

>> ALL RISE.

HEAR YE HEAR YE HEAR YE.

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,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING, AND WELCOME TO
THE FLORIDA SUPREME COURT I
THINK I SEE FOLKS HERE FROM THE
APPELLATE PRACTICE SECTION AND I
WANT TO WELCOME YOU.

WE NOW TURN TO THE SINGLE CASE
ON OUR DOCKET TODAY, WHICH IS
DELMONICO VERSUS TRAYNOR.

>> MR. CHIEF JUSTICE, MAY IT
PLEASE THE COURT, CAN IT TRULY
BE SAID A FALSE, DEFAMATORY,
MALICIOUS STATEMENT MADE OUTSIDE

OF FOR THE, OUTSIDE OF THE
DISCOVERY PROCESS, OUTSIDE OF
THE KNOWLEDGE OF THE PERSON WHO
IS BEING DEFAMED --

>> PLEASE KEEP YOUR VOICE UP.

SPEAKING OF MICS, SO I CAN HEAR
YOU.

>> CAN IT TRULY BE SAID THAT A
FALSE, DEFAMATORY, MALICIOUS
STATEMENT MADE OUTSIDE OF COURT,
OUTSIDE OF DISCOVERY, OUTSIDE OF
THE PRESENCE OF THE PERSON WHO
IS BEING DEFAMED, CAN IT TRULY
BE SAID THAT THAT SERVES THE
JUDICIAL PROCESS AND THAT SERVES
THE FULL AND FAIR FACT-FINDING
PROCESS.

>> ARE YOU ASKING US TO NARROW
THE DEFINITION OF WHAT IS A
JUDICIAL PROCEEDING?
BECAUSE THAT, TO ME, IS ONE
ISSUE, AS TO WHETHER THAT IS A
QUESTION OF LAW, AND, WHETHER IN
ACCORDANCE WITH MOST OF THE
STATES, PRETRIAL INVESTIGATION

IS CONSIDERED PART OF THE
JUDICIAL PROCEEDINGS, SO, IF YOU
COULD FIRST MAYBE START WITH
THAT, AS TO WHETHER, BECAUSE
THIS IS AT A COURT, NOT IN A
DEPOSITION, WHERE THERE IS A
JUDGE, WHETHER IT IS WITHIN THE
SCOPE OF THE ABSOLUTE PRIVILEGE
THAT WE ADOPTED AND HAVE
REAFFIRMED IN LEVIN.

>> JUSTICE PARIENTE, IT IS NOT
WITHIN THE JUDICIAL PROCESS
BECAUSE A JUDICIAL PROCESS
COURTENANCES PARTIES AND AN
OPPORTUNITY TO BE HEARD AND THE
FACT IN THIS KIND OF SITUATION
AS I'VE DESCRIBED THERE IS NO
OPPORTUNITY TO BE HEARD.
ONE CAN SAY THAT THIS IS NOT
CLEARLY WITHIN THE, QUOTED,
JUDICIAL PROCESS.

WHATEVER THAT PHRASE MAY MEAN,
BECAUSE...

>> YOU AGREE IN LEVIN, WE
EXPRESSLY SAID, A DEFAMATORY

STATEMENT MADE IN A JUDICIAL
PROCEEDING IS ABSOLUTELY
PRIVILEGED.

AND THAT MOST DEFAMATORY, IF IT
IS, IT IS MADE, FALSE AND IS
USUALLY MADE INTENTIONALLY, AND
WITH MALICE, SO IN THE -- THE
IDEA WHEN YOU SAY, CAN IT TRULY
BE SAID THAT DEFAMATORY
STATEMENTS ARE ENTITLED TO
ABSOLUTE IMMUNE, THAT IS WHAT WE
SAID IN LEVIN.

>> THAT IS AND WHAT I AM TAKING
ON, IN THE CASE.

WHAT I AM SAYING IS, THAT IT
SHOULD BE A QUALIFIED PRIVILEGE
IN THE FACT SITUATION, THAT
WE'RE TALKING ABOUT IN A CASE
LIKE THIS.

>> YOU ARE GOING TO TAKE THE
APPROACH THAT ACTION BY COUNSEL
TO INVESTIGATE, TO TALK WITH
WITNESSES, THOSE TYPES OF
THINGS, ONE-ON-ONE, INDIVIDUAL
KINDS OF THINGS, OUTSIDE OF THE

SCOPE OF THE COURTROOM OR THE
DEPOSITION ROOM, IS NOT WITHIN
THE JUDICIAL PROCEEDING, WHY IS
THERE ANY PRIVILEGE AT ALL, IF
YOU ARE TAKING THAT EXTREME
APPROACH?

AND WHY IS THERE -- WHY WOULD A
PRIVILEGE ATTACH AT ALL?
THAT IS A CITIZEN-TO-CITIZEN
TYPE OF DISCUSSION.

>> WELL, JUDGE -- JUSTICE LEWIS,
IT'S NOT QUITE A
CITIZEN-TO-CITIZEN DISCUSSION,
WHEN THE LAWYER IS CLOTHED WITH
THE INVESTIGATORY ASPECT OF HIS
REPRESENTATION OF A CLIENTS.

>> YOU SAY -- WHEN YOU SAY
CLOTHED WITH, DOES HE WEAR A
DIFFERENT JACKET OR SOMETHING?
I'M MISSING SOMETHING THERE, IT
IS ONE PERSON TALKING TO
ANOTHER, GATHERING INFORMATION,
THAT MAY AT SOME LATER TIME COME
IN OR MAY NOT.

>> BUT, IT IS --

>> THAT IS WHY I HAVE A
DIFFICULT TIME TRYING TO SAY OR
TO LOOK AT A CASE WHERE THERE IS
SOMETHING GOING ON THAT MAY
TOUCH UPON THE COURT PROCEEDINGS
AND YOU'RE SAYING THAT IT IS NOT
PART OF THE JUDICIAL PROCESS,
THEREFORE, WE TALK IN TERMS OF A
QUALIFIED PRIVILEGE.

WHY IS IT PRIVILEGED AT ALL?
THAT IS THE POINT IT GOES TO.

>> WELL I THINK IT IS HARD FOR
ME TO SAY THAT IT'S NOT PART OF
SOME KIND OF COURT PROCEEDING,
ESPECIALLY ON THE FACTS OF THIS
CASE, WHERE THERE WAS A
LAWSUIT...

>> I THINK THERE YOU ARE GOING
TO WHERE PROBABLY THE -- WE
OUGHT TO BE GOING IN THIS CASE
AND THAT IS WHEN YOU'RE NOT IN
FRONT OF A JUDGE AND A COURT
REPORTER, NOT IN FRONT OF WHAT
A, QUOTED, FORMAL COURT
PROCEEDING, WHAT HAPPENS THEN?

THAT IS MORE THE QUESTION RATHER
THAN A SITUATION SAYING, WELL,
THIS DOESN'T COVER IT AT ALL,
BECAUSE I THINK IT DOES.

AND, NEEDS TO.

IF WE ARE GOING TO PRESERVE THE
ADVERSARIAL SYSTEM WE HAVE.

>> WHAT I'M SUGGESTING IS, IN
THAT SITUATION, IT SHOULD BE A
QUALIFIED PRIVILEGE, NOT AN
ABSOLUTE PRIVILEGE.

>> IS THE PRIVILEGE YOU ARE
DESCRIBING BASED UPON RELEVANCE?
WHAT IS IT BASED UPON?

>> THE PRIVILEGE I'M DESCRIBING
IS BASED UPON WHETHER OR NOT THE
STATEMENTS THAT ARE MADE BY THE
LAWYER SERVE ONE OF THE
INTERESTS THAT THE ABSOLUTE
PRIVILEGE UNDER LEVIN AND THE
OTHER CASES STANDS FOR, WHETHER
OR NOT IT SERVES FULL AND FAIR
FACT-FINDING.

IF A LAWYER CAN LIE AND MAKE
MISSTATEMENTS THAT ARE

DEFAMATORY, FALSE AND MALICIOUS,
IT COMPROMISES THE WHOLE
FACT-FINDING PROCESS, WHICH IS,
AT THE HEART, REALLY, OF THE
LEVIN AND ABSOLUTE IMMUNITY
CASES.

>> THE PROBLEM I HAVE, AND I
HAVE BEEN THINKING ABOUT THIS A
LOT, WHETHER IT IS -- ASSUMING
WE AGREE THAT SOMETHING NEEDS TO
BE ADJUSTED IN LEVIN AND WE
WOULDN'T HAVE TAKEN THAT IF SOME
OF US DIDN'T THINK, SOME PROBLEM
HERE.

YOU HAVE, IF THE ABSOLUTE
PRIVILEGE SAYS, IT HAS TO BE IN
THE JUDICIAL PROCEEDING AND
RELEVANT...

>> YES.

>>... OBVIOUSLY THE LAWYER WAS
INVESTIGATING AND HE WAS TALKING
ABOUT THE VERY SUBJECT MATTER OF
THE LAWSUIT.

AND, HE -- AND AGAIN, IF HE MADE
A DEFAMATORY STATEMENT HE MADE

IT ABOUT THE VERY SUBJECT
MATTER.

HE DIDN'T TALK ABOUT, YOU KNOW,
THE GUY HAD TAKEN A TRIP TO
CHINA AND MET -- SOMETHING
TOTALLY OUTSIDE OF THE SCOPE.
SO, I DON'T SEE, SO, IF YOU GO
TO QUALIFIED PRIVILEGE, BECAUSE,
AGAIN YOU DON'T HAVE THE
PROTECTION OF THE JUDGE WHO
MIGHT SAY, WHAT ARE YOU TALKING
ABOUT, OR THE OTHER LAWYER, TO
MODERATE, THEN THE IDEA WOULD
BE, THAT YOU WOULD HAVE TO SHOW
THE STATEMENTS WERE MADE WITH
MALICE.

>> CORRECT.

>> SO, THAT WOULD BE... HOW
WOULD THAT WORK IN THE REAL LIFE
WORLD?

AGAIN YOU FILED THIS COMPLAINT,
RIGHT NOW, YOU WERE -- THERE WAS
A SUMMARY JUDGMENT AGAINST YOU,
BECAUSE IT WAS ABSOLUTE
PRIVILEGE AND IF IT WAS

QUALIFIED, HOW WOULD IT WORK.

>> LIKE IN "NEW YORK TIMES"

VERSUS SULLIVAN YOU WOULD HAVE
TO PROVE IT WAS DONE MALICIOUSLY
AND THERE WOULD BE A QUESTION OF
WHAT THE STANDARD OF PROOF IS,
AND THE COURT TALKED ABOUT
PREPONDERANCE OF THE EVIDENCE,
IF THE COURT WISHES TO CONSTRICT
THE PRIVILEGE, YOU COULD HAVE
CLEAR AND CONVINCING EVIDENCE.

>> WOULD IT ALWAYS BE A JURY
QUESTION?

MR. TRAYNOR SAID, I DIDN'T SAY I
WAS PROSECUTING HIM FOR
PROSTITUTION.

MAYBE THEY MISUNDERSTOOD THAT.

AND, I WAS REPEATING WHAT THE
ALLEGATIONS WERE, IN THE
COMPLAINT, I WASN'T GOING
OUTSIDE AND TALKING ABOUT, YOU
KNOW, SOMETHING THAT WAS NOT
THERE.

SO, WOULD A JUDGE IN THAT
SITUATION, IF -- BE ABLE TO

GRANT A SUMMARY JUDGMENT IN
FAVOR OF MR. TRAYNOR, IF THERE
IS NO OTHER EVIDENCE OF MALICE.

>> SUMMARY JUDGMENT WOULD BE
ENTERED IN FAVOR OF THE
DEFENDANT AND THAT IS WHY I USE
"THE NEW YORK TIMES" --

>> WHERE IS THIS EVIDENCE THAT
MR. TRAYNOR ACTED WITH MALICE?

>> IN THIS CASE, IT NEVER
REACHED THAT POINT, BECAUSE THE
LEVIN AND SUBSEQUENT CASES HELD
IT DOESN'T MATTER, NO MATTER HOW
MALICIOUS AND DEFAMATORY IF IT
IS MADE IN THE COURT OF JUDICIAL
PROCEEDINGS.

IT IS --

>> I'M HAVING TROUBLE
UNDERSTANDING HERE, IF THE
RESPECT IN WHICH THIS CASE ON
REVIEW CONFLICTS WITH LEVIN.

>> TO THE... AND I THINK YOU
DISSENTED, JUSTICE CANADY.

>> I DID AND I STILL HAVE
TROUBLE AND THE COMMENTS YOU ARE

MAKING HERE MAKE ME CONTINUE TO
HAVE THAT TROUBLE.

I MEAN, IT SEEMS LIKE THERE IS A
PROBLEM WITH THE WAY LEVIN IS
SET UP AND THE INADEQUACY OF
LEVIN.

BUT, AN INADEQUACY OF ONE OF OUR
PRECEDENTS DOESN'T MEAN THAT A
SUBSEQUENT DECISION IS AN
EXPRESS AND DIRECT CONFLICT WITH
IT, DOES IT?

>> IT DOESN'T, EXCEPT IN THIS
CASE, BASED UPON THE FACTS OF
THIS CASE, WHEN ONE LOOKS AT
THESE FACTS, AND, THE
APPLICATION BY THE FOURTH DCA OF
LEVIN, IT IS A CONFLICT WITH TWO
ASPECT OF LEVIN, REALLY.

IT IS -- FIRST, I THINK ONE
QUESTION IS, WHAT IS THE COURSE
OF JUDICIAL PROCEEDINGS?

WHAT DO WE MEAN BY THAT IN
LEVIN?

WHAT DID LEVIN MEAN BY THAT?
THE FOURTH DCA CAME TO THE

CONCLUSION THAT ANYTHING IS
COVERED.

SO, TO THAT EXTENT, WHAT I
SUGGESTED IN MY BRIEF ON
JURISDICTION, IS THAT IT IS A
CONFLICT WITH THE LANGUAGE OF
LEVIN, IN THE COURSE OF JUDICIAL
PROCEEDINGS, BECAUSE...

>> IN THE JURISDICTIONAL BRIEFS,
WASN'T THERE A CONCESSION THAT
THE CONDUCT HERE WAS IN THE
COURSE OF THE JUDICIAL
PROCEEDINGS?

