

>> NEXT CASE FOR THE DAY IS FLORIDA  
DEPARTMENT OF TRANSPORTATION  
VERSUS CLIPPER BAY INVESTMENTS.  
YOU MAY BEGIN.

>> MAY IT PLEASE THE COURT, MY  
NAME IS MARC PEOPLES.  
FLORIDA DEPARTMENT OF  
TRANSPORTATION.

JOINING ME AT COUNSEL TABLE  
MR. WAYNE LAMBERT.  
MR. LAMBERT WAS TRIAL COUNSEL  
BELOW FOR THE D.O.T. I  
RESERVE THREE MINUTES FOR  
REBUTTAL.

I WOULD LIKE TO THANK THIS  
COURT BEFORE I BEGIN AGREEING TO  
POSTPONE IN THE ARGUMENT IN THE  
WAKE OF MR. COSTA'S PASSING AND  
COUNSEL AS WELL, THANK YOU.  
YOUR HONORS, THE ISSUE ON APPEAL  
IS TO DECIDE THE CONFLICT  
BETWEEN THE FOURTH DISTRICT'S  
DECISION IN DARDASHTI, THAT THE  
EXCEPTION TO THE MARKETED RECORD  
TITLE ACT 47.035 APPLIES TO  
RIGHTS-OF-WAY CREATED BY AN  
EASEMENT ONLY.

THE FIRST DISTRICT'S DECISION  
BELOW WHICH HELD THAT THE  
SUBPARAGRAPH FIVE EXCEPTION  
APPLIES TO RIGHTS-OF-WAY CREATED  
BY EASEMENT, AS WELL AS  
RIGHTS-OF-WAY IN FEE.

WHAT IS --

>> YOU HAVE TWO ARGUMENTS.  
DID WE REACH ISSUE TWO IF HE  
FIND FOR YOU ON ISSUE ONE?

>> ISSUE TWO BEING THE SUB ONE  
EXCEPTION?

>> YES.

>> NO, I DON'T THINK --

>> THEY'RE ARGUED IN THE  
ALTERNATIVE, RIGHT?

>> THAT'S CORRECT, YES.

YES.

THIS CASE IS SOMEWHAT UNUSUAL IN  
THAT ORDINARILY IN A CONFLICT  
CASE THE PETITIONER WOULD ARGUE  
THAT THE FIRST DISTRICT'S  
SUPPLIED THE CORRECT RULE.

THE RESPONDENT WOULD ARGUE THAT THE FOURTH DISTRICT SUPPLIED THE RIGHT RULE AND THIS COURT WOULD DECIDE WHICH RULE IS CORRECT. THIS CASE IS UNUSUAL IN THAT THE STATE'S GOING TO ARGUE THAT THE SUB 5 SECTION APPLIES TO EASEMENTS IN AN, EASEMENT AS WELL AS EASEMENTS AND AS WELL AS RIGHTS-OF-WAY AND FEE AND COUNSEL FOR RESPONDENT AGREES THAT THE SUB 5 EXCEPTION APPLIES TO RIGHTS-OF-WAY IN EASEMENT AND IN FEE.

WE EXPLAIN WHY IN OUR BRIEFS AS WELL, AS THE FIRST DISTRICT COURT OF APPEAL EXPLAINS WHY THE SUB5 EXCEPTION SHOULD BE RED READ TO APPLY TO RIGHTS-OF-WAY AS WELL AS EASEMENTS.

I DON'T WANT TO BELABOR THE POINT.

I'M SORRY.

>> SO BOTH OF YOU ARE IN AGREEMENT ON THIS PARTICULAR ISSUE.

SO WE HAVE THIS CASE REALLY FOR SOME OTHER REASON.

SO --

>> NO --

>> HOW DOES, HOW DOES THE RULING THAT APPLIES IN FEE REALLY HELPS YOUR CASE?

>> ALL RIGHT. I --

>> GET TO THE MEAT OF THIS, WHICH SEEMS TO BE MORE OF WHETHER OR NOT THE DISTRICT COURT ACTUALLY ERRED IN PART OF THE PROPERTY, THEY REALLY QUIETED TITLE IN FAVOR OF CLIPPER BAY?

>> THERE ARE TWO, WE'RE NOT ASK FOR TWO THINGS, YOU'RE ABSOLUTELY RIGHT, JUSTICE QUINCE.

FIRST OF ALL, WE ARE ASKING FOR THIS COURT TO AFFIRM THE FIRST DISTRICT APPLIES THE RIGHT RULE. THE SUBSECTION 5 EXCEPTIONAL PLIES TO RIGHTS-OF-WAY IN

EASEMENT AS WELL AS IN FEE THE SECOND THING WE'RE ASKING FOR THE FINDING THAT THE FIRST DCA ERRED IN REFUSING TO QUIET TITLE IN THE DISPUTED PROPERTY TO D.O.T.

>> SO YOUR CONTENTION IS THAT D.O.T. IN FEE OWNED THAT PROPERTY THAT THEY QUIET TITLE AND ON BEHALF OF CLIPPER PAY. SO WHAT EVIDENCE WAS PRESENTED TO DEMONSTRATE THAT?

>> THAT, WHAT EVIDENCE WAS PRESENTED THAT WE OWNED THE PROPERTY?

>> YEAH.

>> WELL THE DEED ITSELF.

>> OKAY.

>> WAS PRESENTED.

THE, BUT BEYOND THAT --

>> I GUESS I'M TRYING TO ASK YOU, WHY IF IT IS SO SIMPLE THAT YOU HAVE THE DEED, WHY THE, DID THE DISTRICT COURT SAY, QUIET TITLE ON BEHALF OF CLIPPER?

>> WELL, TO ANSWER THAT YOU HAVE TO GO BACK TO WHAT THE MARKETABLE RECORD TITLE ACT DOES.

>> OKAY.

>> AND THE MARKETABLE RECORD TITLE ACT, IT SAYS THAT IF LAND OWNER IS ABLE TO PROVE A ROOT OF TITLE GOING BACK AT LEAST 30 YEARS --

>> OKAY.

>> -- THAT ROOT OF TITLE WILL EXTINGUISH ANY COMPETING CLAIMS TO THAT PROPERTY.

THERE ARE CERTAIN EXCEPTIONS.

IF HE TO THE EFFECT OF MRTA.

ONE EFFECT IS IN SUBSECTION 5, WHICH SAYS THAT MARKETABLE RECORD TITLED THAT NOT EFFECT OR EXTINGUISH THE FOLLOWING RIGHTS WHICH INCLUDES UNRECORDED OR UNRECORDED INTERESTS IN THE NATURE OF EASEMENTS, RIGHTS-OF-WAY.

>> OKAY.

>> AND INCLUDING THOSE OF A  
GOVERNMENT ENTRY.  
AND SO LONG AS SAME ARE USED AND  
THE USE OF ANY PART THEREOF  
SHALL EXCEPT FROM THE OPERATION  
HERE OFF THE RIGHT TO ENTIRE USE  
THERE OFF.  
THE COUNTY, THE EXISTENCE OF THE  
THAT ROAD, IS NOT, IS NOT, AT  
ISSUE HERE, RIGHT?  
THAT IS NOT BEING CHALLENGED.  
DO THEY CHALLENGE WHETHER THERE  
IS COUNTY ROAD AND DISPUTED  
PARTS SELL?  
I DON'T THINK SO.  
I THINK THAT THEY CHANGED THAT  
THE PRESENCE OF THE COUNTY ROAD  
HAS ANY, HAS ANY EFFECT UNDER  
MARTA.  
WE CONTEND THAT IT DOES.  
WE CONTEND THAT IT DOESN'T.  
>> I UNDERSTAND THAT.  
SO LONG AS THE USE OF ANY PART  
THERE OF, THE THEREOF REFERRING  
BACK TO THE RIGHT OF WAIVE.  
SHALL, EXCEPT FROM THE OPERATION  
HERE OFF THE RIGHT TO THE ENTIRE  
USE THEREOF.  
BUT ISN'T TO THE RIGHTS, TO THE  
USE OF THE ENTIRE RIGHT-OF-WAY,  
AS OPPOSED TO RIGHT OF TO THE  
USE OF THE ENTIRE PROPERTY THAT  
MAY HAVE BEEN CONVEYED IN THE  
DEED ON WHICH THE RIGHT-OF-WAY  
IS LOCATED?  
>> WELL TO ANSWER THAT, JUSTICE  
CANADY, THE DEPARTMENT DOESN'T  
OWN PROPERTY UNLESS IT IS  
RIGHT-OF-WAY?  
>> I MEAN THAT IS NOT, QUITE  
FRANKLY, I THINK THAT IS  
FANCIFUL STATEMENT.  
I MEAN, THE DEPARTMENT COULD,  
COULD BUY PROPERTY FOR ANCILLARY  
PURPOSES, ANCILLARY TO THE WORK  
OF THE DEPARTMENT, THAT WOULD  
NOT BE RIGHT-OF-WAY.  
NOW IF YOU WANT TO SAY THAT THE  
DEPARTMENT CALLS WHATEVER IT  
OWNS RIGHT-OF-WAY, I THINK THAT

IS FINE FOR THE DEPARTMENT TO CALL WHATEVER, IF THEY WANT, WHATEVER THEY WANT BUT THE LEGAL QUESTION OF WHAT IS RIGHT-OF-WAY IS A DIFFERENT QUESTION OF WHAT THE, THAN WHAT THE DEPARTMENT CALLS.

