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Jill Marsh v. Robert Ear Valyou, Jr.

SC06-118

OUR NEXT CASE, ON THE
CALENDAR IS MARSH v. VALYOU.

>> MAY IT PLEASE THE COURT.
MY NAME IS JOHN STIM BERGER
AND I'M WITH MY COCOUNSEL.
TODAY WE REPRESENT THE
PLAINTIFF APPELLATE IN THIS
CASE, JILL MARSH.

YOUR HONOR, AS THE CURRENT
LEGAL AUTHORITY AS SET BY
THIS COURT IN THE WELL
RECENT FREY CASES IN THIS
DECADE SHOULD RETURN THE
OUTCOME OF THIS CASE IN
FAVOR OF THE PLAINTIFF.

SPECIFICALLY WE WOULD CITE
THIS COURT TO THE TWO MOST
RECENT FRYE DECISIONS.

U.S. SUGAR v. DuPONT AND WE
WOULD MAKE TWO ARGUMENTS
THIS MORNING.

THE FIRST SURMENT IS THAT
FRYE DOES NOT APPLY IN THIS
CASE BECAUSE THE EXPERTS
RENDERED PRU OPINION
TESTIMONY BABASED ON THEIR
TRAINER, AND EXPERIENCE.

>> LET'S GET TO THE REAL
ISSUE ON THAT.

THE ISSUE ON THAT IS THAT, I
THINK THE DEFENDANT DOESN'T
CONTEST THAT WHETHER YOUR
CLIENT HAS FIBROMYALGIA IS
PURE OPINION TESTIMONY THAT
IS NOT SUBJECT TO FRYE.

THE QUESTION IS WHETHER, THE
ISSUE OF WHETHER TRAUMA CAN
EVER CAUSE FIBROMYALGIA IS
ONE OF THE PRINCIPLES ON
WHICH THAT PURE OPINION
TESTIMONY IS BASED AND THAT
IS SUBJECT TO FRYE AND THAT
THERE IS NO CONSENSUSES IN
THE MEDICAL COMMUNITY.

IT IS NOT CLEARLY
ESTABLISHED THAT THAT IS THE

CASE AND THEREFORE THAT'S WHY YOUR EXPERT TESTIMONY IS NOT ADMISSIBLE.

SO WHY IS, WHY UNDER OUR CASES AND ALL THE OTHER CASES, WHY ISN'T THE CASE THAT THAT PRINCIPAL, THAT TRAUMA CAN CAUSE FIBROMYALGIA IS NOT SUBJECT TO FRYE?

>> WELL, FIRST OF ALL, YOUR HONOR, WE WOULD SUBMIT THIS IS PURE OPINION TESTIMONY. FRYE IS INVOKED WHEN THERE IS NEW AND NOVEL SCIENTIFIC METHODOLOGIES, TESTS, PROCEDURES, PROFILES, STATISTICAL PARADIGMS, SOME GADGET IF YOU WILL.

>> AND PRINCIPLE.

>> WELL, THAT'S CORRECT, YOUR HONOR, BUT THIS COURT IS NOT BEING CLEAR EXACTLY ON WHAT PRINCIPLES IS WHETHER TRAUMA CAUSES FIBROMYALGIA, INATE ISN'T THAT AN UNDERLYING PRINCIPLE?

>> YOUR HONOR, THAT COULD BE, IF THIS COURT DETERMINES THAT THAT'S THE CASE, THEN THAT'S THE CASE.

THE WORD PRINCIPLE HAS NOT BEEN SPECIFICALLY DELINEATED BY THIS COURT.

>> WELL, PERHAPS WE HAVE NOT BEEN CLEAR ON WHAT PURE OPINION TESTIMONY IS.

THE, THE FACTS WERE THAT WE WERE ATTEMPTING TO DIFFERENTIATE THERE BETWEEN SOMETHING THAT AN OPINION WHICH IS DEVELOPED BY A PSYCHOLOGIST -- IN A CLINICAL PRACTICE, AND, AN OPINION WHICH IS DEVELOPED BY A FACT THAT IS NOT SEEN THROUGH SYMPTOMS AND PRESENTATION IN THE OFFICE. BUT RATHER IS SEEN THROUGH STUDY OF TREATISES AND AND OTHER MATTERS.

I MEAN, THAT'S WHAT WE SAID, CORRECT?

>> WELL, YOUR HONOR, IN THIS CASE, YOU HAVE THAT. YOU HAVE THE OBJECTIVE OBSERVATION SYMPTOMOLOGY BASED UPON THE --

>> YOU GOT THE SYMPTOMOLOGY THAT HE'S GOT THE DISEASE, THE QUESTION IS, THOUGH, WHAT IS THE LENGTH THAT -- WHAT IS THE LINK THAT CAUSED -- WHATS THE ETIOLOGY OF THE FIBROMYALGIA AND WHAT I AM CONCERNED ABOUT IS THAT IT SEEMS TO ME THAT IN NEITHER FLANIGAN NOR IN HADDEN, DID WE REACH THE CONCLUSION THAT SOMETHING THAT IS, THAT HAS TO BE ONLY DEALT WITH BY SOMETHING THAT IS NOT WITHIN THE CLINICIANS PRACTICE BUT RATHER WITHIN STUDIES OUTSIDE THE CLINICIAN'S PRACTICE DOESN'T FIT WITHIN PURE OPINION TESTIMONY. -- PURE OPINION. AS WE WERE TRYING TO DEFINE T..

>> JUSTICE WELLS, THERE ARE DOZENS OF CLINICAL REPORTS SHOWING THAT PATIENTS REPORT A TRAUMA, REPORT TRAUMA PRECEDING FIBROMYAL ADJUSTMENT IN FACT IT'S 25% OF RHEUMTOLOGISTS AND PODIATRISTS WHO --

>> BUT THAT BRINGS IT WITHIN FRYE. RATHER THAN BEING SOMETHING THAT WE WERE TRYING TO REACH AND HADDEN AS BEING SOMETHING THAT DOESN'T GO UNDER FRYE. WOULDN'T YOU'VE WITH THAT?

>> NOT EXACTLY, YOUR HONOR. IN THE HINSON CASE, AND AGAIN, WE BELIEVE THAT HINSON AND CUSTILLO ARE CONTROLLING IN THIS CASE, TO OUR FACTS, THIS COURT STATED THAT THE, THAT THE FACT THAT AS CAUSE AND EFFECT RELATIONSHIP THAT HAS NOT BEEN CONCLUSIVELY ESTABLISHED DOES NOT RENDER

THE TIME ADMISSIBLE AND IN FACT IN CASTILLO THERE WAS A SCIENTIFIC PROPOSITION REJECTED FLATLY AND THIS COURT STILL ALLOWED THAT PROPOSITION TO GO TO THE JURY.

