

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, GIVE ATTENTION, AND YOU  
SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,  
THAT GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO  
THE FLORIDA SUPREME COURT.

FOR THE CASES TODAY, JUSTICE  
LEWIS IS UNABLE TO BE IN  
ATTENDANCE BUT WILL PARTICIPATE  
IN THE DECISION OF THESE CASES.

WE WILL NOW GO TO THE FIRST CASE  
ON OUR DOCKET, CRIST VERSUS  
ERVIN.

>> PLEASE THE COURT, I'M  
COURTNEY BREWER, SOLICITOR  
GENERAL'S OFFICE, WITH ME AT THE  
TABLE IS RICHARD DONELAN AND I  
REPRESENT THE APPELLANTS IN THE  
CASE, IT IS CRITICAL TO NOTE  
THAT THERE ARE FOUR ISSUES THAT  
ARE NOT CHALLENGED BY THE  
PLAINTIFFS IN THE CASE.

FIRST, PLAINTIFFS DO NOT  
CHALLENGE THE AMOUNT OF THE  
COURT FILING FEES IMPOSED ON  
THEM.

SECOND, THE PLAINTIFFS DO NOT  
CHALLENGE THE CONSTITUTIONALITY  
OF THE IMPOSITION OF THE FILING  
FEE.

THIRD, THIS CASE IS NOT ABOUT  
THE ADEQUATE FUNDING OF THE  
COURT SYSTEM.

AND FINALLY, THIS CASE IS NOT ABOUT THE RIGHT OF ACCESS TO THE COURTS.

NO ONE HAS BEEN DENIED THAT ACCESS.

THIS CASE IS ONLY ABOUT THE DEPOSIT OF A PORTION OF THE FILING FEES INTO GENERAL REVENUE.

AND, NO CONSTITUTIONAL PROVISIONS OR DECISIONS OF ANY FLORIDA COURT PREVENTS THE LEGISLATURE FROM DOING THAT OR REQUIRES A PARTICULAR ACCOUNTING METHOD BE USED BY THE LEGISLATURE.

>> LET ME ASK YOU A QUESTION ABOUT THAT.

ARE THERE OTHER PROVISIONS IN THE STATE WHERE PEOPLE PAY SOME KIND OF FEE OR LICENSING OR ANYTHING LIKE THAT AND ARE PART OF THOSE FEES GIVEN TO GENERAL REVENUE?

DO WE KNOW IF THERE IS ANY OTHER SITUATION LIKE THIS IN THE STATE.

>> YOUR HONOR, I DON'T KNOW OFF THE TOP OF MY HEAD.

I THINK THAT THE IMPORTANT POINT HERE IS THAT THE FILING FEES -- IT IS A FACT IN THIS CASE, THAT -- AND IS ONE OF THE -- THE PLAINTIFFS DO NOT AND CANNOT CONTEST THE FILING FEES SENT TO GENERAL REVENUE NEARLY OFFSET A PORTION OF THE FUNDS THAT GO TO THE ADMINISTRATION OF JUSTICE.

>> WELL, I GUESS MY REAL PROBLEM HERE IS, THAT PEOPLE PAY FILING FEES FOR ACCESS TO THE COURTS, BASICALLY.

AND YOU WOULD AGREE WITH THAT.

>> YET.

>> AND SO IF MONEYS THEY PAY IN ORDER TO USE THE COURT SYSTEM ARE THEN DIVERTED AND BEING USED FOR SOME OTHER PURPOSE, ARE THEY, THEN, SUBSIDIZING SOMETHING OTHER THAN THEIR ACCESS TO THE COURT SYSTEM.

>> JUSTICE QUINCE, IF THE MONIES WERE BEING USED FOR ANOTHER PURPOSE, THAT MIGHT BE A VALID POINTED BUT THE MONIES ARE NOT BEING -- POINT BUT THE MONIES ARE NOT BEING USED FOR ANOTHER PURPOSE.

>> HOW DO YOU KNOW THAT.

>> THEY GO INTO GENERAL REVENUE AND MORE FUNDS COME OUT OF THE GENERAL REVENUE THAN GO IN FROM THE FILING FEES, MONEY IS A FUNGIBLE ENTITY AND DOESN'T RETAIN ANY SEPARATE CHARACTER WHEN IT GOES INTO GENERAL REVENUE AND ALL YOU CAN LOOK AT IS HOW MUCH IS BECOMING CONTACT OUT TO FUND THE ADMINISTRATION OF JUSTICE.

>> BUT, IT IS JUST AS LIKELY THAT THOSE FUNDS COULD BE USED FOR ANY OTHER PURPOSE, OTHER THAN THE ADMINISTRATION OF JUSTICE.

>> NO, YOUR HONOR, WHAT COMES BACK OUT, IT IS SIMILAR -- VERY SIMILAR TO WHEN I GET REIMBURSED FOR TRAVEL EXPENSES THAT I INCUR FOR MY JOB.

WHEN I GOT MY CHECK BACK FROM THE STATE, I DON'T -- THE PUPS OF THOSE FUND, CERTAINLY, IS ONLY TO REIMBURSE ME FOR THE

EXPENSES I INCURRED IN TRAVELING.

BUT, THAT DIFFERENT MEAN I HAVE TO SEND THOSE -- THAT CHECK DIRECTLY TO MY CREDIT CARD COMPANY, FROM WHICH I PAID MY TRAVEL EXPENSES.

I'LL PROBABLY PUT IT INTO MY BANKING ACCOUNTS WHICH IS SIMILAR TO A GENERAL REVENUE FUND AND NO MATTER WHERE I TRACK THE FUNDS, WHICH IS KEY FOR THE ANALYSIS UNDER THE COURT SYSTEM AND IN... [INAUDIBLE] IT IS ENTIRELY WITHIN THE LEGISLATURE'S BUDGETARY OBLIGATION AND PREROGATIVE TO SELECT WHATEVER BOOKKEEPING MEASURE IT CHOOSES FOR STATE FUNDS.

>>... [INAUDIBLE] HOW DO YOU EXPLAIN THAT IN THE... [INAUDIBLE].

>> JUSTICE POLSON, WHAT I MEANT BY SAYING THAT THE ACCESS TO COURTS HAS NOT BEEN DENIED IS THAT WE THINK THE TRIAL COURT ERRED IN CONCLUDING THAT. BUT, ACCESS TO COURTS HAVE NOT BEEN DENIED HERE BECAUSE UNDER THEORY UNDER WHICH THE FARRABE, A FILING FEE VIOLATES THE RIGHT OF AC TO THE COURTS IF THE PRECEDES ARE NOT USED TO FUND THE ADMINISTRATION OF JUSTICE. THE FILING FEES ARE CLEARLY USED TO FUND -- REFUND THE ADMINISTRATION OF JUSTICE, EXPENSES OF THE LEGISLATURE AND ALL PLAINTIFFS ARE CHALLENGING IS A BOOK KEEPING ENTRY AND NOTHING ELSE.

>> YOU SAID WHAT IS AT ISSUE AND WHAT IS NOT?

WE ARE TALKING ONLY ABOUT A PORTION OF THE CIVIL FILING FEES?

>> YES.

>> \$80.

>> YES, JUSTICE PARIENTE.

>> I PROBABLY SHOULD ASK THIS TO THE RESPONDENT, TELL ME, WHY IS THE -- SINCE THERE ARE CERTAINLY GREATER FILING FEES FOR CIVIL CASES, WHY IS JUST THE \$80 -- WHAT IS DIFFERENT ABOUT THE \$80 THAN ANY OF THE OTHER AMOUNTS OF FILING FEES?