>> NOT IN THE JURISDICTIONAL
BRIEF, IN THE BRIEF BELOW, THERE
WAS A FOOTNOTE THAT DID CONCEDE
THAT, IN THE BRIEF BELOW, AND,
YET, WHAT I SAID IN MY
JURISDICTIONAL BRIEF, POINTED
OUT TO THE COURT AND I SAID,
LOOK, DESPITE THAT, THE FOURTH
DISTRICT COURT OF APPEAL DID
ACROSS COURT OF JUDICIAL
PROCEEDINGS.

SO, THERE WAS NO WAIVER THERE,

BECAUSE THAT WAS REALLY THE
HEART OF THEIR DECISION, AND
THEY WENT BASED UPON THEIR
CONSTRUCTION OF THIS...

>> MR. ROGOW, I HAVE SOME
SYMPATHY WITH YOUR POSITION, I
THINK AN ALLEGATION THAT THE
ORIGINAL ALLEGATION THAT THE MAN
MAY HAVE DONE -- PROCURED
PROSTITUTES FOR SOMEONE IS A
TOTALLY DIFFERENT THING FROM
SOMEONE BEING PROSECUTED FOR
PROSTITUTION.

BUT, MY QUESTION, THOUGH, IS
WHERE DO YOU DRAW THE LINE?
I MEAN, BECAUSE, YOU DO HAVE
ALLEGATIONS OF SOMETHING ABOUT
PROSTITUTION, IN THE UNDERLYING
CASE, CORRECT?

>> YES.

>> SO WHERE DO YOU DRAW THE LINE
WHEN IT COMES TO WHETHER OR THE
NOT WHAT THE LAWYER SAID WAS A
PART OF HIS WHOLE IDEA OF
GETTING DISCOVERY, FOR THE CASE,

TO, YOU KNOW, REPRESENT HIS
CLIENT?

I'M HAVING A PROBLEM DRAWING THE
LINE.

BECAUSE I THINK THAT IF THE
LAWYER SAID WHAT HE IS ALLEGED
TO HAVE SAID, IT IS TRULY
OUTRAGEOUS.

BUT WHERE DO YOU DRAW THE LINE.

>> ONE OF THE ALLEGATION IS THE
LAWYER SAID TO THESE, QUOTE,
POTENTIAL WITNESSES THAT HE WAS
ACTUALLY PROSECUTING
MR. DELMONICO AND IT WASN'T
SOLICITING FOR PROSTITUTION IN
TERMS OF BUSINESS, IT WAS AN
ALLEGATION THAT WENT BEYOND
THAT.

BUT, THE LINE WOULD BE DRAWN
BETWEEN THE DIFFERENCE BETWEEN
MAKING A FALSE STATEMENT, AND,
ASKING A QUESTION, I MEAN, I
THINK STUCCHIO POINTS OUT THAT
KIND OF PROBLEM, INTERVIEWING A
WITNESS, THE LAWYER SAYS, DO YOU

KNOW, DO YOU HAVE ANY
INFORMATION ON WHETHER OR NOT
MR. DELMONICO HIRED PROSTITUTES
FOR THE BENEFIT OF HIS
CUSTOMERS?

NOW, THAT IS ASKING A QUESTION.

THAT IS DIFFERENT FROM MAKING A
FALSE DEFAMATORY ASSERTION.

AND THAT IS THE DIFFERENCE,

REALLY THAT STUCCHIO...

>> BUT IS THAT A PROBLEMATIC
SITUATION?

CERTAINLY A SKILLED LAWYER MAY
ASK THIS QUESTION, IN AN
AFFIRMATIVE STATEMENT, IN THE
NATURE YOU WOULD HAVE A
CROSS-EXAMINATION.

AND, ISN'T IT TRUE, THAT
SO-AND-SO PROCURED PROSTITUTES
FOR SO-AND-SO?

NOW, TO ME, IF WE GET INTO
WHETHER IT'S AN AFFIRMATIVE
STATEMENT OR -- IN THE QUESTION
FORM, WE ARE REALLY CONFUSING
THE LAW.

IT SEEMS TO ME THAT EITHER THIS
IS RELEVANT TO THE PROCEEDINGS,
AND I QUESTION THAT, SAYING
SOMEONE IS -- IF THAT IS WHAT
WAS SAID AND WE DON'T EVEN KNOW
WHAT WAS SAID YET.

>> THAT IS TRUE.

>> AND IT IS TOUGH FOR US TO
DECIDE BUT TO ME, IT IS A
TOTALLY DIFFERENT ISSUE, IF
SOMEONE SAYS, HE'S BEING
PROSECUTED FOR, I'M PROSECUTING
SO-AND-SO FOR.

THOSE ARE -- THAT IS A STATEMENT
AND --
AND THE MATERIALITY OF THE
STATEMENT AS OPPOSED TO THE FORM
OF BEING A DECLARATORY FORM, IS
THE GRAVAMEN OF WHAT WE ARE
TALKING ABOUT, NOT A FORM,
WHETHER A QUESTION OR A
STATEMENT.

IF WE DRAW THAT, WE HAVE ALL
KINDS OF PROBLEMS, IT SEEMS TO
ME.

>> YOU CERTAINLY DON'T HAVE TO
DO THAT IN THE CASE, DRAW THOSE
DISTINCTIONS, BASED ON THOSE
ALLEGATIONS BUT I THINK THERE IS
A DIFFERENCE BETWEEN ASKING THE
QUESTION AND STATING IN...

>> THE PROBLEM IS, LEVIN, AND,
AGAIN, I THOUGHT THAT LEVIN,
BECAUSE IT WAS IN A COURTROOM,
THAT THE ABSOLUTE PRIVILEGE
MAKES A LOT OF SENSE.

AGAIN, BUT THEN YOU KNOW WHAT IS
SAID, FIRST OF ALL, AND, IF
SOMEBODY IS SAYING SOMETHING
OUTRAGEOUS, THERE'S ALL SORTS OF
PROTECTIONS, AND, WE MUST... SO,
LEVIN STATES, TO ME, A
DEFAMATORY STATEMENT IS NEVER
RELEVANT BECAUSE IT IS ALWAYS
FALSE.

IF IT IS TRUE THAT IT IS
DEFAMATORY.

BUT, IF IT IS -- LEVIN SAYS,
DEFAMATORY STATEMENTS IN THE
COURSE OF JUDICIAL PROCEEDINGS

ARE ABSOLUTELY... AND, IT IS NOT
RELEVANT.

THEN, I DON'T SEE HOW YOU --
YOUR ALTERNATIVE ARGUMENT WAS IT
IS NOT RELEVANT.

AND IF YOU WANTED TO ADDRESS HOW
WE'D EVER MAKE THE DISTINCTION
IF IT RELATES TO THE SUBJECT
MATTER, AND, NEEDS --
INVESTIGATING A CASE, IT IS
RELEVANT.

SO I HAPPEN TO THINK THAT JUDGE
WARNER'S DISSENTS MAKES SENSE,
YOU KNOW, BUT, IF WE GO
ALTERNATIVELY, HOW DO WE DRAW
THAT LINE, JUSTICE LEWIS IS
SAYING, BECAUSE IT IS ABOUT THE
SUBJECT MATTER OF THE LAWSUIT,
AND, LEVIN HAS A VERY BROAD
STATEMENT THERE.

>> EXTREMELY BROAD AND EVEN,
MATERIALS THAT HAPPENED BEFORE A
LAWSUIT IS FILED, HOW LEVIN HAS
BEEN INTERPRETED.

BUT MY FOCUS, I'M TRYING TO KEEP

IT NARROW, IS ON A QUALIFIED
SITUATION, WHERE THERE IS NO OPT
TRUANT TO BE HEARD.

THAT IS REALLY GOT TO BE THE KEY
TO THIS.

DO YOU SEE LEVIN OVERRULED --

>> MEIJER'S, 1907?

NO, IT DIDN'T OVERRULE THAT, IT
IS AN INTERESTING CASE TO READ
AND GOES THROUGH HISTORY --

>> IT GOES THROUGH A DIFFERENT
SET OF PLEDINGS AND POST TOURS
AND PROCEDURES BUT SEEMS TO ME
THERE ARE THREE LEVELS OF
ANALYSIS THAT THAT COURT TALKS
ABOUT AND I WONDER IF THOSE ARE
STILL VALID.

>> MYERS, YOU HAD AN ALLEGATION
OF TREACHERY AND DECEIT MADE IN
A CHANCERY COMPLAINT AND, THAT
WAS WITHIN THE CASE ITSELF, NO
QUESTION, THAT IS ABSOLUTELY
PRIVILEGED.

NO ONE WOULD DISPUTE THAT.

>> GAVE A PROCEDURE THE COURTS

WOULD FOLLOW AS TO -- GOING
THROUGH THE DIFFERENT STAGES,
HOW YOU GET TO A STORY.
>> AND, WHEN YOU... AT LEAST MY
READING OF THAT LEADS ME TO
CONCLUDE THEY ARE TALKING ABOUT
A QUALIFIED PRIVILEGE, KIND OF
SORTS FOR ME, AND LEVIN COMES
70, ALMOST 80 YEARS LATER, HAS
THE BROAD, BROAD LANGUAGE, AND,
THEN, IT BROADENS IT AND
EVERYTHING IS PROTECTED, AND,
WHAT WE ARE TALKING ABOUT IS NOT
HAVING AN OPPORTUNITY TO BE
HEARD, CAN SOMETHING BE IN THE
COURSE OF JUDICIAL PROCEEDINGS.

>> LET ME ASK YOU...

>> YES, JUSTICE LABARGA.

>> WHEN YOU HAVE ABSOLUTE
IMMUNE, THAT IS WHY WE DON'T SEE
MANY OF THESE CASES, IT IS A
HIGH HURDLE TO JUMP OVER AND,
YOU TALK ABOUT QUALIFIED
IMMUNITY IT MEANS THERE HAS TO
BE FACTUAL FINDINGS MADE TO SEE

IF IT FALLS UNDER THAT.
IN THE FAMILY LAW AREA, WHERE
PEOPLE ARE EMOTIONALLY CHARGED,
AND LAWYERS SEND OUT
INVESTIGATORS TO TALK TO
WITNESSES, AND, THE INVESTIGATOR
SAYS THINGS, ARE WE GOING TO
OPEN THE FLOOD GATE IN THOSE
TYPES OF CASES, TO, EACH SEEM AN
INVESTIGATOR OR LAWYER SAYS
SOMETHING TO THE WITNESS, IN
THOSE TYPES OF CASES THERE WILL
BE A DEFAMATION ACTION.

>> I THINK NOT, JUSTICE, IF MY
ANALOGY TO "NEW YORK TIMES"
VERSUS SULLIVAN AND MAYBE EVEN
THE CLEAR AND CONVINCING
EVIDENCE STANDARD, IS APPLIED,
BECAUSE, THAT WOULD ELIMINATE.
IT IS TRUE THE ABSOLUTE
PRIVILEGE LAWYERS WOULD SAY,
WE'RE NOT GOING TO FILE A
LAWSUIT ON THIS, IT IS
ABSOLUTELY PRIVILEGED FROM START
OR BEFORE START, TO FINISH.

BUT, THE QUALIFIED PRIVILEGE
WOULD SERVE ANOTHER PURPOSE, AND
THAT IS, GOOD LAWYER CONDUCT.
I MEAN, THIS COURT, YOU KNOW, WE
HAVE 80,000 OR SO LAWYERS IN
FLORIDA, AND THE COURT HAD BEEN
VIGILANT ABOUT ENFORCING
STANDARDS AND THE REMEDY LEVIN
SUGGESTED, WHICH WAS, GO TO THE
BAR, OR MAYBE THE JUDGE COULD
IMPOSE SANCTIONS, CLEARLY, THE
JUDGE CAN'T IMPOSE A SANCTION
AND THE -- IN THE SITUATION
WHERE NOBODY EVENNESS ABOUT
THAT, BECAUSE IT IS DONE IN THE
DARK WITHOUT THE OPPORTUNITY TO
BE HEARD.

>> YOU ARE DOWN TO
TWO-AND-A-HALF MINUTES AND YOU
MAY CONTINUE --

>> I'LL TAKE MY LAST 22 SECONDS
AND SAVE TWO MINUTES AND SO I
THINK THAT THE SUGGESTION THAT
I'M MAKING, WHICH IS A QUALIFIED
PRIVILEGE, REALLY, SERVES THE

IMPORTANT PURPOSES, FULL AND
FAIR FACT-FINDING, BECAUSE, IF
YOU ARE LYING TO POTENTIAL
WITNESSES, YOU ARE SKEWING THE
FACT-FINDING PROCESS, TOO.

>> SO WHAT IS THE... THE
ABSOLUTE IMMUNITY, THE ONLY
THING THAT COULD BE DONE, SINCE
IT IS A LAWYER, IS SOME KIND OF
BAR PROCEEDING AND THAT WOULD
NOT HELP THE PERSON WHO IS
DEFAMED.

>> CORRECT.

>> AND THERE IS NOTHING THE
PERSON COULD DO.

THE MAN ALLEGES HE HAS LOST
MILLIONS OF DOLLARS BECAUSE OF
INTERFERENCE WITH HIS BUSINESS.
AND SO THERE IS NOTHING HE COULD
DO, IF WE KEEP THIS ABSOLUTE
IMMUNITY THE WAY IT IS.

>> CORRECT, JUSTICE QUINCE AND,
HIS REPUTATION WOULD NEVER BE
VINDICATED, PUTTING ASIDE MONEY
AND REPUTATION IS ONE OF THE

COMPETING FACTORS HERE,
REPUTATION AGAINST FULL AND FAIR
FACT-FINDING AND I'LL SAVE MY
LAST MINUTE-AND-A-HALF, THANK
YOU.

>> GOOD MORNING, IT IS -- PLEASE
THE COURT, I'M REBECCA VARGAS,
HERE ON BEHALF OF THE DEFENDANTS
IN THE TRIAL COURT, ATTORNEY,
ROGER TRAYNOR AND HIS LAW
FIRM...

>> WOULD YOU SHARE WITH ME HOW
YOU FIND OR WHAT THE LEGAL
THEORY, WHEN SOMEONE SAYS THAT X
IS BEING PROSECUTED FOR
PROSTITUTION, ENGAGING IN
PROSTITUTION, OR I AM
PROSECUTING X, HOW IS THAT
RELEVANT TO AN ACTION WHERE THEY
ARE TALKING ABOUT THE QUESTION
OF WHETHER SOMEONE HAS MADE
STATEMENTS ABOUT PROCURING THEM,
NOT -- THE PROSECUTION ASPECT IS
WHAT I'M GOING TO, HOW IS THAT
RELEVANT TO THE CASE?