HERE WE HAVE AT LEAST THREE CONSENSUS REPORTS, TWO OF WHICH SHOW IT A ROBUST REPEATED CORRELATION BETWEEN TRAUMA AND FIBROMYALGIA.

WE HAVE THREE EPIDEMIOLOGICAL STUDIES TWO OF WHICH SHOW THE ROBUST CORRELATION BETWEEN FIBROMYALGIA AND WE HAVE DOZENS OF CLINICAL REPORTS THAT SHOW THE SAME.

>> [INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> CERTAINLY.

YES, SIR.

[INAUDIBLE]

>> CERTAINLY, AND THAT REALLY BRINGS TO MY SECOND POINT, AND THE ANSWER TO MY QUESTION IS IF FRYE DOES APPLY, IF THIS COURT DOES APPLY TO THE FACTS IN THIS CASE THEN WE BELIEVE THE PLAINTIFF STILL PREVAILS BECAUSE THE EXPERTS MERELY USED A DIFFERENTIAL DIAGNOSIS AS A PROCESS OF EXCLUDING OTHER DIAGNOSIS THEY LOOKED A HISTORY, RECORDS, BLOODWORK, MRIs, X-RAYS, ALL GENERALLY ACCEPTED FORMS OF DIAGNOSIS AND ACCEPTED BY THIS COMMUNITY AND CAME TO THE CONCLUSION THAT JILL HAD FIBROMYALGIA.

>> SO ESSENTIALLY WHAT THEY DID -- THEY RULED OUT, IT CAN'T BE THIS, IT CAN'T BE

THIS, IT CAN'T BE THIS
TCAN'T BE THIS.
THEREFORE IT MUST BE
FIBROMYALGIA, RIGHT?

>> THAT IS CORRECT.

>> [INAUDIBLE]

[INAUDIBLE]

>> I BELIEVE THAT'S CORRECT,
YOUR HONOR, YES.

SNAUBL

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> DIFFERENTIAL DIAGNOSIS.
THEY ALSO RULED OUT THE
POSSIBILITIES THAT THE
CONDITION, THIS CONDITION IS
ALSO CAUSED BY HERED TEAR
AND GENETIC FACTORS, IT'S
CAUSED BY PATHOLOGICAL AND
DISEASE PROCESSES WHICH IS
RULED OUT IT COULD BE CAUSED
BY OTHER TRAUMA, RAPE, WAR,
PHYSICAL ASSAULTS.

[INAUDIBLE]

>> WELL, THAT'S EXACTLY THE
POINT, YOUR HONOR.

AND WE DID NOT HAVE THE
CHANCE TO HAVE THAT BUT THE
VIGGEROUS CROSS EXAMINATION
BETWEEN THE EXPERTS
SHOULD'VE HAPPENED AT TRIAL
AND LET THE JURY DECIDE.

>> CAN WE GO BACK TO THAT
FOR A MOMENT.

AS I AM GOING THROUGH ALL OF
THE MATERIAL, TISHULAR STUDY,
CONSENSUS DOCUMENTS LOF THE
OTHER STUDIES TSEEMS THAT WE
ARE NOT FINDING A CLEAR
CONSENSUS THAT TRAUMA CANNOT
PRODUCE THIS CONDITION.

IT SEEMS AS THOUGH I AM
READING MOST OF THIS THAT
THE ETIOLOGY, THE PATH
PHYSIOLOGY REMAIN UNCLEAR.
THE, THE SYNDROME OF UNKNOWN
ORIGIN, WE CAN'T NECESSARILY
CONNECT IT.

SO IS THAT, AM I READING
THIS CORRECTLY OR, OR, OR,
IS THE MAJORITY SAYING NO,
IT CAN NEVER BE CAUSED BY,

BY TRAUMA?

>> YOU ARE CORRECT.

>> SO THIS IS THE NATURE OF THE UNDERLYING DATA SO REALLY WHAT THE OTHER SIDE IS SAYING IS THAT UNLESS YOU HAVE A CLEAR CONSENSUS OF CAUSATION, YOU CAN NEVER GETGY KIND OF TESTIMONY IN, IS THAT WHERE WE ARE IN THIS CASE?

>> WELL, THAT'S NOT, YOUR HONOR, BECAUSE AGAIN IN HENSON TSAID A CAUSE AND EFFECT RELATIONSHIP DOESN'T HAVE TO BE EXCLUSIVELY ESTABLISHEDF THIS IS A LEGITIMATE MEDICAL DISBUTTE BY SOME OF THE WORLD'S FINEST EXPERTS THAT BASE THEIR --

>> THAT'S WHAT I'M ASKING. THAT'S WHAT IT SEEMS TO BE YOU SAID IT ISN'T I DON'T KNOW.

FRYE ISN'T IMPLEMENT UNLESS IT A GADGET, SOME DEVICE. THAT BRINGS THE CREDIBILITY INTO THE COURTROOM. THE EXPERT, IF IT'S JUST HIS OPINION HE HAS THE OATH OF OFFICE HE TAS HAS TO TAKE, THE QUALIFICATIONS OF AS AN EXPERT.

OTHER EXPERTS CAN SUMMARY JUDGET, DIRECTED VERDICT. THERE IS ALWAYS TO SCREEN THAT EXPERT PURE OPINION TESTIMONY.

OR THERE'S JUST TESTIMONY AT TRIAL.

HOWEVER, THIS FRYE KPPLGS IS NOT TRIGGERED UNLESS THERE IS THIS THING FROM WHICH THE DEDUCTION IS MADE TO REACH THE CONCLUSION THAT CAN'T BE CROSS-EXAMINED THAT BRINGINIZE TO THE COURT THIS RESPECT IN AND OF ITSELF.

>> SO THERE IS NO, IN YOUR POSITION, THERE HAS TO BE NO GENERAL ACCEPTANCE OF THE UNDERLYING THEORY? IN THE SCIENTIFIC COMMUNITY.

>> THAT'S CORRECT.
THIS COURT HAS STATED
SEVERAL TIMES THAT THE
CONCLUSION THAT TRAUMA CAUSES
FIBROMYALGIA.

IT IS THE METHODOLOGY, THE
ASSUMPTION, THE DEDUCTION
THAT BRINGSTUSE FRYE.