>> WELL THE PLAINTIFFS WOULD SAY IT IS -- THAT PARTICULAR \$80 IS TRANSFERRED INTO GENERAL REVENUE BUT IT BRINGS UP A GOOD POINT.

>> WHAT HAPPENED TO THE REST OF THE FILING FEES.

>> A PORTION OF IT GOES TO THE CLERK OF COURTS TRUST FUND, A PORTION GOES TO THE STATE COURT TRUST FUND, AND, I THINK THAT IS A VERY IMPORTANT POINT.

UNDER SECTION 28.372, WHICH HAS NOT BEEN CHALLENGED HERE ALL COURT FILING FEES ARE STATE FUNDS.

>> SO, ARE YOU SAYING OUT OF THE CIVIL FILING FEE, ONLY THE \$80 GOES INTO GENERAL REVENUE AND EVERYTHING ELSE GOES INTO A TRUST FUND?

>> A THIRD OF IT GOES TO THE CLINIC OF COURTS TRUST FUND, YES.

YES.

ANOTHER PORTION GOES TO THE STATE COURT TRUST FUND AND THESE

--

>> WHEN THAT AMOUNT WAS -- WAS THAT \$80 AN ADD-ON OR WHEN DID THE \$80 ADDITION COME INTO BEING?

>> THERE HAS BEEN A PORTION OF COURT FILING FEES TRANSFERRED INTO GENERAL REVENUE FOR I BELIEVE IT IS FOUR DECADES NOW, NOW, THE AMOUNT HAS INCREASED AS HAS THE AMOUNT OF FILING FEES. AS -- BACK IN 2007, I THINK IT WAS, IT WAS \$50. THAT WENT INTO GENERAL REVENUE. NOW --

>> WHY IS THE STATE -- IF THE IDEA IS THAT IT -- THIS IS INTENDED FOR COURT FILING, AND MAYBE THERE ISN'T A CONSTITUTIONAL ISSUE, BUT, WHAT WOULD BE WRONG WITH HAVING THAT ADDITIONAL \$80, GOING INTO THE COURT TRUST FUND AND THEN THERE WOULD BE LESS GENERAL REVENUE THAN -- BY THAT AMOUNT AND I DON'T KNOW IF THAT WILL SATISFY THE PROBLEM AND YOU SAY IT DOESN'T MATTER, DON'T MATTER IN EFFECT AND WHY WASN'T THAT DONE?

>> WELL, TWO RESPONSES, TO THAT, JUSTICE PARIENTE.

FIRST OF ALL, ALL OF THESE TRUST FUNDS AND GENERAL REVENUE ARE ALLSTATE POCKETS FOR THEIR FUNDS.

IT WILL ALWAYS REQUIRE AN APPROPRIATION BY THE LEGISLATURE, AND, THEY ARE -- THERE IS NO DIFFERENCE, METHOD OF ACCOUNTING INVOLVED WITH EACH OF THESE.

AND, SECONDLY --

>> THERE IS ONE THING WITH THE TRUST FUND, THE CFO TAKES' PERCENTAGE OF THE TRUST FUND THAT DOESN'T... WITH GENERAL REVENUE.

>> THAT MAY BE, JUSTICE PARIENTE BUT I THINK THAT THE PROBLEM IS, IT'S NOT A CONSTITUTIONAL ISSUE. AS TO WHICH ACCOUNTING METHODS THE LEGISLATURE SELECTS. AND THAT IS REALLY THE KEY HERE. I SEE MY TIME HAS EXPIRED, SO... THANK YOU.

>> MAY IT PLEASE THE COURT, RICHARD T. DONELAN, JR. AND I'M REPRESENTING THE CHIEF FINANCIAL OFFICER, ALEX SINK.

>> UNDER THE STATE LAW, THE CFO DOES GET A PERCENTAGE OF EVERY TRUST FUND, IS THAT CORRECT.

>> THE STATE LAW REQUIRES THAT FOR SOME TRUST FUNDS BUT NOT ALL TRUST FUNDS, THAT THERE IS AN ADMINISTRATIVE FEE WHICH IS TAKEN OFF OF THE BALANCE IN THE TRUST FUND, TO BE USED TO DEFRAY THE SERVICES TO THE TRUST FUND, THAT ARE PROVIDED BY GENERAL --

>> TRUST FUNDS ARE TREATED DIFFERENTLY THAN GENERAL REVENUE AS FAR AS EVEN THE LEGISLATURE IS CONCERNED, IS THAT CORRECT.

>> YES, I MEAN, THEY ARE NOT VIEWED AS SHALL WE SAY INVIOLEATE REPOSITORIES OF FUNDS.

ALL OF THE FUNDS WOULD BE ACCOUNTED FOR, THERE IS NOT A SEPARATE PILE OF MONEY ASSOCIATED WITH EACH ONE.

>> HOW MUCH THIS IS CIVIL FILING FEE, RIGHT NOW.

>> THE CIVIL FILING FEE, IS UP

TO \$395, EXCEPT IN THE CASE OF PROBATE WHERE IT IS MUCH HIGHER.

>> AND THERE IS FORECLOSURE AND ALSO -- IS ALSO HIGHER AND THE \$80, DO YOU KNOW THE DERIVATION OF THE \$80, AT WHAT POINT IN TIME THAT CAME IN AND WHETHER IT WAS A SPECIFIC PURPOSE FUND.

>> THERE IS NOTHING IN THE FILING FEE STATUTE THAT INDICATES WHAT THE MONEY SHOULD BE SPENT ON.

ORIGINALLY, GOING BACK AS FAR AS 1977, THERE WAS MONEY THAT WAS TAKEN OUT OF FILING FEES, AN EXTRA FEE THAT WAS TO BE PLACED IN GENERAL REVENUE, UNALLOCATED. AND THAT IS, OF COURSE THE GENERAL FUND OF MONIES, THE STATE'S ENTIRE BANK ACCOUNT, IF YOU WILL, JUSTICE PARIENTE.

>> BUT THE POSITION OF THE STATE SEEMS TO BE AND, AGAIN, I'M NOT... AT THIS POINT, NOT SEEING THE CONSTITUTIONAL PROBLEM, SO I WILL SIGNAL THAT.

BUT, I STILL -- THE IDEA THAT THERE ARE TRUST FUND MONIES IN A FEE, VERSUS IT BEING GENERAL REVENUE, EVEN THOUGH THE LEGISLATURE HAS THE ABILITY TO AT TIMES, WHAT WE CALL SWEEP THESE TRUST FUNDS THEY DO HAVE A SEPARATE MEANING UNDER THE LAW AND I THINK IN... SOMEWHAT IN PRACTICE, THERE ARE FUNDS DEDICATED TO A SPECIFIC PURPOSE, SO, SAY, IF THIS WAS LIKE THE OTHER CASE, A LIBRARY TRUST FUND, ARE YOU SAYING, REALLY, IT WOULDN'T MATTER IF -- \$80 FOR A LIBRARY TRUST FUND WHETHER IT

WENT INTO, WHEREVER IT WENT,  
EVEN IF IT DIDN'T GO TO A TRUST  
FUND AS LONG AS THE STATE  
PROVIDED THE EQUIVALENT AMOUNT  
IN REVENUE, BACK TO THAT  
SPECIFIC PURPOSE?

>> YES, AND THAT IS EXACTLY  
CORRECT.

IF, YOU KNOW, FOR THE SAKE OF  
ARGUMENT, THERE WAS NO  
ALLOCATION OF \$80 TO GENERAL  
REVENUE AND THE MONEY WERE  
PLACED IN THE CLERK OF THE COURT  
TRUST FUND FOR EXAMPLE WHERE ALL  
OF REVENUES WHICH ARE COLLECTED  
AT THE COURTHOUSE DOOR, SO TO  
SPEAK BY THE CLERKS ARE SENT TO  
THE DEPARTMENT OF REVENUE FOR  
DEPOSIT IN THAT TRUST FUND, WITH  
THE PORTIONS WHICH ARE  
DESIGNATED SPECIFICALLY IN  
SECTION... BEING DEPOSITED TO  
THE CREDIT, THE CREDIT, MIND  
YOU, OF OTHER FUNDS.