>> THE TESTIMONY OF THE JUSTICE CANADY, WAS THAT THE DEPARTMENT CALL WHAT IT OWNS RIGHT-OF-WAY AND --

>> ALL THAT TESTIMONY, QUITE FRANKLY I DON'T UNDERSTAND WHAT THAT HAS TO DO WITH THE LEGAL QUESTION.

WE HAVE TO DECIDE WHAT THE WORDS IN THIS STATUTE MEANS WHETHER THIS SAYS RIGHT-OF-WAY.

>> I UNDERSTAND AND THAT TESTIMONY IS CONSISTENT WITH THE FLORIDA TRANSPORTATION CODE, UNDER 330.0322, RIGHT-OF-WAY IS DEFINED AS LAND IN WHICH THE STATE OWNS THE FEE OR HAS AN EASEMENT DEVOTED TO A REQUIRED FOR USE AS TRANSPORTATION FACILITY.

SO EXPAND ON THAT, UNPACK THAT A LITTLE MORE --

>> IS IT BORROW PIT A TRANSPORTATION FACILITY?

>> YES.

YES, IT IS.

BUT, WHAT LET'S UNPACK THAT A LITTLE BIT MORE.

IF THE DEPARTMENT OWNS PROPERTY THAT IS NOT RIGHT-OF-WAY. THAT RAISES THE QUESTION, WHAT IS IT IF IT IS NOT RIGHT-OF-WAY? AND MORE SPECIFICALLY, WHAT IS THE DEPARTMENT DOING BUYING IT --

>> THEY CAN SAY IT'S THEIRS. THAT'S WHAT IT IS.

>> I'M SORRY.

>> CLIPPER BAY WOULD SAY IT IS THEIR PROPERTY, IF YOU'RE NOT USING, IF IT IS NOT YOURS, IT'S THEIRS.

THAT IS THE ARGUMENT.

WHAT ARE YOU DOING WITH THE SEVEN ACRES.  
>> WHAT ARE WE DOING WITH IT?  
>> YEAH.  
>> WELL, WE LEASE SOME OF IT TO THE, TO THE COUNTY, TO BUILD A COUNTY ROAD AND BOAT RAMP.  
AND IT'S --  
>> BUT THAT PART IS NOT AT ISSUE HERE, IS IT?  
>> WELL --  
>> THAT SEEMS LIKE THAT MIGHT BE SUSCEPTIBLE TO A YES OR NO ANSWER.  
IF IT IS NOT --  
>> IT IS AN ISSUE, AS I WAS TRYING TO EXPLAIN, IT IS ISSUE TO THE EXTENT DOES THAT LEASE OF THE COUNTY, RECORDED LEASE TO THE COUNTY HAVE ANY RELEVANT EFFECT ON MRTA?  
WE THINK IT DOES.  
>> IF THE DEPARTMENT OWNED THIS PROPERTY, THEN, THEY WOULD HAVE TO, IT HAD TO HAVE SOME -- BECAUSE THEY WOULDN'T BE ABLE TO LEASE IT TO THE COUNTY IF THEY DIDN'T OWN IT.  
>> THAT'S CORRECT.  
YES SO, WE DO OWN THE PROPERTY. AND THE, DEFENDANT PROPERTY OF RECORD.  
>> THAT'S WHAT I THINK JUSTICE CANADY IS SUGGESTING --  
>> WHAT.  
>> RIGHT.  
THE WHOLE PROPERTY OR THE WHOLE RIGHT-OF-WAY.  
THAT'S WHAT HE'S --  
>> AND, AGAIN --  
>> HE'S SAYING THAT NEEDS AN INTERPRETATION.  
>> RIGHT.  
AND UNDER 334.0322 THEY'RE THE SAME THING.  
THAT THE DEPARTMENT DOESN'T OWN PROPERTY UNLESS IT'S RIGHT-OF-WAY BECAUSE WE DON'T HAVE THE AUTHORITY UNDER STATUTE TO OWN PROPERTY THAT'S NOT

RIGHT-OF-WAY.

>> SO NO MATTER HOW MUCH, I MEAN, FOR EXAMPLE, IF YOU HAD A CONDEMNATION, YOU COME IN AND YOU TAKE PROPERTY AND YOU MAY NOT NEED ALL OF A RESTAURANT OR A SUPERMARKET, FOR EXAMPLE, FOR THE ACTUAL ROADWAY ITSELF, IT'S STILL REFERRED TO AS RIGHT-OF-WAY EVEN THOUGH IT'S A TOTAL CONDEMNATION, IT DESTROYS A TOTAL BUSINESS ON A THOROUGHFARE OR SOMETHING.

>> I'M GLAD YOU BROUGHT A CONDEMNATION UP, BECAUSE AS I'M SURE YOU'RE AWARE, IN ORDER TO CONDEMN PROPERTY, WE HAVE TO PROVE --

>> WELL --

>> -- THAT IT'S GOING TO A PUBLIC PURPOSE.

>> WELL, YEAH.

BUT, I MEAN, THERE ARE ALSO SITUATIONS WHERE CONDEMNATION THAT YOU MAY ONLY NEED X NUMBER OF FEET FOR THE ACTUAL RIGHT-OF-WAY, BUT YOU ARE DESTROYING THE INTEREST IN THE PROPERTY.

THE PROPERTY'S NO LONGER VALUABLE AS A RESTAURANT OR A -- AND DO YOU NOT THEN HAVE TO PAY, PAY FOR THE REST OF THE PROPERTY?

>> PAY DAMAGES?

>> RIGHT.

>> YEAH.

SO LONG AS IT'S --

>> YEAH.

SO I MEAN, YOU COULD GET INTO SITUATIONS WHERE YOU DO, IN FACT, HAVE A CONDEMNATION FOR MUCH BROADER AREAS THAN THE ACTUAL RIGHT-OF-WAY ITSELF IS GOING TO BE USED AS A ROADWAY, AND YOU CALL IT RIGHT-OF-WAY.

>> RIGHT.

BECAUSE WE'RE ALREADY ENTITLED TO TAKE RIGHT-OF-WAY.

>> WHAT DO YOU DO WITH THE REST

OF THE PROPERTY THEN?  
IF YOU GO THROUGH IN A  
CONDEMNATION PROCEEDING -- MAYBE  
THIS HAS NOTHING TO DO WITH  
THIS, BUT IT SEEMS TO ME THAT  
THE PROPERTY IN CONNECTION WITH  
A ROADWAY IS THAT YOU CAN HAVE  
OVERAGE THROUGH A CONDEMNATION,  
FOR EXAMPLE.

MAYBE OTHER WAYS TOO.

>> WELL, IF WE TAKE MORE THAN WE  
NEED --

>> BECAUSE YOU HAVE DESTROYED  
THE VALUE OF THE PROPERTY, AND  
YOU HAVE TO PAY FOR THE REST OF  
THE AREA.

>> WE CERTAINLY DO HAVE TO PAY  
SEVERANCE DAMAGES, BUT WE'RE NOT  
ALLOWED TO TAKE MORE THAN WE  
NEED.

WE HAVE TO PROVE NECESSITY.

>> OKAY.

>> AND IF WE CAN'T PROVE  
NECESSITY BEYOND WHAT WE REQUIRE  
FOR OUR RIGHT-OF-WAY, WE CAN'T  
TAKE THAT.

WE'RE NOT ALLOWED TO UNDER THE  
STATUTE, UNDER THE CONSTITUTION.  
WE'RE NOT ALLOWED TO TAKE THAT.

>> BUT WHAT WAS THE NECESSITY  
FOR TAKING THE LAND BEYOND NORTH  
OF THE FENCE?

>> I'M SORRY, I DIDN'T --

>> WHAT WAS THE NECESSITY OF THE  
DEPARTMENT TO TAKE THE LAND TO  
THE NORTH OF THE FENCE THAT WAS  
IN THE ESTATE?

>> THE NECESSITY TO TAKE THE  
LAND --

>> THERE'S A FENCE LINE, RIGHT?