IF THIS COURT HOLDS THE
PRINCIPLE HOLDS THE
SCIENTIFIC THEORY AND
CONCLUSION.

>> SO THE ETYMOLOGY DOESN'T
HAVE TO BE ESTABLISHED BY
ANYWAY STUSTATISTICAL OR
STUDY SO HOW BROAD IS THIS?

JUST GET OUT OF OIFY
FIBROMYALGIA, AUTISM, THERE
IS A BIG QUESTION, IS IT
CAUSED BY VACCINES.

THAT CHILDREN GET.
SO THERE ARE SOME PEOPLE WHO
THINK THAT FACT SO THAT
EXPOSE POSED EVEN THOUGH
THERE IS NO NERL GENERAL
ACCEPTANCE OR UNDERSTANDING,
THE CAUSATION, THAT THAT
COULD BE A BASIS OF
LIABILITY.

IF YOU COULD FIND A DOCTOR
AND SAY WELL I THINK IT'S
THE VACCINES THAT THE KIDS
IT IS JUST A MATTER FOR THE
JURY TO DEBATE AND THE JURY
MAKE A DECISION ON A BASIS
WITHOUT GENERAL ACCEPTANCE
THAT THERE IS A LINK BETWEEN
THE LINK AND OUGHT SNOM WELL,
THAT IS CORRECT PROVIDING
THAT THERE IS NO NEWER NOVEL
SCIENTIFIC METHODOLOGY
PROFILE EVIDENCE, SOME
GADGET, SOME DEVICE WHICH
CAN'T BE CROSS EXAMINATION.

AS LONG AS IT IS PURE
OPINION TESTIMONY THAT
EXPERT IS RENDERING OPINIONS
THAT ARE COMPLETELY FUSEGSES
AND DON'T HAVE NO BASIS IN
MEDICINE IT WILL BE RIPPED
APART IN CROSS EXAMINATION.

>> SO WHAT IS THE BASE IN
MEDICINE OTHER THAN THE
DEFERENTIAL DIAGNOSIS.

>> IN THIS CASE.

>> IN YOUR CASE.

>> WELL THERE ARE PLAUSIBLE
BIOLOGICAL MODELS.

WE KNOW, I THINK I CAN SAY
THAT THERE IS A CONSENSUS
THAT DEFENSE COUNSEL MAY
DISAGREE, THERE IS A
CONSENSUS NOW IN MEDICINE
THAT THIS CONDITION INVOLVES
A DISRUPTION OF THE CENTRAL
NERVOUS SYSTEM.

WE KNOW SOMETHING ABOUT THAT
THAT THAN THAK LIKELY THIS
CONDITION OCCURS WHEN THERE
IS INJURIES TO THE UPPER
CERVICAL REGION TRAUMA COULD
CAUSE THIS DISRUPTION.

>> BUT ISN'T THE PROBLEM
HERE THAT THE DIFFERENT
BETWEEN FRYE IS THAT FRYE
STILL DOES REQUIRE THAT
PROPONENT OF A THEORY TO PUT
ON EVIDENCE WHICH
ESTABLISHES THAT THE THEORY
HAS BEEN DEVELOPED ON THE
BASIS OF GENERALLY ACCEPTED
SCIENTIFIC PRACTICE.

AND, AND PRINCIPLES.

AND THAT IF, AND UNTIL THERE
IS, A CONSENSUS, THAT WE
HAVE A WAY TO CONCLUDE THAT
TRAUMA CAUSES THIS DISEASE,
THAT FRYE WOULD NOT ALLOW
THAT TO BE CONSIDERED BY THE
JURY.

I MEAN, ISN'T THAT THAT, I
MEAN, IT SEEMS TO ME THE
SENSE WOULD BE GRIFFIN
SAYING.

>> THE CASE LAW PUT TOGETHER
BY THIS COURT HAS NOT RULED
SCIENTIFIC PRINCIPLES MEANS
THE UNDERLYING THEORY AND
CONCLUSION OF THE CASE.

IN FARCT, IT'S JUST THE
OPPOSITE.

>> WELL WOSHGS BEAWFULLY
MUCH INVOLVED IN
TERMINOLOGY.

WE, WE DO THAT BECAUSE WHEN
WE SAY THAT BECAUSE IT SEEMS
TO ME, WHAT, WHAT DOES FRYE
THEN STAND FOR?

WHAT DOES FRYE -- I MEAN,
WHY DO YOU SAY THAT, THAT
WHAT IS THE DIFFERENCE
BETWEEN FRYE AND DOGGERT
WHAT YOU ARE ARGUING.

>> WELL THE DIFFERENCE
BETWEEN FRYE AND DOGGERT IS
THAT FRYE REQUIRES THE
GENERAL ACCEPTANCE OF THE
METHODOLOGY WHEN THERE IS A
NEWER NOVEL, METHODOLOGY,
TEST, TECHNIQUE, WHAT HAVE
YOU.

UNDER DAUBERT YOU HAVE
SEVERAL FACTORS THEN WEIGHED
TOGETHER IN SOME PLACES.
INTERPRETED DIFFERENTLY IN
EACH STATE BUT IN DAUBERT
YOU HAVE A NUMBER OF FACTORS
AND ONE OF THEM IS THE FRYE
TEST.

SOME TIMES IT'S NOT GENERAL
ACCEPTANCE BUT SOMETHING
ELSE AND VARIOUS OTHER
FACTORS WEIGHED IN WITH IT.
THERE IS A DISPUTE ABOUT
WHETHER DAUBERT IS MORE
STRICT OR MORE LIBERAL.
SOME MORE KEEN OBSERVERS OF
THIS SAY THE DAUBERT TEST
APPLIED IS MORE STRICT THAN
FRYE ITSELF.

BUT, YOUR HONOR, I THINK TO
GO TO THE TEPER PART OF YOUR
QUESTION IS THAT FRYE IS NOT
IMPLICATED UNLESS THERE IS
METHODOLOGY WHICH IS NEW AND
NOVEL.

THERE IS NOTHING NEW ABOUT
THE THEORY THAT TRAUMA
CAUSES FIBROMYALGIA.

THE DEFENSE IS ON EXPERT,
JOHN RUSSELL RICE, DUKE
UNIVERSITY, AUTHORED A
CHAPTER IN A BOOK COMPLEX
MEDICAL PATIENT.

