

>> THE GREAT STATE OF FLORIDA

AND THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE

SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA

SUPREME COURT.

FIRST CASE FOR THE DAY IS KOSTER

V. SULLIVAN.

YOU MAY BEGIN.

>> MAY IT PLEASE THE COURT,

WILLIAM NEWT HUDSON REPRESENTING

THE PETITIONER IN THESE

PROCEEDINGS, MR. KOSTER.

I KNOW THAT IN PART BECAUSE I'VE

READ THE COURT'S MEMO ON

PREPARING FOR ORAL ARGUMENT THAT

I MAY SAFELY PRESUME THE FACT

THAT THE JUSTICES HAVE READ ALL

THE BRIEFS IN THIS MATTER.

>> THAT'S CORRECT.

>> THAT'S A FAR CRY FROM THE

PRESUMPTION THAT IS AT THE HEART

OF THIS CASE WHICH IS A LEGAL
PRESUMPTION, A VERY IMPORTANT
LEGAL PRESUMPTION, THAT IS
REQUIRED FOR OUR SYSTEM TO
FUNCTION.

>> COULD YOU PULL YOUR MIC UP A
LITTLE SO --

>> SURE.

>> OKAY.

>> THIS BETTER?

SIMPLY, RETURN SERVICE OF
PROCESS IN ORDER FOR THE RETURN
TO BE DEEMED REGULAR ON ITS
FACE, IF THAT OCCURS, THEN THAT
PROCESS HAS A PRESUMPTION OF
VALID SERVICE OVER WHICH, WHICH
CAN ONLY BE OVERCOME BY THE
PRESENTATION OF EVIDENCE THAT
THERE WAS NOT ACTUAL SERVICE OF
PROCESS.

THIS PARTICULAR CASE DEALS WITH
SUBSTITUTE SERVICE PURSUANT TO
SECTION 48.031 WHEREBY SERVICE

WAS ATTEMPTED PURSUANT TO THE
STATUTE.

SERVICE WAS SUPPOSED TO BE
ATTEMPTED BY SERVING SOMEONE AT
THEIR USUAL PLACE OF ABODE, BY
SOMEONE WHO RESIDES THEREIN
WHO'S OVER THE AGE OF 15 AND
WHO'S INFORMED OF THE CONTENTS
OF THE PAPERS.

THE RETURN SERVICE IN THIS CASE
DOES NOT STATE THAT SERVICE WAS
ATTEMPTED AT THE DEFENDANT'S
USUAL PLACE OF ABODE, IT DOES
NOT STATE THAT THE SERVICE WAS
MADE UPON A PERSON WHO WAS OVER
THE AGE OF 15 --

>> IS THERE ANY QUESTION AT ALL
IN THE FACT THAT THERE WAS NOT,
THAT IT WAS NOT THE CLIENT'S
PLACE OF ABODE?

>> NO, YOUR HONOR, IT'S NOT.

>> WHY -- WHAT I'M SEEING ON THE
RETURN OF SERVICE, IT INCLUDED

THE DATE AND TIME --

>> CORRECT.

>> -- WHICH THE SERVER ACTUALLY RECEIVED THE DOCUMENTS TO SERVE THEM.

IT INCLUDED A DATE AND TIME WHEN SERVICE WAS MADE, AND IT INCLUDED THE NAME OF THE PERSON WHO ACTUALLY GOT THE SERVICE, THE SISTER-IN-LAW, I BELIEVE.

WHAT IS IT THAT YOU SAY IS MISSING?

>> WHAT'S MISSING IS ANY SORT OF EVIDENCE WHEREBY THE COURT CAN LOOK AT THE RETURN OF SERVICE TO THIS DAY IN THIS PROCEEDING WITH THE RECORD WE HAVE, THERE IS NOTHING THAT THE COURT CAN LOOK AT IN THE RETURN OF SERVICE ITSELF TO SATISFY THE SUBSTITUTE SERVICE STATUTE THAT'S IN PLAY HERE.

>> SO IT SHOULD, WHAT YOU'RE

SAYING IS IT SHOULD HAVE SAID
SERVED ON WHATEVER THE
SISTER-IN-LAW'S NAME WAS, A
PERSON OVER 15 YEARS OF AGE, FOR
EXAMPLE.

IT SHOULD HAVE SAID THAT
SPECIFICALLY.

>> THAT'S ONE FACT IT SHOULD
HAVE SAID.

>> WHAT ELSE SHOULD IT HAVE
SAID?

>> IT SHOULD HAVE SAID THE
PERSON WAS INFORMED OF THE
CONTENTS OF THE PAPERS, AND IT
ALSO SHOULD HAVE SAID --
EXTREMELY IMPORTANT IN ANY
CASE -- THAT IT WAS THE
DEFENDANT'S USUAL PLACE OF
ABODE, WHAT THE ACTUAL FACTS
ARE --

>> DOESN'T IT IMPLY THAT WHEN IT
SAYS "CO-RESIDENCE," IT
IDENTIFIES THE PERSON THAT GOT

THE PAPERS AS A CO-RESIDENT?

>> JUSTICE, I'D HAVE TO CONCEDE THAT THERE'S AN IMPLICATION WHOEVER THE PERSON WAS THAT WAS SERVED RESIDES THERE, BUT THAT DOESN'T SATISFY THE REMAINING REQUIREMENTS.

THE PERSON'S USUAL PLACE OF ABODE, THAT THE PERSON SERVED WAS OVER THE AGE OF 15 AND THAT THE PERSON WAS INFORMED OF THE CONTENTS OF THE PAPERS.

>> BUT, YOU KNOW, YOU SAY -- WHAT WE'RE LOOKING AT IS THEY CERTAINLY COMPLIED WITH THE EXPRESS REQUIREMENTS OF 48.21.

CORRECT?

NO QUESTION.

>> CORRECT.

>> AND THAT'S, THE LEGISLATURE SAID THAT'S WHAT NEEDS TO BE -- AT LEAST AT THAT TIME -- IN THE RETURN OF SERVICE.

YOU MENTIONED AT THE BEGINNING
AS A PRESUMPTION THAT EVERYONE
HERE READ THE BRIEF.

ASSUMING YOU COULD QUESTION
US -- WELL, I DIDN'T READ YOUR
BRIEFS.

SO ALL THIS DOES IS ENTITLE THE
PERSON WHO, OR ENTITY WHO HAS
SERVED THROUGH SERVICE THE
PRESUMPTION OF VALIDITY.

YOU COULD HAVE CALLED WHOEVER,
THE SISTER-IN-LAW, AND FIND OUT
THAT SHE'S ACTUALLY 14, DOESN'T
LIVE THERE, FACTS THAT WOULD
SHOW THAT THE SERVICE ITSELF WAS
DEFECTIVE.

AND I'M NOT, I'M HAVING A HARD
TIME UNDERSTANDING YOUR POINT
THAT WHEN SOMEBODY DEFAULTS AND
THEN IS TRYING TO SET IT ASIDE,
THAT THEY WOULD BE ENTITLED TO
JUST QUASH THE SERVICE EVEN
UNDER 48.21.

SO EXPLAIN TO ME HOW YOU, YOUR
CONTENTION THAT IT HAD TO HAVE
NOT JUST THE FIRST FOUR FACTORS
THAT ARE IN 48.21, BUT ALL THE
OTHER FACTORS THAT ARE IN
48.031.

WHERE DOES THAT COME FROM?

I MEAN, WHY IS THAT WHAT THE
LEGISLATURE INTENDED, AND WHY
SHOULD WE ADOPT YOUR POINT OF
VIEW?

>> OKAY.

IN 48.21, BESIDES THE DATE AND
TIME AND ALL OF THOSE TEXTUAL
FACTORS, THE OTHER FACTOR IS THE
MANNER OF SERVICE.

AND THE POSITION OF MS. SULLIVAN
THROUGHOUT THESE PROCEEDINGS IS
THAT YOU SATISFY THAT.

WE HAVE IN THE PROCESS SERVER
STATE SUBSTITUTE SERVICE.

THAT'S THAT.

I SUBMIT THAT IF THE LEGISLATURE

WAS TO REWRITE THAT STATUTE TO EXPRESSLY STATE THAT IN ORDER FOR YOU TO OBTAIN VALID SERVICE THAT'S ALL YOU HAVE TO DO AND THE PROCESS SERVER HAS TO SIMPLY WRITE DOWN HIS CONCLUSION THAT I MADE SUBSTITUTE SERVICE PURSUANT TO, YOU CAN CITE THE STATUTE, 48.21 OR YOU CAN STATE, IN THAT MATTER, A CORPORATION.

I MADE PROPER SERVICE ON A CORPORATION UNDER 48.187, I BELIEVE.

THAT'S JUST HIS CONCLUSION.

HIS CONCLUSION --

>> BUT ISN'T THAT CONCLUSION SUPPORTED BY THE FACT THAT IT WAS THE SISTER-IN-LAW THAT WAS ACTUALLY SERVED AS OPPOSED TO THE DEFENDANT?

I MEAN, THAT SEEMS TO ME THAT SATISFIES THAT THIS WAS A SUBSTITUTE SERVICE, IT WAS NOT

SERVICE ON THE INDIVIDUAL.

SO WHY ISN'T THAT ENOUGH?

>> JUSTICE PARIENTE'S QUESTION
WAS HOW DO YOU EXPLAIN THAT THE
MANNER OF SERVICE REQUIRED IN
SECTION 48.21, WHAT DOES THAT
MEAN?

AND WHAT I WAS SUGGESTING IS
THAT IF THE LEGISLATURE WERE TO
REWRITE THAT TO SIMPLY STATE
THAT A PROCESS SERVER'S
CONCLUSION AS FAR AS SERVICE IS
GOOD ENOUGH, THERE WOULD BE DUE
PROCESS RAMIFICATIONS WITH THAT.

