IN THE SUPREME COURT
STATE OF FLORIDA

CASE No. 90,114

DAVID HARRELL,

Petitioner,

V.

THE STATE OF FLORIDA,

Respondent.

BRIEF OF *AMICUS CURIAE* FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

ON **DISCRETIONARY REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL**

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STATEMENT OF INTEREST

The Florida Association of Criminal Defense Lawyers (FACDL) is a not-for-profit corporation formed to assist in the reasoned development of the Florida criminal justice system. The founding purposes of the FACDL include: the promotion of study and research in criminal law and related disciplines; the fair administration of criminal justice in the Florida courts; fostering and maintaining the independence and expertise of criminal defense lawyers; and furthering the education of the criminal defense community. Approximately 1,000 FACDL members provide legal representation to citizens who face criminal prosecution.

As an association of criminal defense lawyers, FACDL is keenly interested in the outcome of this matter, in which this Court will address the admissibility of testimony by satellite transmission in a criminal case. FACDL supports the position of the petitioner David Harrell before this Court.

STATEMENT OF THE CASE AND FACTS

FACDL adopts petitioner's Statement of the Case and Facts.

SUMMARY OF ARGUMENT

The Confrontation Clause has its roots in the supreme importance of face-to-face confrontation in a criminal case. There are compelling circumstances that will excuse compliance with this requirement, but ***only*** where denial of physical confrontation is ***necessary*** to further an important public policy ***and*** where testimonial reliability may otherwise be assured. "Necessity," as defined by the United States Supreme Court, is *case-specific,* that is, the prosecution has the burden of demonstrating that the exigencies of a particular case will allow a departure from the requirement of face-to-face confrontation.

The Third District has announced an unprecedented departure from this hitherto-unquestioned tenet, and has brought itself into irreconcilable conflict with the precedent of the United States Supreme Court and this Court. In a headlong rush to embrace technological innovations, the Third District has announced a ***general rule*** of "necessity" that will come into

play ***whenever a foreign resident does not wish to attend a trial.*** ***No individualized*** inquiry into necessity is required. There are seeds of great mischief in this holding: absent a doctrinal limitation that would check the use of testimony via satellite, the "efficiency" of dispensing with face-to-face confrontation will allow virtually-unlimited use of such testimony ***whenever*** a state witness chooses to avoid the inconvenience of testifying in the courtroom.

Where, as here, the "testifying" witness is far beyond the control of the court — sitting in a television studio in a foreign country — the testimonial oath is rendered meaningless, thus removing yet another of the tripartite support of the confrontation guarantee. What gives an oath its meaning, moral compunctions aside, is the threat of a perjury prosecution. That is a toothless threat indeed when the witness, who is testifying via satellite only because of an unwillingness to travel to this country, ***is certainly not voluntarily going to appear in response to*** a ***charge of perjury***. The preeminent importance of a ***meaningful*** oath has been uniformly recognized by the American courts as central to ensuring the reliability of a witness' testimony. A meaningful oath, like face-to-face confrontation, has been cast aside as the Third District looks to the "virtual courtroom" of the future. The guarantees of the Confrontation Clause, however, have served too well the constitutional promise of a fair trial to be so lightly discarded. While the genius of the Constitution has been its adaptability to changing social and technological conditions, the decision below sacrifices core values to technology.

ARGUMENT

1. The Scope of the Third District's Decision.

This case was decided by the Third District on the presumption that the witnesses simply did not wish to travel to the United States to testify against Mr. Harrell, there having been no evidence submitted to the trial court to prove the alleged illness. *Harrell v. State, 689 S .* 2d 400, 402 (Fla. 3d DCA 1997). Thus, unlike the use of videotaped testimony, § 92.53, Fla. Stat. (1995), or closed-circuit television, § 92.54, Fla. Stat. (1995), both of which require

"*case-specific* findings of necessity in order to dispense with physical, face-to-face confrontation at trial," ***Hopkins v. State,*** 632 So. 2d 1372, 1375 (Fla. 1994) (citation omitted; original emphasis), the use of this "evolutionary technological leap" without ***any*** requirement of necessity in a given case (beyond a witness' unwillingness to testify) has been approved — and even ***encouraged*** — by the Third District's decision. 689 So. 2d at 405. The "policy" considerations that are cited to support the court's ruling, and identified as "more important than constitutional provisions that protect rights of defendants," are: (1) the "[e]fficient allocation of resources within the criminal justice system"; and (2) "deterring violence against foreign tourists . . . by making it easier for tourists to testify. " ***Id.*** at 404-05.