HE HAS A CHART IN THERE AND,
AND IT'S, RECORD PAGE 418 TO
422 AND HE LISTS TRAUMA IN
1987 DWENT YEARS AGO AS ONE
OF THE THINGS SECONDARY TO A
POSSIBLE CAUSE YOU HAVE TO
RULE OUT WHEN, WHEN
DIAGNOSING THIS CONDITION SO

THERE IS NOTHING NEW ABOUT IT.

THERE'S CERTAINLY NOTHING NOVEL ABOUT THE WAY AND THE MAPPER IN WHICH THE TESTIMONY WOULD'VE BEEN ELICITED.

IT WOULD'VE BEEN JUST THE SAME WAY THAT TRAUMA CAUSES CARPAL TUNNEL SYNDROME THERE IS A DISPUTE ON BUT IT GOES TO THE JURY ALL THE TIME.

>> YOU ARE WELL INTO YOUR REBUTTAL.

>>IUM SORRY.

>> USE YOUR TIME AS YOU WISH.

IT'S JUST AN ALERT.

>> MAY IT PLEASE THE CORT COURT.

I'M ELIZABETH.

I REPRESENT THE BURKES IN THIS.

MR. BROCK REPRESENTS THE VALUES, MR. MIXEN REPRESENTSAVES AND HE REPRESENTS THE VALUE -- VALYOUS AND I WILL BE SPLITLING OUR TIME.

>> COULD YOU GO BACK TO THE QUESTION THAT I POSED TO OPPOSING COUNSEL IN GOING THROUGH ALL OF THE MATERIAL IT LOOKS LIKE ALL THE UNDERLYING, IF WE EVEN SAY THIS IS SUBJECT OF FRYE ANALYSIS THAT WE START LOOKING AT THE UNDERLYING MATERIALS AND THE SCIENTIFIC THING IS SAYING THAT THE ETIOLOGY, THE PATH OPHYSIOLOGY WERE JUST UNCLEAR, WE ARE NOT CERTAIN. IS THAT THE STATUS OF IT?

>> THAT'S EXACTLY WHAT IT IS.

>> SO IT'S NOT ANY, THERE'S NOT ANYTHING THERE THAT SAYS ABSOLUTELY THIS CANNOT BE CAUSED BY TRAUMA?

>> THERE'S NOTHING THAT SAYS ABSOLUTELY IT CANNOT BE CAUSED BY TRAUMA BUT BY THE SAME TOKEN THERE IS NO CLEAR

CONSENSUS THAT IT CAN BE
CAUSED BY --

>> WELL, THAT'S WHERE YOU
GET THERE TO THE OPINION AND
IS IT NOT THE BASIS OF FRYE
YOU LOOK AT IT.

FOR EXAMPLE, IF THIS
DIAGNOSIS WERE COMING THAT
THEY WERE USE AGTELESCOPE TO
BOUNCE OFF THE MOON SOME
TYPE OF RAYS AND THAT'S HOW
THEY WERE MAKING THE
DIAGNOSIS THEN CERTAINLY
THAT'S THE METHODOLOGY THAT
MY BE SUBJECT TO, TO
CRITICISM.

BUT IF YOU GO THROUGH ONE --
BECAUSE IF WE GO BACK
FURTHER, WHAT YOU ARE GOING
TO BE SAYING THEN IS THAT
YOU HAVE TO HAVE ABSOLUTE
GENERAL CONSENSUS ON
CAUSATION ON ANYTHING BEFORE
YOU EVER CAN HAVE TESTIMONY
ON IT.

>> NO, YOUR HONOR.

>> THAT'S THE BOTTOM LINE.

>> WE ARE NOT SAYING THAT.

WITH ALL RESPECT, YOUR HONOR,
I THINK THIS COURT HAS SAID
THAT SEVERAL TIMES, AND --

>> WELL, I WOULD
RESPECTFULLY DISAGREE THAT
IT IS THAT.

SO.

IF THAT WHAT YOU ARE SAYING
BECAUSE YOU THINK THAT'S
WHAT WE HAVE SAID THEN WE
NEED TO KNOW THAT.

THAT'S WHAT YOUR POSITION IN
THIS CASE.

>> NO, YOUR HONOR.

OUR POSITION IS NOT THAT
THERE HAS BEEN ABSOLUTE
CERTAINTY BUT UNDER FRYE
THERE HAS BEEN GENERAL
ACCEPTANCE WITHIN THE
RELEVANT SCIENTIFIC
COMMUNITY.

>> [INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> YOUR HONOR, IF I'M -- I'M NOT FAMILIAR WITH NOSECLASES. I DON'T HAVE NOT READ THEM BUT IF YOU COULD TATTOOIOIN TERMS OF CASTULLO CASE AND DIAZ CASE.

>> [INAUDIBLE]

>> TO CHALLENGE --

>> CAUSATION WAS SOMETHING THAT HAS TO BE -- FRYE AND THAT'S WHY --

[INAUDIBLE]

>> PERHAPS --

>>

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> AND I THINK YOU ARE RIGHT, YOUR HONOR, BUT BOTH HINSON AND CASTILLO WERE CAUSATION CASES AND BECAUSE THEY SPIFBLGLY ADDRESSED FRYE, I THINK THEY'RE INSTRUCTIVE ON THIS ISSUE, AND MR. STEMBERER WANTS TO SAY FRYE ONLY APPLIES TO METHODOLOGY BUT THIS COURT HAS REPEATEDLY SAID AND IN FACT IN THE STOKES CASE WHICH IS ONE OF THE EARLIER CASES WHERE THE COURT REAFFIRMED FRYE, THEY SAID THAT THE SCIENTIFIC PRINCIPLES UNDERGUARDING THE OPINION BUT ME GENERALLY ACCEPTED IN THE RELEVANT SCIENTIFIC COMMUNITY WANT THAT HAS SUBSEQUENTLY DEVELOPED INTO I THINK MAYBE THE RAMIREZ CASE, MIGHT'VE'VE BEEN ONE OF THE FIRST ONES TO SAY THE UNDERLYING SCIENTIFIC PRINCIPLES AND THE METHODOLOGY HAVE TO BE GENERALLY ACCEPTED IN THE RELEVANT SCIENTIFIC COMMUNITY.

>> [INAUDIBLE]

>> YES, CORRECT.

>> [INAUDIBLE]

>> WELL, I SURE WOULD.

YES.

>> [INAUDIBLE]

[INAUDIBLE]

>> WELL, YOUR HONOR, I AGAIN,
I GO BACK TO HINSON AND
CASTILLO.