>> THERE IS A FENCE NORTH OF  
I-10, IS THAT --

>> RIGHT.

>> YES.

>> WHAT WAS THE NECESSITY FOR  
THE DEPARTMENT TO TAKE THAT  
PROPERTY IN ORDER TO HAVE A  
RIGHT-OF-WAY ON I-10, TAKE THE  
PROPERTY NORTH OF THE FENCE  
LINE?



>> JUSTICE PERRY, I DON'T RECALL ANYTHING IN EVIDENCE, IN THE RECORD ONE WAY OR THE OTHER. THIS WASN'T THE UNDERLYING CONDEMNATION.

IN FACT --

>> BUT WASN'T THAT, THE LAND HE'S TALKING ABOUT IS THE ACTUAL LAND THAT THEY QUITTED TITLE IN BEHALF OF CLIPPER BAY.

THIS IS THE LAND TO THE NORTH OF WHERE THE ACTUAL FENCE IS, CORRECT?

ISN'T THAT THE LAND --

>> YES.

>> SO HIS QUESTION IS, WHAT WAS THE PURPOSE FOR THAT LAND? WHAT PURPOSE DOES D.O.T. HAVE ON THAT LAND?

WHAT ARE YOU USING IT FOR?

WHAT CAN IT BE USED FOR?

YES.

>> FIRST OF ALL, WE'RE USING IT FOR, TO LEASE TO THE COUNTY FOR A COUNTY ROAD.

>> OKAY.

BUT BEYOND THE LAND THAT'S BEING LEASED TO THE COUNTY, THE OTHER LAND.

>> WELL, THE COUNTY -- WELL, THAT IS THE LAND THAT'S BEING LEASED.

YOU'RE SAYING BEYOND THE, JUST THE SHOULDER TO SHOULDER OF THE ROAD ITSELF?

>> OKAY.

MAYBE WE'RE HAVING A LITTLE --

>> WE'RE TALKING ABOUT THE LAND IN DISPUTE.

>> WELL, THAT'S THE THING --

>> AND THAT'S THE LINE NORTH OF THE FENCE LINE.

>> THE COUNTY ROAD IS IN THE LAND IN DISPUTE.

>> OKAY.

>> YES.

THE ROAD IS THERE IN THE COUNTY LAND IN DISPUTE.

>> LET ME SEE IF I CAN GET YOU --

>> OKAY.  
>> IT SEEMS TO ME AS I UNDERSTAND THIS RECORD THE LAND SOUTH OF THE FENCE IS YOURS, CORRECT?  
>> WELL, YES, IT IS.  
>> ALL RIGHT.  
AND THAT'S WHAT THE COURT SAID. THE LAND NORTH OF THE FENCE IS WHAT THEY SAID BELONGED, THEY QUITTED TITLE ON BEHALF OF CLIPPER BAY, CORRECT?  
>> THAT'S CORRECT.  
>> THAT'S OUTSIDE OF THE LAND THAT THE COUNTY HAS THE ROAD ON, CORRECT?  
>> NO.  
NO.  
THE --  
>> BUT I THOUGHT THEY ALSO QUITTED TITLE ON BEHALF OF THE COUNTY --  
>> OH, I SEE.  
NOW I UNDERSTAND.  
>> BUT WE'RE TALKING ABOUT LAND THAT IS NOT THE ROAD AND NOT THE FENCE.  
WE'RE TALKING ABOUT BEYOND THE FENCE AND BEYOND THE ROAD.  
>> OKAY.  
>> WHAT IS THE D.O.T. DOING WITH THAT LAND?  
THAT'S THE QUESTION AS I UNDERSTAND IT.  
WHAT PURPOSE DOES, IS IT SERVING ON BEHALF OF D.O.T.?  
>> WHAT IS THE LAND IN BLOCK C THAT WAS NOT QUITTED IN THE COUNTY --  
>> CORRECT, CORRECT.  
I THINK THAT WAS THE QUESTION.  
>> NOW I UNDERSTAND.  
JUDGE, AS FAR AS I KNOW, THERE WASN'T ANY DIRECT TESTIMONY ON WHAT THE PURPOSE --  
>> OH, OKAY.  
>> -- OF THAT LAND IS.  
BUT I CAN TELL YOU THAT UNDER HORN, UNDER DAVIDSON AND UNDER THE STATUTE ITSELF USE OF ANY

PART OF THE RIGHT-OF-WAY  
UNDER -- BY WHICH WE MEAN THE  
FEE SIMPLE ESTATE THAT THE  
DEPARTMENT OBTAINED BACK IN  
1969.

>> HOW DOES THE COUNTY ROAD --  
IT SITS ON THE SEVEN ACRES?

>> YES.

>> IS IT SPLIT IN THE MIDDLE?

>> YES.

>> OR HOW -- IT JUST GOES RIGHT  
DOWN THE MIDDLE OF THE SEVEN  
ACRES?

>> BILATERAL.

YEAH.

YOUR HONORS, MY TIME FOR  
REBUTTAL IS ALMOST HERE, SO --

>> YOU CAN SAVE YOUR TIME.

>> I'LL RESERVE MY TIME UNLESS  
THERE'S ANY FURTHER QUESTIONS I  
CAN ADDRESS RIGHT NOW.

>> MAY IT PLEASE THE COURT, I'M  
KEN BELL ON BEHALF OF CLIPPER  
BAY INVESTMENT, AND ALONG WITH  
ME IS WILL DUNAWAY WHO WAS  
COCOUNSEL AT TRIAL IN THIS  
MATTER.

I'M READY TO ANSWER ANY  
QUESTIONS THAT YOU MAY --

>> LET ME ASK YOU --

>> YES, MA'AM.

>> START WITH THIS.

THE D.O.T. OBTAINED ALL OF THIS  
PROPERTY AT SOME POINT IN 1965,  
CORRECT?

>> YES.

AND THE TESTIMONY --

>> AND SO I'M HAVING A HARD TIME  
UNDERSTANDING HOW NOW CLIPPER  
BAY CAN CLAIM ANY OF  
THAT WITHOUT HAVING BOUGHT IT  
FROM D.O.T. OR SOMEHOW OBTAINED  
IT FROM D.O.T. IF THEY HAVE A  
DEED FROM 1965 AND YOUR DEED IS  
FROM 1970?

>> '69, IT WAS RECORDED IN '70.

>> OKAY.

>> LET ME EXPLAIN THAT, IF I  
CAN.

>> THAT'S CALLED MARTYR, RIGHT?

>> THAT'S EXACTLY WHY MARTYR WAS PASSED, IS TO PROTECT THE STATE WHEN IT BUYS LAND, PRIVATE PARTIES WHEN THEY BUY LAND THAT YOU DON'T HAVE SIX, EIGHT-YEAR LEGAL BATTLES WHEN YOU BUY A PARCEL OF PROPERTY.

AND WHEN YOU LOOK AT THE INTERPRETATION OF THIS STATUTE, THE STATUTE IS TO BE LIBERALLY CONSTRUED.

AND THE PURPOSE OF IT IS, IS TO SIMPLIFY AND FACILITATE LAND TRANSACTIONS AND NOT HAVE THESE SORT OF BATTLES.

CLIPPER BAY INVESTMENTS DID EXACTLY WHAT THE LAW REQUIRES TO DO AS DID THE SIX PRIOR PURCHASERS OF THIS PROPERTY. THEY WENT TO THE PUBLIC RECORDS IN SANTA ROSA COUNTY, AND THEY DID A TITLE SEARCH.

>> AND IT SEEMS TO ME THAT IN THEIR INITIAL TITLE SEARCH THERE WAS REFERENCE TO THE D.O.T.'S OWNERSHIP, WASN'T THERE?

>> NO, THAT'S THE PROBLEM. THERE WAS NO REFERENCE. THAT'S WHAT HAPPENED.

AS INSTRUCTED IN MARTYR, THE TITLE SEARCHER WENT BACK 30 YEARS, AND THEY FOUND THIS 1970 DEED.

THE PROPERTY WAS PLATTED. IT WAS ACCEPTED BY THE COUNTY AS PLATTED.

THE PROPERTY'S BEEN TAXED TO PRIVATE PROPERTY --

>> IN 1965?

>> NO, BECAUSE THEY DIDN'T HAVE TO GO PAST 1970.

>> DIDN'T YOU SAY SOMEBODY WAS PAYING TAXES ON THIS PROPERTY?

>> YES.

SINCE IT WAS PLATTED IN 1970.

>> LET ME GET YOU THE STATUTORY LANGUAGE WHERE IT SAYS ANY USE OF THE PART SHALL ACCEPT THE RIGHT TO THE ENTIRE USE WHICH IS REALLY THE CRUX OF THEIR

ARGUMENT, RIGHT?