>> SURE, YOUR HONOR.

TURNING FIRST TO THE RELEVANCE
OF THE STATEMENT, THE
RESTATEMENT OF TORTS, AND THE
COURT'S OPINION IN LEVIN APPLY A
VERY BROAD, RELAXED RELEVANCY
STANDARD, AND, AS LONG AS IT
BEARS SOME RELATION TO THE
PROCEEDING IT IS ENCOMPASSED
WITHIN THE ABSOLUTE PRIVILEGE.

>> WHAT IS THE SUMMARY...

>> THE RELATION IS --

>> THE PROSECUTION, NOT THE
SUBJECT OF PROSTITUTION BUT THE
PROSECUTION, THAT HAS A VERY
DEFINITELY MEANING AND
STATEMENT.

>> YES, YOUR HONOR, FIRST OF
ALL, ATTORNEY TRAYNOR DISPUTED
THAT -- DENIED --

>> YOU CAN'T -- YOU KNOW, WE
HAVE TO ASSUME, I GUESS FOR
THAT, THAT IT IS THE WORST
BECAUSE YOU GOT A SUMMARY
JUDGMENT, CORRECT.

>> YES.

>> AND WE HAVE TO TAKE ALL THE
FACTS IN THE LIGHT MOST
FAVORABLE TO THE OTHER SIDE,
CORRECT?

>> THAT'S CORRECT.

>> OKAY, SO TAKING THOSE FACTS,
WHAT -- TELL ME THE RELEVANCE OF
PROSECUTING FOR...

>> IT'S THE UNDERLYING
COMPLAINT, INVOLVED ALLEGATIONS
THAT FOR BUSINESS REASONS HE WAS

--

>> WELL, YOU KNOW, THERE IS ONE
THING TO SAY PROSECUTING HAS A
CRIMINAL CONNOTATION, AS IF
YOU'RE THE PROSECUTING ATTORNEY
AND THAT IS MORE SERIOUS THAN A
CIVIL CASE.

IT IS ONE THING TO TALK ABOUT
THE CONTEXT OF THE PROSTITUTION
AS IT RELATES TO THE PLEADING
BUT IT IS QUITE... QUITE ANOTHER
TO AFFIRM OR TO ASSERT I AM
PROSECUTING THIS MAN, FOR

PROCURING PROSTITUTES.

AND THAT... I MEAN, THAT IS A

STATEMENT, NOT DONE

INVESTIGATORY -- UNLESS HE IS

INSERTING HIMSELF INTO THE

FACTUAL...

>> YOUR HONOR THE FIRST

DISTRICT'S DECISION IN HOPE HELD

THE BROAD STANDARD OF RELEVANCY

ENCOMPASSES JUST THE FACT THAT

YOU MIGHT BE ALLEGING CRIMINAL

CONDUCT, DOES NOT TAKE IT

OUTSIDE THE SCOPE OF THE

PRIVILEGE AND, KEEP IN MIND, THE

UNDERLYING LAWSUIT THAT WAS

BEING INVESTIGATED HERE,

INVOLVED PROSTITUTION, AND THE

ALLEGATION IN THE UNDERLYING

COMPLAINT WAS THAT HE HAD BEEN

IMPUTED CRIMINAL CONDUCT BECAUSE

HE WAS ENGAGING IN PROSECUTION,

SO THE LAWSUIT INVOLVED

PROSTITUTION.

IF THE LAWSUIT --

>> I UNDERSTAND THAT, BUT, WAS

HE -- WAS HE THE PROSECUTOR?

>> HE WAS NOT PROSECUTOR.

>> OKAY.

>> HE WAS NOT THE PROSECUTOR.

>> WAS THERE EVER A PROSECUTION?

>>.

THERE WAS NOT A PROSECUTION.

>> HOW FAR DOES IT GO.

>> YOUR HONOR IT IS A RELAXED
STANDARD BECAUSE ATTORNEYS NEED
TO BE FREE.

>> THAT IS NO STANDARD, WHAT IS
THE STANDARD?

I'M ASKING, RELAXED STANDARD, TO
ME CAN BE THE WHOLE WORLD.

WHAT IS THE STANDARD.

>> IT IS IT NEEDS TO BEAR SOME
RELATION TO THE PROCEEDINGS.

AND, IN THIS CASE IT DID BEAR --

>> THE PROSECUTION BEARS A
RELATIONSHIP TO THE PROCEEDING?

>> YES, YOUR HONOR BECAUSE IT IS
WITHIN -- YOU HAVE TO BE ABLE TO
SPEAK FREELY, OTHERWISE YOU --
KEEP IN MIND --

>> THAT IS -- IF YOU TAKE IT
ONLY BECAUSE THE STATEMENT IS
MADE WITHOUT REGARD TO THE
CONTENTS OF THE STATEMENT, THEN
ANYTHING GOES.
YOU HAVE TO LOOK TO THE ALLEGED STATEMENT.

>> THE CONTENT IS PROSTITUTION

--

>> I'M ASKING ABOUT PROSECUTION.

WE WOULDN'T BE HERE.

IF IT WERE A DISCUSSION OF
PROSTITUTION, WOULD WE.

>> THE UNDERLYING LAWSUIT
INVOLVED CRIMINAL ALLEGATIONS
AND... SENATE SOMEBODY WAS
PROSECUTED FOR IT?

>> HE SAID IT IMPUTED A CRIMINAL
CONDUCT TO HIM.

>> SOMEONE WAS PROSECUTED.

YOU KEEP AVOIDING -- PLEASE,
ANSWER.

WE NEED TO ADDRESS THIS HEAD ON.

>> WELL, IT DOESN'T INVOLVE
PROSECUTION BUT I THINK IT IS
WELL WITHIN THE BROAD PENUMBRA,

WHEN YOU SPEAK ABOUT
PROSTITUTION, I THINK IN THIS
CASE THERE VERY WELL COULD HAVE
BEEN A MISUNDERSTANDING, WHEN AN
ATTORNEY SAYS, I'M PART OF THE
TEAM, MY CLIENT HAS BEEN SUED
FOR A LOT OF MONEY...

>> ISN'T THAT WHETHER IT WAS
INTENTIONALLY MADE AND WHAT
STATEMENT, YOU HAVE TO FIND OUT
WHAT THE STATEMENT WAS.

>> WELL, I THINK THAT POINTS TO
THE FACT, IF YOU ADOPTED THE
STANDARD THERE WOULD BE A JURY
QUESTION, IN EVERY, SINGLE CASE,
AN ATTORNEY WOULD NEVER BE ABLE
TO ASK A POTENTIALLY
CONTROVERSIAL QUESTION AND THERE
WOULD BE A JURY RESOLUTION, OF
WHETHER THE ATTORNEY'S STATEMENT
WAS CLOSELY RELATED TO THE
SUBJECT OF THE LAWSUIT.

>> LET ME ASK YOU THIS:
LET'S ASSUME YOU HAVE A COUPLE
OF PARTIES WHO ARE IN CONTRACT

WITH EACH OTHER, TWO COMPANIES.

>> RIGHT.

>> AND, ONE OF THE ATTORNEYS FOR
ONE OF THE COMPANIES GOES TO
DEPOSE THE OTHER'S MAJOR
CUSTOMER.

AND, MAKES AN ASSERTION THAT THE
OPPOSING PARTY ENGAGES IN GIVING
BRIBES IN SOME FASHION.

AND, TO THE DETRIMENT OF THE
OPPOSING PARTY.

BUT, YET, IT BEARS IN SOME
DEGREE, ON BUSINESS PRACTICES OF
THE OPPOSING PARTY, BUT, YET, IS
TOTALLY FALSE.

IS THAT ACTIONABLE?

>> WELL, IT WAS -- THE SUBJECT
OF THE LAWSUIT, DID IT HAVE
ANYTHING TO DO WITH THAT?

>> YES.

>> WELL, IF THE SUBJECT OF THE
LAWSUIT HAD...

>> BUT NOT BRIBES, HAD NOTHING
DO WITH BRIBES.

>> THAT WOULD BE UNRELATED.

>> IT HAD TO DO WITH THE
BUSINESS PRACTICES OF EACH SIDE,
AND THERE IS A BREACH OF
CONTRACT ACTION.

>> CORRECT, I THINK IN THAT
CASE, UNDER THOSE FACTS, WHEN IT
IS A BREACH OF CONTRACT ACTION,
COMPLETELY UNRELATED TO BRIBERY
OR OTHER CRIMINAL CONDUCT, THAT
MIGHT BE OUTSIDE OF THE SCOPE OF
THE PRIVILEGE, BUT THAT IS NOT
THIS CASE, IN THIS CASE WE HAVE
A WITNESS WHO IS SPEAKING TO
PURCHASING AGENTS, ASKING THEM
IF THEY HAVE ANY INFORMATION
ABOUT PROSTITUTION.

>> LET ME ASK YOU ABOUT ONE OF
THE OTHER ALLEGATIONS, WHICH IS,
THAT NOT ONLY DID HE ASK AN
EX-WIFE OR EX-GIRLFRIEND OR
SOMETHING ABOUT PROSTITUTION,
BUT, THREAT END HER WITH
PROSECUTION IF SHE HAD KNOWLEDGE
AND WASN'T WILLING TO GIVE UP
THAT KNOWLEDGE AND YOU THINK

THAT KIND OF STATEMENT, ASSUMING
THAT IS TRUE, IS ALSO ABSOLUTELY
PRIVILEGED.

>> WELL, THAT STATEMENT IS
ACTUALLY NOT FOUND IN THE
COMPLAINT.

THERE ARE ALLEGATION WITHIN THE
FACTUAL MATTER, THEY ALLEGE --
AMENDED THEIR COMPLAINT TO MAKE
OTHERAL ALLEGATIONS BUT THAT WAS
NOT SOMETHING SPECIFICALLY
INCLUDED IN THE COMPLAINT AT
ISSUE IN THIS CASE BUT I THINK
IT IS WITHIN THE BROAD SCOPE OF
WHAT THE ATTORNEY, WHEN AN
ATTORNEY IS TRYING TO SPEAK TO A
POTENTIAL WITNESS AND...

>> AND, THEY CAN THREATEN THEM?

WHAT I'M GETTING AT, THIS WAS,
AS I READ IT, A THREAT TO THE
WITNESS TO TRY TO MAKE THE
WITNESS MAKE SOME STATEMENT
ABOUT THIS MAN'S INVOLVEMENT IN
PROSTITUTION.

AND, YOU THINK, AN ALLEGATION

LIKE THAT, ASSUMING THERE IS AN
ALLEGATION LIKE THAT, IS
ABSOLUTELY PRINTED ALSO?
>> WELL, NO, UNDER LEVIN, LEVIN
CARVED OUT AS POSSIBLE REMEDIES
TO DETERMINE MISCONDUCT THE
POSSIBILITY OF CRIMINAL
SANCTIONS, SO, CERTAINLY, YOU
CAN'T VIOLATE THE LAW, YOU CAN'
... PERJURY AND YOU COULD BE
SUBJECT TO CRIMINAL PROSECUTION
AND THERE'S A PENDING LITIGATION
AND YOU ARE SUBJECT TO THE
CONTEMPT POWER OF THE COURT AND
SUBJECT TO CONTEMPT,
COMPENSATORY FINES...
>> WHICH IS ALL ALWAYS
INTERESTING, THAT THE COURT CAN
VINDICATE ITS AUTHORITY HERE BUT
WHAT HAPPENS TO THE PERSON BEING
DEFAMED?
WHAT WE HAVE HERE IS A SITUATION
THAT THAT PERSON CAN NEVER BE
MADE WHOLE, HE SAYS HE LOST
MILLIONS OF DOLLARS, HE SAYS HE

LOST ALL THESE BUSINESS CONTACTS
BECAUSE OF THE INFORMATION.
AND, IF WE HAVE -- IF THIS
ABSOLUTE PRIVILEGE GOES TO ALL
OF THIS INFORMATION, WHICH WAS
NOT TRUE AT ALL, ASSUMING IT'S
NOT TRUE, ASSUMING THESE
STATEMENTS WERE IN FACT MADE, IT
IS JUST BOTHERSOME TO ME THAT
THE ACTUAL PERSON WHO IS DEFAMED
HAS NO REMEDY.

>> WELL, YOUR HONOR, THAT IS THE
POLICY DEBATE THAT THIS COURT
ENGAGED IN IN LEVIN AND ALSO,
MORE RECENTLY IN ECHEVERRIA AND,
THERE WILL BE DEFAMATORY
STATEMENTS MADE AND THEIR
REPUTATION MAY BE DAMAGED AND --
HOWEVER THE ABILITY OF PARTIES
AND WITNESSES TO GATHER
INFORMATION AND FREELY AND FULLY
LITIGATE ISSUES IN THE INITIAL
LAWSUIT, OUT WEIGHS THAT RISK...

>> LET ME ASK YOU THIS.

I'M STILL, STILL TRYING TO

FIGURE OUT WHERE IS THE END AND
WHERE IS THE START?
JUDGE WARNER IN HER DISSENT
NOTED... SAYS, ALTHOUGH THERE IS
CERTAINLY NOTHING WRONG WITH AN
ATTORNEY CONDUCTING EXTRA
JUDICIAL INVESTIGATIONS, THE
CONDUCT OF SUCH INVESTIGATIONS
REMOVED FROM THE JUDICIAL
PROCESS, AND IS NOT A FUNCTION
THAT RESTS UNIQUELY WITH IN THE
DUTIES OF AN ADVOCATE.

SHE SEEMS TO BE SAYING ONCE YOU
GO OUTSIDE WHAT IS TYPICALLY
PERMITTED UNDER OUR RULES OF
DISCOVERY, YOU ARE STEPPING INTO
A DIFFERENT ZONE.

>> SURE.