>> WELL, IF -- BUT YOU'RE NOT,
IN THIS CASE, RAISING A DUE
PROCESS VIOLATION.

BECAUSE THAT WAS ACTUALLY A
QUESTION I WAS GOING TO HAVE.
WE'RE HERE REALLY WITH WHETHER A
RETURN OF SERVICE HAS TO STATE
MORE THAN WHAT WAS STATED IN
THIS PARTICULAR RETURN, ENTITLED

TO THE PRESUMPTION.

THAT'S THE QUESTION.

>> CORRECT.

>> SO NO -- SO I JUST WANT TO
MAKE SURE.

YOU'RE GOING AT DUE PROCESS.

BUT THERE IS NOT IN TERMS OF
WHAT NEEDS TO BE IN A RETURN OF
SERVICE A, ON ITS FACE A DUE
PROCESS VIOLATION.

YOUR CLIENT COULD HAVE TAKEN THE
STAND AND SAID THAT ISN'T MY
USUAL PLACE OF ABODE.

MY SISTER-IN-LAW WAS VISITING
FROM FRANCE, SHE DOESN'T EVEN
SPEAK ENGLISH, AND I NEVER
RECEIVED OR GOT NOTICE OF THIS
SERVICE.

THAT DIDN'T HAPPEN.

SO WHAT DOES DUE PROCESS HAVE TO
DO WITH WHAT YOU JUST --

>> DUE PROCESS HAS EVERYTHING TO
DO WITH THIS CASE BECAUSE THE

RETURN OF SERVICE IN THIS CASE
IS TOTALLY ABSENT OF FACTS WHICH
WOULD SATISFY THE DUE PROCESS
THAT IS SET FORTH IN THE
STATUTE.

AND THE REASON THAT THE FACTS AS
FAR AS THE METHOD OF SERVICE
MUST BE SET FORTH IN THE RETURN
OF SERVICE ITSELF SO THAT THE
COURT CAN DETERMINE WHETHER OR
NOT IT HAS OBTAINED JURISDICTION
OVER THE PERSON OF THE
DEFENDANT.

THIS IS WHAT THIS COURT SAID IN
1870 IN THE STANLEY CASE, IS
THAT UNLESS YOU RECITE THE FACTS
SO THAT THE COURT CAN DETERMINE
WHETHER OR NOT THE DEFENDANT HAS
BEEN PROPERLY BROUGHT BEFORE THE
COURT, THEN THERE IS NO
PRESUMPTION OF SERVICE.

AND THAT'S WHAT THIS CASE IS
ABOUT.

>> BUT IT'S REALLY NOT.

YOU STILL HAVE NOT ANSWERED
WHETHER WERE YOU DEPRIVED OF THE
ABILITY TO EITHER CALL THE
PROCESS SERVER, TO CALL THE
SISTER-IN-LAW, TO CALL THE
DEFENDANT TO ESTABLISH THAT THIS
SERVICE ITSELF WAS DEFECTIVE OF
WHICH IS THAT, IN OTHER WORDS,
IT IS VOID NOT BECAUSE IT DIDN'T
RECITE CERTAIN THINGS, BUT
BECAUSE THE SISTER-IN-LAW, ALL
THOSE OTHER THINGS THAT WE'VE
BEEN TALKING ABOUT.

YOU HAVE THAT RIGHT TO HAVE
PRESENTED THAT IN EVIDENTIARY
HEARING, DID YOU NOT?

>> YES, WE DID.

THE PROBLEM WITH THAT IS THAT
BECAUSE THE TRIAL COURT MADE A
DETERMINATION THAT THE SIMPLE
RECITATION AS FAR AS THE MANNER
OF SERVICE WAS SUBSTITUTE, THAT

CREATES A PRESUMPTION OF VALID
SERVICE.

THAT CHANGES ENTIRELY THE BURDEN
OF PROOF.

NOW, I'M REQUIRED TO COME
FORWARD WITH CLEAR AND
CONVINCING EVIDENCE AS TO THAT.

THE TRIAL JUDGE MADE A
DETERMINATION THAT I DID NOT
MEET THAT BURDEN, BUT THAT'S
WHY --

>> WELL, WHAT DID YOU PRESENT?

>> WE PRESENTED THE TESTIMONY OF
THE SISTER-IN-LAW THAT SHE HAD
LIVED AT THAT RESIDENCE FOR SOME
14 OR SO YEARS, MANY YEARS
BEFORE THIS ACTUAL DATE OF
SERVICE.

BECAUSE THE SISTER-IN-LAW
TESTIFIED THAT SHE WAS THERE
WATCHING MY CLIENT'S DOGS WHILE
HE WAS GONE AND THAT HER
DAUGHTER -- ACTUALLY, IT'S HER

DAUGHTER -- ANSWERED THE DOOR.

THE PROCESS SERVER SHOWED UP AND

SAID, IS LANCE KOSTER HERE?

SHE SAID, NO, WHO ARE YOU?

I'M THE SISTER-IN-LAW.

BOOM, SHE WAS HANDED THESE

PAPERS.

NOW, WHETHER THAT WAS HIS USUAL

PLACE OF ABODE WAS CONTESTED,

AND THERE WAS NO EVIDENCE SHE

WAS ACTUALLY INFORMED OF THE

CONTENTS OF THE PAPERS WHICH IS

WHY --

>> DID LANCE KOSTER TESTIFY?

>> YEAH.

HE TESTIFIED HE NEVER RECEIVED

THE PAPERS FROM HER.

HE BECAME AWARE OF THESE

PROCEEDINGS AFTER THE JUDGMENT

WAS ENTERED AND CERTIFIED COPY

OF THE JUDGMENT WAS RECORDED IN

PINELLAS COUNTY AND A SEPARATE

LAWSUIT TO FORECLOSE THAT

JUDGMENT LIEN WAS INSTITUTED,
AND HE WAS SERVED THE PAPERS.
THAT'S HOW HE BECAME AWARE OF
THE JUDGMENT IN THIS CASE.

SO THE FACTUAL --

>> DID THE SISTER-IN-LAW
TESTIFY?

>> YES, SHE DID.

>> WHAT DID SHE TESTIFY TO?

>> THAT, SHE TESTIFIED, AS I
SAID, THAT SHE'D LIVED AT THAT
RESIDENCE FOR QUITE SOME TIME,
THAT SHE DID NOT LIVE THERE,
THAT SHE HAD ANOTHER APARTMENT,
SHE BROUGHT IN THEIR RENT
CHECKS.

SHE COULDN'T --

>> DID SHE TESTIFY ABOUT WHETHER
SHE WAS INFORMED OF THE CONTENTS
OF THE PAPER?

>> HER TESTIMONY ON THAT WAS, I
DON'T REMEMBER.

I JUST DON'T REMEMBER.

>> DID SHE SAY SHE THREW THE
PAPERS AWAY?

>> SHE SAID SHE DIDN'T RECALL --

>> SHE DIDN'T GIVE THEM TO MR.
KOSTER?

>> SHE HAD NO RECOLLECTION OF
WHAT SHE'D DONE, AND MR. KOSTER
TESTIFIED HE'D NEVER RECEIVED
THEM.

>> HOW OLD WAS THE
SISTER-IN-LAW?

HOW OLD WAS SHE?

SHE WAS OVER 15 --

>> SHE'S 17.

>> 17?

>> THESE FACTUAL MATTERS AS FAR
AS ACTUAL SERVICE ARE NOT WHAT
THIS CASE IS ABOUT.

THIS CASE IS ABOUT THE
PRESUMPTION THAT ARISES OR
DOESN'T ARISE.

>> WELL, LET ME ASK YOU.

I GUESS WHAT I'M HAVING TROUBLE

WITH IS PEOPLE DON'T LIKE TO BE
SERVED OR PROCESSED.

AND WHAT YOU'RE ASKING IS TO
REQUIRE A PROCESS SERVER TO
CONDUCT THIS INQUIRY OF A PERSON
WHO DOESN'T WANT TO ANSWER
QUESTIONS.

AND WHAT HAPPENS IF, FOR
EXAMPLE, THE SISTER-IN-LAW SAYS
WHEN HE ASKED WHO ARE YOU AND
SHE SAID NONE OF YOUR BUSINESS,
SLAMMED THE DOOR IN HIS FACE?
DOES THAT MEAN YOU CAN NEVER GET
SERVICE OF PROCESS BECAUSE YOU
DON'T ASK ALL THE QUESTIONS?

>> I DON'T BELIEVE THAT'S THE
CASE HERE.

I BELIEVE THAT IF YOU LOOK AT
THE RETURN OF SERVICE, IT SAYS
THAT HE RECEIVED IT ON THE --

>> NO.

WHAT I'M ASKING IS BECAUSE WHAT
YOU'RE SUGGESTING IS THAT THE

PROCESS SERVER HAS TO STAND
THERE AND ASK ALL THESE
QUESTIONS OF THE PERSON WHO'S
ABOUT TO RECEIVE SERVICE.
YOU WANTED TO KNOW, YOU KNOW,
WHO ARE YOU, HOW LONG HAVE YOU
LIVED HERE, THOSE KIND OF THINGS
OF SOMEONE WHO DOESN'T WANT TO
ANSWER THOSE QUESTIONS.

I MEAN, WHAT ARE WE ASKING
SERVERS OR PROCESSERS TO DO?
YOU SEE WHAT I'M SAYING?

>> THAT IMPLIES SOMEBODY'S
TRYING TO AVOID -- IN THIS CASE
THE PROCESS SERVER RECEIVED IT
ON THE 3RD DAY OF NOVEMBER AND
SERVED IT ON THE 7TH DAY OF
NOVEMBER.