BUT WE ARE TALKING ENTIRELY WHEN  
WE ARE TALKING ABOUT DEPOSIT OF  
MONEY INTO THE STATE TREASURY,  
WE ARE TALKING ABOUT, IN ALL  
CASES, WHETHER IT IS TRUST FUND,  
WHETHER IT IS THE BUDGET  
STABILIZATION FUND, SO-CALLED  
RAINY DAY FUND, THEY ARE MERELY  
ACCOUNTING ENTRIES.

THE MONEY WHICH IS PLACED IN ALL  
OF THESE ACCOUNTS, IS COMMINGLED  
AND INVESTED BY THE CFO.

THERE IS CASH ON HAND, THAT IS  
KEPT, 17.57, REQUIRES THE CFO TO  
KEEP JUST ENOUGH CASH TO PAY THE  
BILLS AND, INVEST THE REST OF  
IT, SO THAT, YOU KNOW, THE  
TAXPAYERS WILL GET THE BENEFIT

OF THE INCREASE IN THE MONEY.

>> [INAUDIBLE].

>> THAT IS TRUE FOR TRUST FUNDS  
AS WELL.

>> LET ME ASK YOU THE QUESTION,  
I ASKED THE OTHER YOUNG LADY.  
ARE THERE OTHER SITUATIONS WHERE  
PEOPLE PAY FEES FOR A SPECIFIC  
PURPOSE AND PART OF IT GOES INTO  
GENERAL REVENUE?

FOR EXAMPLE, DOES THE STATE  
LICENSE SOMEONE, FOR EXAMPLE, TO  
BE ABLE TO PRACTICE ARCHITECTURE  
OR SOMETHING, AND, WITH PART OF  
THESE FEES, GO -- WOULD PART OF  
THESE FEES GO INTO GENERAL  
REVENUE, DO YOU KNOW WHETHER  
THAT HAPPENS OR NOT.

>> AS A GENERAL RULE, JUST --  
JUSTICE QUINCE THAT WOULD HAPPEN  
AT APPROPRIATION TIME, WHEN A  
PERSON USED TO -- I USED TO BUY  
THE PANTHER TAGS UNTIL I FOUND  
OUT FUNDS THAT WENT INTO THE  
PANTHER TRUST FUND WERE TAKEN  
OFF THE STOP AND SPENT ON OTHER  
THINGS.

>> WHAT.

>> TAKEN OFF THE TOP OF THE  
TRUST FUND AND SPENT FOR  
WHATEVER THE LEGISLATURE  
DETERMINED TO TAKE THE MONEY AND  
APPROPRIATE IT FOR.

AND, THAT IS REALLY THE CRUX.

>> I GUESS I'M STILL NOT SURE,  
THEN, WHY DO WE HAVE TRUST  
FUNDS?

THERE IS A COURT EDUCATION TRUST  
FUND AND IF SOMEONE TOLD ME THAT  
THAT MONEY, BECAUSE EVERY YEAR,  
THAT IS OUR FUND OF MONEY,  
AGAIN, WE KNOW THE LEGISLATURE

CAN DETERMINE, IF THERE IS EXCESS, THAT IT BE -- THEY MAKE A DECISION TO SWEEP SOME AMOUNT. BUT, IT IS BEING PAID IN FOR A SPECIFIC PURPOSE AND I'M STILL HAVING TROUBLE SAYING, WHY, THEN, WHY DO WE HAVE TRUST FUNDS AT ALL?

WHY NOT JUST SAY, IF THE CFO DECIDED EVERYTHING JUST GOES INTO GENERAL REVENUE, BUT WE'LL DO ACCOUNTING, WE SAVE OURSELVES AT LEAST THE PERCENTAGE OFF OF YOUR -- WE HAVE TO PAY, TO THE CFO, WHY DO YOU HAVE A TRUST FUND.

>> THE ANSWER TO THAT, MADAME JUSTICE IS, IT IS RELATED TO THE BUDGET PROCESS.

IT IS NOT SIMPLY A QUESTION OF TAKING A PILE OF MONEY AND SETTING IT ASIDE AND SAYING THIS IS ALL WE HAVE TO USE.

BECAUSE THE STATE'S BUDGETING PROCESS GOING FORWARD AND THIS IS WHERE THE REVENUE ESTIMATING CONFERENCES AND THINGS LIKE THAT COME IN, THE STATE TRACKS HOW ITS REVENUES COME IN TO HAVE A SENSE AS IT GOES ALONG, OF HOW MUCH MONEY IS EXPECTED TO BE AVAILABLE, NOT RIGHT NOW, BECAUSE, WE HAVE PLENTY OF MONEY TO PAY THE CURRENT BILLS, BUT, LOOKING AT THE FUTURE EXPECTATIONS, OF HOW REVENUES ARE COMING IN, I MEAN, THIS IS WHY WE HAVE THE REVENUE ESTIMATING CONFERENCES, AND DIRE PREDICTIONS THAT REVENUES GENERALLY ARE GOING TO BE...

>> WITH ALL DUE -- WITH

DEFERENCE, I DON'T THINK YOU  
HAVE REALLY ANSWERED MY  
QUESTION.

>>... TO A TRUST FUND.

THIS IS -- KEEP TRACK OF THAT.

>> ISN'T THE ANSWER TO THE  
QUESTION THAT OF WHY IT'S  
ORGANIZED THIS WAY IS BECAUSE  
THE LEGISLATURE DECIDED TO  
ORGANIZE IT THAT WAY.

>> AND THAT IS ABSOLUTELY  
CORRECT.

>> WELL ISN'T IT ANALOGOUS INTO  
A FAMILY SITUATION WHERE  
INDIVIDUALS MIGHT HAVE A SAVINGS  
ACCOUNT AND WHERE THEY PUT MONEY  
FOR SAVINGS, BUT, THEY MIGHT ON  
OCCASION DECIDE THAT THAT HAS TO  
BE USED FOR PURPOSES CURRENTLY.

>> YES.

AND THAT IS THE ONLY WAY THE  
STATE CAN MEET THE BALANCED  
BUDGET REQUIREMENT OF THE  
CONSTITUTION.

>> IS THE \$80 EVER PUT INTO A  
TRUST FUND.

>> THE \$80 HAS NEVER BEEN PUT  
INTO A TRUST FUND, TO THE BEST  
OF MY KNOWLEDGE.

>> YOU ARE NOW DOWN TO FOUR  
MINUTES.

>> AND, I WILL THEN RESERVE THE  
BALANCE OF MY TIME, THANK YOU  
VERY MUCH.

>> PLEASE THE COURT, I'M SID  
MATTHEW FOR THE APPELLEE, AND...  
I WILL TAKE 15 MINUTES AND DEFER  
FIVE TO MY COLLEAGUES.

FIRST OF ALL, THE TRIAL COURT  
THE HELD PROPERLY SO, THAT THE  
\$80 DIVERSION OF FILING FEES TO  
GENERAL REVENUE WAS A PER SE

CONSTITUTIONAL VIOLATION,  
BECAUSE, IT IMPAIRS THE ACCESS  
TO THE COURTS.

THE WAY THAT IT DOES IT IS BY  
OPERATION OF THE STATUTE.

THE STATUTE -- THESE MONIES ARE  
NOT FUNGIBLE.