Two less case-specific findings are difficult to imagine. If the efficient allocation of resources within the criminal justice system and the deterrence of violence (hopefully against residents of this country as well) will suffice to authorize dispensing with physical confrontation, the courts of this state will shortly be conducting virtually every criminal trial via video teleconference. The prosecution will be able to argue that the state attorney's budget would be protected against unnecessary expenditures by allowing, for example, police officers to testify from a conference room at the police station, coroners to testify from their offices, and eyewitnesses from the closest video conference facility to their home or place of employment. [1] And the deterrence of violence can certainly be cited as a reason to dispense with face-to-face confrontation in every case involving a charge of a crime of violence. In

[1] The courts will be hard-pressed to find many witnesses, police or civilian, who look forward to coming to the criminal courthouse, particularly one located in a heavily-populated metropolitan area such as Dade County, to sit through the innumerable delays that are an unfortunate feature of an overloaded criminal justice system before having their opportunity to testify. On the other side of the coin, it is not difficult to imagine that most witnesses would leap at the opportunity to testify from a convenient place, away from the crowded courthouse and packed parking lots of downtown Miami. The Third District's "accommodation" theory works as readily for Florida residents as it does for foreign tourists and, Dade County's interest in promoting a safe tourist environment notwithstanding, legal distinctions cannot be based on localized social and economic conditions,

short, an exception has been carved out from the requirement of physical confrontation that, in the name of "enhanc[ing] the efficiency of our courts," will inevitably lead to precisely what the Third District envisioned: "satellite trials in a virtual courtroom, while the jury deliberates in a secure cyber chat room." 689 So. 2d at 400.

The terms of this debate are thus far more sweeping in their potential scope than the admission of satellite testimony by an unwilling foreign witness. There is ***no doctrinal limitation*** in the Third District's decision that checks its use in ***any*** criminal trial, the "efficiency" of which would be enhanced by dispensing with physical confrontation.

2. Protecting the Right of Confrontation From Technological Annihilation.

a. The Supreme Court's "necessity" limitation on dispensing with face-to-face confrontation.

At its core, the Confrontation Clause of the Sixth Amendment "guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." Coy v. ***Iowa,*** 487 U.S. 1012, 1016 (1988). The "primary object" of the Clause, as can readily be determined "not only from the literal text . . . . but also from our understanding of its historical roots," ***Maryland v. Craig, 497*** US, 836, 844 (1990),

> was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity . . . of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.

Mattox v. United States, 156 U.S. 237, 242-43 (1895).

Of course, the Supreme Court has "never insisted on an actual face-to-face encounter at trial in every instance in which testimony is admitted against a defendant." ***Maryland v. Craig,*** 497 U.S. at 847. While the Clause "reflects a preference for face-to-face confrontation at trial," it is "all but universally assumed that there are circumstances that excuse compliance with the right of confrontation." ***Id.*** at 849-50 (citations omitted). That is, the preference "must occasionally give way to considerations of public policy and the necessities of the case,"

Id. at 849. This elasticity, however, does not authorize *ad* hoc departures from face-to-face confrontation at the tribunal's whim:

> *That* ***the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with.*** . . . [A] defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial ***only where denial of such confrontation is necessary*** *to* ***further an important public policy*** and only where the reliability of the testimony is otherwise assured.

Id. at 850 (citations omitted; emphasis supplied).

The decision in ***Maryland*** v. ***Craig*** arose from the use of closed-circuit testimony of the victims in a prosecution for sexual abuse of children. The Supreme Court held that "a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." 497 U.S. at 853. But — unlike the Third District's open-ended declaration of admissibility in this case — the Supreme Court carefully limited the state's ability to restrict face-to-face confrontation:

> [I]f the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant .
>
> The requisite finding of necessity ***must of course be a*** *case-specific* ***one*** The trial court must hear evidence and determine whether use of the one-way closed circuit television procedure ***is necessary to protect the welfare of*** *the* ***particular*** *child witness who seeks to* ***testify.*** The trial court must also find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant.. . , .