>> THAT'S WHAT HAPPENED IN THIS
CASE, BUT WHEN WE WRITE AN
OPINION, IT'S GOING TO APPLY TO
EVERY CASE FROM NOW ON.
THAT'S WHAT I'M THINKING ABOUT.

>> CORRECT.

BUT THE WHOLE POINT IS UNLESS
THE PROCESS SERVER HAS FACTS
THAT HE KNOWS OF THAT ALL OF
THOSE FACTORS -- USUAL PLACE OF
ABODE, PERSON ABIDES THEREIN,
PERSON'S OVER 15 AND THEY KNOW
THE CONTENTS -- UNLESS HE KNOWS
THOSE FACTS HE CAN'T COME TO THE
CONCLUSION THERE'S BEEN VALID
SERVICE.

BUT IT'S NOT FOR THE PROCESS
SERVER TO MAKE THE CONCLUSION.
HE HAS TO RECITE THOSE FACTS SO
THE COURT CAN MAKE THIS
DECISION.

THAT'S WHAT THIS COURT SAID IN
1870 IN THE STANLEY CASE, AND
THAT'S WHAT THIS COURT SAID IN
1959 IN THE CASE WHICH FOLLOWS
STANLEY.

AND VERY CLEARLY SETS FORTH THE
DISTINCTION BETWEEN VALID

SERVICE AND AN INVALID RETURN
AND VICE VERSA.

YOU CAN HAVE ACTUAL SERVICE --

>> WOULD YOU HAVE REQUIRED THE
SERVICE, THE PROCESS SERVER TO
INQUIRE OF THE PERSON HOW OLD HE
OR SHE IS?

THE PERSON RECEIVING SERVICE?

WOULD THEY HAVE TO ASK HOW OLD
ARE YOU?

>> YES, HE WOULD.

HE WOULD HAVE TO DETERMINE THOSE
FACTS.

>> ALL RIGHT.

NOW, WOULD HE BE REQUIRED TO ASK
FOR SOME IDENTIFICATION PROVING
THAT THE PERSON'S OVER 17 YEARS
OLD?

UNDER YOUR POSITION?

>> IN ORDER FOR HIM TO VALIDLY
SIGN A RETURN OF PROCESS THAT
SAYS THOSE THINGS, HE'D HAVE TO
HAVE SOME FACTUAL BASIS FOR THAT

TO SUGGEST THAT HE HAS A FACTUAL
BASIS FOR IT.

HE JUST PUTS DOWN THE
CONCLUSION.

>> ALL RIGHT.

SO HE WOULD HAVE TO ASK FOR ID,
YOU KNOW?

>> I SUGGEST THAT IF I ANSWERED
THE DOOR, HE WOULDN'T HAVE TO
ASK ME FOR ID THAT I WAS OVER
15.

BUT IN CERTAIN CASES PERHAPS HE
MIGHT.

>> WELL, AGAIN, THAT'S IN YOUR
CASE.

IN SOME CASES IT MAY BE THE
TEENAGE DAUGHTER WHO'S ACTUALLY
19 BUT LOOKS LIKE SHE'S 15, OR
THE SON.

WOULD HE HAVE TO ASK FOR AN ID?
IN THOSE CASES?

>> I DON'T THINK THAT HE WOULD
NECESSARILY WOULD OR WOULDN'T,

BUT THE POINT IS IF HE DOESN'T
HAVE THE FACTS, HE CANNOT
WRITE --

>> THE POINT, THE POINT I'M
RAISING IS THAT IT SEEMS TO ME
THESE ARE THE TYPE OF THINGS
THAT ARE DEALT WITH AT AN
EVIDENTIARY HEARING LATER ON IF
IT TURNS OUT THAT THE PERSON WHO
RECEIVED SERVICE ACTUALLY WAS
NOT 17.

>> AND THOSE ARE THINGS THAT CAN
BE DEALT WITH IN AN EVIDENTIARY
HEARING.

AND THE DIFFICULTY IS WITH THE
PRESUMPTION OF VALID SERVICE, IT
ENTIRELY CHANGES THE BURDEN OF
PROOF OF THE EVIDENTIARY
HEARING.

YOU'RE NOT ENTITLED TO THE
PRESUMPTION WITHOUT THE FACTS.
HOW CAN SOMEBODY BE ENTITLED TO
A PRESUMPTION, A VALID SERVICE

OF PROCESS WITHOUT RECITING

FACTS TO SHOW IT?

I'M OUT OF TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS DUANE DYKER, AND I
REPRESENT THE RESPONDENT, CAROL
SULLIVAN.

THE SECOND DISTRICT'S HOLDING
BELOW AND THEIR INTERPRETATION
OF FLORIDA STATUTE 48.21
COMPORTS WITH THE STATUTORY
LANGUAGE AND IS CONSISTENT WITH
PUBLIC POLICY.

LET ME FIRST START BY --

>> LET ME ASK YOU THIS QUESTION.
IF WE HAVE INDIVIDUAL, PERSONAL
SERVICE, THERE'S NO PROBLEM,
CORRECT?

>> CORRECT.

>> ANYTIME, HOWEVER, THAT
SOMEONE IS SERVED IN EITHER A
REPRESENTATIVE CAPACITY OR IN A

SUBSTITUTE CAPACITY, THERE HAVE
TO BE CERTAIN FACTS KNOWN,
CORRECT?

>> NOT NECESSARILY FOR THE
FACIAL VALIDITY OF THE RETURN,
BUT ULTIMATELY TO PROVE
SERVICE --

>> WELL, WHY NOT?

WHY NOT?

TO SHOW THE MANNER OF SERVICE,
THEN WE COULD BE SERVING A
CUSTOMER AT A PLACE OF BUSINESS.
IF YOU DON'T ASK AM I SERVING
THE PRESIDENT, SECRETARY, ETC.

>> WELL, I THINK --

>> IT DOES CONTEMPLATE ASKING
SOMETHING, DOESN'T IT?

>> I HAVE TO MAKE A DISTINCTION.
THERE'S A DISTINCTION BETWEEN
CASES THAT ARRIVE UNDER
CORPORATE SERVICE AND PERSONAL
OR EVEN SUBSTITUTE SERVICE UNDER

48.21 --

>> I KNOW THERE ARE WITH
INDIVIDUALS.

I'M TALKING ABOUT SUBSTITUTE.
BECAUSE TO DO SUBSTITUTE SERVICE
YOU MUST KNOW SOMETHING ABOUT
WHO YOU'RE HANDING THE PIECE OF
PAPER TO.

>> CERTAINLY.

>> AND THE ONLY WAY YOU CAN GET
THAT IS BY ASKING SOME KIND OF
QUESTION, ISN'T IT?

>> CERTAINLY.

I GUESS THERE'S DEFINITELY
DIFFERENT METHODS OF
INVESTIGATION.

ASKING QUESTIONS IS CERTAINLY
ONE OF THEM.

>> WELL, ARE YOU SUGGESTING THAT
THIS JUST HAPPENS, YOU KNOW?
I'M DELIVERING PROCESS, AND I
SAY, OKAY, IN SUBSTITUTE OF
SERVICE, AND THAT'S BECAUSE THIS
PERSON IS A, B, C AND D WHEN

YOU'VE NEVER ASKED A QUESTION
AND NO ONE HAS TO VOLUNTEER THAT
INFORMATION?

IT JUST SEEMS, THIS SEEMS
ILLOGICAL TO ME, THIS WHOLE
THING, AFTER DOING THIS FOR,
LIKE, 45 YEARS THAT I'VE NEVER
SEEN ONE WHERE IT DOESN'T TELL
YOU ON THE RETURN WHAT THEY DID
WITH IT.

>> THE PROCESS SERVER CERTAINLY
HAS AN OBLIGATION TO DETERMINE
ALL THOSE FACTS, RIGHT?

WE HAVE TO ASSUME THAT THE
PROCESS SERVER --

>> OKAY.

ALL RIGHT.

SO THERE IS THEN, THAT'S -- WE
AGREE ON THAT.

>> YES.

>> YOU HAVE TO GET THOSE FACTS
SOMEPLACE.

>> CORRECT.

>> SO YOU'RE SAYING, THOUGH, THE DIFFERENCE IS THEY DON'T HAVE TO RECORD THOSE FACTS ON THE PIECE OF PAPER THEY SEND BACK TO THE COURT.

>> THAT'S CORRECT.

>> OKAY.

>> THAT'S CORRECT.

WE AGREE, EVERYONE AGREES THAT SERVICE OF PROCESS STATUTES ARE SUBJECT TO STRICT CONSTRUCTION. THERE ARE DUE PROCESS CONCERNS ANYTIME THERE'S A DEFAULT OR POTENTIAL DEFAULT.

THE SECOND DISTRICT'S HOLDING, I BELIEVE, IS CONSISTENT WITH A STRICT CONSTRUCTION OF 48.21.

48.21 IS THE STATUTE THAT SETS FORTH THE EXACT REQUIREMENTS FOR VALIDITY, FACIAL VALIDITY, OF A RETURN OF SERVICE.

>> BUT YOU NEED TO KNOW WHAT "MANNER OF SERVICE" MEANS.

>> YOU DO.

>> SO THE WHOLE FIGHT IN THIS CASE IS THAT YOU SAY YOU JUST MARKET -- YOU LIST THE MANNER, THAT THAT'S SUFFICIENT, AND THE OTHER SIDE'S SAYING THAT YOU HAVE TO LIST THE FACTS THAT ESTABLISH THE MANNER.

>> THAT'S CORRECT.

>> IS THAT WHAT THIS CASE IS ABOUT?