>> ISN'T THAT -- THAT IS REALLY  
WHAT WE ARE -- WHAT WE ARE HERE  
FOR, IF, FOR EXAMPLE, NOW, LET  
ME GO -- WHERE IS THE \$80, WHEN  
DOES IT COME INTO LAW, AS BEING  
THE FEE FOR PART OF THE COURT  
FILING FEE?

>> IT CAME INTO BEING IN 2004.  
IN THE IN ENABLING LEGISLATION,  
2004, 1265, I POINT IT OUT ON  
PAGE 6 OF OUR BRIEF AND THE  
NUMBER WAS LITERALLY PLUCKED BY  
THE LEGISLATURE OUT OF THE AIR,  
WHICH IS A PROOF POSITIVE THAT  
IT WAS AN IRRATIONAL NUMBER, THE  
LEGISLATURE COULD HAVE PLUCKED  
IN THE CASE OF CHAPTER 2524 13B,  
THE LEGISLATURE CHARGES \$295 TO  
FILE A CROSS CLAIM OR  
INTERVENTION IN THE COURT AND  
THE LEGISLATURE PASSED THE  
STATUTE THAT... THE ENTIRE \$295  
TO GENERAL REVENUE.

NOW, THESE FUNDS ARE SEPARATE.

>> YOU ARE NOT CHALLENGING THAT.

>> WE ARE CHALLENGING THAT.

>> I THOUGHT YOU WERE ONLY  
CHALLENGING THE 80 --

>> WE CHALLENGE FIVE STATUTES AS  
TEST STATUTES FOR THE  
PROPOSITION THAT ANY DIVERSION  
OF TRUST FUNDS DIRECTLY TO  
GENERAL REVENUE IS PER SE  
UNCONSTITUTIONAL.

UNDER FLOOD, WHICH IS 1928, HAS

FOLLOWED CONSISTENTLY.

>> THE COURT... FROM IT IN A SUBSTANTIAL WAY IN LARABY, ISN'T THAT ACCURATE?

>> YES, SIR THEY DETERMINED A LAW LIBRARY WAS NOT IN THE FURTHERANCE OF THE ADMINISTRATION OF JUSTICE BUT THE COURT DECIDED FLOOD AS LATE AS 1991, IN THE ADVISORY OPINION ON THE VALIDITY OF SERVICE TAXES FOR LAWYERS, THE COURT REITERATED FLOOD CONSISTENTLY. HERE'S THE POINT:

WHEN THE CLERK COLLECTS THE FEES, UNDER -- STATUTE 2837, THEY ARE IMMEDIATELY EARMARK AS TRUST FUNDS TO THE CLERK OF COURTS TRUSS FUND UNDER THE JAC. THEY ARE TRUST FUNDS.

AND, UNDER THE STATUTE, TO ANSWER JUSTICE POLSON'S QUESTION, THOSE CANNOT BE INVESTED" AND UNDER 215-CITED BY COUNSEL, CHAPTER 215, GENERAL REVENUE IS SEPARATE FROM TRUST FUND.

THEY ARE SEPARATE.

AND, THESE FUNDS INHERIT A SEPARATE EARMARK FROM TIME THEY ARE COLLECTED FROM CLERK, AND, THEY ARE NOT DIVERTED DIRECTLY TO GENERAL REVENUE.

NOW, BY PLUCKING A NUMBER FROM THIN AIR, THE LEGISLATURE HAS DEMONSTRATED THE IRRATIONAL NATURE OF THE NUMBER.

BY PLUCKING \$295 FROM THIN AIR, THEY HAVE DEMONSTRATED THAT THERE IS NO RATIONAL RELATIONSHIP BETWEEN THAT NUMBER AND THE PURPOSE OF THE STATUTE

WHICH IS TO PAY FOR THE  
ADMINISTRATION OF THE...

>> BUT, IF -- HAVE YOU BEEN ABLE  
TO ESTABLISH... I MEAN, I  
APPRECIATE YOUR POINT AND IF  
SOME OF THE FILING FEES WERE  
GREATER THAN THE AMOUNT OF THE  
LEGISLATURE FUNDED, THE COURT  
SYSTEM, THERE WOULD BE ACTUAL  
HARM.

BUT, IF -- DO YOU TAKE ISSUE  
WITH THE FACT THAT IF YOU --  
THAT YOU TAKE ALL THE FILING  
FEES, THAT BETWEEN THE CLERKS OF  
THE COURT AND THE OTHER JUSTICE  
SYSTEM PARTNERS INCLUDING THE  
COURT SYSTEM THAT THE  
LEGISLATURE HAS ACTUALLY FUNDED  
MORE THAN THE AMOUNT OF THE TOTE  
-- TOTAL AMOUNT OF FILING FEES.

>> THE RECORD IS OTHERWISE.  
THE LEGISLATURE DOES NOT TAKE  
THESE MONIES, DIVERTED TO  
GENERAL REVENUE AND  
REAPPROPRIATE THEM BACK INTO THE  
SYSTEM, THE LAST 2-3 YEARS THAT  
HAS NOT BEEN THE CASE.

>> AS TO A SPECIFIC DOLLAR, THAT  
IS... [INAUDIBLE] I WOULD  
CHARACTERIZE IT AS A BUCKET  
ARGUMENT, THE SAME MONEY HAS TO  
BE COLLECTED IS THE SAME MONEY  
USED BUT I... YOU DON'T DISPUTE,  
DO YOU, THAT THERE WAS  
SUBSTANTIALLY MORE MONEY SPENT  
BY THE LEGISLATURE, BE IT FROM  
GENERAL REVENUE, TRUST FUNDS,  
WHATEVER SOURCES, FOR EVEN THE  
JUDICIAL BRANCH THAN WHAT WAS  
COLLECTED BY THE CLERKS.

>> IN TERMS OF PURE NUMBERS,  
THAT IS CORRECT.

BUT, THE POINT IS, AND IN ANSWER TO YOUR QUESTION ON WHY ARE THE STATUTES SET UP THIS WAY?

THE PURPOSE IS STABILITY IN COURT FUNDING.

THAT IS WHAT ARTICLE 5, SECTION 14 WAS ALL ABOUT.

IT WAS TO SET ASIDE THESE FILING FEES, TO, IN A TRUST FUND, TO BE READILY AVAILABLE TO PAY THE COST OF THE ADMINISTRATION OF JUSTICE, AND, NOT BE CHURNED THROUGH THE DEPARTMENT OF REVENUE TO THE GENERAL REVENUE FUND, BACK THROUGH THE LABORIOUS LEGISLATIVE APPROPRIATIONS PROCESS, AND THE NEXT YEAR, BACK TO THE COURT SYSTEM, TO PAY THE BILLS THAT SHOULD HAVE BEEN PAID A YEAR AGO.

>> BUT YOU -- I MEAN, THE WAY THE BUDGET WORKS, THOUGH, AND, JUST THOUGH THIS IS BEING ASKED OF THE GENERAL PUBLIC, IT'S NOT AS IF WHEN MONEY COMES INTO ONE OF THESE TRUST FUNDS, THAT THE COURT OR WHATEVER IS THE BENEFICIARY OF THE TRUST FUND GETS TO SPEND ANY MORE THAN HAS BEEN APPROPRIATED BY THE LEGISLATURE, IN OTHER WORDS, WE MAY HAVE MORE MONEY IN OUR EDUCATION TRUST FUND BUT IF WE WANTED ADDITIONAL POSITIONS, WE STILL HAVE TO GO THROUGH THE LEGISLATIVE PROCESS.

IT IS NOT THERE, FOR THE COURT SYSTEM JUST TO USE, AS SOMEBODY MIGHT BE ABLE TO USE A SEPARATE SAVINGS ACCOUNT.