Id. at 855-56 (citations omitted; emphasis supplied).

b. This Court's precedent.

This Court has hewn closely to the Supreme Court's constitutional rule in its construction and application of Florida's statutes allowing videotaped testimony, § 92.53, Fla. Stat. (1995), and testimony via closed-circuit television, § 92.54, Fla. Stat. (1995), in child-abuse cases, holding that the procedures established by these statutes provide "the means by

which the court determines if the state's interest in protecting the child witness ***is so great*** as to excuse compliance with the right to confrontation. " ***Hopkins v. State, 632 So.*** 2d at 1375 (emphasis supplied). The case-specific requirements of the statutes are essential to render constitutional the denial of face-to-face confrontation authorized thereunder, because the statutes are "closely tailored to protect the child victim only ***in those particular circumstances*** [where] it is deemed necessary. " ***Leggett v. State, 565 So.*** 2d 315, 318 (Fla. 1990) (citation omitted; emphasis supplied). "[T]here must be ***case-specific*** findings of necessity in order to dispense with physical, face-to-face confrontation at trial." ***Hopkins v. State, 632*** So. 2d at 1375 (citation omitted; original emphasis).

And "case-specific" findings require an ***"individualized*** determination" of necessity. ***Feller v. State,*** 637 So. 2d 911, 914 (Fla. 1994) (emphasis supplied). Departing from this well-established constitutional limitation on dispensing with confrontation at trial, the Third District has established an "across-the-board" rule of "necessity," to apply whenever a resident of a foreign country chooses not to come to the United States to testify.

This Court's decision in ***State v. Ford,*** 626 So. 2d 1338 (Fla. 1993), addressed the use of technological innovations in cases that are outside the narrow scope of Sections 92.53 and 92.54, and held that "[a] trial court may implement a procedure not expressly authorized by this Court or otherwise authorized by law if the procedure is necessary to further an important public policy interest. " ***Id.*** at 1345. Contrary to the Third District's interpretation of this language, however, the Court was not speaking to broad "policy interests" in the criminal justice system, but rather to ***case-specific*** interests — in that case, "the State's interest in protecting a child witness from the trauma of testifying in the presence of a defendant accused of killing her parent. " ***Id.*** That is:

> The State has a traditional interest in protecting the emotional and mental welfare of children in child abuse and sexual abuse cases from the trauma of testifying in the defendant's presence. We find that the State has the same interest in protecting children who witness the violent death of a parent from the trauma of testifying in a defendant's presence. The trial court made ***a case-***

> *specific finding* that the child witness would suffer "at the very least, moderate emotional or mental harm" if required to testify in the presence of the defendant. The trial court based its finding on expert testimony and its own observations that the child witness had a negative reaction to the possibility of testifying in the presence of the defendant. Therefore, we find that the trial court showed the necessity of providing an alternative procedure in taking the child's testimony to the face-to-face confrontation with the defendant.

Id. at 1347 (footnote omitted; emphasis supplied).

Thus, contrary to the Third District's overly-broad reading of ***Ford,*** this Court did not depart from the limitations of ***Craig*** when it endorsed the use of innovative procedures "if necessary to further an important public policy interest." ***Id.*** at 1340. Rather, the Court was simply expanding the scope of Craig-derived precedent to situations outside the precise scope of the enabling statutes, and did not repudiate the requirement of *case-specific* necessity. Dispensing with face-to-face confrontation whenever a witness simply chooses not to appear in court at the state's behest is far beyond anything that was contemplated in ***Ford.***

c. **Testimony by satellite transmission, absent case-specific necessity, is inconsistent with the Confrontation Clause.**

The Third District authorized the use of testimony via satellite transmission simply because the witnesses did not wish to come to the United States. This is not, however, *case-specific* necessity; as the Supreme Court defined "necessity" in ***Maryland v. Craig.*** The Court in that case stressed that even a child witness should not be permitted to testify from outside the courtroom "unless it is the presence of the defendant that causes the trauma. " 497 U.S. at 856. Thus, "if the state interest were merely the interest in protecting child witnesses from courtroom trauma generally, denial of face-to-face confrontation ***would be unnecessary. "*** ***Id.*** (emphasis supplied). The Third District, however, is willing to allow dispensing with face-to-face confrontation for the mere ***convenience*** of a witness who chooses not to travel to the United States.

