KEEP IN MIND THAT THIS COURT  
HAS DECIDED THROUGH YOUR  
RULE-MAKING AUTHORITY THAT ONCE  
THERE IS AN INJURY OR A DEATH  
INVOLVING A CIVIL TRAFFIC  
INFRACTION, IT MUST GO BEFORE A  
JUDGE.  
IT CAN'T GO BEFORE A HEARING  
OFFICER.  
>> SO THEN THE TRAFFIC COURT  
RULES DON'T APPLY?  
>> NO.  
THEY DO APPLY.  
IT'S THE JUDGE SITTING IN HIS OR  
HER CAPACITY IS A CIVIL TRAFFIC  
JUDGE IN THAT INSTANCE.  
SO THAT JUDGE HOPEFULLY IS MORE  
EXPERIENCED AND TRAINED TO  
HANDLE THAT ISSUE.  
>> EXPERIENCED AND TRAINED.  
I GUESS STILL THE QUESTION IS  
WHAT ARE THEY -- IF YOU WERE  
INSTRUCTING ME, IT WAS MY FIRST  
DAY ON THE BENCH, YOU SAY,  
UNREPRESENTED DEFENDANT WHERE  
THE TRAFFIC CASE HAS RESULTED IN  
INJURIES OR DEATH.  
AND I'M NOW BEFORE AND I SAY I  
THINK I'M PROBABLY GUILTY.  
WHAT DO YOU SAY TO ME?  
>> IN THAT SPECIFIC  
INSTANCE -- AND, AGAIN, I HAVE TO

CONFINE MY RESPONSE TO MY CIRCUIT  
BECAUSE I DON'T KNOW IF THE OTHER  
CIRCUITS NECESSARILY DO WHAT WE  
DO -- IT WOULD NOT BE IN A CIVIL  
TRAFFIC PROCEEDING IF A DECISION  
HAD ALREADY NOT BEEN MADE BY THE  
STATE ATTORNEY'S OFFICE THAT NO  
CRIMINAL CHARGES WERE GOING TO BE  
FILED.

SO ONCE THAT HAPPENS, I WOULD  
TREAT IT LIKE ANYTHING ELSE BY  
SAYING IT IS NOW YOUR TIME TO SAY  
ANYTHING IF YOU WOULD LIKE, IF  
YOU WOULD LIKE TO QUESTION ANY OF  
THESE WITNESSES, YOU MAY DO THAT  
TOO.

WHEN A PRO SE LITIGANT  
CROSS-EXAMINES A POLICE OFFICER,  
THEY INEVITABLY, IT SEEMS, START  
TO TELL THEIR STORY.  
SO IT DOES CREATE SOME PRACTICAL  
ADMINISTRATIVE ISSUES IF YOU'RE  
GOING TO SAY TO THEM, YOU HAVE THE  
RIGHT TO REMAIN SILENT, BUT YOU  
DO HAVE THE RIGHT TO  
CROSS-EXAMINE THE WITNESS.

SO THERE ARE A LOT OF CONCERNS.  
WHICH IS WHY THE CONFERENCE WHEN  
WE LOOKED AT THIS, I MEAN, WE HAVE  
LISTS OF THINGS THAT THE  
DIFFERENT JUDGES KEEP EMAILING  
THAT ARE PROBLEMATIC THERE.  
BUT THAT -- BUT, AGAIN, IN  
BROWARD I JUST DON'T SEE THAT  
THAT CONCERN WOULD COME TO  
FRUITION.

OUR CONFERENCE IS IN FOUR WEEKS.  
AND PERHAPS WE CAN ASK THE OTHER  
CIRCUITS IF THEY HAVE A  
DIFFERENT --

>> YOU WERE GETTING READY TO TALK  
ABOUT I THINK THE JOHNSON CASE  
BACK IN '77 OR SO WHEN THIS WAS  
FIRST SET UP?

IS THERE SOMETHING YOU WANTED TO  
ADDRESS THERE?

>> IN THE JOHNSON CASE?

>> YES.