>> EXACTLY.

>> SO WHY ISN'T THAT LAND THAT HAS THE COUNTY ROAD THAT GOES BILATERALLY ON THE SEVEN ACRES, WHY ISN'T THAT USE OF ANY PART THAT WOULD OPERATE FOR THE RIGHT TO THE ENTIRE WHOLE SEVEN ACRES AT DISPUTE HERE?

>> BECAUSE IT'S THE COUNTY'S ROAD, IT'S THE COUNTY'S EASEMENT, IT'S THE COUNTY'S RIGHT-OF-WAY, IT'S THE COUNTY'S RIGHT.

THAT'S WHY WE'VE NEVER CONTESTED THAT.

THE USE IS THE COUNTY'S.

>> SO HOW AS A MATTER OF LAW THE USE AS A LEASE TO THE COUNTY DOES NOT OPERATE AS USE ON BEHALF OF D.O.T. AS PART OF THE STATUTE?

>> RIGHT.

BECAUSE IT'S NOT THEIR EASEMENT. IT'S NOT THEIR RIGHT-OF-WAY.

>> WHERE DO WE LOOK TO FOR THAT PRINCIPLE OF LAW?

HAS THAT BEEN DECIDED BEFORE?

>> NO.

AND IF YOU LOOK BACK AT ALL OF THE CASES, IF YOU LOOK BACK TO THE CASE THAT RELIED UPON IN ROBB, YOU LOOK AT CITY OF JACKSONVILLE V. HORN, DAVIDSON AND ALL THE CASES THAT THEY RELY ON, I THINK THE KEY QUESTION THE COURT HAS TO ASK HERE IS, OKAY, WE'VE AGREED ON THE QUESTION IS A RIGHT-OF-WAY.

DOES IT INCLUDE A RIGHT-OF-WAY THAT, LIKE THEY DEVELOPED WHERE I-10 IS UNDER A FEE ESTATE, OR IS IT LIMITED TO EASEMENTS?

WE'VE CONCEDED IT INCLUDES BOTH. BUT THE NEXT, AND I THINK THE MOST VITAL, QUESTION THIS COURT HAS TO ASK IS THEN HOW IS THE RIGHT-OF-WAY REFERRED TO IN THIS EXCEPTION ESTABLISHED?

AND AS HORN, DAVIDSON AND ALL

THESE OTHER CASES TALK ABOUT,  
THEY'RE ESTABLISHED BY  
APPROPRIATE DEDICATION.  
AND THIS IS WHERE, IN MY  
OPINION, THE FIRST DCA DIDN'T GO  
FAR ENOUGH BECAUSE THEY'RE  
MAKING THE SAME BASIC ARGUMENT  
THEY MADE.

WE HAVE A FEE ESTATE, WE HAVE A  
DEED, THERE'S A RIGHT-OF-WAY ON  
A PORTION OF OUR FEE, SO THIS  
EXCEPTION APPLIES TO OUR ENTIRE  
FEE.

AND WHAT THE CASE ACTUALLY SAID  
EVEN THOUGH IT'S CONFUSING AND  
NEEDS TO BE ADDRESSED IS THAT  
1917 DEED TO THE COUNTY DID NOT  
ESTABLISH OR DEDICATE THE  
RIGHT-OF-WAY ON THAT FEE.

WHAT THE COUNTY DID IS IN 1956,  
IS THE COUNTY TOOK 39 FEET OF  
THAT PROPERTY AND RECORDED A  
PLATTE OR MAPPED A SURVEY.

AND IF YOU TAKE THIS DEFINITION  
THAT THE DEPARTMENT IS RELYING  
ON, IT DEFINES WHAT THE  
RIGHT-OF-WAY IS, BUT THEN IT  
GOES ON TO SAY HOW DO YOU  
ESTABLISH THE LENGTH, THE WIDTH  
AND THE DESCRIPTION OF THE  
RIGHT-OF-WAY --

>> SOMETHING TOO QUICKLY, AND  
THAT'S -- I'M SORRY, I DIDN'T  
QUITE UNDERSTAND IT.

>> I'M SORRY.

>> WHY ISN'T THE FACT THAT THE  
D.O.T. DEEDED OR -- NOT DEEDED,  
BUT AT LEAST IN SOME WAY ALLOWED  
THE COUNTY TO BUILD THE ROAD  
THERE, WHY ISN'T THAT --

>> BECAUSE AS I SAID EARLIER,  
WHAT MARTYR DOES IS SAY YOU RELY  
ON THE PUBLIC RECORDS.

CLIPPER BAY AND THE PRIOR PEOPLE  
GO LOOK AT THE PUBLIC RECORDS,  
YOU DON'T SEE ANYTHING IN THE  
LEASE TO CLIPPER BAY AND ITS  
PREDECESSORS.

YOU DON'T SEE IN ITS PUBLIC  
RECORDS ANY INDICATION OF --

WHAT YOU DO IS YOU GO OUT THERE,  
AND YOU SEE A ROAD, AND YOU KNOW  
THAT UNDER 95631 --

>> THE LEASE IS NOT RECORDED.

>> THE LEASE ISN'T RECORDED.

IT'S NOT IN THE PUBLIC RECORD.

>> BUT THE SIMPLE PURCHASE OF IT  
IS RECORDED.

>> IN 1965 PRIOR TO THE DEED TO  
ESCAMBIA SHORES.

>> SO, WHICH WAS IN '70.

SO WHEN THEY WERE PURCHASING IN  
1969 OR '70, WHY -- WOULDN'T THE  
'65 PURCHASE BY D.O.T. HAVE BEEN  
IN THAT CHAIN?

>> IT MAY HAVE BEEN THE SAME  
PEOPLE WHO SOLD IT TO THE STATE  
ROAD, THE SAME PEOPLE WHO SOLD  
IT TO THE STATE ROAD DEPARTMENT  
WHICH IS NOW FDOT BACK IN 1965  
SOLD THE PROPERTY NORTH OF THE  
FENCE TO ESCAMBIA SHORES WHICH  
WAS INCORPORATED BY PAT EMANUEL,  
FORMER PRESIDENT OF THE FLORIDA  
BAR.

>> THAT'S WHAT IS BOTHERING ME.  
I DON'T SEE WHY IN 1969 OR '70  
WHEN WHATEVER PURCHASE WAS  
GOING, WAS TAKING PLACE, THAT  
THE D.O.T.'S 1965 PURCHASE WAS  
NOT IN THE CHAIN.

>> IT MAY HAVE BEEN.

BUT THERE'S THREE WAYS THE FDOT  
COULD PROTECT ITS LAND THAT'S  
NOT RIGHT-OF-WAY.

IT COULD HAVE FILED THE NOTICE  
WHICH THE STATUTE REQUIRES, IT  
COULD HAVE GOTTEN ANOTHER  
EXCEPTION FROM THE LEGISLATURE  
WHICH IT HAS FAILED TO DO, AND  
WE SET THAT FORTH IN OUR BRIEF.  
THE LEGISLATURE HAS DEFINED THE  
LIMITED EXCEPTIONS, AND THIS  
COURT HAS SAID IN H&F LAND  
COMPANY THAT YOU'RE NOT GOING TO  
GO BEYOND WHAT THE EXCEPTIONS  
ARE.

AND THERE ARE EXCEPTIONS,  
EXCEPTION 7 AND EXCEPTION 9  
WHICH WAS ADDED IN 2010 AFTER

THIS CASE THAT DEAL WITH THE EXCEPTIONS TO STATE PROPERTY.

>> SO IT'S BECAUSE -- I THINK THAT WHAT AT LEAST I'M HEARING FROM JUSTICE QUINCE AND I HAVE THE SAME VERY BASIC ISSUE, IF THIS WAS A NONSTATE, A PRIVATE ENTITY THAT OWNED IN FEE SIMPLE THIS PROPERTY AND IT'S IN THE RECORD, YOU DON'T OWN -- YOU AS THE SUBSEQUENT PURCHASER, YOU DON'T OWN THAT PROPERTY, RIGHT? >> RIGHT.

>> I MEAN, THAT WOULD BE -- SO ARE WE SAYING BECAUSE IT'S THE STATE THAT THE LEGISLATURE HAS GIVEN THE STATE LESS RIGHTS VIS-A-VIS PROPERTY THAT IT OWNS THAN A PRIVATE CITIZEN --

>> NO, THE OPPOSITE. AND THAT'S PART OF MY CONCERN IN THE CITY OF JACKSONVILLE V. HORN.

THERE IS NO EXTRA PROTECTION FOR THE PUBLIC.

IF YOU LOOK AT --

>> WELL, IF IT WAS --

>> THEY'RE ON EVEN FOOTING.