I THINK THAT IS WHAT JUDGE
WARNER IS SAYING, SHE'S SAYING
FITS NOT A FORMAL DISCOVERY
REQUEST, DO IT AT YOUR OWN RISK.
IF YOU ARE A WITNESS -- DON'T
SPEAK TO ATTORNEYS ABOUT THE AN
SUBPOENA AND IF YOU ARE A

ATTORNEY, DON'T SPEAK TO THE
WITNESS WITHOUT SUBPOENAING THEM
FIRST OR CALLING THE OTHER SIDE
AND DIVULGING THE WORK PRODUCT
AND TRIAL STRATEGY AND SAYING,
HI, OPPOSING COUNSEL I WOULD
LIKE TO SPEAK TO THE WITNESS
ABOUT THIS ISSUE, WHAT TIME IS
GOOD FOR YOU.

>> THAT AND ALSO, WHAT WE SEE
COMMONLY IN HIGH PROFILE CASES
TODAY, EVERYTHING, SINGLE DAY,
AFTER THE END OF THE TESTIMONY,
THE LAWYERS STEP OUTSIDE,...

>> THAT WOULD NOT, BECAUSE -- I
APOLOGIZE, THAT WOULD BE A BROAD
QUALIFICATION BEYOND THE SCOPE
OF THE PRIVILEGE AND THE
STATEMENT TO THE PRESS IS NOT
SOMEONE WHO IS INTERESTED IN THE
PARTY, KEEP IN MIND THESE WERE
WITNESSES, IF YOU LOOK AT THEIR
AFFIDAVITS, EACH OF THEM WAS
DEPOSED AS A FACT WITNESS IN THE
SUIT, IN THE MOTION FOR SUMMARY

JUDGMENT HEARING, THE
PLAINTIFF'S OWN COUNSEL SAID,
DEFENDANT WAS, QUOTE,
INTERVIEWING WITNESSES, END
QUOTE, THESE WERE NOT MEMBERS OF
THE SOFTBALL TEAM, NOT
NEIGHBORS, THESE WERE PEOPLE
WITH CRUCIAL FACTUAL INFORMATION
NECESSARY TO EXPLORE...

>> HOW ABOUT IF INSTEAD OF
TALKING TO ONE PERSON, THAT THEY
PUBLISHED IT, IT HAPPENED,
SOMEPLACE IN FLORIDA, FORT
LAUDERDALE OR SOME AREA DOWN
THERE?

>> OH, YEAH, THE UNDERLYING...

YES.

RIGHT.

>> I TAKE OUT AN ADD IN THE SUN
SENTINEL, SAYING X IS PROSECUTED
FOR PROSTITUTION, WHATEVER THE
NAME OF THE STATUTE IS, THAT I
AM PROSECUTING FOR THAT, IF YOU
HAVE ANY INFORMATION, CONTACT
SO-AND-SO.

>> THE STATEMENTS IN THE PRESS
ARE BEYOND THE SCOPE OF THE
PRIVILEGE, BECAUSE THEY ARE NOT
PARTIES AND THAT ARE RELATED TO
THE LAWSUIT.

>> THIS IS A PUBLICATION, AN
INVESTIGATION.
TRYING TO GATHER INFORMATION.
IS THAT -- SO YOU SAY THAT IS
NOT...

>> WE CITED OUT OF STATE CASES
THAT MADE THAT DISTINCTION.
ONCE YOU ARE TALKING TO PEOPLE
WHO HAVE NO INTEREST IN THE
LITIGATION, NO INFORMATION TO
GIVE, IN THE LITIGATION THAT IS
BEYOND THE SCOPE OF THE
PRIVILEGE.

>> CROSSES THE LINE.
AS TO -- I SAY THAT PERSON MAY
HAVE KNOWLEDGE, DOES THIS CLOSE
THE DOOR --

>> THEY HAVEN'T CHALLENGED THAT
THE WITNESSES HAVE KNOWLEDGE,
THEY WERE DEPOSED AS FACT

WITNESSES IN THE CASE.

>> BECAUSE THIS ARE DEPOSED
DOESN'T MEAN THEY HAVE ANY
KNOWLEDGE, HOW MANY DEPOSITIONS
DO WE TAKE IN A CASE --

>> IF YOU CHANGE THE RULE IN
LEVIN YOU WILL BE TAKING MORE
DEPOSITIONS BECAUSE NO WITNESSES
WILL EVER TALK TO AN ATTORNEY
WITHOUT A SUBPOENA.

>> THE GLOOM AND DOOM, I'M
SORRY, I DON'T SUBSCRIBE TO
THAT, IF YOU HAVE A FAIR
PRINCIPLE OF LAW THE WORLD WILL
COME TO AN END, WE NEED TO
ADDRESS THE CIRCUMSTANCE, NOT
LEVIN, BECAUSE THIS IS NOT UNDER
THE SUPERVISION OF THE COURT.

BUT, WHAT HAPPENS WHEN YOU GO
OUT TO INDIVIDUAL PEOPLE IN THE
COMMUNITY, AND START MAKING
STATEMENTS?

I MEAN, THAT IS WHAT WE HAVE TO
DEAL WITH.

>> RIGHT.

>> THEY ARE NOT INDIVIDUAL
PEOPLE, THEY ARE PEOPLE WHO ARE
WITNESSES WHO HAVE INFORMATION
ABOUT THE CASE...

>> WELL, I -- WHAT ESTABLISHES
THAT IN THE RECORD, THEY
ABSOLUTELY HAD KNOWLEDGE.

>> THE AFFIDAVITS, THEY WERE
WITNESSES IN THE CASE AND THEY
-- ONE, ONE OF THE WITNESSES,
WAS A CRITICAL DAMAGES WITNESS
AND ACCORDING TO THE COMPLAINT
IS THE PERSON WHO CHANGED
BUSINESSES AS A RESULT OF OF THE
STATEMENTS.

>> DID HE KNOWLEDGE OF
PROSTITUTION ACTIVITIES?

>> WELL, I DON'T KNOW IF HE
ACTUALLY HAD KNOWLEDGE.

>> EVEN --

>> HOW DO YOU KNOW UNTIL YOU
SPEAK INFORMALLY TO THE
WITNESSES.

>> THAT IS WHAT I'M SAYING, HOW
DO YOU KNOW WHEN YOU TALK TO

SOMEBODY WHETHER THEY ARE A

WITNESS OR NOT.

>> THAT DEMONSTRATES WHY YOU

WANT TO ALLOW ATTORNEYS TO SPEAK

FREELY WITH THE POTENTIAL

WITNESSES SO --

>> I HAVE A PROBLEM WITH

ATTORNEYS -- I DON'T HAVE A

PROBLEM OF ATTORNEYS SPEAKING

TRUTHFULLY WITH PEOPLE AND A

GENERATION OF LAWYERS DON'T GIVE

A HOOT ABOUT WHETHER TRUTH IS

TRANSMITTED OR NOT AND THAT MAY

BE AN UNFORTUNATE STATEMENT BUT

THAT IS WHAT WE SEE AND

SOMETIMES THINGS CHANGE DURING

THE HISTORY OF A PROFESSION AND

THINGS CAN HAPPEN.

AND THE QUESTION IS, DO OUR

RULES OF LAW KEEP UP WITH WHAT

IS ACTUALLY GOING ON, ON THE

STREET.

>> WELL, AS THE SUPREME COURT

YOU CERTAINLY HAVE THE ULTIMATE

RESPONSIBILITY TO DISCIPLINE

ATTORNEYS, AND IT IS YOUR
ABILITY TO IMPOSE BAR SANCTIONS
AND TO POLICE...

>> SO, A PHANTOM REMEDY IS
SUFFICIENT?

>> WELL -- LET'S BE HONEST HERE.
WE DO NOT, WE DO NOT SUPERVISE
OUR LAWYERS TO THAT STENTS.
AND, THAT IS A PHANTOM RELIEF.
TO MAKE THE STATEMENT, WE CAN
CATCH EVERYBODY WHO MAKES
STATEMENTS TO SOMEBODY IN THE
PUBLIC.

>> IT IS A PUBLIC POLICY
DECISION THAT ATTORNEYS ARE
PROFESSIONALS --

>> WHY.

>> WHO COULD LOSE THEIR LICENSE
IF THEY ARE MAKING FALSE
STATEMENTS --

>> THE QUESTION IS, OUR
PRINCIPLES OF LAW NEED TO BE IN
SYNC WITH WHAT THE REAL WORLD IS
AND NOT A FANTASY WORLD, DO YOU
AGREE?

>> I AGREE.

THAT IS TRUE.

IT NEEDS TO BE IN SYNC WITH

THAT.

>> LEVIN STILL APPLIES.

>> OKAY.

TRYING TO GET A QUESTION HERE.

THERE SEEMS TO BE MEMBERS OF THE

COURT THAT ARE CONCERNED THAT

WHEN YOU ARE TALKING ABOUT BEING

PROSECUTED FOR PROSTITUTION THAT

IS NOT RELEVANT TO THE SUBJECT

MATTER.

AND, THEN, THAT WOULD INVOLVE,

IF THAT IS THE CASE, RELAX

LEVIN, BECAUSE TO ME, LEVIN SAYS

ANYTHING DEFAMATORY AND THE ACT

OF INVESTIGATION, THAT YOU DON'T

REALLY LOOK TOO CLOSELY AT THE

CONTENT.

ISN'T IT BETTER TO GO IF YOU HAD

A -- AS A LAWYER, THINKING ABOUT

DEFENDING AGAINST A LAWYER'S

CONDUCT, TO HAVE THE QUALIFIED

PRIVILEGE FOR EXTRA JUDICIAL

PROCEEDINGS, BECAUSE AGAIN, YOU
DON'T HAVE -- IN THE DEPOSITION
YOU HAVE A RECORD AND YOU KNOW
WHAT WAS SAID AND, YOU SAID I
DON'T KNOW IF HE SAID PROSECUTED
OR NOT AND YOU HAVE A RECORD,
THROUGH DISCOVERY AND
INTERROGATORIES AND, NOW IT IS A
SWEAR MATCH, YOU DON'T HAVE A
RECORD AND IT SEEMS THE POLICY
IS BETTER SERVED BY THE PERSON
WHO WAS ALLEGING SOMETHING,
HAVING TO SAY THAT IT WAS DONE,
IT IS FALSE AND IT WAS DONE WITH
MALICE, WHICH -- AND I HEARD
MR. ROGOW, SAY MAYBE IT IS A
CLEAR AND CONVINCING STANDARD,
THAN TRYING TO FIGURE OUT FOR
THE JURY TO FIGURE OUT, WELL,
DID HE SAY PROSECUTED FOR
PROSTITUTION OR DID HE SAY,
WE'RE INVESTIGATING AN
ALLEGATION OF PROSTITUTION.
AND, LEAVING THAT ULTIMATE
QUESTION OF THE EXACT SUBSTANCE

OF THE STATEMENT TO A JURY.
TO ME, I GUESS, BY SAYING THAT,
I THINK THAT IS WHY THE ANSWER
IS THE POLICY IN TERMS OF FREE
SPEECH, VERSUS DEFAMING
SOMEBODY, THE KEY IS THAT YOU
DON'T HAVE A RECORD HERE, AND
WE'RE GOING TO HAVE A SWEARING
MATCH WHICH IS GOING TO, IF WE
HAVE TO SAY WHETHER IT'S
RELEVANT, IN CASES, FAMILY LAW,
THEY'LL JUST SAY ANYTHING THEY
WANT TO SAY AND IT WILL HAVE TO
GO TO A JURY, WHY ISN'T A
QUALIFIED IMMUNITY BETTER FOR
PROTECTING LAWYERS BECAUSE MOST
LAWYERS WE'RE ASSUMING WILL,
MAYBE WILL MAKE A STATEMENT,
THAT THEY FELT WAS WHATEVER IT
WAS, BUT, ARE NOT MAKING IT WITH
MALICE, IF THEY ARE REPRESENTING
THEIR CLIENT.

>> WELL I THINK THE PROBLEM WITH
THAT, YOUR HONOR, IS IF THERE IS
A QUALIFIED IMMUNITY THERE WILL

BE A JURY QUESTION IN EVERY
CASE, AND KEEP IN MIND WE'RE NOT
JUST TALKING ABOUT ATTORNEYS, WE
ARE ALSO TALKING ABOUT
WITNESSES, WITH VALUABLE
INFORMATION THAT WE WANT TO BE
FREE TO COME FORWARD AND SPEAK
FREELY EVEN IF THE EVIDENCE THEY
HAVE IS CONTROVERSIAL.

THE SAME THING, FOR THE
ATTORNEYS, THAT YOU NEED TO HAVE
ATTORNEYS...

>> I UNDERSTAND ABOUT PRETRIAL
INVESTIGATION.

BUT THERE ARE DEPOSITIONS, AS
YOU SAID, ALL OF THESE
WITNESSES, YOU SAID THEY WERE
DEPOSED AND SO, THEY'LL FEEL
FREE TO GIVE A DEPOSITION.

AND I THINK AGAIN, THE IDEA OF
SOMETHING BEING SAID WITH
MALICE, IS SOMETHING THAT IS
AMENABLE TO -- YOU CAN'T INFER
IT.

YOU WOULD HAVE TO SHOW SOME

REASON THAT MR. TRAYNOR WOULD
HAVE A DESIRE TO INJURE THE
REPUTATION OF THE PERSON WHO IS
THE, YOU KNOW, PLAINTIFF OR THE
DEFENDANT, HOWEVER IT WENT
ORIGINALLY.

>> RIGHT.

WELL, I'D LIKE TO POINT TO THE
COURT'S DECISION IN ECHEVERRIA,
WHERE YOU BALANCE THE SAME
POLICY AND FOUND THE RIGHT TO
FREE INFORMATION OUTWEIGHED THE
RISK OF POSSIBLE DEFAMATORY
CONDUCT AND IN ECHEVERRIA, THE
STATEMENTS IN THAT CASE WERE
LETTERS SENT BEFORE A LAWSUIT
HAD EVEN BEEN FILED, AND, SO,
WHILE JUSTICE PARIENTE, YOU AND
JUSTICE WELLS BOTH WROTE CON
CURRENCIES QUESTIONING WHETHER
THAT WAS REALLY -- CONCURRENCES,
THE QUESTION WAS OF THE TIME, IT
WASN'T A QUESTION BECAUSE THE
LETTERS WEREN'T PART OF THE
FORMAL COURT FILE THEY COULD NOT

BE CONSIDERED IN THE
PROCEEDINGS.