>> YES.

IN THIS CASE THE RETURN OF SERVICE, THE PROCESS SERVER AFFIRMED THAT HE MADE SERVICE IN ACCORDANCE WITH STATE STATUTES IN THE MANNER OF SUBSTITUTE SERVICE AND PROVIDED THE REQUIREMENTS.

THERE'S NO QUESTION, I THINK, THAT THE RETURN SERVICE IN THIS CASE SATISFIED THE BASIC REQUIREMENTS OF 48.21.

IT CONTAINED THE DATE AND TIME

IT CAME TO HIM, WHEN IT WAS

SERVED, THE MANNER OF --

>> WELL, AGAIN, IF YOU INTERPRET

THE MANNER OF SERVICE --

>> RIGHT.

AND THE NAME OF THE PERSON

SERVED.

THAT'S CORRECT.

HOWEVER, MY POINT IS THAT THERE

IS NO STATUTORY AUTHORITY TO

SUGGEST THAT THERE IS THIS

EXPANDED REQUIREMENT FOR, TO

INCLUDE THAT INFORMATION IN THE

RETURN OF SERVICE.

48.21 IS THE STATUTE THAT

GOVERNS THIS, AND IT IS SILENT

ON THAT ISSUE.

IT DOES NOT EVEN --

>> WELL, AGAIN, IT COMES DOWN TO

THE INTERPRETATION OF "MANNER OF

SERVICE."

DO I USE THE WORD "SUBSTITUTE,"

OR DO I HAVE TO PUT "SERVING AN
ADULT OVER THE AGE OF," ETC.

>> IT DOES.

>> OKAY.

>> BUT IN A SITUATION LIKE THIS
WHERE THE STATUTE IS TO BE
STRICTLY CONSTRUED, I WOULD
SUGGEST TO THE COURT IF THERE IS
NO STATUTORY AUTHORITY TO
SUGGEST THAT THAT INFORMATION
NEEDS TO BE CONTAINED WITHIN THE
RETURN OF SERVICE --

>> BUT ISN'T, I GUESS -- AND I
DO AGREE THAT THE MANNER OF
SERVICE, IT WOULD SEEM THAT
SAYING PERSONS OVER 15 REALLY
ISN'T MORE, IS NOT A MANNER OF
SERVICE, BUT WHAT ELSE OTHER
THAN SAYING "SUBSTITUTE SERVICE"
WOULD THE MANNER OF SERVICE
MEAN?

WHAT ELSE --

>> WELL, I THINK THAT'S EXACTLY

WHAT IT MEANS.

IT MEANS SUBSTITUTED SERVICE.

>> WELL, BUT THAT'S, AS JUSTICE LEWIS IS SAYING, THAT'S PRETTY APPARENT IF IT'S NOT THE PERSON, SOMEONE ELSE IN THIS A SUBSTITUTE SERVICE AT LEAST AS -- SO IT DOESN'T SEEM IT IS A HELPFUL ADDITION IF IT DOESN'T MEAN MORE THAN JUST I USED SUBSTITUTE SERVICE.

>> WELL, IN THIS CASE THE RETURN IDENTIFIED THE PERSON AND THEIR RELATIONSHIP AS SISTER-IN-LAW AND CO-RESIDENT.

>> SO --

>> SO THE ONLY THING THAT PETITIONER WOULD SAY IS MISSING IS THIS ROTE RECITATION AND THAT PERSON WAS OVER 15 YEARS OF AGE AND WAS INFORMED OF THE CONTENTS OF THE PROCESS.

>> BUT ISN'T THAT -- WELL, LET'S

JUST GO OVER THAT ONE, THE LAST ONE.

BECAUSE THE OVER 15, AGAIN --

>> THERE IS NO DISPUTE IN THE RECORD.

>> AND ALSO THEY PUT MORE IN BY SAYING "SISTER-IN-LAW."

SO THAT GIVES SOME FEELING THAT IT'S NOT A CUSTOMER, THAT THEY DIDN'T HAVE -- UNDER YOUR INTERPRETATION, THEY WOULDN'T HAVE HAD TO SAY IT'S THE SISTER-IN-LAW, IS THAT CORRECT?

IT SAYS "THE PERSON SERVED."

>> THE STATUTE SAYS IF YOU'RE SERVING SOMEONE IN A REPRESENTATIVE CAPACITY, YOU HAVE TO GIVE THEIR POSITION.

I DON'T KNOW THAT THAT APPLIES, BUT --

>> WELL, WE OUGHT TO, WE OUGHT TO IF WE'RE GOING TO BE INTERPRETING WHAT IT MEANS, THEN

WE OUGHT TO SAY YOU HAVE TO JUST NOT SAY THE NAME.

SO IF WE'RE NOT SAYING IT HAS TO BE THE NAME AND THEY KNOW THE RELATIONSHIP, CERTAINLY SAYING THE MANNER ALSO WOULD MEAN THAT THEY'RE OVER 15.

BUT THE ONE THAT YOU SAID IS NOT IN THERE BUT MANNER THAT COULD BE THAT IS, TO ME, THE CRITICAL PART IS EXPLAINING THE CONTENT. BECAUSE IF WE'RE REALLY SAYING THAT WE NEED TO LET THE PERSON WHO IS BEING SUBSTITUTED UNDERSTAND THE IMPORTANCE OF WHAT'S GOING ON HERE.

AND, AGAIN, MAYBE IN THE REAL WORLD EVERYONE KNOWS WHAT'S GOING ON.

THEN SAYING THIS IS A LAWSUIT AGAINST MR. KOSTER, AND IT IS ALLEGING THIS SO THAT THE PERSON WHO IS RECEIVING IT UNDERSTANDS

THAT IT HAS TO BE DELIVERED.

SO IF THAT WERE -- LET'S JUST GO
OVER THAT.

IF THAT WERE, LET'S JUST SAY
THAT IN THIS CASE WAS REQUIRED,
AND THEY SAY I EXPLAINED THE
CONTENTS.

NOW I JUST WANT TO GO AND TO SEE
THE REAL LIFE EXAMPLE IN THIS
SITUATION BECAUSE THE SERVICE,
IT WOULD ALLOW YOU TO COME IN
AND JUST AMEND TO SAY, YES, THE
PROCESS SERVER DID ADD THOSE
ADDITIONAL FACTS.

NOW, I DON'T KNOW IF YOU COULD
HAVE DONE THAT OR NOT, BUT IT
DOESN'T INVALIDATE SERVICE.

SO LET'S JUST SAY THAT YOU
COULDN'T AMEND, AND NOW THERE'S
NO PRESUMPTION.

IS IT THEN YOUR BURDEN, I MEAN,
IF WE CARRIED THIS OUT, IS IT
YOUR BURDEN THEN TO ESTABLISH

THAT THE PROCESS SERVER WHO
MAY -- WHO YOU MAY NOT BE ABLE
TO FIND -- DID EXPLAIN THE
CONTENTS?

HOW WOULD THAT GO?

>> AT THAT POINT, YES.

IF WE'RE NOT ENTITLED TO THE
PRESUMPTION, THEN THE BURDEN
WOULD SHIFT TO US TO SHOW --
NOW, IN THIS PARTICULAR CASE I
THINK YOU'VE HEARD THERE IS NO
EVIDENCE ON THE ISSUE OF WHETHER
THERE -- THERE IS NO CONTRARY
EVIDENCE THAT THE SUMMONS WASN'T
EXPLAINED TO THE RECIPIENT.

THE RECIPIENT TESTIFIED THAT SHE
DIDN'T RECALL, SO THERE'S NO
RECORD EVIDENCE IN THIS CASE ON
THAT.

BUT --

>> SO IT WAS REALLY IN THIS CASE
IF YOU INTERPRET THIS
DIFFERENTLY THAN IT'S BEEN

INTERPRETED, IT WOULD REALLY
PUT -- I MEAN, IT'S ONE THING TO
SAY PROSPECTIVELY THAT'S A
BETTER IDEA, THAT THE PROCESS
SERVER SHOULD INCLUDE MORE FACTS
SO THAT BOTH SIDES REALLY -- BUT
WE WOULD BE, AGAIN, I DON'T KNOW
WHETHER WE WOULD BE REWRITING
THE STATUTE, BUT IS THERE --
WHERE DID IT COME UP WITH THAT
THERE IS CLEAR AND CONVINCING,
THAT THAT'S THE STANDARD?
WHY IS IT NOT THAT THE BURDEN
SHIFTS, BUT IT'S -- WHY --
WHERE -- WHO DECIDED IT HAD TO
BE CLEAR AND CONVINCING?
DID THIS COURT DO THAT IN 1870
OR --

[LAUGHTER]

IT'S NOT IN STATUTE.

>> I'M NOT CERTAIN.

IT'S PRETTY WELL ESTABLISHED
THAT CASE LAW HAS ESTABLISHED

FOR SOME TIME, AND I CAN'T, I
CAN'T CITE TO THE COURT WHERE
THAT CAME FROM, BUT I THINK THE
LAW HAS PRETTY WELL ESTABLISHED
AND ACCEPTED THAT THIS
PRESUMPTION ARISES AND THEN HAS
TO BE OVERCOME BY CLEAR AND
CONVINCING.

AND I THINK THAT THAT IS A, IT'S
A POLICY CHOICE THAT'S BEEN MADE
BY THE COURTS OF FLORIDA
SOMEWHERE ALONG THE LINE THAT --
>> BUT YOU DON'T KNOW WHERE IT
CAME FROM.

I MEAN, IT COULD JUST BE THAT
IT'S JUST, THE PRESUMPTION
SHIFTS AND IT'S JUST THE SAME
OLD SHIFTING.