IN HINSON, THE ISSUE WAS
WHETHER, THAT WAS THE CASE
WHERE I BELIEVE THE WORKING
HAD FRENIC NERVE PARALYSIS
THAT HE TRIED TO TIE INTO
EXPOSURE AT HIS WORKPLACE,
AND IN THAT CASE, IT WAS
GENERALLY ACCEPTED AND IT
STATED IN THE OPINION AND
BOTH, BOTH THIS COURT AND IN
THE FIRST DCA IT STATED IT
WAS GENERALLY ACCEPTED IN
THE RELEVANT SCIENTIFIC
COMMUNITY THAT ORGANNO
PHOSPHATES ARE NEURTOXIC.
SO FROM THAT, THE COURT THEN
LOOKED TO THE METHODOLOGY
THAT WE WAS USED BY THE
EXPERTS TO EXTRAPOLATE FROM
THAT GENERAL UNDERLYING
SCIENTIFIC PRINCIPLE TO THE
ISSUE OF WHETHER THE ORGANO
PHOSPHATES WERE NEUROTOXIC
IN THIS INDIVIDUAL.

>> [INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> AND YOUR HONOR --

>>

[INAUDIBLE]

>> YOUR HONOR, IF THERE WAS
NO CONSENSUS IN THE
SCIENTIFIC COMMUNITY, THAT
IS THE STANDARD AS I
UNDERSTAND IT, UNDER FRYE.
THERE HAS TO BE GENERAL
ACCEPTANCE.

AND IF THERE ARE SOME THAT
SAY THIS AND SOME THAT SAY
THAT, THERE IS NO GENERAL
CONSENSUS.

THERE IS NO GENERAL
ACCEPTANCE.

WITHIN THE SCIENTIFIC
COMMUNITY.

AND SO THEREFORE, UNDER FRYE,
IT'S NOT ADMISSIBLE.

>> WELL, WHAT IS THIS
SPECIAL REPORT THAT IS A
PART OF THE INFORMATION THAT

WE HAVE IN THIS CASE?
THIS IS A SPECIAL REPORT,
THE FIBROMYALGIA SYNDROME
ACONSENSUS REPORT ON
FIBROMYALGIA AND DISABILITY
AND UNDER THE SECTION IN
THAT REPORT THAT TALKS ABOUT
THE CAUSES, IT SAYS THE
CAUSES OF FIBROMYALGIA ARE
INCOMPLETELY UNDERSTOOD.
THERE MAY BE EVENTS
DESCRIBED BY THE PHYSICAL
TRAUMA, EMOTIONAL TRAUMA,
ET CETERA.

SO WHAT ARE WE TO DO WITH
THAT?

IT SEEMS TO ME THAT THIS
REPORT, AND A LATER
CONSENSUS REPORT SEEMS TO
ACCEPT THAT THERE ARE MANY
WAYS THAT FIBROMYALGIA IS
CAUSED INCLUDING PHYSICAL
TRAUMA.

SO WHY, WHY CAN'T WE WHY
CAN'T A MEDICAL EXPERT MAKE
A DIAGNOSIS BASED ON THIS?

>> I DON'T THINK THAT'S WHAT
THOSE CASES SAY.

WHAT THEY ARE SAYING --

>> I AM TALKING ABOUT THIS
REPORT.

>> YES, THAT REPORT.

I'M SORRY.

THAT'S NOT WHAT THAT REPORT
SAYS.

THAT REPORT SAYS WE DON'T
KNOW WHAT CAUSES -- WE'RE
NOT SAYING THAT TRAUMA CAN'T
CAUSE IT.

WE ARE NOT SAYING THAT
TRAUMA CAN CAUSE IT.

WE ARE JUST SAYING WE DON'T
KNOW AND THAT FURTHER
STUDIES ARE REQUIRED.

>> WELL, THEY REALLY SAY YOU
LOOK AT THE PATIENT, IT GO
ONS TO TALK ABOUT AND
DETERMINING AND DETERMINING,
YOU TAKE THE PATIENT HISTORY,
YOU LOOK AT, THE, THE REVIEW
OF THE EVENTS THAT HAVE
TAKEN PLACE AND THE
PATIENT'S LIFE, AND ALL OF
THOSE KINDS OF THINGS AND SO,

IT SEEMS TO ME THAT WHERE WE ARE HERE IS THAT THERE SEEMS TO BE SOME ACCEPTANCE THAT IT COULD BE.

>> THERE IS.

>> A CAUSE OF FIBROMYALGIA.

>> THERE, THERE ARE STATEMENTS IN THE REPORTS THAT IT, IF POSSIBLE, THAT IT COULD, BUT THERE, THERE HAS NOT BEEN ANY SCIENTIFIC EVIDENCE AT THIS POINT TO LINK IT.

AND THE REASON WHY -- THEY ARE NOT EVEN SAYING THERE IS A CAUSAL LINK.

THEY ARE SAYING THAT THERE IS AN ASSOCIATION AND IF YOU READ THROUGH ALL THOSE REPORTS, THAT ASSOCIATION IS SIMPLE A TEMPORAL ONE.

THAT BEING THAT PEOPLE ARE ASKED WELL, DO YOU REMEMBER WHETHER THERE WAS ANY KIND OF TRAUMA BEFORE YOU STARTED HAVING THESE PROBLEMS?

AND, AND THEY SAY, WELL, YES, I WAS IN AN ACCIDENT OR THIS OR THAT OR THE OTHER THING.

WHICH ARE THE ONLY --

>> WOULD YOU AGREE THAT REALLY WE GET, INTO THIS FRYE ARGUMENT.

ON THE BASE OF THE FACT THAT SOMEONE OF PROPOSING TO PUT ON AN OPINION TESTIMONY AND THAT FRYE THEN IS A PREDICATE THAT HAS TO BE LAID IN ORDER TO ALLOW THAT TESTIMONY TO COME IN?

>> YES, I DO, YOUR HONOR, AND THE REASON FOR THAT IS THAT THIS COURT HAS SAID, AND AGAIN THIS IS IN THE HINSON CASE, THAT THE PURPOSE OF FRYE IS TO ENSURE RELIABILITY OF DECISIONS AND RESULTS.

AND AGAIN, RELIABILITY IS FUNDAMENTAL TO ISSUES AND INVOLVING MISABILITIES OF EVIDENCE.

AND MANY, MANY YEARS AGO, THIS COURT DECIDED THE CASE

OF ARKEN v. SIMPCON SAYING
THAT THE, THE AN EXPERT'S
OPINION CAN'T FURNISH THE
BASIS FOR THE OPINION
ITSELF.