>> WELL, I JUST WANTED TO POINT  
OUT SOME OF THE LANGUAGE THAT  
THIS COURT USED IN ITS  
INCARNATION BACK IN 1977.  
THIS COURT SAID THAT THIS  
PROCEEDING -- THE WHOLE REASON  
FOR DECRIMINALIZATION WAS TO  
HAVE A PROCEEDING THAT WAS  
INFORMAL, WHERE THE JUDGE IS FREE  
TO DISCUSS WITH THE OFFENDER IN  
AN INFORMAL MANNER THE BEST WAY



TO REMEDY, CHANGE BEHAVIOR,  
PROTECT SAFETY.  
YOU ALSO SAID THAT INQUIRY IS  
PART OF THE JUDICIAL FUNCTION AND  
THAT THE PROCEEDINGS PARTAKE OF  
AN INQUIRY RATHER THAN A  
PROSECUTION.

AND IT'S THE JUDGE'S VIEW THAT IF  
YOU CANNOT HAVE THIS DIALOGUE  
WITH THE OFFENDER, WHERE THEY'RE  
NOT FACING JAIL, THEY'RE NOT  
FACING PROBATION, THEY'RE NOT  
FACING ANY TYPE OF SUSPENSION OF  
A PROFESSIONAL LICENSE, THAT  
IT'S GOING TO AFFECT THE JUDGE'S  
ABILITY TO DO WHAT THIS LAW WAS  
INTENDED TO DO BACK IN 1975.

>> IT SEEMS AS THOUGH THE  
PROPONENTS ARE SAYING THAT MAY BE  
ALL WELL AND GOOD, THAT THAT MAY  
BE THE INTENT, BUT NONETHELESS  
THERE ARE THESE RISKS THAT ARE  
THERE FOR A FLORIDA CITIZEN AND  
IF YOU DON'T TELL THEM, THEY'RE  
GIVING UP SOME VALUABLE RIGHTS.  
THAT'S WHAT THE GENTLEMAN IS  
SAYING TO US.

>> AND WHILE I AGREE WITH THAT,  
I DO SEE THAT THAT RISK IS IN ANY  
PRO SE CASE THAT WE HAVE, WHETHER  
IT'S IN A NORMAL GARDEN VARIETY  
CIVIL NONTRAFFIC CASE,  
LANDLORD/TENANT WHERE THEY'RE  
ACCUSED OF TEARING UP AN  
APARTMENT.

IT COULD BE WHERE THE JUDGES ARE  
ATTUNED TO KNOW THIS MAY TRIGGER  
THAT INQUIRY.

THAT'S PART OF OUR TRAINING I  
BELIEVE ANYWAY.

>> BUT, AGAIN, I APPRECIATE HOW  
WONDERFUL BROWARD COUNTY IS, BUT  
THE QUESTION TO ME IS WE NEED TO  
BE ASSURED IS THAT'S WHAT'S  
HAPPENING IN THE STATE, THAT WE  
OUGHT NOT BE TREATING  
DIFFERENTLY IN BROWARD COUNTY  
THAN WE DO HERE IN LEON COUNTY AND  
THAT WE SHOULD ALL FOLLOW THE  
SAME SORT OF PROCEDURES.  
WE'RE ALL COVERED BY THE SAME  
STATUTES.

AND I THINK WE NEED TO BE SURE  
THAT WE'RE NOT, YOU KNOW, MISSING  
SOMETHING BECAUSE BROWARD IS SO  
WONDERFUL THAT THE REST OF  
THE -- THE OTHER 66 COUNTIES ARE  
NOT.