DO YOU AGREE WITH THAT.

>> THAT IS EXACTLY CORRECT.

WE DO NOT CHALLENGE THE LEGISLATURE'S ABSOLUTE PREROGATIVE TO APPROPRIATE THE MONEY BUT THERE IS TO PROBLEM WITH THEM APPROPRIATING THE MONEY OUT OF THE CLERK OF THE COURT'S TRUST FUND IN THE JAC. IF THEY APPROPRIATE THE MONEY OUT OF THERE, WE STILL HAVE THE CONTINUITY AND STABILITY IN FUNDING.

THAT IS THE WHOLE PURPOSE BEHIND ARTICLE 5, SECTION 14.

AND THE CREATION OF THESE TRUST FUNDS.

THEY ARE COMPLETELY SEPARATE AND AS FAR AS THE INVESTMENT GOES, IT IS TRUE THEY CAN SWEEP UNNEEDED SURPLUS.

THIS COURT TOOK JUDICIAL NOTICE WITHOUT ANY OBJECTION BY THE STATE, THE COURTS IN FLORIDA ARE UNDER FUNDED.

IN THAT PARTICULAR SITUATION, ALL OF THESE MONIES ARE DESPERATELY NEEDED.

NOW, THESE ARE NOT...

>> WHAT IS THE BASIS FOR THAT JUDICIAL NOTICE, THE JUDGE'S SALARY HAD BEEN REDUCED.

>> NO, SIR, HE SAID THAT, HE SAID THE JUDGE'S SALARY WAS REDUCED BUT THE COURT HELD IN THE FEBRUARY 25, 2010 OPINION IN RE: THE CERTIFICATION OF THE NEED FOR NEW JUDGES, THAT FOR TRIAL COURTS, REPORTS OF NO NEW JUDGESHIPS FOR THE LAST THREE FISCAL YEARS SLOWED CASE PROCESSING TIMES AND NEGATIVELY IMPACTED... RATES AND JUSTICE IN MANY CASES IS DELAYED.

>> BUT, ALL OF THIS... I THINK I UNDERSTAND YOUR ARGUMENT. BUT, IT SEEMS TO BE DETACHED FROM THE REALITY THAT YOU HAVE NOT CONCEDED THAT THE LEGISLATURE IS PROVIDING MORE FUNDS FOR THE JUDICIAL SYSTEM, THE COURTS AND THE CLERKS, THAN THE CLERKS ARE COLLECTING IN FILING FEES.

SO, AND THE ARGUMENT THAT THE MONEY IS NOT FUNGIBLE, I DON'T UNDERSTAND THAT.

MONEY IS INHERENTLY FUNGIBLE. I MEAN, THE WHOLE FINANCIAL SYSTEM OPERATES ON THE CONCEPT THAT, YOU KNOW, WE DON'T HAVE PIECES OF PAPER THAT HAVE TO BE USED FOR PARTICULAR PURPOSES, WE HAVE ACCOUNTS.

SO, WOULD YOU EXPLAIN TO ME THE CONCEPT THAT MONEY ISN'T FUNGIBLE.

>> THE CONCEPT IS THAT ACCORDING TO FLORIDA STATUTE 2837.2 THE CLERK COLLECTS THE MONEY UNDER FLORIDA STATUTE 215-31 AND IS EARMARKED AS A TRUST FUND TO BE DEPOSITED IN THE CLERK OF THE COURT'S TRUST FUND, AND, FURTHERMORE, THE CFO CANNOT SWEEP THOSE MONIES FOR INVESTMENT PURPOSES, TO GENERAL REVENUE.

THAT IS CHAPTER 1761.

THE JAC AND THE CLERK OF THE COURT'S TRUST FUNDS ARE EXEMPTED BY STATUTE 1761 FROM BEING SWEEPED TO GENERAL REVENUE FOR INVESTMENT PURPOSES.

THEY ARE EXEMPT.

BOTH OF THEM.

IT SAYS.

YOU CANNOT DO IT.

NOW THERE'S A PURPOSE FOR THAT  
AND THAT IS THE STABILITY IN  
COURT FUNDING AND THE QUESTION,  
DO THEY APPROPRIATE MORE MONEY  
THAN THEY SWEEP IN THE INITIAL  
EARMARKED FILING FEES, THE  
QUESTION IS ARE THE COURTS IN  
FLORIDA UNDER FUNDED?

IF THEY ARE SWEEPING THE MONEY  
TO GENERAL REVENUE, THAT IS A  
PER SE VIOLATION OF ACCESS TO  
COURTS UNDER ARTICLE 1, SECTION  
21 AND HAS BEEN THAT WAY SINCE  
1928 IN THE FLOOD CASE WHICH HAS  
BEEN FOLLOWED, AS RECENTLY AS  
JANUARY BY THE OKLAHOMA --

>> BUT UNDER YOUR THEORY, ISN'T  
IT THE CASE, IF THE LEGISLATURE  
REARRANGED THE WAY THE ACCOUNTS  
ARE ORGANIZED, THEY CAN GIVE  
EXACTLY THE SAME AMOUNT OF MONEY  
TO THE ADMINISTRATION OF  
JUSTICE, AND YOU'D HAVE TO  
CLAIM.

>> WE WOULD HAVE A CLAIM UNDER  
ARTICLE 5, SECTION 14, THAT  
THERE IS A PER SE FUNDAMENTAL  
RIGHT OF ADEQUATE FUNDING OF THE  
COURTS.

AND, FOR THE LAST THREE YEARS,  
ACCORDING TO THIS COURT --

>> AND FOR THE VIOLATION THAT  
YOU... THE JUDGE HAS DECIDED  
THAT VIOLATED BY TAKING JUDICIAL  
NOTICE OF SOMETHING.

>> WE TOOK JUDICIAL NOTICE  
ACCORDING TO THIS COURT'S PAST  
THREE OPINIONS ON CERTIFICATION  
OF THE NEED OF JUDGES, THAT THE  
COURTS WERE UNDER FUNDED IN

FLORIDA... BEING CAUSED AND BACKLOGS AND DELAYS ARE BEING CAUSED AND CIVIL CASES ARE PUT TO THE BACK OF THE DOCKET, BEHIND SPEEDY TRIAL CRIMINAL CASES, THE COURTS ARE IN CRISIS BECAUSE THE LEGISLATURE IS UNDER FUNDING THE COURT SYSTEM, AND, WE ARE CRYING OUT FOR SOME HELP, WE NEED STABILITY IN COURT FUNDING, AND, THERE IS NO RATIONAL BASIS FOR SWEEPING \$80 OR \$245 OR \$285 --

>> LET ME ASK YOU.

>> TO THE GENERAL REVENUE FUND.

>> HOW MUCH DOES THAT 80 -- HOW MUCH DOES THE \$80 PER FILING FEE TOTAL IN A YEAR'S TIME.

>> IN 19 -- 2008, IT WAS \$186 MILLION.

>> AND, HOW MUCH MONEY IS TOTALLY COLLECTED IN FILING FEES, DO YOU KNOW WHAT THAT FIGURE IS.

>> IT IS ABOUT 4 OR \$500 MILLION.

DEPENDING UPON THE ECONOMICS.

>> AND DO YOU KNOW HOW MUCH MONEY IS SPENT, TOTALLY, FOR THE ADMINISTRATION OF JUSTICE?

>> ALL COLLECTED, A BILLION DOLLARS WAS DEFENSE EXHIBIT NUMBER ONE, \$1.1 BILLION, IN 2008.

>> I GUESS, THIS IS WHAT -- WHERE WE ARE REALLY HAVING THE PROBLEM HERE.