>> GOING TO JUSTICE LEWIS'S
QUESTION, IF A WITNESS GOT
UP AND SAID I BELIEVE, I
HAVE COME TO THE CONCLUSION
BASED UPON MY STUDIES THAT
THE MOON IS MADE OF GREEN
CHEESE.

AND I HAVE COME TO THAT
CONCLUSION BY REASON OF THE
FACT THAT I HAVE LOOKED
THROUGH THE MICROSCOPE AND I
HAVE DETERMINED THAT THESE
PARTICLES OUT THERE ARE,
HAVE THE SAME SUBSTANCE AS
CHEESE.

THAT THAT IS THE TYPE OF, OF
OPINION TESTIMONY THAT YOU
WERE TRYING TO GET ASKED IN
NOT, IN BEING NEW AND NOVEL.

>> EXACTLY.

BUT CERTAINLY TRAUMA IS NOT
NEW AND NOVEL IN FIBROMYAL
JUBECAUSE IT IS KNOWN TO
CAUSE IT.

>> I WOULD REMIND YOU THAT
IN THE REPORTS THAT YOU HAVE
PROBABLY READ AD NAUSEAM
THERE WASN'T EVE AN
CLASSIFICATION CRITERIA FOR
FIBROMYALGIA SYNDROME UNTILL
1990.

THIS IS A RECENT.

>> GOING BACK TO JUSTICE
WELL'S QUESTION IT IS THAT
YOUR POSITION FRYE TEST
EVERY OPINION THAT COMES IN
BECAUSE IT'S BASED ON
SCIENTIFICAL ANALYSIS AND
CAUSATION.

>> NO YOUR HONOR.

I THINK YOU HAVE TO FRYE
TEST IT WHEN THERE IS AN
OBJECTION.

>> EVERY TIME THERE IS A
OBJECTION THERE YOU HAVE TO
FRYE TEST IT WHEN TRAUMA CAN
CAUSE A FRACTURE TO A LEG,
WE HAVE TO FRYE TEST IT.

>> NO, AND I DON'T THINK

MANY ATTORNEYS WOULD ATTEMPT TO BRING A FRYE ISSUE ON THAT KIND OF A, OF AN INJURY BUT THIS IS, THERE IS OBVIOUSLY CONTROVERSY IN THE, IN THE MEDICAL LITERATURE AS TO WHETHER TRAUMA CAN CAUSE FIBROMYALGIA AND SO UNDER THOSE SUSHGS SUSHGSS, IN THE HADDEN CASE THIS COURT SAID NOVEL SCIENTIFIC EVIDENCE MUST BE SHOWN TO BE RELIABLE ON SOME BASIS OTHER THAN IT IS SIMPLY THE OPINION OF THE WITNESS WHO IS GIVING THE OPINION.

AND THAT'S WHAT THE ISSUE HERE, THE ISSUE HERE IS RELY!!!!!!! RELIABILITY AND IT IS AN ISSUE FOR DETERMINATION BY THE COURT AS TO WHETHER THAT OPINION IS ADMISSIBLE AT ALL.

IT'S A, IT'S A PREDICATE OF, OF RELIABILITY THAT THE FRYE TEST PROVIDES, AND THAT PREDICATE AT LEAST AT THIS POINT IN THIS STATE IS THAT THERE HAS TO BE GENERAL ACCEPTANCE.

>> YOU'RE WELL OVER YOUR TIME.

>> I UNDERSTAND.

THANK YOU.

>> THANK YOU.

YES, SIR?

>> I WOULD LIKE TO EMPHASIZE THAT THE FRYE TEST ONLY APPLIES TO NEW OR NOVEL SCIENTIFIC THEORIES.

IT DOESN'T APPLY TO -- I MEAN, FOR EXAMPLE, THE ISSUE OF WHETHER AN AUTOMOBILE ACCIDENT CAN CAUSE SOFT TISSUE INJURIES, THAT'S SOMETHING THAT'S JUST CLEARLY UNDERSTOOD. FRYE OBVIOUSLY WOULDN'T APPLY TO THAT.

NOW WHEN YOU TALK ABOUT NEW AND NOVEL SCIENTIFIC PRINCIPLES, IN THE CONTEXT OF MEDICAL CAUSATION, YOU ARE TALKING ABOUT THE

UNDERLYING THEORY THAT SOME,
THAT SOME GENERAL THING CAN
CAUSE SOME GENERAL INJURY.

OKAY?

AND IN THE TOXIC CASES, ALL
OF THOSE CASES INVOLVE
GENERALLY ACCEPTED BASIC
UNDERLYING SCIENTIFIC
PRINCIPLES.

IN THE CASTILLO CASE, IT WAS
GENERALLY -- OR CERTAINLY
WAS NOT DISPUTED BY DuPONT.
IT WAS BASED ON ITS OWN
STUDIES THAT IT WAS A
TURATGEN CAPEAL ONLYF CAUSES
THESE BIRTH DEFECTS.

THEY HAD RAT STUDIES THERE
IS A GENERAL STUDY THAT
MUMALIAN STUDIES WERE
TRANSFERRABLE TO OTHER
SPECIES AND THEN EXPERTS
COULD THEN EXTRAPOLATE, MAKE
INFERENCES AND ASSUMPTIONS.

THOSE ASSUMPTIONS WOULD NOT
BE FRYE TESTED BECAUSE YOU
COULD REACH CONFLICTING SORT
OF SUBSIDIARY INFERENCES.
BASED UPON THAT GENERALLY
ACCEPTED UNDERLYING
SCIENTIFIC CAUSAL THEORY.

WHEN YOU GET TO FIBROMYALGIA,
YOU START FROM THE IDEA WELL
DID THESE ACCIDENTS CAUSE
THE FIBROMYALGIA, BUT THAT
TAKE USE BACK TO THE
UNDERLYING THEORY, CAN AUTO
ACCIDENTS CAUSE
FIBROMYALGIA.

>>

[INAUDIBLE]

>> NO.

THERE IS NO SHOWING OF THAT.
YOU HAVE TO UNDERSTAND THIS
PAIN IS NOT LOCALIZED WHERE
THE INJURIES WERE.

AND THERE IS NO, THERE IS NO
PHYSIOLOGICAL UNDERSTANDING
AS TO HOW THIS PAIN ARISES.

AND MEDICAL SCIENCE, AND I
WANT TO EMPHASIZE THAT THE
VANCOUVER CONSENSUS REPORT
CONCLUDED, THEY CONCLUDED
THAT MEDICAL SCIENCE DOES
NOT KNOW WHAT CAUSES

FIBROMYALGIA.