>> OKAY.

>> SO LET'S SAY --

>> SO IF THE DEED, GOING BACK TO JUST THE DEED NOT THE FACT THAT IT ISN'T RECORDED, THE DEED GAVE TO THE STATE OF FLORIDA HOW MUCH PROPERTY?

>> HUNDREDS OF ACRES.

I MEAN, THEY BOUGHT LAND ALL THE WAY FROM HERE --

>> NO.

>> THIS PROPERTY WAS HUNDREDS OF ACRES.

>> BUT AS IT CONCERNS, YOU KNOW, WHEN YOU SAID PART OF IT WAS, WENT TO YOUR CLIENT'S PREDECESSOR --

>> THE TWO OWNERS THAT CONVEYED THE SAME PROPERTY LATER TO ESCAMBIA SHORES SOLD HUNDREDS OF ACRES TO THE STATE OF FLORIDA. THE STATE OF FLORIDA BECAUSE IF



YOU'VE DRIVEN OVER THIS, THIS IS WHERE THE FOOT OF THE BRIDGE, I-10 BRIDGE THAT GOES FROM SANTA ROSA COUNTY TO ESCAMBIA COUNTY IS MARSHLAND.

SO THE TESTIMONY BELOW WAS THEY BOUGHT MORE LAND THAN THEY NEEDED BECAUSE THEY DIDN'T KNOW EXACTLY WHERE THE ROAD WAS GOING TO GO.

THEY BUILT I-10, THEY FENCED IT WITH A LIMITED ACCESS FENCE, AND BY 1969 WHEN THIS LAND WAS CONVEYED AND THE PLATTE WAS RECORDED, EVERYBODY CONSIDERED THE LIMITED ACCESS FENCE TO BE THE DEMARCATION OF THE RIGHT-OF-WAY.

>> BUT, BUT I, I GUESS TO GO BACK AND PUT THIS IN PERSPECTIVE AT LEAST SO I THINK I CAN UNDERSTAND IT, IF I BOUGHT THIS SAME PROPERTY IN 1965 AND I DIDN'T DO ANYTHING WITH IT OR I PUT SOMETHING ON PART OF IT AND SOMETHING NOT ON ANOTHER PART OF IT -- WHICH IS, ESSENTIALLY, WHAT D.O.T. DID, I GUESS -- AND THEN IN 1970 OR '69 THE PEOPLE I BOUGHT IT FROM ARE NOW GOING TO TRY TO SELL SOME MORE OF IT, IT JUST SEEMS TO ME MY CLAIM TO IT WOULD HAVE BEEN THERE FOR THEM TO SEE, AND THEY COULD NOT HAVE CONVEYED IT TO SOMEONE ELSE BECAUSE I ALREADY GOT IT IN 1965, OKAY?

>> BUT IF YOU DIDN'T PAY TAXES ON IT, AND IF OTHER PEOPLE PAID TAXES ON IT, IF THE COUNTY GOT IT PLATTED, IF OTHER PEOPLE USED IT AND YOUR INTEREST BECAME STALE AFTER 30 YEARS BECAUSE YOU WEREN'T PAYING TAXES, YOU WEREN'T DOING ANYTHING ON THE PROPERTY --

>> OH, SO THE ARGUMENT REALLY THEN --

>> EXACTLY.

>> -- IS THE STATE HAD THE

PROPERTY, THEY DIDN'T DO WHAT  
THEY WERE SUPPOSED TO DO --

>> RIGHT.

>> -- AND SO THE PROPERTY --

>> THE WAY THE STATUTE IS  
DESIGNED TO WORK IS THAT IN --  
THE DEFINITION THEY'RE RELYING  
ON FOR RIGHT-OF-WAY SAYS  
MONUMENT, MAP, RECORD THE MAP,  
PUT IT IN THE PUBLIC RECORDS.  
IF THAT HAD BEEN DONE, CLIPPER  
BAY WOULD HAVE NEVER BOUGHT THE  
PROPERTY.

THE FIVE OR SIX PRIOR OWNERS  
WOULD NEVER HAVE BOUGHT THE  
PROPERTY.

AND CLIPPER BAY'S NOT THE ONE TO  
SUFFER FOR THE STATE NOT DOING  
WHAT IT WAS SUPPOSED TO HAVE  
DONE.

AND IN EVERY CASE YOU HAVE A  
RECORDED PLATTE, A RECORDED MAP  
OF SURVEY, SOMETHING THAT  
SOMEBODY COULD GO TO THE PUBLIC  
RECORDS --

>> SO IT'S NOT ENOUGH TO JUST  
BUY IT, YOU HAVE TO --

>> IF YOU WANT TO PRESERVE IT --

>> EVERYBODY KNOWS YOU BOUGHT  
IT.

>> YOU HAVE TO HAVE AN EASEMENT.

>> OR YOU HAVE GOT TO UNDER THE  
STATUTE --

>> FILE THE NOTICE.

>> OR USE IT.

>> OR USE IT.

>> WHICH IS REALLY THE ISSUE OF  
THE CASE.

>> RIGHT.

>> YOU DESCRIBED A WHILE AGO THE  
CONDEMNATION PROCESS FOR I-10  
AND WHERE THERE WAS MORE LAND  
TAKEN THAN NEEDED.

BECAUSE THEY DIDN'T KNOW WHERE  
THE --

>> WELL, IT WASN'T CONDEMNATION.  
THEY PURCHASED IT.

>> RIGHT.

AND THAT WAS SORT OF WHAT THE  
PROCESS OF WHAT JUSTICE LEWIS

REFERRED TO EARLIER WHERE YOU MAY HAVE OVERAGES OR THINGS OF THAT NATURE.

>> I THINK THE CRITICAL DIFFERENCE IS IN A CONDEMNATION, AS HE SAYS, YOU CAN ONLY CONDEMN WHAT YOU NEED.

HERE THEY BOUGHT FROM PRIVATE PEOPLE.

AND SO THERE WAS NO CONDEMNATION.

THEY PURCHASED THE LAND.

>> BUT THE EFFECT HERE IS GOING TO BE THE SAME, RIGHT?

YOU'VE GOT, ESSENTIALLY, LAND YOU'RE NOT PUTTING THE INTERSTATE ON.

>> EXACTLY.

>> SO D.O.T. OWNS THIS SEVEN ACRES AT ISSUE THAT IT'S NOT USING TO PUT THE I-10 ON.

>> RIGHT.

IT'S NON-RIGHT-OF-WAY.

>> SO UNDER THE STATUTE IT SEEMS IT DID USE IT FOR A PURPOSE, IT USED IT BY LEASING IT TO THE COUNTY TO PUT A COUNTY ROAD ON. SO I'M STILL STRUGGLING WITH THE NOTION OF WHY UNDER THE STATUTE THAT CONSTITUTES AS A MATTER OF LAW, NOT USE.

>> WELL, WHAT DOES THE STATUTE SAY?

WHAT DOES IT PROTECT?

IT DOESN'T PROTECT UNDERLYING FEE.

IT PROTECTS THE RIGHT TO THE ENTIRE USE THEREOF.

SO, YES, FDOT CAN HAVE ANY USE THAT THEY HAD AT THE TIME, BUT THEY WEREN'T USING IT.

ALL THE STATUTE, THE STATUTE DOESN'T PROTECT THE UNDERLYING FEE, AND THAT'S THE PROBLEM WITH THE WHOLE DECISION IS THEY WANT YOU TO GRANT THEM AN EXCEPTION THAT IF WE BUY A THOUSAND ACRES AND WE PUT A 60-FOOT ROAD --

>> SO YOU'RE --

>> -- THAT SOMEHOW OUR ENTIRE

PROPERTY BECOMES A RIGHT-OF-WAY.

>> SO YOUR POSITION THEN WOULD BE THAT THE ROAD ITSELF IS NOT YOURS, BUT EVERYTHING ON THE REMAINING --

>> YES.

>> -- PART OF THE SEVEN ACRES THAT'S NOT THE ROAD IS YOUR PROPERTY?

>> WE'VE CONCEDED THAT FROM THE BEGINNING.

SANTA ROSA COUNTY'S MAINTAINED ROAD IS THE SANTA ROSA COUNTY ROAD.

THEY HAVE THE RIGHT TO USE IT.

>> LET ME GO TO THE PRACTICAL SIDE OF THIS.

YOU SAID YOUR CLIENT WOULD NEVER HAVE PURCHASED THE PROPERTY. BECAUSE OF THE, THIS DISPUTE. DOES IT PREVENT -- ARE YOU -- IS THIS PROPERTY THAT YOU HAVE, IS IT BEING USED?

>> NO, IT CAN'T BE USED.

>> WHY CAN'T IT BE USED?