>> I FEEL CONFIDENT THAT THE

OTHER 66 COUNTIES ARE LIKEWISE  
WONDERFUL.  
>> OKAY.  
>> THANK YOU VERY MUCH, JUSTICES.  
>> IF I COULD JUST BRIEFLY  
RESPOND.  
>> IS THAT WHAT GOES ON  
IN -- AGAIN, IT SOUNDS FROM JUDGE  
LEE THAT THIS ISN'T A PROBLEM  
BECAUSE OF THE WAY AT LEAST IT'S  
HANDLED IN BROWARD.  
DO YOU HAVE -- WE'VE SAID THERE'S  
NO CASES.  
WE DON'T -- IT'S LIKE WE'RE  
CREATING SOMETHING THAT SEEMS  
THAT IT DOESN'T -- FOR A PROBLEM  
THAT DOESN'T SEEM TO EXIST.  
>> HERE'S OUR CONCERN.  
DEFENDANTS BY SOME LAW  
ENFORCEMENT AGENCIES ARE  
SUBPOENAING DEFENDANTS TO  
APPEAR.  
THEY HAVE TO APPEAR UNDER THREAT  
OF CONTEMPT OF COURT.  
THEY'RE STILL SUBJECT TO  
CONTEMPT.  
THEY SHOW UP AND THE JUDGE SAYS  
WHAT DO YOU HAVE TO SAY?  
THEY TELL THEM THEY HAVE TO  
TESTIFY AND THEY CAN BE HELD IN  
CONTEMPT IF THEY DON'T.  
WE'VE HAD LAWYERS THREATENED  
WITH CONTEMPT FOR TELLING  
CLIENTS THEY DON'T HAVE TO  
TESTIFY IN A CASE.  
>> BUT WE HAVE THE WORLD OF  
BROWARD AND THEN THE PLACE WHERE  
THEY'RE REALLY SUBPOENAING  
DEFENDANTS.  
AGAIN, WE'RE TALKING ABOUT TWO  
MILLION TRAFFIC CASES A YEAR,  
RIGHT?  
>> RIGHT.  
>> SO IT'S JUST -- I THINK WE'RE  
TRYING TO FIX SOMETHING IN A WAY  
THAT IS NOT TAILORED TO THE  
PARTICULAR CONCERNS THAT YOU'RE  
TALKING ABOUT.  
>> I WOULD JUST SAY THAT THE  
PROBLEM IS NOT COUNTY TO COUNTY.  
IT'S COURTROOM TO COURTROOM,  
WHICH MEANS IT'S MORE IMPERATIVE  
TO ENACT THIS RULE.  
>> EVEN WITHIN THE CIRCUITS THEY  
DEAL WITH THESE DIFFERENTLY?  
>> ABSOLUTELY.  
I HAD A CASE THE HEARING OFFICER  
DIDN'T LOOK AT MY CLIENT.  
I MOVED FOR JOA.

IT WAS GRANTED RIGHT THERE.  
IF THE COURT LOOKS AT JOHNSON, IT  
SAYS AN OPPORTUNITY IS GIVEN THE  
OFFENDER TO OFFER SWORN  
TESTIMONY.  
IT'S THE DEFENDANT'S CHOICE.  
WE'RE CONCERNED NOT ABOUT FUTURE  
CRIMINAL PROSECUTIONS BUT  
WALKING OUT OF THERE THAT DAY ON  
A CASE THEY SHOULD HAVE BEEN  
PROVED NOT GUILTY.  
THERE'S MONEY INVOLVED.  
THERE'S POINTS ON THE LICENSE.  
AND A JUDGE HAS THE AUTHORITY TO  
SUSPEND A DRIVER'S LICENSE.  
YOU COULD FIND YOURSELF LEAVING  
A COURTROOM WITHOUT A DRIVER'S  
LICENSE BASED UPON YOUR  
COMPELLED TESTIMONY.  
THAT IS VERY SCARY TO US AS  
MEMBERS OF THE TRAFFIC BAR.  
WE ARE DOING THIS MOSTLY OUT OF  
CONCERN FOR THE PEOPLE THAT ARE  
NOT LAWYERS.  
AND THERE IS NOTHING WRONG WITH  
THE COURT SIMPLY SAYING AS A  
DEFENDANT YOU ENJOY THE RIGHT NOT  
TO BE A WITNESS IN THIS CASE.  
YOU HAVE ALL THE OTHER RIGHTS.  
IT'S REALLY VERY, VERY SIMPLE.  
IT'S NOT TIME-CONSUMING.  
AND IF YOU LOOK AT THE BODY OF THE  
RULES OF COURT AS WELL AS THE  
OPINIONS OF THIS CASE, THEY'RE  
BASICALLY SAYING THAT.  
THIS IS THE DEFENDANT'S DAY.  
THE DEFENDANT HAS THIS  
OPPORTUNITY.  
THANK YOU FOR THIS OPPORTUNITY TO  
APPEAR BEFORE THE COURT.  
>> WE THANK YOU BOTH FOR YOUR  
ARGUMENT.