The decision of ***In re San Juan Dupont Plaza Hotel Fire Litigation,*** 129 F.R.D. 424 (D.P.R. 1989), while a useful compendium of procedures for the use of satellite testimony, arose from a ***civil lawsuit,*** in which the right of confrontation guaranteed by the Sixth

Amendment was simply inapposite. Moreover, the precise basis of the district court's ruling in that case was its power to compel testimony under Rule 45(b)(2) of the Federal Rules of Civil Procedure (formerly subsection (e)(l)) via satellite for witnesses whom the defendants refused to produce voluntarily. ***Id.*** at 425. The choice faced by the district court in that case, which involved multi-district litigation, was between the presentation of testimony on behalf of the plaintiffs by deposition or by satellite transmission, ***id.*** at 425-26, and the court chose satellite transmission for the following reasons:

> (1) the control defendants had over the witnesses in question; (2) the complex, multi-party, multi-state nature of the litigation; (3) the apparent tactical advantage, as opposed to any real inconvenience to the witnesses, that the defendants were seeking by not producing the witnesses voluntarily; (4) the lack of any true prejudice to the defendants; and (5) the flexibility needed to manage a complex multi-district litigation.

Id. at 426. Needless to say, none of these factors exist in a run-of-the-mine criminal case, distinguished — as here — only by the unwillingness of a particular witness to come to the courthouse and testify.

The Court of Appeals for the Eighth Circuit discussed ***the Sun Juan Dupont Plaza Litigation*** decision in ***Murphy v. Tivoli Enterprises,*** 953 F.2d 354 (8th Cir. 1992), in which the plaintiff was permitted to present an expert's testimony on rebuttal by telephone. Relying on Rule 43(a) of the Federal Rules of Civil Procedure, which rule requires that, "[i]n all trials the testimony of witnesses shall be taken orally in open court, " the Eighth Circuit held that the district court had erred in allowing the telephone testimony. The court emphasized that, "because of the importance of a party's right to cross-examine and impeach witnesses in the presence of the jury," exceptions to Rule 43(a) would not readily be created, 953 F.2d at 359, even in a civil case. "The federal rules strongly favor the testimony of live witnesses whenever possible. " ***Id.*** Discussing the ***San Juan Dupont Plaza Litigation*** decision, the Eighth Circuit noted that the district court in that case had not even "confront[ed] the issue of whether admitting satellite testimony violates Rule 43(a)," and that American courts "have

almost universally condemned testimony by telephone " in civil cases, absent consent of both parties. 953 F.2d at 359 n.2. The court also observed that, "[o]bviously, because of the confrontation clause, courts have not permitted telephone testimony on a substantive matter in a criminal case unless the defendant has consented. " ***Id.***

The ***San Juan Dupont Plaza Litigation*** decision has given rise to the suggestion that Rule 45(b)(2), whose 100-mile limitation on a district court's subpoena power dates back to 1789, be modernized, in large part to avoid the use of such "strange and exotic mechanisms to circumvent the rule. " ***Eliminating the 100 Mile Limit for Civil Trial Witnesses: A Proposal to Modernize Civil Trial Practice,*** 140 F.R.D. 33, 38-39 (1992). The authors note that, "in addition to being enormously expensive, closed circuit procedures have been reported to unsatisfactory, as might have been expected." ***Id.*** at 39 (footnote omitted).

Empirical evidence of the "outrageous cost" of satellite testimony was provided by a study of ***the San Juan Dupont Plaza Litigation*** case that showed the costs to be "between ***$15,000 and*** $24,000 per day" for the satellite testimony of ***one witness*** in that trial. Cathaleen A, Roach, ***It's Time to Change the Rule Compelling Witness Appearance at Trial: Proposed Revisions to Federal Rule of Civil Procedure 45(e), 79*** GEO .L.J. 81, 97 (1990) (emphasis supplied) .[2] The author, who advocates granting nationwide subpoena power to the federal courts in civil cases, criticized ***the San Juan*** approach:

> [T]he use of satellite testimony as an alternative to reading endless deposition testimony into the record is untenable in most circumstances. The potentially enormous costs of satellite testimony appear indefensible compared with the option of exercising nationwide subpoena power. Moreover, even though the witness technically testifies live with satellite transmission, the fact-finder still lacks the opportunity to observe the witness in court and thus is still one step removed from the best evidence available. Finally, the introduction of satellite testimony and its exorbitant costs appear to be contrary to the intent of the

[2] The staggering cost of testimony via satellite refutes the Third District's primary policy reason for endorsing satellite testimony — the purposed reduction of cost and promoting "efficient use of limited resources" in the criminal justice system. ***Harrell, 689 So.*** 2d at 404.

Federal Rules of Civil Procedure as expressed in rule 1: "to secure the just, speedy, and inexpensive determination of every action, "

Id. at 97.[3]

Thus, even in the context of civil cases, in which the stringent protections of the Sixth Amendment's confrontation guarantee simply do not pertain, the use of satellite testimony has not been endorsed beyond the ***San Juan Dupont Plaza Litigation*** decision which, as set forth, above, is not particularly supportive of the use of such an approach in an ordinary civil case, much less in a criminal case governed by the Confrontation Clause.[4] The Supreme Court has recognized that "face-to-face confrontation enhances the accuracy of factfmding by reducing the risk that a witness will wrongfully implicate an innocent person. " ***Maryland v. Craig, 497*** U.S. at 847. Dispensing with face-to-face confrontation in favor of the "virtual courtroom" of the future visualized by the Third District, is to strip the Clause of its vitality and force, in the

[3] This article suggests — in harmony with the approach in criminal cases under the Confrontation Clause — that "the use of satellite testimony is appropriate when a court determines, ***on an individualized basis,*** that a witness will be unduly burdened by a compelled appearance at trial. " *Id.* at 98 (emphasis supplied). A court should use satellite testimony in a civil case only "if the court finds that the benefits of the proposed satellite testimony outweigh the enormous costs." *Id.* at 116-17.

[4] Unwilling foreign witnesses are not a new phenomenon, and the courts do not require the use of "cutting edge" technology to cope with such situations. For example, an Arizona trial court was confronted with recalcitrant witnesses living in the Cayman Islands, in a prosecution for fraud in which bank records and other documents located in the Caymans were critical to the case. ***Christian v. Rhode,*** 41 F.3d 461, 465 (9th Cir. 1994) (on habeas corpus review), The prosecution was permitted to take videotaped depositions of the witnesses in the Caymans, which depositions were attended by the defendant's counsel. *Id.* The court approved of the procedure, finding error only in the failure to make arrangements for the defendant to be present at the depositions, because the Confrontation Clause grants the accused "the right to be present and to confront witnesses giving testimony during a pretrial deposition, where the deposition is intended for use at trial. " *Id.* at 465-67. Where, as here, foreign residents are unwilling voluntarily to attend an American trial and the prosecution does not have the power to compel their attendance, "the use of depositions is a reasonable solution. " *Id.* at 467-68. Florida allows the use of depositions to secure the testimony of witnesses who "reside beyond the territorial jurisdiction of the court," Fla. R. Crim. P. 3.190(j), and the Third District's decision offers no explanation for the trial court's failure to explore this unexceptional — albeit less technologically-advanced — method of presenting the testimony of a recalcitrant foreign witness.

name of what the Third District has labeled as "techno-evolutionary reality." ***Harrell, 689 So.*** 2d at 401 (footnote omitted).

3. The Toothless Oath via Satellite.

Even in a case more laced with exigency and urgency than the present one, in which the choice of testimony via satellite is based on more than mere inconvenience to a witness, the use of satellite testimony nonetheless cannot satisfy the core commands of the Confrontation Clause where, as here, the witness is so far beyond the control of the trial court that the oath is rendered meaningless. In the present case, in which the witnesses simply refused to travel to Florida to testify against the person charged with committing a violent act against them, this Court can presume to an absolute certainty that they would never voluntarily come to Florida to face a perjury charge based upon their testimony. The oath, in such circumstances, is absolutely no assurance that the witness will speak the truth, or even be impelled to do so.[5]