>> BECAUSE IT'S IN LITIGATION. THEY'RE CLAIMING THEY OWN IT, WE'RE CLAIMING WE OWN IT.

>> NO, THAT PART -- BUT DON'T YOU OWN -- WHAT ELSE?

>> NO, THIS IS EVERYTHING WE OWN.

EVERYTHING NORTH OF THE RIGHT-OF-WAY INCLUDING IF YOU LOOK ON THE PLATTE MAP, THERE ARE PRIVATE PROPERTY OWNERS WITH RESIDENCES THAT ARE IN THE SAME SITUATION HERE.

ACCEPTED BY THE COUNTY AND TAXED FOR 40 YEARS ARE SUFFERING THE SAME RISK.

>> SO THERE'S NO USE.

>> NO.

IT CAN'T BE USED.

AND THAT'S THE WHOLE THING THAT MARTYR WAS INTENDED TO SIMPLIFY. AND IF YOU'RE LOOKING AT PUBLIC POLICIES, THE LEGISLATURE DETERMINED WHAT THE PUBLIC POLICY WAS HERE IN THIS CASE,

AND THEY HAD TO FILE THE NOTICE.  
THEY DIDN'T FILE THE NOTICE.

>> DID YOU JUST SAY THAT THERE  
ARE OTHER PEOPLE WHO BOUGHT THIS  
SAME LAND THAT HAVE HOMES ON IT,  
THAT THEIR TITLES ARE NOW IN  
JEOPARDY?

>> IF YOU ACCEPT THEIR ARGUMENT,  
ALL OF THE PROPERTY NORTH OF THE  
FENCE LINE IS THEIRS AND IT'S  
SUBJECT TO THEM CLAIMING HOMES,  
CANAL-FRONT HOMES.

IF YOU LOOK ON THE PLATTE, THE  
WHOLE ESCAMBIA SHORES PLATTE  
THAT WAS RECORDED WOULD BE  
SUBJECT TO THEIR CLAIM.

AND THAT'S WHAT MARTYR WAS  
INTENDED TO --

>> SO YOU'RE SAYING IT'S BEEN  
DEVELOPED?

>> YES.

>> THERE ARE HOUSES ON IT?

>> THIS IS BLOCK C OF THAT  
SUBDIVISION.

IN THE OTHER --

>> I'M SAYING BLOCK C, HAS BLOCK  
C BEEN DEVELOPED?

>> NO.

THAT'S WHAT IT WAS --

>> IT HASN'T BEEN DEVELOPED FOR  
30 YEARS?

PLUS YEARS?

>> RIGHT.

>> WERE THERE OTHER INSTANCES ON  
I-10 WHERE THE D.O.T. FILED THE  
APPROPRIATE PLATTS AND SO FORTH  
WHERE IT WOULD GIVE NOTICE, OR  
WAS THIS A COMMON PRACTICE ALL  
THROUGH THE PANHANDLE?

>> IT'S NOT PART OF THE RECORD,  
BUT MY UNDERSTANDING FROM  
TALKING TO MR. COSTAS PRIVATELY  
THAT THEY WERE NOT MONUMENTING  
AND RECORDING THE MAPS.

>> HOW BIG, MR. BELL, WAS THE  
ENTIRE PARCEL THAT THEY HAD  
PURCHASED UNDER THIS TRANSACTION  
THAT NOW HAS OTHER HOMES ON IT  
THAT YOU'RE TALKING ABOUT?

I MEAN, WE MUST BE TALKING A

SIGNIFICANT AMOUNT OF PROPERTY  
THAT WE'RE DEALING WITH.

>> HUNDREDS OF ACRES.

IT WAS OVER 700 FEET ONE WAY,  
BUT IT GOES SEVERAL THOUSANDS OF  
FEET DOWN, THEN IT NARROWS.

SO, YOU KNOW, OVER A HUNDRED  
ACRES, COUPLE HUNDRED ACRES.

>> ARE WE ONLY TALKING HERE --

>> YOU'RE TALKING ACRES OR FEET?

>> NO.

700 FEET WIDE, A COUPLE OF  
THOUSAND FEET LONG.

>> WE'RE ONLY TALKING HERE ABOUT  
SEVEN -- ONLY, IT'S SEVEN ACRES,  
CORRECT?

>> YES, MA'AM.

>> AND HOW MUCH PROPERTY DOES  
YOUR, DOES CLIPPER BAY, DID IT  
PURCHASE?

>> THE SEVEN ACRES.

>> THAT'S IT.

>> YES.

THAT WAS THE BLOCK C.

>> SO YOU PURCHASED PROPERTY  
THAT IS, HAS ZERO VALUE IF  
THE --

>> EXACTLY.

WE SPENT HUNDREDS OF THOUSANDS  
OF DOLLARS, MILLION DOLLARS OR  
MORE WENT TO THE PUBLIC RECORDS,  
GOT TITLE INSURANCE, GOT A  
SURVEYOR, DID EVERYTHING WAS  
REQUIRED TO DO UNDER MARTYR,  
UNDER REAL ESTATE LAW AND HAD NO  
KNOWLEDGE --

>> AGAIN, WHEN IT LOOKED AT --  
WHEN YOU -- WHY WOULDN'T SOMEONE  
LOOKING AT IT WHEN THEY  
PURCHASED IT SEE, THIS GOES BACK  
TO JUSTICE QUINCE'S QUESTION,  
THE DEED THAT WAS RECORDED IN  
'60?

>> WE HAD BEFORE THE TRIAL COURT  
FRANK JACKSON WHO WAS A  
CERTIFIED TITLE EXAMINER FOR 40  
YEARS TESTIFY.

WE HAD WAYNE PARKER CERTIFY.

AND ALL OF THEM, IT'S UNDISPUTED  
TESTIMONY THAT ALL YOU DO UNDER

MARTYR IS GO BACK TO THE TITLE.  
>> SO THAT'S ONE OF THE  
QUESTIONS I WAS GOING TO --  
>> IT WAS RECORDED IN '70, DATED  
1969.

THE 1970 DEED WAS THE ROOT OF  
TITLE, AND MARTYR SAYS YOU DON'T  
HAVE TO GO BEYOND THAT POINT.

>> DID YOU, THEREFORE, IS THIS A  
MIXED QUESTION OF LAW AND FACT?  
I'M JUST GOING BACK TO WHAT THE  
TRIAL COURT ACTUALLY DID IN THIS  
CASE.

YOU DIS-- WHAT DID THE TRIAL  
COURT DO?

>> WHAT THE TRIAL COURT DID IS  
THEY SPLIT THE BABY, AND THEY  
SAID THAT WE SHOULD HAVE GONE  
BACK AND LOOKED AT AN UNRECORDED  
MAP OF SURVEY OR ROAD MAP THAT  
THE FLORIDA DEPARTMENT OF  
TRANSPORTATION HAD DEVELOPED AT  
THE TIME THEY BOUGHT THE  
PROPERTY AND THEY KEPT IN THEIR  
CRESTVIEW OFFICE.

AND WHAT MARTYR AND WHAT FIRST  
DCA HELD IS THAT, NO, YOU'RE  
SUPPOSED TO LOOK IN THE PUBLIC  
RECORDS.

>> WHAT ELSE DID THE, WHAT  
ELSE -- WHEN YOU SAY THEY "SPLIT  
THE BABY," THEY, THE TRIAL  
COURT, DID WHAT?

>> GAVE US A PORTION OF THE  
LAND.

BUT SHE SAID SHE LOOKED --

>> WHAT PORTION?

HOW MUCH --

>> I DON'T REMEMBER THE EXACT  
NUMBER.

BUT --

>> WELL, YOU'VE GOT SEVEN, WE'RE  
ONLY TALKING ABOUT SEVEN ACRES.

>> HALF.

BASICALLY, HALF.

>> 3.5 ACRES.

>> BUT SHE LOOKED AT AN  
UNRECORDED MAP AND WHAT IS A MAP  
OF SURVEY.