I APPRECIATE THE ARGUMENT YOU ARE MAKING, AND... [INAUDIBLE] THE COURT UNDER BUDGET AND THE PROBLEM I AM HAVING HERE, IF IN FACT THE STATE IS SPENDING OVER

A BILLION DOLLARS, AS YOU SAID  
BUT THE FILING FEES ONLY COME UP  
TO HALF A BILLION DOLLARS, I'M  
NOT SURE THAT I'M GETTING THE  
TRUE CONNECTION HERE, THAT YOU  
ARE MAKING.

WHY THEN, ARE WE HAVING THIS  
ARGUMENT, THAT THIS IS A -- AN  
ACCESS TO THE COURTS ISSUE.

>> THE REASON IS THAT JUSTICE  
SHALL NOT BE SOLD, DENIED OR  
DELAYED AND JUSTICE IS BEING  
DELAYED ACCORDING TO THE LAST  
THREE OPINIONS OF THIS COURT,  
AND THE FIRST \$80, JUSTICE  
QUINCE, ARE NEEDED FOR THE  
STABILITY IN COURT FUNDING.

WE NEED THE READY FUNDS.

>> LET'S ASSUME... LET'S ASSUME  
THE \$80 IS NOW GIVEN TO THE  
STATE COURT TRUST FUND.

THAT \$80 WOULD STILL NOT BE  
ENOUGH, IF YOU ADD IT TO WHAT IS  
ALREADY THERE, WOULD THAT BE  
ENOUGH AND WOULDN'T YOU STILL  
NEED OTHER FUNDS TO COMPLETELY  
FUND THE COURT SYSTEM.

>> YES, MA'AM, WE WOULD.

BUT THE \$186 MILLION WILL GO A  
LONG WAY TOWARD GETTING OUR  
CIVIL ACTION CASES TO TRIAL,  
RATHER THAN RUN THEM THROUGH THE  
MILL OF THE LEGISLATIVE PROCESS

--

>> WOULD YOU WOULD THAT  
NECESSARILY GET TRICKLED DOWN TO  
THE CIVIL, BECAUSE IF YOU GIVE  
IT TO THE COURT'S TRUST FUND,  
YOU CAN USE IT FOR ANY  
ADMINISTRATION OF JUSTICE ISSUE  
IN THE COURT SYSTEM.

CORRECT?

>> YES.

AND THE ANSWER IS, THAT WE HAVE TO TRUST THAT THE LEGISLATORS ARE GOING TO FOLLOW THEIR OATH TO THE CONSTITUTION TO ADEQUATELY FUND THE COURT SYSTEM, AND TO APPROPRIATE THE MONEY OUT OF THE CLERK OF THE COURT'S TRUST FUND, TO THE COURT SYSTEM, AND, NOT TO SOME OTHER EXECUTIVE BRANCH PROGRAMS LIKE THEY'VE DONE FOR THE LAST TWO OUT OF THREE YEARS.

ALL OF THE INCREASED --

>> YOU KNOW, THAT IS ALL WAS AN INTERESTING ARGUMENT TO ME. HOW DO WE KNOW THAT IS WHAT HAS BEEN DONE WITH THE \$80?

>> IN VOLUME 8, OF THE RECORD, PLAINTIFFS EXHIBIT 46, TAB L TO OUR APPENDIX TO THE BRIEF, WE PRODUCED THE CONFERENCE COMMITTEE, FINAL CONFERENCE COMMITTEE REPORT WHICH SHOWS IN 2008, WHEN WE HAD THE \$186 MILLION DIVERSION, ZERO DOLLARS FROM THOSE INCREASED FILING FEES WERE APPROPRIATED BACK TO THE COURT SYSTEM.

BOTH THE HOUSE AND THE SENATE AGREED ZERO DOLLARS FROM INCREASED FILING FEES WOULD BE APPROPRIATED BACK TO THE COURT SYSTEM.

AND, AS EARLY AS THIS YEAR, 2010, \$4 MILLION WAS DIVERTED OUT OF THE CLERK OF THE COURT'S TRUST FUND, AND THE ARBITRATION AND MEDIATION TRUST FUND, NEVER REPLENISHED, LEAVING THOSE ACCOUNT SHORT OF CASH, SO THE LEGISLATURE DID NOT REPLENISH

THOSE AND TOOK THE MONEY OUT,  
AND, WE HAVE HAD TWO OTHER  
INSTANCES, THE CHILD EDUCATIONAL  
ENDOWMENT TRUST FUND, \$345  
MILLION WAS DIVERTED OUT OF THAT  
TRUST FUND...

>> NOW YOU ARE RAISING A BIGGER  
ISSUE ABOUT THE WHOLE NEXT OF  
WHAT ARE TRUST FUNDS, IN THE  
STATE, ARE SECURE, THE CFO'S  
ATTORNEY HAS SAID, NO, TRUST  
FUNDS ARE NO DIFFERENT THAN  
GENERAL REVENUE AND I THINK YOU  
ARE ACTUALLY ABOUT TO GO INTO  
SOMEONE ELSE'S TIME.

SO --

BUT I THINK YOU ARE RAISING A  
GENERAL -- SOMETHING THAT GOES  
ACROSS THE BOARD ABOUT SWEEPING  
TRUST FUNDS.

>> TRUST FUNDS HAVE A PURPOSE,  
IT IS STABILITY IN FUNDING AND  
WE ARE ASKING THAT THE TRUST BE  
PUT BACK INTO THE WORD "TRUST  
FUND".

[INAUDIBLE].

>> MAY IT PLEASE THE COURT, TWO  
MATTERS OF CLARIFICATION.  
JUSTICE CANADY, FIRST OF ALL,  
FARRABEE DID NOT OVERRULE FLOOD,  
IT AFFIRMED IT.

THE ONLY DISTINCTION IT MADE WAS  
WHETHER A LAW LIBRARY WAS PART  
OF THE COURT SYSTEM BUT IT  
AFFIRMED THE FUNDAMENTAL BASIC  
UNDERPINNINGS OF THE  
CONSTITUTIONAL PRINCIPLES IN  
FLOOD.

THIS IS NOT ONLY AND ACTIONS TO  
COURTS ISSUE.

THE ARTICLE 1, SECTION 21 OF THE  
CONSTITUTION SAYS, EVERY COURT

SHALL BE OPEN AND ADMINISTERED WITHOUT SALE.

THAT IS A TERM IN SALE, IF YOU GO BACK TO FLOOD, WHICH JUSTICE TERRELL VOTED IN FAVOR OF THAT DECISION, THE MERE ACT OF -- >> IS THAT SUPPOSED TO HAVE SIGNIFICANCE?

>> WELL, I THINK IT DOES.

HE'S A DISTINGUISHED MEMBER OF THE COURT.

BUT, WHAT I WANT TO SAY, IS THAT THE VERY ACT OF IMPOSING A TAX TO GAIN ACCESS TO THE COURTS IN FLOOD, THE SUPREME COURT -- THIS SUPREME COURT DETERMINED THAT THAT WAS THE SALE OF JUSTICE.

IT DOESN'T MATTER WHAT HAPPENS TO THE MONEY LATER.

ALL OF THESE QUESTIONS THAT YOU HAVE BEEN POSING ARE AS APPLIED, RATHER THAN A --

>> WHAT IS THE --

>>... CONSTITUTIONALLY CHALLENGED .

>> YOU ARE FOCUSING ON THE WORD, SALE.

HELP ME UNDERSTAND WHAT YOU MEAN BY THAT.

DOES YOUR ARGUMENT REALLY MEAN, CHARGING ANY FILING FEE IS A VIOLATION OF THE CONSTITUTIONAL PROVISION.

>> BUT TAXING SOMEONE FOR ACCESS IS BY DEFINITION THE SALE OF JUSTICE AS DISCUSSED BY THE SUPREME COURT, IN THE FLOOD CASE.