I MEAN, WHY DOES IT HAVE TO BE
CLEAR AND CONVINCING?

>> NO.

AND I'M SORRY I CAN'T POINT YOU
TO A CASE.

I KNOW THAT I HAVE READ CASES.

I BELIEVE THEY MAY BE CITED IN
THE BRIEFS THAT RELATE TO THAT
ISSUE.

BUT I THINK IT'S A STRONG POLICY
CHOICE THAT'S BEING MADE BY THE
STATE OF FLORIDA TO SAY WE WANT
THERE TO BE A PRESUMPTION IN
FAVOR OF VALID SERVICE.

YOU HAVE AN OPPORTUNITY TO COME
BACK AND CHALLENGE THE SERVICE,
AND YOU CERTAINLY HAVE AN
OPPORTUNITY TO CHALLENGE THE
CASE ON THE MERITS, BUT I THINK
THAT WE AS THE FLORIDA JUDICIAL
SYSTEM ARE MAKING A POLICY
CHOICE THERE FOR EXPEDIENCY.

>> SEE, I THOUGHT WE WERE TRYING
TO FOLLOW THE WILL OF THE
LEGISLATURE.

BECAUSE IF I WERE THE POLICY
CHOICES THAT A LOT OF PEOPLE
COMPETING THING -- PEOPLE WANT

TO AVOID SERVICE.

ON THE OTHER HAND, PROCESS
SERVERS, I DON'T KNOW IF THEY,
HOW THEY GET PAID, BUT, YOU
KNOW, IT'S NOT EXACTLY IN THEIR
INTEREST TO BE CONDUCTING A TEN
MINUTE INQUIRY WITH THE PERSON
THAT THEY'RE SERVING.

SO I THINK THERE'S POLICY
ARGUMENTS BOTH WAYS.

I DIDN'T THINK WE WERE HERE
TRYING TO MAKE A POLICY
DECISION.

I THOUGHT WE WERE TRYING TO
DECIDE WHAT WAS REQUIRED UNDER
THE LEGISLATIVE SCHEME.

>> WELL, I AGREE WITH YOU, I'M
NOT SURE THAT THE POLICY
DECISION -- THE POLICY DECISION
ABOUT THE BURDEN OF PROOF,
THAT'S AN ISSUE THAT'S REALLY
NOT BEFORE THE COURT.

I MEAN, IN THIS CASE THE RETURN

WAS FOUND FACIALLY VALID, SO
THAT IS NOT AN ISSUE THAT'S
BEFORE THE COURT HERE.

I WOULD AGREE WITH YOU THAT THE
COURT'S OBLIGATION TODAY IS TO
DETERMINE AS BETWEEN THE SECOND
AND THIRD DCA HOLDINGS WHICH
COMPORTS WITH THE STATUTE --

>> WELL, LET ME GO BACK AND ASK
YOU THEN ABOUT MANNER, BECAUSE I
THINK THE TERM IN MY MIND CAN BE
INTERPRETED TWO WAYS.

IT COULD BE INTERPRETED AS WHAT
METHOD YOU USED, OR IT COULD BE
MORE EXPANSIVE TO INCLUDE ALL OF
THESE OTHER PARTICULARS THAT
YOUR OPPONENT HAS TALKED ABOUT.

SO IF THE MANNER OF SERVICE
MEANS THE PROCEDURE OR PROCESS
THAT YOU USE -- BECAUSE I LOOK
AT THIS RETURN OF SERVICE, AND
THERE ARE SEVERAL WAYS THAT YOU
COULD HAVE EFFECTUATED THE

SERVICE.

THE MANNER COULD BE INDIVIDUAL
SERVICE, THE SUBSTITUTE SERVICE,
COULD BE BY POSTING, CAN BE
BY -- I THINK --

>> CORPORATE SERVICE.

>> -- YOU PUT IT IN THE
NEWSPAPER, THOSE KINDS OF
THINGS.

AND SO THE MANNER COULD BE
INTERPRETED, COULD IT NOT, AS
WHICH OF THOSE METHODS YOU
ACTUALLY USE TO EFFECTUATE
SERVICE.

IS THAT A FAIR READING OF THE
TERM "MANNER"?

>> I THINK THAT'S CORRECT.

>> AND SO IF THAT IS A FAIR
READING OF THE TERM, THEN DOES
IT INCLUDE ALL OF THOSE OTHER
ITEMS THAT WE'VE BEEN TALKING
ABOUT HERE TODAY WHICH IS
WHETHER OR NOT YOU ASCERTAINED

THAT THE PERSON WAS 15, OVER 15,
WHETHER OR NOT YOU EXPLAIN TO
THEM WHAT THIS SERVICE WAS ALL
ABOUT?

>> I THINK THAT'S CORRECT.

I THINK IT DOES NOT INCLUDE ALL
THAT EXTRA INFORMATION.

IN A CASE LIKE THIS, REALLY THE
PETITIONER'S ARGUMENT IS THIS
SUMMONS, THIS RETURN WOULD HAVE
BEEN VALID IF ONLY IT HAD
CONTAINED THE EXTRA WORDS, YOU
KNOW, "WHO WAS OVER 15 YEARS OF
AGE AND WAS INFORMED OF THE
CONTENTS."

IT'S REALLY A MAGIC LANGUAGE
SORT OF ARGUMENT THAT THE
SUMMONS DIDN'T NEED ANY NEW
INFORMATION, IT DIDN'T NEED ANY
NEW SUBSTANTIVE INFORMATION, IT
JUST NEEDED SOME EXTRA WORDS TO
MAKE ID VALID.

>> WELL, IF THOSE EXTRA WORDS

WERE IN THERE, WOULD THE PERSON
HAVE AN OPPORTUNITY STILL TO
CHALLENGE THE VALIDITY OF IT?

>> FIRST OF ALL, LET ME JUST SAY
I THINK THE WORDS ARE IN THERE
SORT OF BY IMPLICATION, BY
REFERENCE, BECAUSE THEY SAY THEY
COMPLIED BY STATUTE.

BUT, YES, THE PERSON STILL HAS
AN OPPORTUNITY TO CHALLENGE
SERVICE.

HOWEVER, THEY DO HAVE THE BURDEN
TO --

>> I GUESS I'M INCLINED TO
DECIDE IF YOU CAN CHALLENGE IT,
THE YOU DON'T HAVE IT AND YOU
CAN CHALLENGE IT.

IF YOU DO HAVE IT, THEN WHY ARE
WE, WHY DO YOU -- WHY WOULD WE
NEED THIS EXTRA INFORMATION
THAT'S NOT ACTUALLY ASKED FOR,
IN MY ESTIMATION, IN 48.21?

>> I DON'T THINK THAT WE DO.

IMPORTANTLY, I DON'T THINK THAT
IT ADDS ANYTHING TO THE PROCESS.
I DON'T THINK THAT IT ADDS ANY
FURTHER GUARANTEE OF
RELIABILITY.

IT'S JUST MORE WORDS IN A FORM.
IT'S JUST, YOU KNOW, IN THE
MAGIC LANGUAGE FROM 48.031 THAT
SUDDENLY MAKES THE SUMMONS VALID
ON ITS FACE, IT DOESN'T REQUIRE
ANYTHING ADDITIONAL.

IT'S NOT AN ADDITIONAL GUARANTEE
OF RELIABILITY FOR ANYONE IN THE
PROCESS.

>> IS THIS PARTICULAR FORM, THIS
RETURN OF SERVICE FORM, TYPICAL
IN THE STATE, OR, YOU KNOW --

>> I'M NOT SURE --

>> I HAVEN'T SEEN ONE IN A LONG
TIME, SO I'M NOT SURE.

>> I'M NOT SURE THAT THERE IS A
TYPICAL FORM.

I THINK THAT THERE'S A LOT OF

VARIATION IN THE FORMS BASED

UPON THE PROCESS SERVERS

INDIVIDUALLY.

BUT I THINK THAT THIS MANNER OF

CHECKING --

>> LET ME ASK YOU --

>> -- A SUBSTITUTE SERVICE BOX

IS NOT UNUSUAL.

>> LET ME ASK YOU THIS, IT IS

ACTUALLY 48.031 THAT PROVIDES

THOSE FACTORS THAT NEED TO BE

INCLUDED.

BUT IT SAYS, "THE USUAL PLACE OF

ABODE WITH ANY PERSON RESIDING

WITHIN WHO IS 15 YEARS OF AGE OR

OLDER AND INFORMING THE PERSON

OF THEIR CONTENTS."

WHAT IS IT THAT IS REQUIRED OF

THE SERVICE PROCESSER TO INFORM

THE PEOPLE OF?

EXPLAIN THE LAWSUIT TO THEM?

>> I BELIEVE --

>> JUST TELL THEM YOU'RE ABOUT

TO GET SUED, YOU'RE GETTING SUED

OR WHATEVER?

WHAT IS IT THEY'RE SUPPOSED TO

SAY?

>> I'M NOT SURE THERE'S BEEN A

LEGAL CHALLENGE OF THAT

SPECIFICALLY, BUT I WOULD SAY

THAT THE TRADITIONAL MANNER HAS

BEEN THE PROCESS SERVER HAS

SIMPLY INFORMED THE PERSON THAT

THIS IS A LAWSUIT AGAINST SUCH

AND SUCH A PERSON, AND IT

REQUIRES A RESPONSE, OR, YOU

KNOW, SOMETHING ALONG THOSE

INES TO GIVE THE RECIPIENT AN

IDEA OF THE GRAVITY OF THE

SITUATION.

>> WELL, MR. KOSTER IS

CHALLENGING THAT.

HE'S SAYING THAT THE

SISTER-IN-LAW WAS NOT INFORMED

OF THE CONTENTS OF THE PAPERS

SHE WAS ABOUT TO BE RECEIVED.