>> SO YOU APPEALED SAYING YOU

WANTED ALL SEVEN ACRES.  
>> CORRECT.  
>> WELL, EXCEPT FOR THE ROAD.  
>> EXCEPT FOR THE ROAD.  
EXCEPT FOR THE SANTA ROSA COUNTY  
ROAD, RIGHT.  
>> IS THE LEASE TO THE COUNTY,  
IS IT SPECIFICALLY FOR THE  
PROPERTY THAT THE ROAD IS ON OR  
THE WHOLE SEVEN ACRES?  
>> NO.  
IT'S JUST FOR THE PROPERTY THE  
ROAD IS ON.  
AND HAVING THE ROAD IS  
ADVANTAGEOUS BECAUSE THE ONLY  
ACCESS -- NORTH OF THE PROPERTY  
IS WATER.  
THE ONLY ACCESS TO THE PROPERTY  
IS ROAD, SO THERE'D BE NO REASON  
FOR THE PROPERTY OWNER TO OBJECT  
TO A COUNTY-MAINTAINED ROAD.  
IT PROVIDED ACCESS TO THE  
PROPERTY.  
>> LET ME MAKE SURE I'M CLEAR ON  
THAT.  
IS THAT THE THEORY THAT'S BEING  
ADVANCED BY THE DEPARTMENT OF  
TRANSPORTATION, IT WOULD  
NEGATIVELY IMPACT EVERY OTHER  
HOME THAT'S ALREADY IN THAT AREA  
THAT'S ABOVE YOUR PROPERTY THAT  
WAS SUBJECT TO THE PURCHASE?  
>> THERE ARE TWO HOMES --  
>> IT'S ONLY TWO HOMES IN THAT  
AREA?  
>> BUT THE -- BUT NOT ONLY THAT,  
IT WOULD IMPACT PEOPLE ALL OVER  
THE STATE OF FLORIDA.  
>> WELL, I'M SAYING, THIS IS  
BIGGER THAN JUST THIS ONE CASE.  
>> HUGE.  
>> YEAH.  
>> AND THE IMPORTANT PART IS THE  
WEIGHING THE PROTECTION OF  
PUBLIC RIGHT-OF-WAYS.  
YOU ALSO HAVE TO SAY THE  
LEGISLATURE HAD TO WEIGH BECAUSE  
THE IMPORTANCE OF SIMPLE LAND  
TRANSACTIONS WHERE PEOPLE CAN  
RELY ON BEFORE THEY INVEST



MILLIONS OF DOLLARS IN PROPERTY,  
THEY KNOW IT'S NOT GOING TO BE  
TAKEN AWAY BY SOME INTEREST.  
THAT'S WHAT MARTYR WAS DESIGNED  
TO DO.

AND FOR THIS COURT TO --  
>> ON THE OTHER HAND, THE  
DEPARTMENT ACTUALLY HAD TO PAY  
MONEY FOR THIS PROPERTY ALSO.  
AND SO NOW WE'RE SAYING THAT THE  
PUBLIC MONEY THAT WAS SPENT TO  
BUY THIS PROPERTY WAS WASTED  
BECAUSE NOW THE PROPERTY BELONGS  
TO SOMEONE ELSE.

>> AND THE LEGISLATURE WHO  
BUDGETS THAT MONEY AND ALLOCATES  
THAT MONEY HAS GIVEN EXCEPTIONS  
TO THE WATER DISTRICT, TO THE  
BOARD OF TRUSTEES FOR THE  
INTERNAL IMPROVEMENT FUND, AND  
THEY WERE ASKED TO GIVE AN  
EXEMPTION FOR ALL STATE  
GOVERNMENT PROPERTY, AND THEY  
SAID, NO.

>> THE ISSUE ON -- AND YOU'RE  
OUT OF YOUR TIME -- ABOUT THE  
OTHER HOUSES BECAUSE, OBVIOUSLY,  
THE IMPLICATIONS, YOU KNOW, THE  
COURT IS ALWAYS CONCERNED ABOUT  
POLICY ISSUES.

IS THAT IN THE RECORD ABOUT THE  
OTHER HOMES AND WHAT IT WOULD DO  
TO THE OTHER HOMES?

>> NO.

>> BUT, I MEAN --

>> THE PLATTE IS IN RECORD, IT  
SHOWS THE PLATTED LOTS THAT ARE  
IN THE RECORD FROM WHERE IT WAS.  
OKAY?

THANK YOU.

>> REBUTTAL.

>> JUST A FEW POINTS.

FIRST OF ALL, JUSTICE PARIENTE,  
ON THE, THESE OTHER PROPERTIES  
THAT AREN'T IN THE RECORD BUT  
THAT MR. BELL REFERRED TO, TRIAL  
COUNSEL TELLS ME THAT PLATTE  
NORTH OF BLOCK C, WE HAVE NO  
CLAIM TO THAT LAST.

>> BUT DO YOU AGREE THAT WHAT,

IF WE UPHOLD YOUR THEORY, THAT  
WHAT THEY BOUGHT IS WORTHLESS,  
THAT THEY BOUGHT NOTHING?  
THEY SAID, BASICALLY, THAT IT'S  
WORTH THE SEVEN ACRES IS ALL  
THEY BOUGHT, AND IT'S -- IF IT'S  
ALL OWNED BY YOU, THEN THEY HAVE  
NOTHING?

>> IF YOU QUITE TITLE IN THE  
DEPARTMENT, THEN THEY WOULD HAVE  
NOTHING.

I WOULD AGREE WITH THAT.

>> SO, AGAIN, IN TERMS OF  
DEPARTMENTS, DID THE DEPARTMENT  
TAKE THE POSITION BEFORE THE  
TRIAL COURT THAT THEY SHOULD GET  
3.5 ACRES OF THE 7 ACRES?

>> NO.

NO.

IT'S BOTH CLIPPER BAY AND THE  
DEPARTMENT ARGUED TO THE TRIAL  
COURT THAT THIS IS NOT A  
SPLIT-THE-BABY-TYPE CASE.  
THAT THAT SEVEN ACRES SHOULD BE  
QUITTED IN THE DEPARTMENT OR  
QUITTED --

>> SO SOMEBODY LOOKING AT THE  
TITLE WHEN THEY PURCHASED IT,  
WHAT DO THEY, WHAT WAS THE  
TESTIMONY AT TRIAL ABOUT WHAT A  
REASONABLE TITLE EXAMINER WOULD  
SEE WHEN THEY WENT TO, WHEN  
CLIPPER BAY WENT TO BUY THIS  
PROPERTY?

>> WELL, I THINK MR. BELL  
CAPTURED IT ACCURATELY, THAT  
THEY HAD WITNESSES THAT SAID  
UNDER MARTYR YOU ONLY GO BACK 30  
YEARS.

BUT THE PROBLEM WITH THAT  
TESTIMONY IS THAT THAT EXCLUDES  
THE IDEA THAT THERE MAY BE AN  
APPLICABLE EXCEPTION.

THE EXCEPTIONS TO MARTYR ARE  
WORTHLESS UNLESS YOU GO BACK  
MORE THAN 30 YEARS.

>> BUT HIS POINT IS, WHICH SEEMS  
COMPELLING, IS IF THE  
LEGISLATURE WANTED TO GIVE  
D.O.T. A COMPLETE EXEMPTION,

THERE WOULD BE REASONS MAYBE TO DO THAT BECAUSE -- THERE WOULD BE REASONS MAYBE TO DO THAT BECAUSE, ROAD BUILDING, THAT THEY COULD HAVE WRITTEN THAT INTO THE STATUTE AND THAT THEY DIDN'T.

SO THAT THE D.O.T., THEREFORE, HAS -- THERE'S FURTHER OBLIGATIONS THE D.O.T. NEEDS TO FOLLOW FOR THERE TO BE VALID CLAIMS THAT THE D.O.T. HAS TO OVERRULE A VALID PURCHASER, SUBSEQUENT PURCHASER OF THE PROPERTY.

>> WELL, THE LEGISLATURE DID GIVE A BLANKET EXEMPTION FOR RIGHT-OF-WAY.

>> WELL, THAT GOES BACK TO THE --

>> AND THE QUESTION BEFORE WITH, AGAIN, THE CONFLICT QUESTION IS WHETHER RIGHT-OF-WAY APPLIES TO EASEMENTS OR RIGHTS-OF-WAY IN FEE.

I APPRECIATE THE CONCESSION. BUT IT IS A LIVE CONFLICT.

>> WELL, LET ME ASK YOU THIS, I THOUGHT PART OF HIS ARGUMENT ALSO WAS THAT YOU NEVER PAID ANY TAXES ON THE LAND --

>> WELL --

>> -- AND NEVER PUT UP A MONUMENT OR DID ANYTHING, AND SO IT DIDN'T PUT PEOPLE ON NOTICE THAT THE PROPERTY WAS ACTUALLY OWNED BY THE DEPARTMENT.

>> FIRST OF ALL, THE STATE DOESN'T PAY TAXES.

SECONDLY, THERE IS A 1965 DEED THAT'S RECORDED.