>> FILING FEES THEMSELVES --

>> NO.

NO.

THE FILING THESE THEMSELVES ARE

NOT.

BUT, CHARGING A TAX, WHICH THIS WOULD BE, BECAUSE IT DOESN'T GO ON ITS FACE, ON THE FACE OF THE STATUTE, IT DOES NOT GO TO THE COURT SYSTEM.

IT IS DIVERTED AWAY FROM THE COURT SYSTEM.

>> [INAUDIBLE].

>> IT SEEMS LIKE THE ARGUMENT IS, THAT IT IS REALLY A TRUST FUND WHICH CANNOT BE SWEEPED, CONSTITUTIONALLY.

THAT SAME -- SEEMS IN ESSENCE TO BE WHAT ARE ARGUING, MONIES COLLECTED OUGHT TO BE TREATED AS A TRUST FUND AND CANNOT BE SWEEPED AND I'M STRUGGLING WITH THAT, BECAUSE, IN ARTICLE 3, SECTION 19F, THE FLORIDA CONSTITUTION CLEARLY SETS FORTH HOW TRUST FUNDS WILL BE DEALT WITH AND FOR LARGE PART BY CONTROL OF THE LEGISLATURE.

AND IN FACT THEY TERMINATE AFTER FOUR YEARS.

SO, THE CONSTITUTION DOESN'T STRUCTURALLY ACCOMMODATE YOUR ARGUMENT, IT SEEMS TO ME.

THAT IS WHAT I'M STRUGGLING WITH, ALTHOUGH MAYBE IT IS A GOOD IDEA, CONSTITUTIONALLY TO CHANGE TO IT ACCOMMODATE WHAT YOU ARE SAYING BUT I DON'T SEE WHERE IN THE CONSTITUTION IT SAYS THAT.

>> WELL, AGAIN, JUDGE, WHAT YOU ARE FOCUSING ON IS WHAT HAPPENS AFTER THE MONEY IS COLLECTED. WHAT WE SAY, IS A PER SE VIOLATION OF THE CONSTITUTION IS THE VERY ACT OF CHARGING A TAX

FOR ACCESS TO THE COURTS TO  
BEGIN WITH.

REGARDLESS OF WHAT HAPPENS TO  
THE MONEY ONCE IT IS IN THE  
SYSTEM.

>> NO MATTER WHERE --

>> NO, NO, WHERE -- THE ACT --  
OF REQUIRING THE DEPOSIT OF THE  
MONEY INTO THE GENERAL REVENUE  
AND NOT -- RENDERS IT TO BE A  
TAX.

>> SO --

>>... FOR THE COURT INTO THE  
VERY FACT THAT \$80, YOU -- ARE  
YOU BASICALLY SAYING THAT THAT  
\$80 IS REALLY NOT A FILING FEE,  
BUT IS A TAX THAT IS PAID --

>> IS A TAX PAID IN EXCESS OF  
WHAT THE FILING FEE SHOULD BE.

>> EXACTLY BECAUSE BY DEFINITION  
IT IS A TAX, AND, IF YOU READ  
FLOOD, FARRABEE ALL THE  
DECISIONS ALL OVER THE COUNTRY  
THAT CONSIDERED THIS ISSUE,  
ALMOST UNIVERSALLY THEY DECLARED  
THE INCREMENTAL AMOUNT DIVERTED  
TO GENERAL REVENUE OR A CHARGE  
THAT GOES TO -- FOR ACCESS TO  
THE COURTS, GOES TO SOMETHING  
OTHER THAN THE COURT SYSTEM, TO  
BE A TAX.

>> LET ME ASK YOU THIS.

IF YOU ARE RIGHT ABOUT ALL OF  
THAT, WHY WOULDN'T PEOPLE WHO  
HAVE PAID THAT UNCONSTITUTIONAL  
TAX AS YOU HAVE REFERRED TO IT,  
BE ENTITLED TO PURSUE A CLAIM TO  
GET BACK, ASSUMING THEY ARE NOT  
BARRED BY THE NINE-POINT STATUTE  
OR SOME STATUTE OF LIMITATIONS.

>> I DON'T KNOW, JUDGE, THAT IS  
NOT OUR ISSUE AND WE HAVE NOT

SOUGHT THAT.

WHAT WE SAY IS THE MONEY NEEDS TO STAY IN THE SYSTEM AND THAT WHAT IS THE TRIAL COURT'S ORDER DOES AND SO I... I CANNOT RESPOND TO YOUR QUESTION.

ALL I'M SAYING THAT IS IF THE COURT FOCUSES ON WHETHER OR NOT THIS IS A FACIAL CONSTITUTIONAL CHALLENGE TO THIS, ALL OF THIS DISCUSSION WE HAVE HAD ABOUT WHAT HAPPENS TO IT, THE ACCOUNTING OF IT AND EVERYTHING IS IRRELEVANT TO THE DETERMINATION OF THAT CONSTITUTIONAL ISSUE.

>> THANK YOU VERY MUCH.

YOUR --

>> I GUESS MY FINAL QUESTION TO YOU, WOULD BE, ASSUMING THAT YOU KNOW, THE FILING FEE IS \$350, AND WHATEVER IT IS, AND, IF THAT PROVISION ABOUT THE \$80, IS NOT THERE AND THE \$80, SIMPLY WENT INTO THE CLERK'S TRUST FUNDS AND AT THE END OF THE YEAR IT WAS MORE THAN THE CLERKS NEEDED TO OPERATE, AND, THEN WENT TO GENERAL REVENUE, WOULD YOU STILL HAVE THE SAME ARGUMENT?

>> YOU MEAN, IF IN FACT WHEN YOU PAID THE FILING FEE, THE STATUTE REQUIRED THAT IT BE KEPT IN THE COURT SYSTEM?

>> THAT'S RIGHT.

>> YES.

-- AT THE END OF THE YEAR.

>> AT THE -- YES, I THINK TO ANSWER YOUR QUESTION, IT WOULD NOT BE A TAX UNDER THOSE CIRCUMSTANCES, SO, IT WOULDN'T BE SUBJECT TO FACIAL

CONSTITUTIONAL CHALLENGE.  
NOW, AT THE END OF THE DAY, WHAT  
THE LEGISLATURE DID WITH IT OR  
WHETHER THEY TRIED TO SWEEP IT  
LATER ON, THAT MIGHT POSE A  
DIFFERENT SET OF CONSTITUTIONAL  
CHALLENGES.

BUT, IF THE MONEY WAS DESIGNATED  
BY THE STATUTE, THAT REQUIRED  
YOU TO FILE A LAWSUIT, TO STAY  
IN THE COURT SYSTEM, THEN IT  
WOULD NOT BE IN OUR OPINION A  
TAX FOR ACCESS TO THE COURTS.  
AND IT WOULDN'T BE A SALE OF  
JUSTICE.

>> THANK YOU.

MR. DONELAN.

>> THANK YOU, MR. CHIEF JUSTICE.

THIS CASE IS FATALLY FLAWED.  
THE OPINION BELOW WAS FATALLY  
FLAWED BECAUSE IT ATTEMPTS TO  
ATTACH CONSTITUTIONAL DIMENSION  
TO THE WAY THE STATE ACCOUNTS  
FOR ITS MONEY.

YOU READ LITERALLY THE OPINION  
BELOW, IT SAYS THAT THE  
DEPOSITING OF \$80 FROM A FILING  
FEE CAUSES THIS UNDERFUNDING OF  
THE COURT SYSTEM AND THAT IS  
SIMPLY NOT TRUE AS A MATTER OF  
FACT.