>> WELL THEN THAT, ISN'T THAT WHAT REALLY COMES BACK THEN BECAUSE IF YOU ACCEPT THAT AS THE BASELINE THEN YOU MUST HAVE GENERALLY ACCEPTED VIEWS ON, ON CAUSATION BEFORE YOU CAN EVER HAVE AN OPINION ON CAUSATION.

>> NO.

YOU HAVE TO HAVE A GENERALLY ACCEPTED UNDERLYING PRINCIPLE OF GENERAL CAUSATION WHERE IT'S NEW AND NOVEL SCIENCE.

AND THE --

>> NOT NEW AND NOVEL SCIENCE.

THE DIFFERENTIAL DIAGNOSIS AND DO DOING ALL OF THE STUDIES.

EVERYTHING THAT'S DONE MEDICALLY ON THIS PATIENT AS I UNDERSTAND IT, HAS BEEN, BEEN DONE FOR 50 YEARS ANYWAY.

>> IF YOU HAVE -- A DIFFERENTIAL DIAGNOSIS --

>> IS THAT CORRECT?

I MEAN, MEDICAL PROCEDURES THAT WERE WERE APPLIED WERE NOT?

THESE WEREN'T THE STANDARD PROCEDURES, BLOOD TISTS AND X-RAYS?

AND THE DIAGNOSIS PROCESS? THAT HAD BEEN ENGAGED IN BY THE MEDICAL PROFESSION FOR AT LEAST 20, 30 YEARS AND PROBABLY MUCH LONGER. AND YOUR ANSWER IS NO?

>> THE, THE ISSUE OF WHETHER TRAUMA CAN CAUSE FIBROMYALGIA.

>> YOU DID WANT ANSWER MY QUESTION.

MY QUESTION WAS DID THEY USE THE METHODOLOGY, THE BLOOD TESTS, THE X-RAYS, THE OFFICE VISITS, THE, WHATEVER IT IS THAT HAVE BEEN RECOGNIZED FOR THE LAST 20 YEARS?

THEY DID NOT?

>> WELL, THE ACR CRITERIA WERE PROMULGATED IN 1990. THAT'S THE FIRST TIME THAT THERE WAS ANY KIND OF UNIFORM STANDARD FOR, FOR DIAGNOSING FIBROMYALGIA. THIS DOESN'T HAVE TO DO WITH CAUSE.

THIS HAS TO DO WITH WHETHER YOU HAVE IT.

>> COULD I AGAIN -- IS IT POSSIBLE TO GET AN ANSWER TO MY QUESTION?

DID THEY USE SOMETHING DIFFERENT IN THIS CASE TO REACH THIS CONCLUSION THAN OTHER DOCTORS HAVE BEEN USING FOR 20, 30 YEARS.

IT IS A VERY SIMPLE QUESTION AND IF IT WAS, WHAT WAS DIFFERENT.

>> THERE WAS, WE'RE NOT CONTESTING WHETHER THE DIAGNOSIS OF FIBROMYALGIA SO I DON'T SEE THAT HAS RELEVANT AS TO HOW --

>> WELL, I HAVE THE INQUIRY SO I GUESS IF YOU DON'T CARE WHAT THE COURT IS CONCERNED WITH --

>> YOUR HONOR, LET ME JUST SAY, HE HAS MADE NO SHOWING AS TO WHAT THE DOCTORS DID AT ALL.

WE HAVE NO RECORD CITATIONS. IN FACT, WHAT WE FIND IS THAT HE HAS AN OSHTHPEDIST WHO BASICALLY SAID THAT HE, HIS IDEA OF FIBROMYALGIA WAS WHAT HE RAED READ IN THE LITERATURE.

WE HAD A RHEUMTOLOGIST WHEN HE SAID SHE WASN'T AWARE OF THE RECENT -- OF THE CONSENSUS REPORT, THE VANCOUVER REPORT AND SHE ALSO SAID THE FIRST TIME SHE THOUGHT ABOUT WHAT CAUSED FIBROMIALGIA WAS WHEN SHE TALKED TO PLAINTIFF'S DEPO.

>> [INAUDIBLE]

>> RIGHT.

>> [INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> YES, YOUR HONOR, AND I WAS TRYING TO DRESS THE JUSTICE'S QUESTION WHICH I DON'T THINK IS THE ISSUE IN THIS CASE.

THE ISSUE IS WHETHER THESE EXPERTS CAN TESTIFY ABOUT A CAUSAL RELATIONSHIP BETWEEN THE ACCIDENTS AND FIBROMYALGIA, WHICH IS NECESSARILY BASED ON THE UNDERLYING SCIENTIFIC THEORY THAT TRAUMA CAN CAUSE FIBROMYALGIA, AND THAT IS NOT GENERALLY ACCEPTED. AND I WOULD POINT OUT THAT THIS RECENT NEBRASKA CASE WHICH HE CITES IN HIS REPLY BRIEF IN HIS LENGTHY QUOTE HE'S EDITED OUT SEVERAL POINTS.

NEBRASKA IS A DAUBERT STATE, AND DAUBERT IS A MORE FLEXIBLE LIBERAL STANDARD AND THE POINT THAT THE COURT MADE IS IF WE WERE FRYE TESTING IN NEBRASKA, THE PLAINTIFF THIS WOULD BE INADMISSIBLE.

AND THEY START OUT AND THEY POINT, THESE ARE ACTUAL TEXTS THAT'S TAKEN OUT FROM HIS QUOTE.

THE RELIABILITY -- RELIABILITY ASSESSMENT DOES NOT THE PARTICULAR DEGREE OF ACCEPTANCE WITHIN THE SCIENTIFIC COMMUNITY --

>>

[INAUDIBLE]

>> YES.

>> [INAUDIBLE]

>> WELL, THE --

>>

[INAUDIBLE]

>> WELL DAUBERT IS --

>>

[INAUDIBLE]

>> WHATEVER NEWER, NOVEL SCIENTIFIC PRINCIPLE,

ABSOLUTELY.

THE FRYE TEST ONLY APPLIES

TO NEWER, NOVEL SCIENCE.

DAUBERT APPLIES TO ALL

EXPERT TESTIMONY.

THE TWO DON'T ADDRESS THE

SAME ISSUE BUT I WOULD POINT

OUT THAT THIS NEBRASKA CASE

SAYS THE THEORY THAT TRAUMA

CAN CAUSE FIBROMYALGIA.