>> WELL, ACTUALLY, THE EVIDENCE IS THAT SHE DOES NOT RECALL WHETHER SHE WAS INFORMED OR NOT. THE PROCESS SERVER TESTIFIED, I BELIEVE, THAT IT IS NORMAL COURSE TO DO SO, AND MS. HASSET -- WHO IS THE RECIPIENT -- TESTIFIED SHE DIDN'T RECALL. SO THERE'S REALLY A FAILURE OF EVIDENCE --

>> OKAY, SO HE TESTIFIED THAT HIS NORMAL PROCESS, NORMAL CUSTOM WAS TO DO THAT, WAS TO EXPLAIN.

IS THAT WHAT HE SAID?

>> I BELIEVE THAT'S CORRECT, YES.

>> YOU KNOW WHAT'S TROUBLING ME HERE IS THAT YOUR PRIMARY ARGUMENT, THAT MANNER OF SERVICE IS SATISFIED BY MERELY CHECKING OFF OR SAYING SUBSTITUTED

SERVICE, WHEN THE FORM ITSELF
SEEMS DIRECTLY CONTRARY TO THAT.
THIS FORM ABSOLUTELY REQUIRES
SOMETHING MORE THAN JUST
CHECKING OFF SUBSTITUTE OF
SERVICE BUT DOESN'T REQUIRE ALL
FOUR OF THE ELEMENTS.

ISN'T THAT THE CASE?

I'M LOOKING AT THE RETURN, AND
IF YOU WOULD JUST, IF YOU HAD
JUST MARK "SUBSTITUTED SERVICE"
AND NOT FILLED OUT THE REST, IS
THAT THEN THE PRESUMPTION AND
VALID?

>> NO, IT WOULD NOT BE.

>> OKAY.

THEREFORE, IT IS THAT "MANNER OF
SERVICE" HAS GOT TO MEAN MORE
THAN JUST "SUBSTITUTED SERVICE."

>> NO.

I MEAN --

>> YOU'RE GOING BACK AND FORTH.

YOU SAID ALL YOU HAD TO DO WAS

LIST "INDIVIDUAL" OR
"SUBSTITUTE" OR "CORPORATE" OR
WHAT HAVE YOU.

>> FOR THE MANNER, YES.

>> RIGHT.

>> AND THAT'S REQUIRED TO NAME,
THAT'S A PART OF 4.21.

I MEAN, THAT'S REQUIRED
REGARDLESS.

YOU KNOW, THAT INFORMATION IS
REQUIRED.

>> BUT THIS JUST, I MEAN, JUST
COINCIDENTALLY, IT JUST HAPPENS
TO LIST IT WAS SUBSTITUTED
SERVICE.

THIS IS WHAT JUST DOESN'T MAKE
SENSE.

WE'RE GOING MULTIPLE DIFFERENT
WAYS HERE, AND THEY DON'T SEEM
TO BE CONSISTENT.

IF "MANNER" INCLUDES MORE THAN
JUST LISTING SUBSTITUTED
SERVICE, THEN IT MUST, AND WE

HAVE TO DECIDE WHAT.

IF IT'S, IF IT IS SATISFIED BY
MARKING "SUBSTITUTED SERVICE,"
THEN WE NEED TO SATISFY THAT.
THEN YOU NEED MORE.

>> I'M SORRY, I DON'T AGREE --
THE MERE FACT THAT THAT BLANK IS
BEHIND SUBSTITUTED SERVICE IN
THIS FORM, WHICH ADMITTEDLY IS
NOT A GREAT FORM, IS NOT A --

>> WELL, IT'S YOUR FORM.
IT'S WHAT YOU USE TO SERVE THE
PEOPLE.

>> IT'S OUR PROCESS SERVER'S
FORM, YES.

>> WELL --

>> MY POINT IS THE REASON THE
NAME "PAT HASSET" HAS TO BE
THERE AS THE RECIPIENT IS
BECAUSE OF 48.21.

IT DOESN'T HAVE ANYTHING TO DO
WITH THE MANNER OF SERVICE.

>> HOW ABOUT THAT --

[INAUDIBLE]

THE SAME THING?

>> YOU KNOW, IT'S --

>> SISTER-IN-LAW?

I MEAN --

>> SUBSTITUTE SERVICE, THE 48.21

SUGGESTS THAT IF YOU'RE MAKING

SERVICE IN A REPRESENTATIVE

CAPACITY, YOU WERE SUPPOSED TO

GIVE THE TITLE OR RELATIONSHIP

OF THE PERSON --

>> THIS IS NOT A REPRESENTATIVE

CAPACITY.

>> I AGREE.

AND I THINK THAT IS PROBABLY NOT

REQUIRED TO BE THERE IN THE

FORM -- ON THE FORM, BUT IT IS.

>> WELL, AGAIN, THIS IS NOT

STATE PROCESS.

THIS IS ONE OF THOSE WHEN I

FIRST STARTED PRACTICING, WE HAD

TO USE THE LAW ENFORCEMENT.

AND THEN WE CAME ALONG AND

ALLOWED PRIVATE COMPANIES TO BE
CERTIFIED, AND THEN INDIVIDUAL
LAW FIRMS HIRE THEIR OWN
INVESTIGATORS WHICH THIS APPEARS
TO BE WHO'S A CERTIFIED PROCESS
SERVER TO GO OUT AND CERTIFY AND
TO MAKE SERVICE.

SO IF WE'RE STRICTLY CONSTRUING
SOMETHING, IT WOULD SEEM TO ME
THAT IT OUGHT TO BE STRICTLY
CONSTRUED IN FAVOR OF A
DEFENDANT WHO'S RECEIVING THESE
KIND OF PAPERS.

WOULDN'T THAT BE THE CASE?

TALKING ABOUT DUE PROCESS AND
ALL THESE KINDS OF THINGS?

>> WELL, THE ISSUE IS STRICT
CONSTRUCTION REFERS TO THIS
STRICT CONSTRUCTION OF THE
STATUTE.

>> I AGREE, I AGREE.

>> THIS IS REALLY READING
REQUIREMENTS INTO THE STATUTE

THAT ARE NOT THERE.

I MEAN, MANNER OF SERVICE IS IN
48.21, BUT MANNER OF SERVICE IS
NOT DEFINED, IT'S NOT
CROSS-REFERENCED --

>> BUT IF THEY HAD MERELY LISTED
"SUBSTITUTED SERVICE," IT WOULD
NOT HAVE OBTAINED THE
PRESUMPTION OF VALIDITY.

>> IT WOULD BE SUFFICIENT AS FAR
AS THE MANNER OF SERVICE GOES,
BUT IT WOULD ALSO REQUIRE THREE
OTHER THINGS IN 48.21.

IT WOULD REQUIRE THAT THE NAME,
THE TIME SERVED AND TIME THAT
CAME TO --

>> AND THAT'S WHAT YOU THINK
THIS FORM ON ITS FACE SHOWS
THAT.

>> I BELIEVE IT DOES.

>> JUST SO I'M CLEAR, WHAT
YOU'RE SAYING IS THE ONLY THING
THE STATUTE REQUIRES -- STATUTE

IN THIS INSTANCE MEANING

48.21 -- IS AS FAR AS MANNER OF
SERVICE IS CONCERNED IS WHETHER
IT WAS SERVED ON MR. KOSTER
HIMSELF OR WHETHER IT WAS SERVED
BY SUBSTITUTE SERVICE TO SOMEONE
ELSE.

THAT'S IT.

MANNER OF SERVICE MEANS WHETHER
DIRECTLY OR SUBSTITUTE SERVICE.

>> THERE ARE OTHER MANNERS OF
SERVICE --

>> WHATEVER ELSE, YOU KNOW?
NEWSPAPER OR WHATEVER.

NOW, THE STATUTE ALSO SAYS THE
NAME OF THE PERSON ON WHOM IT
WAS SERVED.

SO THAT BLANK LINE AFTER
"SUBSTITUTE SERVICE" IS REQUIRED
BY 48.21, ISN'T IT?

>> SAY THAT AGAIN, JUDGE?

>> 48.21 SAYS THE DATE AND TIME
WHEN HE WAS SERVED AND MANNER OF

SERVICE AND THE NAME OF THE
PERSON ON WHOM IT WAS SERVED.

>> YES.

>> SO THE FORM HAS TO HAVE A
BLANK SPACE FOR THIS PROCESS
SERVER TO WRITE IN THE NAME OF
THE PERSON HE ACTUALLY SERVED.
THE SISTER-IN-LAW IN THIS CASE.

>> IF HE'S NOT SERVING THE
PERSON DIRECTLY, THEY HAVE TO
INDICATE THE NAME OF THE PERSON
SERVED.

>> EVEN IF HE WAS SERVING THE
PERSON DIRECTLY, THAT BLANK LINE
NEEDS TO BE THERE AS WELL,
DOESN'T IT?

>> YES.

>> WELL, HOW CAN THAT BE?
INDIVIDUAL SERVICE, YOU SATISFY
THAT BY JUST MERELY CHECKING
WITHOUT WRITING IN ANYTHING,
SERVED THE WITHIN-NAMED PERSON.

>> IT IS IDENTIFYING THE PERSON

TO BE --

>> RIGHT.

BUT, I MEAN, IT'S NOT A SEPARATE PLACE.

>> IT DOESN'T REQUIRE A SEPARATE BLANK.

I MEAN, I THINK IT COULD HAVE ONE, BUT IT WOULDN'T BE REQUIRED BECAUSE IT WOULD BE CLEAR FROM THE FIRM THAT THE NAMED PERSON WAS PERSONAL SERVICE DIRECTLY TO THEM.