There are three elements of the confrontation guarantee: the oath, face-to-face presence in court, and cross-examination. ***Maryland v. Craig,*** 497 U.S. at 845-46. The requisite of sworn testimony "insures that the witness will give his statements under oath — thus impressing him with the seriousness of the matter and ***guarding against the lie by the possibility of a penalty for perjury."*** ***Id.*** (emphasis supplied). It is ***the "combined effect*** of these elements of confrontation — physical presence, oath, cross-examination, and observation of demeanor by the trier of fact" that preserves the Confrontation Clause "by ensuring that

[5] The court in ***the San Juan Dupont Plaza Hotel Fire Litigation*** case never had to address this thorny issue, and not only because the Sixth Amendment did not pertain. The witness in that case, whose testimony was given in a trial conducted in the District of Puerto Rico, testified via satellite from a television studio in Hollywood, California, and was thus ***within the criminal jurisdiction*** of the United States courts. See Roach, ***It's Time to Change the Rule Compelling Witness Appearance at Trial: Proposed Revisions to Federal Rule of Civil Procedure 45(e), 79*** GEO.L.J AT 93-94. The district court thus had no occasion to consider the efficacy of an oath given to a witness who is ***completely beyond*** the reach of prosecution for perjury.

evidence admitted against an accused is reliable. " Id. at 846 (emphasis supplied). And reliability is the "central concern" of the Clause. ***Id.*** at 845.

Thus, this Court's decision in ***State v. Ford,*** despite approving the use of protective measures for the benefit of a traumatized child witness, held that the Confrontation Clause had been violated by allowing the child to testify without having been sworn under oath. 626 So. 2d at 1347. The "oath" administered to the foreign witnesses in this case, however, was an empty formality devoid of the most fundamental function of a testimonial oath.

"The testimonial oath is designed to serve two discrete functions: to alert the witness to the moral duty to testify truthfully ***and to deter false testimony by establishing a legal basis for a perjury prosecution.*** " ***People v. Parks,*** 41 N.Y.2d 36, 390 N.Y.S.2d 848, 359 N.E.2d 358, 366 (1976) (citation omitted; emphasis supplied). The preeminent importance of a ***meaningful*** oath, ***i.e.*** one that subjects the witness to a prosecution for perjury, is thus uniformly recognized by American courts. ***E.g., Tomlin*** v. ***State,*** 247 Ind. 277, 215 N.E.2d 190, 191 (1966) ("[a] party to a law suit is entitled to have his witnesses placed under oath, with the resulting threat of perjury hanging over them if they violate that oath"); Kovucs v. Kovucs, 869 S.W.2d 789, 792 (Mo.App. 1994) ("important feature" of oath "is its quickening of the conscience of the witness and the liability it creates for the penalty of perjury"); *Tice v. Mandel,* 76 N.W.2d 124, 137 (1956) (objection of requiring oath "is first to affect the conscience of the witness and thus compel him to speak the truth, and also to lay him open to punishment for perjury in case he willfully falsifies") (citation omitted); ***Heier v. State, 727*** P.2d 707, 709 (Wyo. 1986) ("value and purpose of the oath" is "to bind the conscience of the witness" and "to make him amenable to prosecution if he gives perjured information"). An "oath" that does not subject the individual taking it to prosecution **for** perjury is ***not*** a valid testimonial oath. ***See, e.g., Scott v. State,*** 464 So. 2d 1171, 1172 (Fla. 1985); ***Helms v. State,*** 659 So. 2d 1138 (Fla. 5th DCA 1995).

Testimony of a witness from a foreign country, beyond the jurisdiction of the court, with the satellite transmission used because the witness simply refused to come to the United States to testify, will be testimony given under an "oath," the violation of which will carry no meaningful threat of prosecution for perjury. Reliance on a meaningless oath removes one of the rudimentary guarantees of reliable testimony and cannot be reconciled with the core values of the Confrontation Clause.

CONCLUSION

"[T]here is something deep in human nature that regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution."' Coy *v. Iowa,* 487 U.S. at 1017 (citation omitted). As enticing as modern technology may be, this fundamental function of the Confrontation Clause should not be so readily cast aside in favor of a "virtual" courtroom. FACDL urges the Court to quash the Third District's decision in this cause.

Respectfully submitted,

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