>> A LETTER WHICH IS CAPABLE,
YOU KNOW, I DON'T KNOW IF IT IS
A PRETRIAL SUIT BUT YOU'VE GOT
SOMETHING THAT IS CAPABLE, OF
SOMEONE EVALUATING IT, AND
AGAIN, THE JUDGE OR THE OTHER
SIDE, TO BE ABLE TO, AS
MR. ROGOW SAID, HAVE NOTICE AND
BE ABLE TO TAKE WHATEVER WAS IN
A COMPLAINT, WHICH IS IN ITSELF,
PRETTY OUTRAGEOUS STUFF, AND, BE
ABLE TO GO, WAIT, THEY ARE
SAYING THIS, THERE IS NO
EVIDENCE THAT HE EVER SUPPLIED
PROSTITUTES TO HIS CUSTOMERS.
THE SUBJECT MATTER ITSELF IS
RACY.

>> RIGHT.

AND THAT JUST EXPLAINS, WHEN THE
SUBJECT MATTER IS, HE USES
PROSTITUTES TO GET BUSINESS, IT
IS A VERY DIFFICULT -- DIFFICULT
TO SPEAK TO ANYONE ABOUT THAT

WITHOUT MENTIONING THE WORD
"PROSTITUTION".

>> WAIT, THE WORD IS NOT
PROSTITUTION, AS OFFENSIVE AS
THAT MAY SOUND, IT IS
PROSECUTING.

>> I UNDERSTAND THE WORD IS
PROSECUTING.

AND, I THINK THAT THAT IS STILL
RELATED TO THE UNDERLYING
CRIMINAL CONDUCT AS ALLEGED --

>> PROSECUTING.

>> YES, BECAUSE IT IS A BROAD,
HAS TO BEAR RELATION --

>> MAYBE I'M MISSING SOMETHING,
ISN'T THE TERM PROSECUTE
FREQUENTLY USED WITH RESPECT TO
CIVIL CASES.

>> I COULD EASILY SEE THAT
HAPPENING HERE, IT WAS A
MISCOMMUNICATION WHERE HE SAID,
WE'RE BRINGING A LAWSUIT, WIRE
PROSECUTING A LAWSUIT SENATE
THEY ARE DEFENDING.
THEY ARE NOT PROSECUTING A SUIT.

>> KEEP IN MIND, THAT HE'S
SPEAKING TO A LAY PERSON AND HE

--

>> DEFENDING THE CASE.

>> DEFENDING THE LAWSUIT, BUT,
STILL I COULD SEE IT HAPPEN.

WITH THAT, I --

>> HE SAID HE DIDN'T SAY IT,
DIDN'T HE.

>> APOLOGIZE?

>> DID HE SAY HE DIDN'T SAY
NIGHT HE DENIED SAYING IT.

>> FACTUAL.

>> IT IS A FACTUAL ISSUE AS IN
ANY CASE AND, THAT IS WHY WE ASK
THIS COURT TO REAFFIRM ITS
HOLDING IN LEVIN.

THERE IS NO REASON TO CHANGE THE
LAW IN THIS AREA.

>> I GUESS YOU COULD SAY HE WAS
PROSECUTING A DEFENSE.

AN OXYMORON.

>> I GUESS, YOUR HONOR, BUT IT
POINTS TO HOW THIS IS REALLY --
BECOMES A FACTUAL QUESTION AND,

ATTORNEYS NEED TO BE FREE TO
SPEAK TO A WITNESS IN THE
INFORMAL SETTING WITHOUT FEAR OF
BOTH THE ATTORNEY AND THE
WITNESS HAVING THEIR OWN
PERSONAL LIABILITY ON THE LINE,
AND BEING AFRAID TO COME FORWARD
WITH VALUABLE INFORMATION, AND
FOR ATTORNEYS TO ASK THE HARD
QUESTIONS, THAT ARE NECESSARY TO
ACTIVELY DEFEND THEIR CLIENTS.
WITH THAT I'D ASK THIS COURT TO
PLEASE REVISIT ITS DECISION AND
EXERCISE JURISDICTION IN THIS
CASE AND IF NOT, TO AFFIRM THE
DECISION OF THE FOURTH DISTRICT.
THANK YOU VERY MUCH.

>> I WILL GIVE YOU AN EXTRA
MONEY.

>> THANK YOU, JUSTICE CANADY,
ABSOLUTE IMMUNITY IS ACTUALLY A
RARE THING, IN OUR JUDICIAL
SYSTEM.

AND, IN OUR LEGISLATIVE SYSTEM,
THE SPEECH AND DEBATE CLAUSE, OF

COURSE, PROTECTS MEMBERS OF
CONGRESS FROM THINGS THAT ARE
SAID ON THE FLOOR OF CONGRESS.
FLORIDA DOESN'T HAVE A SPEECH
AND DEBATE CLAUSE, PROVISION IN
THE FLORIDA CONSTITUTION THOUGH
IT DID IN THE 1865 CONSTITUTION
AND WE ARE LOOKING AT SOMETHING
VERY, VERY UNIQUE.

WHEN YOU TALK ABOUT ABSOLUTE
IMMUNITY.

AND, WHAT --

>> PEEKING OF THE PRINCIPLE
ISN'T COUNSEL CORRECT WE
SHOULDN'T HAVE TO LITIGATE A
CASE OF LITIGATION MULTIPLE
TIMES FOR WHO SAID WHAT DURING
LITIGATION?

THERE IS NO END TO THIS.

>> THERE IS AN END, YOU ARE
RIGHT, JUSTICE LEWIS AND THE
BALANCE I'M SUGGESTING,
QUALIFIED IMMUNITY, YOU KNOW,
WHEN YOU TALK ABOUT, ABOUT THE
FIRST AMENDMENT, AND THE RIGHT

TO COMMENT ABOUT PUBLIC
OFFICIALS, IT IS A QUALIFIED
IMMUNITY.

THAT COMES INTO PLAY THERE AND
THAT IS WHAT WE'RE TALKING ABOUT
HERE AND THESE CASES WOULD NOT
GO TO TRIAL, IF YOU USE THE SAME
STANDARD, THE EVIDENCE TURNS
OUT, THERE IS NO MALICE, THEN
THE CASE IS OVER.

BUT WHAT ARE WE BALANCING HERE?
YOU HEARD THE ARGUMENT, FROM THE
ATTORNEYS, THEY NEED TO BE FREE.
WELL, YOU KNOW, THAT IS NOT
COMPLETELY SO.

WE CERTAINLY DON'T SUBSCRIBE TO
THE ATTORNEYS NEED TO BE FREE.
THERE ARE LIMITATIONS.

AND, ON THE OTHER SIDE, IS THE
INDIVIDUAL'S RIGHT TO REPUTATION
WHICH IS ABOUT AS HIGH AN
INTEREST AS ONE CAN HAVE, EVEN
BEYOND THE NOTION OF DAMAGES.
AND SOS, THE RISK THAT WOULD BE
AVOIDED, WOULD ALL BE ADDRESSED

BY A QUALIFIED IMMUNITY KIND OF
SITUATION.

THERE IS A BALANCING, OF COURSE
AND WHAT I'M SUGGESTING, IS AN
EFFORT TO STRIKE THE BALANCE,
THAT SERVES THE FACT-FINDING
INTERESTS AND JUDGE WARNER WAS
CLEAR ABOUT THAT, IT COULD BE
ANTITHETICAL TO THE FACT-FINDING
INTEREST WHEN YOU HAVE LAWYERS
LYING TO POTENTIAL WITNESSES,
AND LEVIN IS NOT A LICENSE TO
LIE.

>> THIS IS A CHARGE OR AN
ACCUSATION OF CRIMINAL BEHAVIOR,
SUFFICIENT TO ESTABLISH AT LEAST
PRELIMINARILY, MALICE?

>> IT IS WOULD BE PER SE...

>> THAT IS WHAT I THOUGHT.

SO THEN ALL YOU HAVE TO DO IN
THESE COMPLAINTS IS MAKE SOME
KIND OF STATEMENT, AL DPAGS,
SOMEONE IMPLIED, CRIMINAL
CONDUCT, AND YOU WILL HAVE TO
HAVE EVERY WITNESS HE'S TALKED

WITH, ANOTHER LAWSUIT ON WHAT
WAS SAID AND NOT SAID THEN.

>> THERE WOULD HAVE TO BE -- IT
COULD END ON SUMMARY JUDGMENT,
IF THE COURT FOUND THERE WAS NO
MALICE IN TERMS OF HOW...

>> THE ALLEGATION IS MADE, YOU
CROSS THE THRESHOLD, AT LEAST
YOU HAVE TO DEFEND THE LAWSUIT.

>> YES.

YES.

WE RESPECTFULLY REQUEST THE
COURT REVERSE THE DECISION BELOW
AND ADDRESS THE ISSUES WE HAVE
PRESENTED.

THANK YOU.

>> THANK YOU BOTH FOR YOUR
ARGUMENT.

THE ONLY CASE ON TODAY'S DOCKET
SO THE COURT WILL NOW BE
ADJOURNED.

>> ALL RISE.

>> I WANT YOU TO UNDERSTAND AN
HONEST DIFFERENCE OF
PHILOSOPHICAL OPINION IS NOT

PERSONAL.

IT DOESN'T MAKE SOMEBODY DO EVIL
THINGS, LIKE SINNED CHILDREN TO
SCHOOL HUNGRY.

BECAUSE, WE DISAGREE

PHILOSOPHICALLY OF A POINT AND

SHOULD BE LEFT OUT OF THE DEBATE

AND WE HAVE TALKED ABOUT THE THE

CONCEPT IN THE HOUSE OF

REPRESENTATIVES FOR OVER A

QUARTER OF A CENTURY.

TO HEAR THAT, OVER A QUARTER OF

A CENTURY WE HAVE BEEN TALKING

ABOUT THIS.

AND, BECAUSE WE DISAGREE, IT IS

NOT DISRESPECT, IT IS AN HONEST,

PHILOSOPHICAL DIFFERENCE OF

OPINION.

AND, LEST ANYBODY THINK I DON'T

HAVE SOME KNOWLEDGE OF

EDUCATION, BOTH MY PARENTS WERE

COLLEGE PROFESSORS WHEN I WAS

BORN, MY SISTER WAS TEACHER OF

THE YEAR IN POLK COUNTY, MY WIFE

RETIRED AFTER 35 YEARS IN

EDUCATION, AND I'M PROUD TO SAY
I HAVE TWO DAUGHTERS WHO ARE
TEACHERS AND I'M SUPPORTING THIS
BILL, BECAUSE I WANT THEM TO GET
PAID WHAT THEY ARE WORTH.
AND I WANT THEM TO HAVE THE
OPPORTUNITY TO SHOW THAT THEY
CAN AND HE WILL BECAUSE I
BELIEVE THEY DO ALREADY AND
SHOULD BE REWARDED FOR THAT.
MOST OF ALL, I WOULD ASK ALL OF
YOU TO JOIN ME IN RECOGNIZING
YOUR OWN FALLIBILITY AND
ACKNOWLEDGING WHILE NOT PERFECT,
THIS BILL IS A STEP IN THE RIGHT
DIRECTION.

THANK YOU, MR. SPEAKER.

I YIELD BACK TO DR. PROCTOR.

>> REPRESENTATIVE PROCTOR, YOU
ARE RECOGNIZED.

>> THANK YOU, MR. SPEAKER.

AT THIS TIME I YIELD TO
REPRESENTATIVE LOPEZ-CANTERA.

>> REPRESENTATIVE, YOU ARE
RECOGNIZED IN DEBATE.

>> THANK YOU, MR. SPEAKER.

TODAY, MEMBERS, WE HAVE
EXPERIENCED PASSIONATE DEBATE
ABOUT THE FUTURE OF EDUCATION
REFORM, IN FLORIDA.

BUT THIS DEBATE IS ABOUT MORE
THAN EDUCATION REFORM.

IT IS MORE THAN TEACHERS UNIONS
OR PERFORMANCE PAY, OR POLITICS.

THIS DEBATE IS ABOUT GIVING
EVERY CHILD IN EVERY COMMUNITY
THE CHANCE FOR A BETTER FUTURE.

ABOUT GIVING EVERY CHILD THE
OPPORTUNITY TO SUCCEED.

MANY OF OUR TEACHERS WORK
TIRELESSLY, AND GO ABOVE AND
BEYOND THE CALL OF DUTY AND

THOSE TEACHERS DESERVE A HIGHER
SALARY FOR A JOB WELL DONE, IN A
LAND OF GREAT ECONOMIC

OPPORTUNITY AND HARD WORK AND
INGENUITY ALLOWS ANYONE TO
SUCCEED REGARDLESS OF

CIRCUMSTANCE, IT IS UNFATHOMABLE
WE WOULD LEAVE OUR CHILDREN'S

OPT STUDENTS FOR A BETTER FUTURE
TO RANDOM CHANCE RATHER THAN
MEASURED EXCELLENCE AND WE MUST
BE COMMITTED TO EXCELLENCE IN
EDUCATION, EVEN IF THE TOUGH
CHOICES WE MUST MAKE TO GET
THERE ARE NOT EASY.

WE WERE NOT ELECTED TO DO WHAT
WAS EASY.

WE WERE ELECTED TO DO WHAT WAS
RIGHT.

AND WHAT IS RIGHT IS TO PASS

THIS BILL AND GIVE EVERY CHILD

IN FLORIDA A GREATER OPPORTUNITY
FOR SUCCESS.

MR. SPEAKER, I HOPE THAT THE

PASSAGE OF THE BILL, WE SEND A

STRONG MESSAGE TO THE CHILDREN

IN THE STATE OF FLORIDA.

AND THAT MESSAGE IS, SUPERMAN,

IS ON THE WAY.

THANK YOU, MEMBERS

[APPLAUSE].

>> REPRESENTATIVE PROCTOR.

YOU ARE RECOGNIZED.

>> THANK YOU, MR. SPEAKER.

AT THIS TIME I YIELD TO
REPRESENTATIVE WEATHERFORD.

>> YOU ARE RECOGNIZED IN DEBATE.

>> THANK YOU, MR. SPEAKER.

I AM REMINISCING ABOUT THE
DEBATE WE HAD ON THIS FLOOR LAST
YEAR, AND I WISH FRANKLY THAT
THE 40-PLUS MEMBERS WHO ARE NEW
TO THE CHAMBER HAD THE
OPPORTUNITY TO SEE WHAT TOOK
PLACE HERE LAST YEAR.