>> SO YOU AGREE THE LINE ON WHICH YOU HAVE PAT HASSET IS NOT THE LINE OF THE INDIVIDUAL IF IT'S THE DEFENDANT THAT'S BEING SERVED, RIGHT?

>> THAT'S CORRECT.

>> OKAY.

>> ONLY SUBSTITUTE SERVICE THAT LINE APPLIES TO.

>> THAT LINE HAS TO BE THERE IN THE CASE OF SUBSTITUTE SERVICE,

CERTAINLY, WHICH IS WHY IT'S

THERE ON THE FORM.

>> IF YOU WANT TO GET TECHNICAL
ABOUT IT IF YOU'D HAD INDIVIDUAL
SERVICE, THIS FORM SAYS
INDIVIDUAL SERVICE SERVED THE
WITHIN-NAMED PERSON.

>> YES.

>> I MEAN, THE STATUTE SAYS THE
NAME OF THE PERSON WHOM WAS
SERVED.

IF YOU WANT TO GET TECHNICAL,
YOU HAVE TO WRITE THE PERSON'S
NAME NEXT TO IT.

>> I THINK INCORPORATING IT BY
REFERENCE IS PROBABLY
SUFFICIENT.

>> PROBABLY.

>> BUT IT PROBABLY WOULDN'T HURT
TO HAVE THAT IN EITHER BLANK.

YES.

>> I GUESS WHAT I'M THINKING IS
WHY, I MEAN, WHY THE PROCESS

SERVER AFTER HE GETS THERE, SETS
DOWN HIS CARD AND WRITES THESE
THINGS DOWN SO WE DON'T HAVE TO
DO THIS.

>> I SEE I'M OUT OF TIME.

JUSTICE PARIENTE, I JUST WANTED
TO SAY --

>> WELL, I HAVE A QUESTION.

>> SURE.

>> FIRST OF ALL, THE FORM
ITSELF, IS THAT A STATUTORY
FORM?

IS IT CREATED, IS IT A PINELLAS
COUNTY FORM?

IS IT A STANDARD THROUGHOUT THE
STATE OF FLORIDA?

>> IT IS NOT A STANDARD FORM, I
BELIEVE IT'S CREATED BY THE
PROCESS SERVER.

>> OKAY.

SO THE ISSUE OF WHAT THE FORM
SAYS IS REALLY JUST GO BACK TO
WHAT'S IN THE STATUTE.

>> IN THE STATUTE.

>> YOU MENTIONED CONFLICT WITH
THE THIRD DISTRICT.

NOW, THERE WERE TWO BASES FOR
BEING HERE; ONE IS THE CERTIFIED
QUESTION, ONE IS CONFLICT.

WHAT CASE DO YOU CONTEND OR DOES
THE SECOND DISTRICT CONTEND THE
CONFLICT WITH?

WHAT HAS THE THIRD DISTRICT HELD
AS FAR AS THIS SAME ISSUE?

>> THE SECOND DISTRICT CERTIFIED
CONFLICT IN WHAT I WOULD
CONSIDER A RATHER CONTESTED
MANNER, BUT THEY SAID THERE ARE
THREE CASES THAT COULD CONFLICT
WITH THEIR RULING BELOW, AND
THAT'S THE HERSKOWITZ AND THE
GONZALEZ CASE AND THE
ROBLES-MARTINEZ CASE.

>> AND DO YOU -- BECAUSE I'M
LOOKING AT ROBLES-MARTINEZ, AND
I'M NOT SEEING HOW IT CONFLICTS

AS TO WHAT IS THE REQUIREMENT
FOR FACIAL VALIDITY OF THE
RETURN OF SERVICE.

>> I DON'T EITHER.

AND WE'VE MADE THAT ARGUMENT IN
OUR JURISDICTIONAL BRIEFS AND IN
OUR PRINCIPAL BRIEFS.

I DON'T BELIEVE ANY OF THOSE
THREE CASES -- BUT CERTAINLY
THAT CASE EXPRESSES DIRECT
CONFLICT.

IN THAT CASE THEY FOUND A RETURN
TO BE FACIALLY VALID, BUT WE
DON'T EVEN KNOW WHAT THE WORDING
OF THAT RETURN WAS.

IT CLEARLY WAS NOT AN ISSUE IN
THAT CASE.

THEY MAKE MENTION OF 48.031, BUT
THEY NEVER ANALYZE OR REPORT
WHAT THE LANGUAGE IS.

THAT'S CLEARLY THE ISSUE IN THIS
CASE --

>> WELL, IN GONZALEZ DON'T THEY

SAY IN ADDITION THERE WAS NO EVIDENCE ESTABLISHING: A, WHO THE PERSON SERVED WAS, WHETHER THAT -- B, WHETHER THAT PERSON WAS OVER 15 YEARS OF AGE, C, WHETHER THE PERSON RESIDED AT THE ADDRESS OF THIS SERVICE AND, D, WHETHER THE PERSON WAS INFORMED OF THE CONTENTS OF THE DOCUMENT.

SO THEY CERTAINLY, THEY'RE SUGGESTING THAT THAT'S INFORMATION THAT NEEDS TO BE INCLUDED.

AND YOUR ARGUMENT THAT THERE'S NOT JURISDICTION HERE, WHICH I THINK YOU ARGUE --

>> YES.

>> I MEAN, I DON'T KNOW WHAT BASIS THERE WOULD BE FOR THAT. BECAUSE ONCE I THINK OUR JURISPRUDENCE IS THAT ONCE THE DISTRICT COURT CERTIFIES THE

CONFLICT, WE HAVE JURISDICTION.
NOW, WE MAY EXERCISE OUR
DISCRETION NOT TO TAKE IT, BUT
FURTHERMORE, IT SEEMS TO ME THAT
THERE'S CERTAINLY SOME TENSION
BETWEEN THE REASONING IN THIS
CASE, IN THE THIRD CASE, AND THE
REASONING IN THE SECOND
DISTRICT'S CASE.

ISN'T THAT THE CASE?

>> I THINK THAT'S TRUE.

AND YOU EVEN PREMISED IT BY
SAYING "IN ADDITION THEY SAID,"
AND THAT IS BECAUSE THE MAIN
PROBLEM, IT WAS A TERRIBLE CASE
FOR SERVICE.

THE PROCESS SERVER DID A
HORRIBLE JOB.

BUT THE MAIN REASON, THE MAIN
PROBLEM WAS THERE WAS SERVICE ON
ANONYMOUS PERSON.

IT VIOLATED 48.21.

THE COURT DIDN'T HAVE TO REACH

ANY FARTHER THAN THAT.

THEY DIDN'T HAVE TO GET TO

48.031.

>> SO IF WE WERE ARGUING ABOUT WHETHER THERE WAS EXPRESS AND DIRECT CONFLICT IN THE ABSENCE OF A CERTIFICATION OF CONFLICT, YOUR ARGUMENT MIGHT HAVE SOME WEIGHT.

BUT ONCE THE CONFLICT IS CERTIFIED, I BELIEVE WE HAVE JURISDICTION.

IF WE WANT TO TAKE IT.

>> I'M SURE THE COURT CAN, AND I WOULD JUST SUGGEST THAT BECAUSE OF THE REASONS THAT WE IDENTIFIED, I DON'T KNOW THAT THIS IS THE BEST CASE TO ACCEPT THAT.

THERE MAY BE A CONFLICT BREWING BETWEEN THE SECOND AND THE THIRD IF THE THIRD CONTINUES ALONG THIS PATH, BUT THESE CASES ARE

NOT THE TYPE OF CLEAR, EXPRESS
AND DIRECT CONFLICT THAT WOULD
MAKE THE BEST CASE TO DECIDE
THAT ON.

>> THANK YOU.

>> COULD I ASK JUST ONE
QUESTION?

>> SURE.

>> AS I UNDERSTAND, YOUR
OPPONENT MADE THE STATEMENT THAT
DURING THE EVIDENTIARY HEARING
IT WAS ESTABLISHED THAT THE
SISTER-IN-LAW USED TO LIVE THERE
BUT DID NOT LIVE THERE AT THE
TIME OF THE SERVICE.

>> YES.

>> DOES IT MAKE A DIFFERENCE
THAT THIS ON ITS FACE CALLS FOR
A CO-RESIDENT?

IF THAT'S NOT IN DISPUTE, THAT
IS WRONG, ISN'T IT?

ON THE FACE OF THIS --

>> WELL, THE RETURN IS FACIALLY

VALID, BUT THE PETITIONER HAS
THE OPTION TO PROVE BY CLEAR AND
CONVINCING EVIDENCE AND, IN
FACT, THOSE FACTS ARE NOT TRUE.

>> WELL, THEY HAVE PROVED THAT
THEN.

IF THAT'S THE ONLY EVIDENCE THAT
THAT WAS NOT A RESIDENT OF THAT
HOUSEHOLD, ISN'T THAT -- I MEAN,
THAT'S ABSOLUTELY PROOF.

IT'S BEYOND CLEAR AND
CONVINCING.

>> THE CIRCUIT COURT FOUND THAT
INCONCLUSIVE.

THERE WAS CONTRARY EVIDENCE.

>> OH, OKAY.

HE SAID --

>> I'M SORRY.

>> GO AHEAD.

>> -- THAT SHE LIVED THERE
BEFORE, AND SHE LIVED THERE
AFTER, AND SHE HAD SOME EVIDENCE
THAT SHE WAS PAYING RENT IN

ANOTHER PLACE BUT COULDN'T
PRODUCE THE LEASE BECAUSE THE
LEASE HAD BEEN DESTROYED BY THE
LANDLORD, AND THERE WAS EVIDENCE
THAT SHE CONTINUED THROUGHOUT
THAT ENTIRE TIME PERIOD TO GET
ALL HER OFFICIAL MAIL AT THE
RESIDENCE WHERE SHE WAS SERVED.