AND, THIRDLY, NOTHING IN THE STATUTES PROVIDES THAT RIGHT-OF-WAY IS ESTABLISHED BY FILING A RIGHT-OF-WAY MAP. AND THAT WOULD ONLY MAKE SENSE, BECAUSE A RIGHT-OF-WAY MAP ISN'T A CONVEYANCE OF REAL PROPERTY. THE TESTIMONY WAS THAT YOU CREATE THE RIGHT-OF-WAY MAP

BEFORE YOU GO OUT AND ACQUIRE  
THE PROPERTY BECAUSE THAT'S THE  
ONLY WAY YOU KNOW IF IT'S GOING  
TO --

>> BRIEFLY, BRIEFLY ADDRESS THE  
EXCEPTION THAT HAS TO DO WITH  
THE MONUMENTS AND WHETHER IT WAS  
MENTIONED IN THE CHAIN, THE  
TITLE OF THE ROOT DOCUMENT.

>> I AM OUT OF TIME, BUT IF --

>> JUST BRIEFLY ADDRESS THAT.

>> BASICALLY, THE IDEA IS THAT  
THE 1981 TRUSTEES' DEED IN THEIR  
CHAIN OF TITLE REFERS  
SPECIFICALLY TO THE CONVEYANCE  
BACK IN 1965 TO THE DEPARTMENT  
AND THAT THAT 1981 TRUSTEES'  
DEED IS A POST-ROOT TITLE THAT  
CONFIRMED OUR ESTATE.

>> AND THAT BRINGS IT INTO --

>> THAT BRINGS IT INTO THE  
EXCEPTION UNDER 712031 WHICH, AS  
JUSTICE POLSTON POINTED OUT, IS  
AN ALTERNATIVE ARGUMENT TO OUR  
035 ARGUMENT.

>> LET ME ASK YOU ABOUT THAT.

WHEN YOU LOOK AT -- IT'S A 1980  
INSTRUMENT, RIGHT?

>> '81.

>> '81, OKAY.

LOOK AT THAT INSTRUMENT.

CAN YOU SEE ANYTHING THAT WOULD  
GIVE YOU A CLUE ON THE FACE OF  
THAT DOCUMENT THAT SOMEBODY ELSE  
OWNS THE PROPERTY?

>> IT REFERS TO A BOOK --

>> WELL, I UNDERSTAND THAT.

THAT'S NOT MY QUESTION.

I UNDERSTAND THAT MAKES A  
REFERENCE TO A BOOK AND PAGE  
NUMBER.

BUT IN CONJUNCTION WITH THAT,  
DOES IT TELL YOU ANYTHING ON THE  
FACE OF THAT DOCUMENT THAT WOULD  
GIVE ANYBODY LOOKING AT THAT A  
CLUE THAT THERE WAS AN ADVERSE  
INTEREST?

>> THE QUESTION IS OTHER THAN  
THE BOOK AND PAGE REFERENCE, IS  
THERE ANYTHING ELSE ON THE

1981 --

>> WHAT DOES IT SAY?

>> OH.

WELL, IT -- I HAVE IT RIGHT  
HERE.

JUST ONE MOMENT, PLEASE.

NO --

[INAUDIBLE]

PRESENTS THAT CENTRAL PLAZA BANK  
AND TRUST COMPANY AND BY VIRTUE  
OF THE POWERS VESTED BY DEED AS  
TRUSTEES FROM CENTRAL BANK AND  
TRUST COMPANY DATED THE 14TH DAY  
OF SEPTEMBER, 1965, RECORDED IN  
OFFICIAL RECORDS BOOK 119, PAGE  
16 OF SANTA ROSA COUNTY.

YOU GO TO BOOK 119 --

>> OKAY, I UNDERSTAND THAT.

AND ON THE FACE OF THAT, IT  
GIVES YOU NO CLUE THAT THERE'S  
SOME OTHER INTEREST.

>> WELL --

>> NOW WHAT YOUR POSITION IS, IF  
THERE'S EVER A REFERENCE TO A  
BOOK AND PAGE NUMBER IN AN  
INSTRUMENT THAT'S IN THE CHAIN  
OF TITLE GOING BACK TO THE ROOT,  
THAT ANY INSTRUMENTS REFERRED TO  
THERE IS AN INSTRUMENT YOU'VE  
GOT TO GO LOOK AT.

>> THAT'S WHAT 712031 SAYS.

THAT UNLESS SPECIFIC  
IDENTIFICATION BY REFERENCE --

>> I DON'T THINK THAT'S WHAT IT  
SAYS.

IT SAYS IT'S GOT TO REVEAL  
SOMETHING BEFORE YOU GET TO THAT  
PART ABOUT THE BOOK AND PAGE  
NUMBER.

IT HAS GOT TO DISCLOSE OR, AN  
INTEREST OR I CAN'T -- I DON'T  
HAVE THE WORDS IN FRONT OF ME.  
BUT IT'S GOT TO -- THE BOOK AND  
PAGE NUMBER IS THE SECOND PART  
OF WHAT IS REQUIRED.

>> WELL, IT SAYS THAT A GENERAL  
REFERENCE TO SOME MONUMENTS IS  
NOT SPECIFIC UNLESS THERE'S A  
SPECIFIC BOOK AND PAGE  
REFERENCE.

>> WHAT'S IT SAY BEFORE THAT?  
>> AS I SAID, A GENERAL  
REFERENCE --  
>> WHAT DOES IT SAY BEFORE THAT?  
>> INTERESTS DISCLOSED BY,  
EFFECTS --  
>> OKAY.  
IT'S GOT TO DISCLOSE.  
THE INSTRUMENT HAS TO HAVE --  
WHY DOES IT NOT HAVE TO DISCLOSE  
OR HAVE INHERENT IN IT AN  
ADVERSE INSTRUMENT?  
THAT'S THE POINT.  
>> IT DOES BY THE REFERENCE TO  
THE BOOK AND PAGE.  
>> WOULDN'T IT PUT THEM ON  
NOTICE THAT THERE'S SOMETHING  
ELSE THEY SHOULD LOOK AT, THE  
1965 DEED?  
>> JUSTICE PERRY, THAT'S EXACTLY  
MY POSITION.  
YES.  
>> I MEAN, CAN YOU JUST IGNORE  
THAT?  
>> WELL, NO.  
YOU SHOULDN'T.  
>> WOULD YOU AGREE WITH YOUR  
OPPOSING COUNSEL THAT THE LEASE  
TO THE COUNTY IS ONLY FOR THE  
LAND THAT THE ROAD SITS ON, NOT  
FOR THE WHOLE SEVEN ACRES?  
>> I WOULDN'T.  
"ROAD" IS DEFINED IN THE  
TRANSPORTATION CODE FAR MORE  
BROADLY THAN JUST SHOULDER TO  
SHOULDER.  
IT'S GOING TO --  
>> WELL, WASN'T -- THE LEASE  
ITSELF, DOES IT REFER TO  
DESCRIPTION, OR WHAT DOES IT  
REFER TO?  
>> YES, YES.  
>> IS IT FOR THE WHOLE SEVEN  
ACRES?  
>> NO, IT'S NOT FOR THE WHOLE  
SEVEN ACRES.  
>> IT'S JUST FOR WHAT THE ROAD  
SITS ON.  
>> THAT IS CORRECT.  
>> OKAY.

>> MR. BELL MADE A LOT OF POLICY ARGUMENTS AS TO WHY THE D.O.T. SHOULD HAVE DONE MORE AND HAS STATED THAT THIS RULING WILL AFFECT PROPERTIES ALL OVER THE STATE OF FLORIDA.

THE POINT OF VIEW OF THE D.O.T. THAT YOU'RE TAKING THIS POSITION THAT ESSENTIALLY THEY FOUGHT NOTHING, I GUESS THEY'D HAVE A CLAIM AGAINST THE TITLE EXAMINER OR SOMETHING, WHAT IS -- WHY IS THE D.O.T., I MEAN, WHAT'S THE FLIP SIDE OF THE POLICY ARGUMENT ABOUT WHY WE SHOULD AGREE WITH THE D.O.T.'S VIEW THAT THE WHOLE PROPERTY IS A RIGHT-OF-WAY AND, THEREFORE, SUBJECT TO THE --

>> RIGHT.

I GUESS THE FLIP SIDE, THE POLICY ARGUMENT WOULD BE IN DAVIDSON AND HORN THAT RIGHTS ACQUIRED FOR THE USE AND BENEFIT OF THE PUBLIC SHOULD NOT BE EASILY SURRENDERED.

JUSTICE ANSTEAD SAID IN HIS SHORT DISSENT THAT THE STATE SHOULDN'T BE REQUIRED TO BUY FEE AGAIN --

>> FROM THEMSELVES.

>> YES, EXACTLY.

EXACTLY.

SO I THINK THAT'S THE POLICY ARGUMENT, AND IT'S EXPRESSED BETTER THAN I CAN IN THE HORN DECISION AND THE DAVIDSON DECISION.

>> THANK YOU FOR YOUR ARGUMENTS. COURT IS IN RECESS FOR TEN MINUTES.

>> THANK YOU.

>> ALL RISE.