Y IT LASTED UNTIL 3:00 A.M. AND
WHEN I SPOKE ABOUT THE VERY
ISSUE, IT WAS 2:40 A.M.

THE RHETORIC WAS A LITTLE
THICKER, THE TONE WAS A LITTLE
HARSHER, THE ISSUES WERE A
LITTLE BIT DIFFERENT.

THE MEMBERS OVER THE LAST YEAR,
THERE HAS BEEN A TIRELESS EFFORT
ON MEMBERS OF THIS CHAMBER,
REPUBLICAN AND DEMOCRAT, TO MAKE
THIS A BETTER BILL.

AND THERE AREN'T SMALL CHANGES

IN THE BILL COMPARED TO LAST
YEAR.

THERE ARE SIGNIFICANT POLICY
DIFFERENCES IN THE LEGISLATION
COMPARED TO WHAT WE DID LAST
YEAR.

LAST YEAR THEY SAID THAT WE RUSH
THE BILL THROUGH, AND WE
PROBABLY DID.

LAST YEAR THEY SAID THAT WE
DIDN'T LISTEN TO TEACHERS ENOUGH
AND PROBABLY DIDN'T.

BUT, MEMBERS, THIS YEAR AFTER
DEBATING THE BILL FOR THE LAST
18 MONTHS AND BE THIS
LEGISLATION WE HAVE LISTENED, WE
HAVE LEARNED, AND WE HAVE MADE
THIS A BETTER PRODUCT.

AND I WANT TO FIRST THANK NOT
JUST THE SPEAKER FOR SHOWING
LEADERSHIP ON THIS BILL AND
MAKING THIS A PRIORITY AND
GETTING THAT OUT EARLY IN
SESSION BUT ALSO TO
REPRESENTATIVE PROTECTOR AND

REPRESENTATIVE FRESEN WHO MADE
IT WHAT IT IS TODAY, WHICH IS A
BETTER BILL THAN WHEN I TALKED
ABOUT 2:30 IN THE MORNING LAST
YEAR.

THANK YOU GUYS FOR MAKING IT A
GOOD BILL.

[APPLAUSE].

>> THIS ISSUE BRINGS PASSION
ABOUT.

BUT YOU KNOW WHAT?

WHEN WE TALK ABOUT EDUCATION FOR
OUR CHILDREN, WE SHOULD BE
PASSIONATE.

WHAT OTHER ISSUES SHOULD BRING
OUT THE EMOTION OF LEGISLATORS
ON BOTH SIDES OF THE AISLE THAN
THE FUTURE OF OUR CHILDREN?

BECAUSE, EVERYBODY IN HERE
KNOWS, AND THEY AGREE AND
BELIEVE THAT EDUCATION IS THE
KEY TO SUCCESS, IT IS THE KEY TO
BREAKING THE CYCLES OF POVERTY
WE TALK ABOUT, IT IS THE KEY TO
PROSPERITY, AND WE BELIEVE THAT

AND THAT IS WHY WHEN WE TALK
ABOUT BEING BETTER, THEY CAN BE
PASSIONATE AND EMOTIONAL AND
THERE IS TREMENDOUS FEAR OF THE
UNKNOWN.

WHERE ARE WE HEADED?

WHAT WILL IT DO.

IF I'M A TEACHER HOW WILL IT
AFFECT ME, WHAT DOES IT MEAN FOR
ME?

AM I A GOOD TEACHER?

GOOD ENOUGH?

HIGHLY EFFECTIVE?

EFFECTIVE?

LET ME TELL YOU WHAT I FEAR.

I FEARED IT LAST YEAR AND STILL
DO TODAY.

I FEAR THE STATUS QUO.

MEMBERS, WE CANNOT CONTINUE TO
BE THANKFUL AND HAPPY WITH THE
WAY THINGS ARE TODAY.

ARE WE DOING BETTER THAN TEN
YEARS AGO?

ABSOLUTELY, WE ARE.

AND 1998 WE HAD THE 31ST BEST

EDUCATION SYSTEM IN THE U.S.A.
AND TODAY IT IS 5th AND IT IS
BECAUSE WE BROUGHT
ACCOUNTABILITY, MEASUREMENT AND
CHOICE INTO OUR EDUCATION
SYSTEM.

BUT WE DID THAT BECAUSE WE WERE
WILLING TO REFORM.

WE WERE WILLING TO CHANGE.

WE HAVE TO CONTINUE THAT.

TEACHING IS HARD.

MANY OF YOU HAVE GONE INTO THE
CLASSROOM, PROBABLY, HAVE DONE
THAT ON THE GREATS AMERICAN
TEACH IN DAY LIKE I HAVE AND
SPENT TIME IN THE CLASSROOM AND
HAVE DONE SIX CLASSES IN A ROW
AND I'M READY TO KEEL OVER AND
DIE AFTER TEACHING ALL DAY.

IT IS HARD.

I COULD NOT BE A TEACHER.

I DON'T HAVE THE TALENT OR
SKILL, TO BE A TEACHER, IT IS AN
ART AND SCIENCE, TRANSFORMING
INFORMATION -- TRANSFERRING

INFORMATION FROM ONE PERSON TO
ANOTHER IS A GIFT.

BUT THAT GIFT IS NOT FOR
EVERYBODY.

AND WE HAVE TO BE COGNIZANT OF
THAT.

THERE'S A QUOT I WANT TO READ
AND IT SAYS THIS:

"MONEY WITHOUT REFORM WILL NOT
FIX OUR PROBLEMS.

TEACHERS WHO FAIL TO LIVE UP TO
EXPECTATIONS NEED TO BE GIVEN A
CHANCE TO IMPROVE, BUT THOSE WHO
DO NOT SHOULD MOVE ON."

UNIONS CANNOT AND SHOULD NOT
DEFEND THE STATUS QUO IN WHICH
1/3 OF CHILDREN ARE DROPPING OUT
OF HIGH SCHOOL.

MEMBERS, THAT IS NOT JEB BUSH,
REPRESENTATIVE FRESEN, NOT
REPRESENTATIVE PROCTOR, SOME OF
YOU KNOW YOUR HISTORY, THAT IS
THE PRESIDENT OF THE UNITED
STATES, BARACK OBAMA, SAID THAT.

AND YOU KNOW WHAT?

HE SHOULD BE COMMENDED FOR THAT.

BECAUSE THIS IS NOT A PARTISAN
ISSUE.

THIS IS ABOUT THE FUTURE OF OUR
STATE, THE FUTURE OF OUR
CHILDREN.

AND, IN THE TIMES PAST WHEN WE
HAVE SHOWN COURAGE IN REFORM,
AND HAVE DONE WHAT IS RIGHT AND
NOT WHAT IS POPULAR WE'VE GONE
FROM BEING THE 31ST BEST
EDUCATION SYSTEM IN THE COUNTRY
TO THE 5TH AND IF WE DO THIS TEN
YEARS FROM NOW, WE'LL BE THE
BEST.

WE WILL BE NUMBER ONE.

VOTE FOR THE BILL, MEMBERS,

THANK YOU.

[APPLAUSE].

>> REPRESENTATIVE PROCTOR.

YOU ARE RECOGNIZED.

>> THANK YOU, MR. SPEAKER.

MEMBERS, SOME OF YOU MAY
REMEMBER A PUBLICATION OF A
NATIONAL REPORT, A NATION AT

RISK.

FOR THOSE OF YOU TOO YOUNG TO

REMEMBER THAT, I WILL READ YOU

JUST ONE SENTENCE FROM IT.

IF AN UNFRIENDLY FOREIGN POWER

HAD ATTEMPTED TO IMPOSE ON

AMERICA THE MEDIOCRE EDUCATIONAL

PERFORMANCE THAT EXISTS TODAY WE

MIGHT HAVE VIEWED IT AS AN

ACTION OF WAR.

THAT WAS WRITTEN IN 1983.

25 YEARS LATER, THAT WAS A

FOLLOW-UP REPORT.

I GIVE YOU ONE LINE IN THAT

REPORT.

IF WE WERE AT RISK IN 1983, WE

ARE AT EVEN GREATER RISK TODAY.

THAT WAS 2006.

SIMPLY STATED, BECAUSE IN

INTERNATIONAL COMPETITION WE'RE

FALLING BEHIND, 26 IN MATH

LITERACY, 21ST IN SCIENCE

LITERACY.

NOW, THAT REPORT, LAST REPORT,

IS NOT ALL PESSIMISTIC.

THERE ARE TWO OUTSTANDING THINGS
IN THAT REPORT.

ONE, THEY SAY FOR THE FIRST TIME
IN AMERICAN HISTORY, WE CAN
MEASURE STUDENT PERFORMANCE.

I UNDERSTAND THAT.

WE CAN MEASURE STUDENT
PERFORMANCE.

SECOND THING THEY SAY IN THAT
REPORT, IS THAT WE CANNOT EFFECT
THE CHANGE WE NEED IN EDUCATION
WITHOUT A STRUCTURAL CHANGE.

AND WHAT IS A STRUCTURAL CHANGE?
WHEN YOU DO AWAY WITH LAST IN,
FIRST OUT, A CHANGE IN
STRUCTURE.

YOU CAN'T TINKER AROUND THE EDGE
AND COMPETE INTERNATIONALLY.
YOU'VE GOT TO BE WILLING TO MAKE
STRUCTURAL CHANGES.

DON'T TAKE MY WORD FOR THAT.

READ THE NATIONAL REPORT.

SOME OF YOU IN -- AND I'LL CLOSE
ON THAT BECAUSE I RECOMMEND THE
REPORT TO YOU, IT IS CALLED, A

NATION ACCOUNTABLE.

PUBLISHED IN 2006, I BELIEVE.

NOW, SOME OF YOU ARE WORRIED

ABOUT TENURE.

THIS IS MY 54th YEAR IN THE

EDUCATIONAL PROFESSION AND I

NEVER HAD TENURE.

AND I NEVER WORRIED ABOUT IT.

IF I WASN'T GOOD ENOUGH TO KEEP

THE JOB I DIDN'T WANT TO BE

PROTECTED BY TENURE.

SO LET ME READ YOU SOMETHING

ABOUT TENURE AND I HOPE YOU WILL

THINK ABOUT THAT SERIOUSLY.

DEMOCRATS, THIS COMES FROM A

PUBLICATION BY THE DEMOCRATS FOR

EDUCATIONAL REFORM.

THIS IS NOT A REPUBLICAN

CONSERVATIVE THINK TANK AND

HERE'S WHAT IT SAYS ABOUT

TENURE:

"WE KNOW THERE ARE INCREDIBLE

TEACHERS IN CLASSROOMS ACROSS

AMERICA

WE ALL KNOW THAT BUT WHEN

EXCELLENCE ITSELF IS IRRELEVANT
IN PUBLIC EDUCATION HAS IT HAS
THROUGH THE PROLIFERATION OF
ILL-EQUIPPED AND BROKEN TENURE
SYSTEMS, THE BEST TEACHERS AND
THE MOST PROMISING SCHOOL
LEADERS GO UNRECOGNIZED.

A SYSTEM DESIGNED TO PROTECT...
WILL INEVITABLY FALL ON ITS VERY
BEST.

THANK YOU, MR. SPEAKER.

[APPLAUSE].

>> ALL RIGH.

REPRESENTED WALDMAN, YOU ARE
RECOGNIZED IN DEBATE INTO THANK
YOU, YIELD TO REPRESENTATIVE
DWIGHT BULLARD WHO WILL FINISH
OUT THE DEBATE ON THIS SIDE.

>> REPRESENTATIVE BULLARD, YOU
ARE RECOGNIZED IN DEBATE.

>> THANK YOU, MR. SPEAKER, AND,
I'M ECSTATIC THAT REPRESENTATIVE
WEATHERFORD POINTED OUT IT IS
HARD TO BE A TEACHER, BECAUSE,
FOR THE LAST 11 YEARS I HAVE

BEEN ONE AND SO, EVERY DAY,
MONDAY THROUGH FRIDAY, I HAVE
DONE EXACTLY WHAT THAT ONE DAY
THAT YOU TALK ABOUT,
EXEMPLIFIES.

SO, I'M GLAD YOU RECOGNIZED THE
HARD WORK TEACHERS ARE PUTTING
IN AND I SURE WISH YOU WOULD
OFFER UP AN AMENDMENT TO PUT
SOME OF THAT IN THIS BILL.

I COULD SIT HERE ON THE FLOOR OF
THE HOUSE OF REPRESENTATIVES AND
HARP ON ALL KINDS OF STUDIES AND
TALK ABOUT HOW DOE IN THEIR MOST
RECENT FINDINGS ABOUT THE BILL
CALLED IT AN UNFUNDED MANDATE
BECAUSE THEY REALIZE THEY CAN'T
AFFORD TO IMPLEMENT THE BILL, I
COULD TALK ABOUT HOW OUR HOME
COUNTY, REPRESENTATIVE FRESEN,
IS GOING TO BE STIFLED WITH ONE
BILLION DOLLARS WORTH OF TEST
DEVELOPMENT FOR THE 1,000-PLUS
SECTIONS THEY HAVE TO CREATE
TESTS FOR.

AND THAT IS BEFORE YOU GET TO
THE PORTION WHERE YOU HAVE TO
SOMEHOW FIND MERIT PAY.

I COULD TALK ABOUT THE
7,000-PLUS ATTEMPTS IN THE LAST
150 YEARS, THAT THE UNITED
STATES HAS TAKEN FOR MERIT PAY.
IN WHICH ALL FAILED YET WE THINK
WE FOUND THE SOLUTION ON THE
FLOOR TODAY.

I COULD HIGHLIGHT THE FACT THAT,
YES, WE ARE 25th
INTERNATIONALLY, BUT THE ONE
COUNTRY THAT SITS ATOP US ALL,
FINLAND, LITTLE FINLAND, HAS ALL
OF THEIR TEACHER EVALUATION
CENTERED TESTS DEVELOPED BY
TEACHERS.

I COULD NOTE THE FACT THAT THEY
ARE 100% UNION.

I COULD NOTE ALL OF THAT.

BUT, WHY BOTHER?

YOU ALREADY KNOW HOW YOU ARE
VOTING TODAY.

Y ALREADY DO.