NOT TRUE AS A MATTER OF LAW.

>> IT SEEMS -- HIS ARGUMENT AND  
WHETHER IT MAKES ANY DIFFERENCE,  
FOR THE ISSUE OF UNDERFUNDING IS  
THAT THE \$80, BY BEING DIVERTED  
AND DEPOSITED INTO GENERAL  
REVENUE, RENDERS THAT A TAX AS  
OPPOSED TO A FEE FOR THE FUNDING  
OF THE COURT SYSTEM AND THAT IS  
-- I MEAN, THAT IS THE ARGUMENT  
AND YOU ARE SAYING IT DOESN'T

MATTER, BECAUSE, IT DOESN'T --  
IT'S NOT THE CAUSE OF THE UNDER  
FUNDING BECAUSE, THERE IS MORE  
MONEY BUT IN THAN IS COLLECTED.  
IS THAT YOUR ARGUMENT.

>> THAT IS MY ARGUMENT.

NO MATTER WHERE THAT \$80 PIECE  
OF THE FUNDING -- IF, YOU KNOW,  
FOR THE SAKE OF ARGUMENT, THE  
\$80 PER PUT WITH THE \$180, THAT  
IS CURRENTLY GOING FROM THE  
FILING FEE INTO THE COURT'S  
REVENUE TRUST FUND, AT THE END  
OF THE FISCAL YEAR, BEFORE THE  
UPCOMING APPROPRIATIONS YEAR, IT  
IS THE DECISION OF THE  
LEGISLATURE AS TO WHETHER TO  
SPEND THAT MONEY.

AND, IF THE LEGISLATURE DOES NOT  
DETERMINE TO SPEND THE MONEY,  
WHERE DOES THE MONEY STAY?  
IT STAYS IN THE STATE TREASURY,  
AND IT GETS INVESTED BY MY BOSS.  
SO THAT JUST PUTTING IT IN IS  
NOT A PROXY FOR HOW IT IS GOING  
TO BE SPENT.

AND, CRITICALLY, YOU KNOW, WHEN  
ARTICLE 5 PROVISION 7 WAS  
PASSED, TO TRANSFER THE  
RESPONSIBILITY FOR FUNDING OF  
THE ADMINISTRATION OF JUSTICE,  
TO THE STATE, THAT IS AN  
ENTIRELY DIFFERENT SITUATION.  
THAN IT WAS APPLICABLE IN THE  
YEARS OF FLOOD IN 1928, AND,  
FARRABEE IN 1971, THE  
FUNDAMENTAL... WAS LOCAL  
AUTHORITIES WOULD FUND THE COURT  
SYSTEM AND THE STATE WOULD PAY  
THE SALARIES OF THE JUDGES AND  
OF COURSE THE STATE PAID THE  
SALARIES OF THE JUDGES OUT OF

GENERAL REVENUE, IT WAS HARDLY IRRATIONAL THAT A SMALL PIECE OF GENERAL REVENUE WOULD BE TAKEN OUT OF THE FILING FEE, THAT OTHERWISE WAS THE PROPERTY OF THE CLERK.

IF THE CLERK WERE A FEE OFFICER, THAT WAS HOW THE CLERK PAID THE SALARY AND THE OPERATIONS OF HIS OFFICE.

NOW, CLERKS ARE PAID BY THE STATE FOR THEIR COURT RELATED SERVICES.

ALL OF THE REVENUES, THAT ARE TAKEN IN AT THE COURTHOUSE DOOR ARE STATE FUNDS FROM THE MINUTE THAT IT COMES TO THE CLERK.

AND, SO, ALL WE ARE TALKING ABOUT IS HOW, ACCOUNTING PURPOSES, STATE REVENUES ARE TRACKED AND ONCE THOSE REVENUES ARE TRACKED, THEN IT GOES TO A NEXT STEP, WHICH IS, THAT THE LEGISLATURE MAKES THE APPROPRIATIONS.

>> IS THERE ANYTHING IN THE LEGISLATIVE HISTORY THAT TELLS US WHY THE LEGISLATURE DECIDED TO TAKE THIS \$80 AND PUT IT IN GENERAL REVENUE?

>> NOT THAT I'M AWARE OF, MADAME JUSTICE.

BUT, ONE CAN INFER THAT BECAUSE THE JUSTICE SYSTEM IS NOT ONLY THE CIVIL COURT SYSTEM, BUT THE CRIMINAL COURT SYSTEM, THAT DOES NOT PAY FOR ITSELF, THAT THEY WERE LOOKING TO TAKE... AS PERMITTED, LITERALLY IN THE LANGUAGE OF THE COURT'S FARRABEE DECISION, TO TAKE INTO THE COURT OF THE ADMINISTRATION TODAY AND

IT IS A LOT MORE AS THE PANOPLY OF SERVICES PROVIDED THROUGH THE JUSTICE SYSTEM, GUARDIAN AD LITEM, VARIOUS THINGS THAT WERE NOT EVEN CONTEMPLATED IN 1928.

SO ALL OF THE CFO -- ALL THE CFO HAS TO SAY TO THE COURT TODAY IS WE ARE TRYING TO KEEP TRACK OF THE MONEY.

WE HAVE NO CONTROL OVER WHAT THE LEGISLATURE DOES TO APPROPRIATE IT, BUT, THE MERE FACT THAT THE MONEY IS DISPOSED IN GENERAL REVENUE IS NOT A CONSTITUTIONAL VIOLATION.

IF FOR THE SAKE OF ARGUMENT, ONCE AGAIN, THE LEGISLATURE WERE TO SAY WE'RE GOING TO TAKE THE MONEY AND SPEND IT DELIBERATELY ON THIS AND NOT ON THE ADMINISTRATION OF JUSTICE, THEN THAT CONCEIVABLY COULD BE A VIOLATION OF THE NOTION THAT YOU CANNOT CHARGE MONEY TO A PERSON WHO ENTERS THE JUSTICE SYSTEM AND THEN USE THAT FOR OTHER PURPOSES.

BUT, THERE IS NO SHOWING IN THIS CASE, WE WERE NOT PERMITTED TO MAKE THE SHOWING, THAT THE STATE SPENDS A WHOLE LOT MORE MONEY ON THE ADMINISTRATION OF JUSTICE THAN IT POSSIBLY COULD TAKE FROM THE \$80 FEE AND I CAN SAY, SINCE MR. MATHEWS WAS MAKING FACTUAL REPRESENTATION TO THE COURT, I COULD REPRESENT TO THE COURT THAT THIS PAST FISCAL YEAR THERE WERE INSUFFICIENT FUNDS IN THE CLERK OF COURT'S TRUST FUND TO PAY FOR THE CLERK OF COURT'S ACTIVITIES.

AND IRONICALLY, MONEY WAS TAKEN FROM THE COURT'S REVENUE TRUST FUND TO MAKE UP THAT DIFFERENCE. AND THAT, OF COURSE, IS HOW THE SYSTEM WORKS IN PRACTICE. BUT MONEY IS MONEY, MR. JUSTICE CANADY YOU ARE ABSOLUTELY CORRECT, MONEY IS FUNGIBLE AND WHEN IT COMES INTO OUR TREASURY, WE INVEST IT, WE HAVE MONEY THAT WE KEEP TO PAY THE BILLS, AND IT IS NOT A QUESTION OF THERE BEING A DISPARATE NEED FOR THE \$80 AND THE CLERKS CAN KEEP THEIR DOORS OPEN, WE PAY THE BILLS AND PAY THEM ON TIME AND THAT IS NOT A PROBLEM AND --

>> YOU ARE INTO OVERTIME NOW.

>> THANK YOU SO MUCH.

>> THANK YOU, WE THANK YOU ALL, VERY MUCH.