THE COURT FOUND IT WAS NOT
CONCLUSIVE ON THAT ISSUE.

I KNOW I'M OUT OF TIME.

I HAVE SAID BEFORE ABOUT THE
ISSUE WITH THE PROCESS SERVER
TESTIFYING AS TO THE -- THAT HE
HAD REPORTED THE CONTENTS.

AS I HAVE BEEN THINKING ABOUT
THIS, I'M NOT SURE IF THAT'S THE
CASE.

I'D HAVE TO REVIEW THE RECORD ON
THAT POINT.

I KNOW THAT MS. HASSET TESTIFIED
THAT SHE DID NOT RECALL.

AND REALLY IT'S NOT AN ISSUE FOR

THIS COURT BECAUSE ULTIMATELY
THE BURDEN OF PROOF WAS CLEAR
AND CONVINCING ON THE
PETITIONERS TO ESTABLISH THOSE
FACTS.

>> WELL, THIS WAS INVALID ON ITS
FACE.

SO AT THAT POINT IT BECOMES A
BIG ISSUE.

>> I JUST, I DIDN'T WANT TO
MISREPRESENT ANYTHING.

I'M NOT CERTAIN WHAT THE
EVIDENCE WAS ON THAT POINT.

>> THANK YOU FOR YOUR ARGUMENT.
REBUTTAL.

>> THANK YOU.

>> JUST TO CLARIFY THAT, THE
HEARING ON THE EVIDENTIARY
HEARING TOOK TWO DAYS.

THE PROCESS SERVER WAS THERE THE
FIRST DAY, BUT WE RAN OUT OF
TIME.

HE DIDN'T TESTIFY.

AND WHEN WE RESET IT, HE WASN'T
THERE.

SO HE DIDN'T -- HE NEVER
TESTIFIED.

A COUPLE OTHER POINTS, THE --
GOING HAND IN HAND WITH THAT --
>> YOU'RE NOT CHALLENGE -- YOUR
CHALLENGE HERE IS VERY LIMITED.

>> ABSOLUTELY.

THE FIRST STEP IN ANY SERVER
PROCESS ANALYSIS IS WHETHER OR
NOT THERE'S A RETURN OF SERVICE
THAT SHOWS VALID SERVICE.

THAT'S WHERE THE PRESUMPTION
COMES IN.

IF THERE IS --

>> AND THAT'S YOUR WHOLE
ARGUMENT.

>> CORRECT.

IF THERE'S NO EVIDENCE OF
SERVICE, THEN THERE'S NO
PRESUMPTION.

AND AS COUNSEL SAID, IN THIS

PARTICULAR CASE MS. HASSET CAME
TO COURT, AND SHE TESTIFIED.

SHE DIDN'T EXPLAIN HE DIDN'T
EXPLAIN THE PAPERS TO ME.

SHE TESTIFIED, I DON'T REMEMBER.

>> BUT ALSO IN THE CASE OF
GONZALEZ FROM THE THIRD
DISTRICT, IT'S A PRETTY BIG
DIFFERENCE BETWEEN SAYING THAT
SOMEBODY IS JANE DOE, AN
ANONYMOUS PERSON WHICH IS GOING
TO BE UNDER ANY CIRCUMSTANCE
INVALID.

YOU CAN'T JUST CALL SOMEONE

"JANE DOE."

IN THIS, IN THE CRITICAL ISSUE
OF YOU HAD THE NAME, YOU HAD
"SISTER-IN-LAW," AND YOU HAD
"CO-RESIDENT."

THE PRESUMPTION FROM WHEN THAT
SERVICE WAS MADE IS THAT THIS
PROCESS SERVER DID INQUIRE WHO
SHE WAS, WHAT HER RELATIONSHIP

WAS TO THE DEFENDANT, AND THAT SHE LIVED THERE.

BECAUSE THAT'S WHAT

"CO-RESIDENT" MEANS.

SO I THINK, YOU KNOW, THERE MIGHT BE ANOTHER CASE WHERE, AGAIN, IF IT SAID "JANE DOE" AND SAID NOTHING MORE OR SAID HER NAME AND NOTHING MORE, BUT IN THIS CASE THOSE FACTORS SEEM TO -- THEREFORE, YOU KNOW WHO IT WAS SERVED ON, AND THAT PERSON CAN TESTIFY.

AND IF SHE COULD HAVE TESTIFIED THAT UNEQUIVOCALLY THAT SHE DIDN'T LIVE THERE, THEN YOU WOULD HAVE HAD A WHOLE OTHER CASE GOING FORWARD.

>> THE DIFFICULTY IS THE FAILURE OF THE RETURN OF SERVICE TO ADDRESS THE OTHER ISSUES.

AND I WANT TO ZERO IN ON THE WHETHER SHE WAS ADVISED OF THE

CONTENTS OF THE PAPERS.

THERE IS NO EVIDENCE IN THE
RETURN THAT THAT OCCURRED.

>> BUT ISN'T -- WE ARE GOING
BACK AROUND, BECAUSE THE ISSUE
IS DOES IT NEED TO BE UNDER THE
STATUTE THAT SPECIFIES WHAT HAS
TO BE IN A RETURN.

>> THAT'S WHY WE'RE HERE.

AND I SUBMIT --

>> AND I DON'T KNOW HOW YOU CAN
TAKE "MANNER OF SERVICE" AND SAY
THAT THAT MEANS, I MEAN, AGAIN,
I THINK IT'S A STRETCH TO SAY
ALTHOUGH IT'S AN ARGUMENT, BUT
IT'S A STRETCH TO SAY THAT MEANS
THEY HAVE TO SPECIFICALLY SAY IN
THE RETURN, AND I EXPLAINED THE
CONTENTS.

BECAUSE, AGAIN, THE QUESTION
REALLY IS YOU WANT TO BE ABLE TO
TELL THE PERSON THIS IS REALLY
IMPORTANT.

YOU BETTER GET IT TO MR. KOSTER.

THIS IS A GRAVE SITUATION.

SAYING THIS IS A LAWSUIT ABOUT

THIS MAY NOT EVEN DO THAT.

SO WE START TO MICROMANAGE WHAT

SHOULD BE IN THERE, AND IT MIGHT

BE A GOOD IDEA GOING FORWARD TO

REQUIRE THAT.

BUT I DON'T KNOW HOW IN THIS

CASE IT INVALIDATES THIS

SERVICE.

>> THE FACT THAT MS. HASSET

TESTIFIED THAT SHE DIDN'T

REMEMBER, THAT'S THE ONLY

EVIDENCE IN THIS CASE ABOUT THAT

PARTICULAR ISSUE ABOUT WHETHER

OR NOT SHE WAS INFORMED OF THE

CONTENTS OF THE --

>> WELL, YOUR SISTER-IN-LAW

WANTING TO HELP YOUR BROTHER OR

BROTHER-IN-LAW, AND SO SOMEONE

SAYS, YOU KNOW, BETTER TO SAY

YOU DON'T REMEMBER, THAT WOULD

BE A BETTER -- YOU CAN'T REALLY
GO WRONG ON THAT.

BUT, I MEAN, SERIOUSLY, I'M NOT
GOING TO EXPECT THE
SISTER-IN-LAW TO SAY, I MEAN,
THE BEST SHE COULD HAVE SAID IS,
NO, IT WAS NEVER EXPLAINED.
COULDN'T SAY THAT.

>> SHE DIDN'T SAY THAT.

SHE DIDN'T REMEMBER.

IF THE RETURN OF SERVICE IS
REQUIRED TO STATE WHAT I
SUGGESTED MUST, THAT THE
CONTENTS OF THE PAPER WERE
EXPLAINED TO THE PERSON SERVED,
THERE IS NO EVIDENCE IN THE
RECORD.

THERE IS EVIDENCE OF THAT FACT
IN THE RECORD.

IN THE ABSENCE OF THE EVIDENCE,
THERE IS, THERE IS NO PROOF OF
SERVICE.

>> DID SHE SAY SHE GAVE IT TO

HER BROTHER-IN-LAW?

>> SHE SAID SHE DID NOT KNOW

WHAT SHE DID.

SHE WAS WATCHING HIS HOUSE WHILE
THEY WERE OUT OF TOWN.

SHE WAS COMING OVER AND WATCHING
THE DOGS, IS WHAT SHE TESTIFIED
TO.

BUT AGAIN, THE ISSUE IS NOT WHAT
HAPPENED FACTUALLY, THE ISSUE
WAS THE PRESUMPTION OF SERVICE.

AND JUST SIMPLY --

>> WELL, THAT'S THE ISSUE, AND
THAT'S REALLY WHY IT'S NOT A DUE
PROCESS ISSUE.

>> CORRECT.

AND JUST BRIEFLY, THIS COURT IN
THE STANLEY CASE IN 1870 RECITED
THE SUBSTITUTE SERVICE STATUTE
THERE WHICH REQUIRED PLACE OF
ABODE, PERSON RESIDING THEREIN
WHO WAS OVER THE AGE OF 15.

AND THE COURT HERE SAID THAT THE

PROCESS SERVER MUST DESIGNATE
THE STEPS THAT HE'S TAKEN IN
ORDER TO SHOW WHETHER THE
SERVICE HAS OCCURRED.

OTHERWISE THE COURT IS NOT
INFORMED.

THE COURT IS NOT INFORMED BY A
PROCESS SERVER, IN THIS CASE,
SIMPLY COMING UP WITH THE
CONCLUSION THAT I MADE
SUBSTITUTE SERVICE.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.