YOU ARE PRIMED AND READY TO
PRESS THE GREEN BUTTON AND
PRIMED AND READY TO GO TO THE
BOARD AND SHOWED EVERYBODY,
TEACHERS, STUDENTS, CITIZENS OF
THE STATE OF FLORIDA, THE
TWO-AND-A-HALF MILLION PUBLIC
SCHOOL STUDENTS, 189,000 PUBLIC
SCHOOL TEACHERS, EXACTLY HOW YOU
FEEL ABOUT IT AND THEN YOU WILL
GO BACK TO YOUR DISTRICTS AND
EXPLAIN TO THEM AN ANSWER
E-MAILS, THE ONES YOU HAVE BEEN
TRYING TO AVOID, FOR THE LAST
SEVERAL DAYS, AND, SAY, WE DID
RIGHT BY YOU AND LET ME TELL YOU
WHY:

I COULD TELL YOU ALL THAT.

BUT THERE IS NO POINT AS I
STATED BEFORE.

NO POINT IN ME TRYING TO CHANGE
YOUR MIND BECAUSE YOU ARE
ALREADY -- YOU KNOW WHERE YOU
ARE GOING TO GO.

SO, WITH THAT BEING SAID, I'D

LIKE TO MAKE A FEW

ACKNOWLEDGEMENTS.

I'D LIKE TO ACKNOWLEDGE MY

CAUCUS.

FOR STANDING WITH ME FOR WHAT IS

RIGHT FOR THE STATE OF FLORIDA.

YESTERDAY WE OFFERED UP 4

AMENDMENTS BECAUSE WE TRIED TO

MAKE THE BILL BETTER AND WE

LISTENED TO SPEAKER AFTER

SPEAKER TALK ABOUT RACE TO THE

TOP.

AND HOW WE NEED TO ALIGN THIS

WITH THE RACE TO THE TOP, YET

WHEN WE PROPOSE AMENDMENTS TO

ALIGN IT, FURTHER, WITH RACE TO

THE TOP, THEY WERE REJECTED.

I HEARD MEMBER AFTER MEMBER TALK

ABOUT THE NEED FOR

ACCOUNTABILITY.

TRANSPARENCY.

YET WHEN WE OFFERED UP

AMENDMENTS FOR ACCOUNTABILITY,

FOR SOMEONE BESIDES TEACHERS,

ADMINISTRATORS AND

SUPERINTENDENTS, IT WAS

REJECTED.

AND I HAVE TO ASK MYSELF WHY,

WHY IS THAT?

I WOULD HATE TO CREATE AS

REPRESENTATIVE GAETZ POINTED

OUT, SOME CONSPIRACY THEORY THAT

IT IS FOR POLITICAL GAIN OR

REASONS.

GOD FORBID.

NOT ON THIS FLOOR!

NOT ON THE FLOOR THAT REPRESENTS

18.5 MILLION PEOPLE OF DIFFERENT

BACKGROUNDS, DIFFERENT ECONOMIC

AND SOCIOECONOMIC CONDITIONS,

DIFFERENT ABILITIES TO LEARN,

PUBLIC AND PRIVATE SCHOOLS,

BUSINESS AND PUBLIC SECTOR, NOT

ON THIS FLOOR, WE WOULDN'T DO

SOMETHING LIKE THAT.

WE'RE BEYOND THE SCOPE OF THAT,

RIGHT?

I MENTIONED TWO YEARS AGO, THE

CHAMBER DOESN'T HAVE WINDOWS.

BECAUSE THE PEOPLE DON'T WANT TO

PEER IN AND WE DON'T WANT TO BE
INFLUENCED BY THE OUTSIDE
INFLUENCE BUT, WE TOO OFTEN
AVOID OUTSIDE INFLUENCES.

BUT LET ME TELL YOU BOY A FEW
INFLUENCES.

I HAVE ACKNOWLEDGED MY CAUCUS
FOR STANDING WITH ME AND DOING
WHAT IS RIGHT FOR THE STATE OF
FLORIDA.

BUT I WANT TO ACKNOWLEDGE A
COUPLE PEOPLE.

I WANT TO ACKNOWLEDGE IN ORDER,
MRS. JOHNSON, MRS. PUTNAM,
MRS. BUTLER, MS. DWAYNE AND
MS. WEIGHT, MR. HART AND
MS. CANE.

AND I WANT TO ACKNOWLEDGE MY
FIRST AND BEST TEACHER.

THE SENATOR FROM THE 39th
DISTRICT.

WHO HERSELF WAS A FIRST GRADE
PHENOMENAL HIGH QUALITY TEACHER,
NONE OF WHOM WERE HAMPERED BY
THE F CAT AND YET, SOMEHOW, SOME

WAY, GOT STUDENTS TO LEARN.

NEVER ONCE HAVING TO TEACH TO A
TEST, YET, SOMEHOW, SOME WAY,
GOT STUDENTS OVER THAT HUMP.

TAUGHT STUDENTS TO READ.

SOMEHOW, SOME WAY, THEY WERE
ABLE TO ACCOMPLISH THAT BEFORE
JEB BUSH.

BEFORE ALL OF THESE WONDERFUL
REFORM INITIATIVES THAT HAVE
HAPPENED WHETHER DEMOCRAT OR
REPUBLICAN, AS HAS BEEN POINTED
OUT OVER THE LAST 20 YEARS.

SOMEHOW, SOME WAY, THEY GOT A
STUDENT IN THEIR CLASSROOM TO
RUN FOR ELECTED OFFICE, AND WIN.

BECAUSE ALL OF THEM SHARED
INFLUENCES AND LET ME TELL YOU,
SPECIFICALLY, WHAT THEY DID.

MIS-JOHNSON TOLD ME THE VALUE OF
SHARING.

THAT IT IS IMPORTANT TO ECHANGE
WITH OTHERS AND NOT WITHHOLD
INFORMATION YOU KNOW IS
BENEFICIAL TO THEM.

IF YOU HAVE SOME, MAYBE THERE IS
SOMEONE OUT THERE WHO DESERVES A
LITTLE BIT.

THAT IS WHAT MS. JOHNSON TAUGHT
US, MS. PUTNAM.

MY FIRST GRADE TEACHER, WHO
TAUGHT NEXT-DOOR TO MY MOM, WHO
OFTEN SHARED IDEAS.

FOUND IN HER HEART OF HEARTS TO
SEND ME A POST CARD OR LETTER
EVERY YEAR UNTIL I GRADUATED
FROM HIGH SCHOOL.

EVERY YEAR PRIOR TO SCHOOL
STARTING, I LOOKED FORWARD TO
RECEIVING THAT POST CARD FROM
MS. PUTNAM, EVEN AFTER SHE MOVED
TO NEW HAMPSHIRE.

BECAUSE SHE KNEW THE VALUE OF
ENCOURAGING ME TO PUSH ON.
IN SPITE OF IT ALL.

YOU SEE, MS. De ARMIS, THE THING
ABOUT HER, THAT I LOVED WAS THE
FACT THAT SHE RECOGNIZED THAT
EVEN THOUGH I WAS THE ONLY BLACK
STUDENT IN HER CLASS, THAT SHE

WASN'T GOING TO TREAT ME ANY
DIFFERENTLY.

SHE NEVER ONCE DEVALUED ME.

SHE NEVER ONCE MADE ME THE SORE
THUMB IN THE ROOM, SHE ALWAYS
LOOKED AT ALL OF US AS EQUALS.

SEE, NOW MS. BUTLER WAS A LITTLE
DIFFERENT.

BECAUSE WHAT MS. BUTLER WOULD DO
IS, SHE TRIED TO TRICK YOU INTO
LEARNING.

YOU KNOW, SHE'D SAY STUFF LIKE,
IF YOU DON'T LEARN CURSIVE I'M
GOING TO SIT ON YOU!

THAT'S WHAT I USED THE LOVE
ABOUT MISS BUTLER.

SOMEHOW, SOME WAY, I COULD LEARN
THE DIFFERENCE BETWEEN A CURSIVE
B AND D, BECAUSE OF HER.

NOW, I SEE M.S.U. NCHOVAG
CHALLENGED ME, AND, WORD
PROBLEMS NEED TO BE THOUGHT
THROUGH, WHEN I'D COME TO HER IN
MATH, WITH THE WORD PROBLEM AND
SAY I DON'T GET IT.

SHE DIDN'T SAY, HERE'S THE
ANSWER.

SHE SAID, GO BACK AND KEEP
TRYING.

KEEP PUSHING.

MS. WEIGHT.

THEY TOLD ME TO BE A GOOD
CITIZEN.

HERE IN THE STATE OF FLORIDA,
AND TOLD ME THE VALUE OF
LEARNING ALL 50 STATES.

BY PUTTING A BLANK MAP IN FRONT
OF ME AND SAYING, WRITE THAT
NAME DOWN, ON EACH STATE.

AND WHEN I WENT TO HER AND I
SAID I THINK I HAVE 38 OUT OF
50.

GUESS WHAT SHE SAID?

GIVE ME 50.

GIVE ME 50.

GIVE ME 50.

WELL, I GOT 46.

GIVE ME 50.

WELL, I GOT 48.

GIVE ME 50.

AND THEN WHEN I WAS DONE WITH
THAT 50, SHE SAID, FIND ME THOSE
CAPITALS, THAT IS CALLED
CHALLENGING SOMEONE.

MR. HART, DESPITE BEING THE LONE
MALE TEACHER I HAD IN MY
MATRICULATION THROUGH ELEMENTARY
SCHOOL, ALWAYS POINTED OUT THE
FACT THAT THERE WAS ANOTHER STEP
TO TAKE.

ONCE YOU LEAVE WINSTON PARK
ELEMENTARY, DWIGHT THERE WILL BE
A LOT OF OBSTACLES AND
CHALLENGES PUT IN YOUR WAY BUT
ALL YOU CAN DO IS KEEP PUSHING
TO GET AHEAD.

SEE, NOW, SOME OF YOU MAY THINK,
MAN, DID HE HAVE TO GO THAT...
WHAT YEARBOOK DID HE LOOK AT TO
REMIND HIMSELF OF THESE FOLKS?
AND I WILL LET YOU KNOW RIGHT
NOW, GUESS WHAT?

I CARRY THEM RIGHT HERE.

IN MY HEART, EVERY DAY.

BECAUSE, PEOPLE OFTENTIMES ASK,

WHY DO YOU GET SO PASSIONATE
ABOUT THIS ISSUE OF EDUCATION?
WHY ARE YOU SO CONCERNED, WHY
WOULD YOU WASTE YOUR BREATH
DEBATING AN ISSUE THAT YOU KNOW
THE OUTCOME IS PREDETERMINED?

WHY WOULD YOU BOTHER?

I BOTHER BECAUSE OF THEM.

THEY TAUGHT ME.

LET ME SAY THAT AGAIN, BECAUSE
YOU MIGHT HAVE MISSED IT.

THEY TAUGHT ME... THAT LESSON,
ALL OF THEM.

WITHOUT ONCE SAYING... CONTINUE
THIS LESSON, THEY BUILT AND
CONSTRUCTED AND DEVELOPED A
STUDENT ALL WITHOUT TRYING.

WITHOUT MERIT PAY, WITHOUT THE
PROMISE OF MERIT PAY.

WITHOUT OBSTRUCTION.

THIS IS WHAT THEY DID.

I CAN ALSO THANK THE OTHER
MS. JOHNSON, MY PRESCHOOL
TEACHER, SINCE WE WERE TALKING
ABOUT EDUCATION, AND, PAROCHIAL,

I WENT TO PRESCHOOL FOR A YEAR
AND MS. JOHNSON SAID, YOU KNOW
WHAT?

YOU KNOW WHAT, DWIGHT?

THE FACT THAT YOU ARE HERE MEANS
YOU ARE IMPORTANT TO KNOW AND
I'LL TEACH YOU A COUPLE THINGS,
TOO.

EVEN THOUGH YOU DON'T WANT TO DO
IT, I'LL MAKE YOU LEARN HOW TO
BE A PUBLIC SPEAKER.

I WANT TO MAKE YOU PLAY SANTA
CLAUS IN THE CHRISTMAS PLAY.

I WANT TO MAKE YOU PLAY UNCLE
SAM.

AT THE END OF THE YEAR.

SHE WAS THE ONE WHO TOLD ME,
WITHIN DAY YOU WILL BE GREAT.

THAT IS THE SEED SHE PLANT.

I WANT TO TALK ABOUT HOW MY
TEACHER IDENTIFIED ME AS GIFTED
AND I TOOK THE TEST AND SENT TO
ANOTHER PUBLIC SCHOOL FOR THE
GIFTED, I RAN INTO A LADY,
MS. FREEZE.

MS. FREEZE.

MS. FREEZE SAT RIGHT NEXT TO US
IN THE CLASS AND DID THE COUNTS
DOWN, 10, 9, 8, 7, 6... AND
WATCHED THE SPACE SHUTTLE GO
INTO THE AIR.

JANUARY 1986 AND GUESS WHAT?
TWO-AND-A-HALF MINUTES LATER SHE
WAS RESILIENT ENOUGH TO FIGHT
BACK HER OWN TEARS WHEN THE
CHALLENGER EXPLODED.

AND TEACH US A LESSON ON THE
VALUE OF LIFE.

THAT WASN'T DICTATED.

THERE WERE NO LESSON PLANS
DRAFTED, NO EDICT.

NO SUNSHINE STATE STANDARD THAT
COVERED THAT.

IT IS WHAT SHE HAD TO DO AT THE
MOMENT BECAUSE SHE UNDERSTOOD
THAT HER CLASS WAS TERRIFIED.

SHE TAUGHT THAT LESSON, I WANT
TO DRUM THAT NA YOUR HEAD.

YOU KNOW, IT WAS INTERESTING
WHEN REPRESENTATIVE DRAKE

POINTED OUT, YOU KNOW, HIS
MULTI-GENERATION OF TEACHERS AND
AT A PREVIOUS COMMITTEE I
MENTIONED I'M A FOURTH
GENERATION TEACHER, ON MY
MOTHER'S SIDE.

UNTIL MY MOTHER CORRECTED ME AND
SAID, NO, YOU ARE A 5TH
GENERATION TEACHER.

I SAID, 5TH GENERATION?

I WAS IN COMMITTEE AND I POINTED
OUT, THAT, YOU KNOW, THIS PERSON
WHO WAS FIRST IN LINE WAS UNDER
SOME VERY ADVERSE CONDITIONS
WHEN SHE WAS BORN.