THERE IS NOT A SCIENTIFIC

CONSENSUS THAT.

IN OTHER WORDS WHAT THEY ARE

SAYING IS IF WE FOLLOWED THE

FRYE TEST IN NEBRASKA, THIS

WOULDN'T BE ADMISSIBLE AND

IN FACT THE GRANT CASE FROM

--

>> TO ANSWER JUSTICES

PARIENTE'S QUESTION.

>> YOUR HONOR?

>> THE THEORY BEHIND FRYE IS

THAT COURTROOMS ARE NOT

MEDICAL LABORATORIES AND

THEY'RE NOT THE PLACE TO

DEBATE SCIENTIFIC

PRINCIPLES.

THOSE HAVE TO BE ESTABLISHED

ELSEWHERE.

THE COURTROOM IS, IS THERE

TO DEBATE WHETHER THE

PLAINTIFF SUFFERED INJURY IN

THE CASE.

>> LOOK WHAT YOU ARE DOING

TO THE JURY.

YOU ARE PUTTING THEM IN A

POSITION WHERE THEY HAVE TO

DECIDE WHAT'S VALID SCIENCE.

ON SOMETHING NEW OR NAUVL

AND THAT'S WHAT THE --

>> WITH OUR HELP YOU HAVE

USED UP ALL OF YOUR TIME.

>> [INAUDIBLE]

>> SURE, YOU DID NOT RESERVE

THE TIME.

AND SO WE'RE MOVING FORWARD.

MOVING FORWARD.

THANK YOU.

YOU WANT TO FINISH UP, YOU

GOT SHORT TIME LEFT.

>> YOUR HONOR, A COUPLE

OPOINTS IN THE WAY OF

REBUTTAL.

FIRST OF ALL, PLAINTIFF'S

EXPERTS ARE SOME OF THE
FINEST IN THE WORLD.
JOHN RAMANO, WILLING WEST
VIRGINIA WAS ON THE ACR
CRITERIA THAT DEVELOPED THE
DIAGNOSIS FOR FIBROMYALGIA.
HE'S THE AUTHOR OF TWO OF
THE THREE CONSENSUS REPORTS
AND IS TRULY AN EXPERT IN
THE FIELD.

DR. PELGREENO, OUR EXPERT IN
CANTON OHIO, HAS ONE OF THE
LARGEST FIBROMYALGIA -- HE'S
AUTHORED MANY BOOKS --
>> CAN YOU RESPOND TO THE
NEBRASKA CASE PORTION OF THE
-- WHEN HE SAYS THE COURT'S
POSITION --

>>

[INAUDIBLE]

ESSENTIALLY THIS EVIDENCE
WOULD NOT BE ADMISSIBLE
UNDER A FRYE STATEMENT.
AS FAR AS THAT ELEMENT, FOR,
COMPLEX, COMPLICATION.

[INAUDIBLE]

SPECIFIC PART THERE SUPPORT
HIS POSITION.

YOU HAVE, YOU'VE GIVEN US
THE NEBRASKA.

IT APPEARS THAT WE ARE JUST
APPLY AGFRYE STANDARD TO
THAT CASE.

>> YES.

>> THAT EVIDENCE WOULD NOT
BE ADMISSIBLE.

>> YES, JUSTIN ANSTEAD.

EACH STATE DETERMINES HOW
FRYE IS APPLICABLE.

IT'S NOT A STATIC STANDARD.

AND THIS COURT IS DETERMINED
THAT FRYE APPLIES TO NEW AND
NOVEL SCIENTIFIC
METHODOLOGIES, TESTS, THERE
HAS TO BE THAT SCIENTIFIC
DEVICE IN THE COURTROOM THAT
CAN'T BE CROSS-EXAMINED TO
EVEN TRIGGER FRYE TO BEGIN
WITH.

>> TELL US WHAT THE NEBRASKA
COURT HAD FOR IT?

WHAT, THE ANALYSIS WAS.

WHAT WOULD LOOK TO IN THAT
ANALYSIS THAT YOU HAVE CITE

FOR HELP HERE DETERMINING
WHAT THE OUTCOME OF OUR
EXAMINATION.

>> YES.

>> WHETHER WE SHOULD APPLY
FRYE.

LIKE THE CHICKEN AND THE EGG
THE WAY YOU ALL HAVE BEEN
ARGUING.

BUT I AM ASKING YOU TO CITE
THAT SOMETHING YOUR OPPONENT
HAS REFERRED TO TO SUPPORT
YOUR POSITION.

CAN YOU HELP ME WITH THAT.

>> WE SUBMITTED THE CASE NOT
AS EXPOSITIVE AUTHORITY.

WE HAD TO CITE IT TO BRING
THE COURT'S ATTENTION.

>> DOES IT SKA WHAT YOUR
APONEABOUT SAYS IT SAYS THAT
IF THEY APPLIED FRYE TO IN
NEBRASKA THAT IT WOULD NOT
BE ADMISSIBLE, DOES IT SAY
THAT.

>> THAT IS THE QUOTE HE
READ.

THAT IS CORRECT CORRECT.
BUT THE LAW IN THIS STATE IS
NOT THE LAW IN NEBRASKA.
THEY ARE DIFFERENT.

>> I AM CONCERNED WITH YOUR
RELIANCE THOUGH ON THE, ON
THE CREDIBILITY OF YOUR
EXPERTS.

BECAUSE THAT'S REALLY NOT
THE ISSUE.

THE ISSUE IS THE UNDERLYING
ISSUE IS THAT WE MUST TEST.

WHAT IS IT THAT MUST BE
TEST?

AND YOU COULD HAVE THE
EXPERT THAT HAS ALL THE
CREDENTIALS IN THE WORLD.
THAT DOESN'T OVERCOME THE
FUNDAMENTAL REQUIREMENT.
THAT'S, I DON'T UNDERSTAND
WHY YOU'RE SAYING YOUR
EXPERTS ARE SO MUCH MORE
CREDIBLE.

IS THAT IN SOME RESPONSE TO
THE UNDERLYING TEST?

>> ONLY BECAUSE THE DEFENSE
COUNCIL INDICATED THAT OUR
EXPERTS WERE NOT VERY

CREDIBLE.

>> WITH YOUR HELP, YOU HAVE
USED UP ALL OF YOUR TIME.

WE'LL TAKE A UNDER
ADVISEMENT.

THE COURT WILL TAKE ITS
MORNING RECESS.

>> THANK YOU, YOUR HONOR.

>> ALL RISE,