COMMENTS OF
ATTORNEY DANIEL S. CIENER

Daniel S. Ciener submits the following comments regarding eliminating the provision in Florida Rule of Criminal Procedure 3.250 giving defendants the right to opening and concluding argument when no evidence other than the testimony of the accused is presented.

PRACTICAL REASONS FOR REJECTING THE COMMITTEES NEW RECOMMENDATION TO GIVE THE STATE OPENING AND CLOSING ARGUMENTS IN CRIMINAL CASES

If the Defense has only the middle argument whether defense witnesses (other than Defendant) are called or not, then most defense lawyers will put on many witnesses to be sure there is not a later . CR. 3.850 complaint that the Defense lawyer failed to call witnesses (for example: even if only marginally relevant, witness to the facts;, numerous family alibi witnesses; which usually are not called because not believed by jurors; plus many character witnesses to the truth of the Defendant, non-violence or other character and reputation issues).

The result will be trials that could take up to twice as long in time or more and will cause the already overworked criminal trial court system to become un-manageable. The State hopes to get opening and closing arguments because of the obvious advantages. In any kind of argument whether the argument is in criminal court or between husband and wife, the first and last word is more persuasive then the middle argument. But clearly the state is already convicting a great majority of all criminal trials even though DNA and other Appellant or Post Trial procedures have repeatedly showed many have been convicted even though they are truly innocent persons and even in some death penalty cases. Such cases generating newspaper articles of long prison sentence before the truth is learned that this person was wrongly convicted by a judge,

prosecutor, police and jury which is now happening even with the State sandwiched in the middle.

To stack the deck even more for the State to win an even greater percent of their trials for no compelling reason changing a system over 150 years old in Florida and potentially double the length of trials, seems a waste of the Judges time, jurors time and , taxpayers money and furthermore congesting the court system.

As a former prosecutor, now a Defense attorney with over 37 years of total criminal trial experience, it seems to me that changing the rule is exactly the wrong thing to do today because of the crowded trial dockets. As the old farmer said "If it ain't broken, don't fix it".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to: Adrienne Frischberg Promoff, 44 West Flagler Street, Suite 2100, Miami, Fl 33130-6807; Aubrey George Rudd, 7901 Southwest 67th Ave., Suite 206, South Miami, Fl 33143-4538; George Eurpedes Tragos, 600 Cleveland Street, Suite 700, Clearwater, Fl 33755-4158; Judge Winifred J. Sharp, Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, Fl 32114-5002; Judge Dedee Costello, P.O. Box 1089, Panama City, Fl 32402; Judge Chris W. Alternbernd, Second District Court of Apppeal, 1700 N. Tampa Street, Suite 300, Tampa, Fl 33602; Judge O.H. Eaton, Seminole County Courthouse, 301 North Park Avenue, Sanford, Fl 32771-1243 by mail this _____ day of November, 2005.

By:_____

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