AND SHE TOLD ME THAT, GUESS
WHAT, DESPITE SLAVERY, DESPITE
JIM CROW, DESPITE THOSE ADVERSE
CONDITIONS, BULLARDS, MITCHELLS,
JOHNSONS TEACH.

FOR KNOW OTHER REASON THAN TO
MAKE KIDS RIGHT AND GUESS WHAT,
IS THE REASON I CAN'T SUPPORT
THIS BILL AND I WILL NOT SUPPORT
THIS BILL, IS BECAUSE I STAND

HERE FOR THEM.

BUT, MORE IMPORTANTLY, THIS BILL
DOESN'T CHERISH WHAT THEY TAUGHT
ME.

THERE IS NOTHING IN THIS BILL TO
GUARANTEE MERIT PAY FOR
INSTILLING THOSE VALUES IN ME
AND ADD THAT VALUE TO THE BILL.
UNTIL THIS BILL INFLUENCES ME
THE WAY THEY INFLUENCED ME, I
WOULD URGE YOU AND URGE EVERYONE
IN THE CHAMBER NOT TO SUPPORT
MEASURES LIKE THIS.

THANK YOU, MR. SPEAKER.

[APPLAUSE].

>> REPRESENTATIVE PROCTOR.

>> THANK YOU, MEMBERS.

I YIELD TO REPRESENTATIVE
FRENZY.

>> REPRESENTATIVE FRENZY, YOU
ARE RECOGNIZED TO CLOSE ON YOUR
BILL.

>> THANK YOU, MR. SPEAKER.

AND THANK YOU CHAIRMAN PROCTOR
FOR YOUR GUIDANCE, LEADERSHIP

AND THE OPPORTUNITY, TO CLOSE
HERE TODAY.

I WANT TO START BEFORE I CLOSE
THIS AND I WOULD BE REMISS GIVEN
THE INCREDIBLE WORK EFFORT THAT
HAS BEEN UNDERTAKEN FOR THE
BILL, TO NOT THINK MY COMMITTEE
MEMBERS -- THANK MY COMMITTEE
REMEMBERS AND I START WITH
CLARKE-REED, REPRESENTATIVE
BULLARD, BERGEN, CHESTNUT,
COLBY, CORCORAN, DAVIS, FULL
WOOD, NUNEZ, PERRY, REED, AND
TRUJILLO, THANKS FOR YOUR
PARTICIPATION, AND, FOR YOUR
EFFORT, AND FOR YOUR COMMITMENT
TO LISTEN TO TO COMMUNICATE WHAT
IS... WITH THE BILL AND WANT TO
THANK MY VICE CHAIR,
REPRESENTATIVE ADKINS WHO
STEERED THE SHIP AS IT LEFT
DOCK, THE PCB IN THE FIRST
COMMITTEE.
MEMBERS, WE HAVE HEARD DIFFERENT
DEBATES, BOTH FRONT ROW AND

BACK, BUT, PARTICULARLY THE
FRONT ROW OF ALL THE MERITS THE
BILL HAS.

NO PUN INTENDED.

ALL THE VALUE THE BILL HAS, THE
SPECIFIC POINT THAT MAKES IT A
GOOD BILL AND WE'VE HEARD THOSE
AND I WANT TO TRY TO STAY AWAY
FROM THAT FOR A SECOND, I THINK
THAT HAS BEEN EXHAUSTED.

AND WHAT I WANTED TO TALK ABOUT
MORE IMPORTANTLY IS NOT THE
DETAILS OF THE BILL WHICH WERE
EXHAUSTED TODAY BUT
RESPONSIBILITY OF THE CHAMBER.

REPRESENTATIVE BULLARD, AND
OTHERS IN THE BACK ROW HAVE
SPENT MOST OF THE DAY CLOUDING
THE SPECIFICS OF THE BILL, IN
PORTIONS OF THE EDUCATION CODE
THEY THINK ARE MISDIRECTED.

ELEMENTS OF SCHOOLS AND THE WAY
THAT HE FUNCTION THEY THINK
SHOULD BE IMPROVED AND
EVERYTHING UNDER THE SUN EXCEPT

FOR ONE SIMPLE THING, THAT THEY

ACKNOWLEDGE OR DON'T

ACKNOWLEDGE.

AND IT IS THIS.

VERY SIMPLE.

THE CURRENT SYSTEM THAT IS IN

PLACE IN THIS EDUCATIONAL SYSTEM

IN FLORIDA, IS NOT ONLY

ILLOGICAL BUT IN MY OPINION,

FUNDAMENTALLY UNJUST.

HERE'S WHY.

THE CONCEPT OF LAST IN, FIRST

OUT, PUTS ON BLINDERS, WE HAVE

TALKED ABOUT WHETHER OR NOT THE

FRONT ROW IS BLINDED, YOU ARE

DEFENDING BY NOT VOTING FOR THE

BILL AND BY DEFENDING THE STATUS

QUO, YOU ARE ESSENTIALLY

DEFENDING A SYSTEM THAT IN

ITSELF IS NOT ONLY BLIND AND

DOES NOT LOOK AT ANYTHING BUT

WANTS TO PERPETUATE BEING BLIND

IN THE PRESENT EBBS OF TOOLS

THAT CAN MAKE YOU SEE.

HERE'S THE THING.

THAT SYSTEM THAT YOU ARE
DEFENDING WILL PUT ON A BLINDER
AND SAY, TEACHER X WHO HAS BEEN
IN THE SYSTEM FIVE YEARS,
IRRESPECTIVE OF THE EFFORT, OF
THE METHODOLOGY, MORE
IMPORTANTLY OF WHETHER OR NOT
THE KIDS ARE LEARNING BECAUSE OF
THE FACT THEY ARE IN THE SYSTEM
WILL MAKE X AMOUNT OF MONEY.
TEACHER Y, HAS BEEN IN THE
SYSTEM A LOCK LONGER PERIOD OF
TIME, IRRESPECTIVE OF EFFORT OR
ACKNOWLEDGING WHETHER OR NOT
METHODOLOGIES ARE WORKING WILL
MAKE X PLUS MORE.
THAT SYSTEM LITERALLY HAS
NOTHING TO DO WITH RECOGNIZING
WHETHER OR NOT THE METHODOLOGY
THAT THOSE TEACHERS ARE USING
ARE RIGHT, MORE IMPORTANTLY, AND
RECOGNIZING WE MOVE... IN THE
COUNTRY AND RECOGNIZING WE HAVE
INCREDIBLE TEACHERS IN THE
STATE, WORKING EVERYDAY, AND

SACRIFICING YET WE HAVE EITHER
THE LACK OF SPIRIT, LACK OF
MOTIVATION, TO STEP IN TO A
SYSTEM, TOOLS, VALUE ADDED
MODELS, WHAT THE BILL IS TALKING
ABOUT, STEP FORWARD TOWARDS A
SYSTEM THAT CAN MEASURE WHAT IS
WORKING AND WHAT IS NOT WORKING,
A SYSTEM THAT CAN IN REAL TIME
DETERMINE WHETHER OR NOT A
TEACHER'S EFFORT IS RECOGNIZED,
WHETHER IT IS MATERIALIZING AND
LEARNING AND MORE IMPORTANTLY
NOW CREATING A SYSTEM SO THAT
THAT SYSTEM REWARDS THAT TEACHER
FIRST AND NOT LAST.

REPRESENTATIVE YOU MENTIONED
MIAMI-DADE COUNTY AND WILL
MENTION ONE QUICK BLIP.

WE DID AN EXPERIMENT, A FAILING
SCHOOL, CALLED CENTRAL HIGH
SCHOOL, THERE WAS ONE MAJOR
ELEMENT DONE IN THAT SCHOOL AND
THE PRINCIPAL THAT CAME IN
NEGOTIATED WITH THE TEACHERS

UNION TO FREE, SUSPEND, THE
CONCEPT OF TENURE FOR THAT
PILOT, SO HE COULD HAVE THE
FLEXIBILITY TO DO WHAT THEY
NEEDED TO DO AND ANALYZED ASSETS
AND SHIFTED AROUND 60% OF THE
TEACHERS AND MOVED IT AROUND AND
THAT SCHOOL, LADIES AND
GENTLEMEN IS THE SCHOOL OUR
PRESIDENT, OUR FORMER GOVERNOR
BUSH, JUST VISITED A COUPLE
WEEKS AGO, BECAUSE, AGAIN AS
REPRESENTATIVE WEATHERFORD SAID,
THIS IS NOT A BIPARTISAN, NOT A
PARTISAN ISSUE.
A BIPARTISAN ISSUE AND THE ONE
SCHOOL RECOGNIZED BY THE
PRESIDENT OF THE UNITED STATES,
FORMER GOVERNOR OF THIS GREAT
STATE AND ALL THE PRESS
THROUGHOUT THE COUNTRY WAS A
SCHOOL WHOSE MAJOR POINT IN
ORDER TO BE ABLE TO TURN AROUND
WAS EXACTLY WHAT THE BILL DOES.
SO TO IGNORE THAT FACT AND

SIMPLY TRY TO TAKE JABS AND SAY
SOMEHOW IT HAS A PARTISAN
GENESIS, IS COMPLETELY MISSING
THE POINT.

SO LOOKING AT THAT, AND COMING
BACK INTO THE CHAMBER, OKAY?

I KNOW FOR A FACT THERE ARE
MEMBERS IN THE BACK ROW THAT,
WHILE DEBATING AGAINST THE BILL
AND PERHAPS HAVING UNEASINESS
WITH IT RECOGNIZE THAT THE TWO
STRUCTURAL CHANGES THE BILL DOES
IN ADDITION TO IMPLEMENTING RACE
TO THE TOP WORK AND THE
STRUCTURES THAT THE BILL CHANGES
IN THE STATE OF FLORIDA ARE
UNJUST.

AND HERE'S WHY.

BECAUSE MAMA DRAKE WAS TEACHING
THAT WELL FROM HER FIRST YEAR
IN, 5th, 10th YEAR IN AND WAS
NEVER RECOGNIZED UNTIL HE WAS 30
YEARS IN AND MR. BELLAMY, WHO
GOT REPRESENTATIVE SCHMIDT OUT
OF THE CONDITION, WAS NEVER

RECOGNIZED FOR THAT EFFORT.

AND YOU ALL KNOW THAT.

SO WHAT I WOULD SAY, FOR-- EVEN

IF THE PLACE HAD WINDOWS, DON'T

ALLOWER DECISIONS TODAY TO BE

BASED ON ANY INFLUENCE OUTSIDE

OF WHAT YOU KNOW TO BE CORRECT

AND KNOW TO BE LOGICAL.

SPEAKER PRO TEM, THANK YOU SO

MUCH FOR BLAZING THE TRAIL, LAST

YEAR, FOR THE PROCESS YOU

CREATED, THIS YEAR IN ORDER FOR

THIS TO HAPPEN, SPEAKER CANON,

THANK YOU SO MUCH FOR YOUR

LEADERSHIP AND, MORE IMPORTANT

YOUR TRYST IN ME IN CARRYING THE

BILL, MEMBERS THIS IS

UNQUESTIONABLY A FOOTPRINT IN

THE SAND MOMENT AND YOU'LL

REGRET IT 20 YEARS FROM NOW IF

YOU DON'T VOTE FOR THE BILL.

SPEAKER CANON, PLEASE OPEN UP

THE MACHINE, MEMBERS, I ASK FOR

YOUR VOTE.

[APPLAUSE].

>> REPRESENTATIVE FRESEN HAVING
CLOSED ON THE BILL, CHAIRMAN...
THE ABSENCE OF THIS QUORUM...
CHAIRMAN, SUGGESTS THE ABSENCE
OF A QUORUM, MEMBERS WILL UNLOCK
THE MACHINE, RECORD THEIR
PRESENCE.

QUORUM CALL, QUORUM CALL.

QUORUM CALL.

QUORUM CALL.

CLERK WILL LOCK THE MACHINE AND
ANNOUNCE THE PRESENCE OF A
QUORUM.

>> 119 MEMBERS VOTING, A QUORUM
IS PRESENT, MEMBERS.

>> THE QUESTION, NOW RECURS ON
FINAL PASSAGE OF COMMITTEE
SUBSTITUTE FOR COMMITTEE
SUBSTITUTE FOR SB 736, CLERK
WILL UNLOCK THE MACHINE AND
MEMBERS, WILL PLEASE VOTE.

>> HAVE ALL MEMBERS VOTED?

HAVE ALL MEMBERS VOTED?

THE CLERK WILL LOCK THE MACHINE
AND ANNOUNCE THE VOTE.

[APPLAUSE].

>> 80 YEAS, 39 NAYS, MEMBERS.

[APPLAUSE].

>> SHOW THE BILL PASSES.

[APPLAUSE].

>> REPRESENTATIVE FRESEN, YOU

ARE RECOGNIZED FOR A MOTION.

>> MR. SPEAKER, I MOVE TO WAIVE

THE RULES, BE CERTIFIED,

COMMITTEE SUBSTITUTE FOR

COMMITTEE SUBSTITUTE FOR SB 736,

TO THE SENATE.

>> REPRESENTATIVE FRESEN MOVES

TO WAIVE THE RULES IMMEDIATELY

CERTIFY FOR COMMITTEE SUBSTITUTE

FOR COMMITTEE SUBSTITUTE FOR SB

736 TO THE SENATE, ALL IN FAVOR

SIGNIFY BY SAYING YEA.

>> YEA!

>> OPPOSED, NO.

>> NO!

>> SHOW THE MOTION PASSES.

READ THE NEXT BILL.

>> NONE ON THE DESK, MR.

SPEAKER.

>> MEMBERS, STAY IN YOUR SEATS,
I HAD TO RECOGNIZE BEFORE THE
NEXT ORDER OF BUSINESS,
RECOGNIZE CHAIR AUBUCHON FOR A
MOTION.

>> THANK YOU, MR. SPEAKER.

MEMBERS, EARLIER IN SESSION WE
PASSED HOUSE BILL 7001.

AT THE TIME WE HAD MEMBERS WHO
WERE EXCUSED BUT ARE NOW PRESENT
IN THE CHAMBER.

FOR CONSTITUTIONAL MANDATE
PURPOSES, THE BILL REQUIRES A
2/3 VOTE.

FOR THAT REASON, I MOVE TO
RECONSIDER THE VOTE BY WHICH HB
7001 PASSED.

>> REPRESENTATIVE AUBUCHON MOVES
TO RECONSIDER THE VOTE BY
WHICH...