

>> 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, YOU SHALL BE  
HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.  
>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.  
>> GOOD MORNING.  
WELCOME TO THE SUPREME COURT OF  
FLORIDA.  
AND THE FIRST CASE ON THE DOCKET  
IS WORLEY V. CENTRAL FLORIDA  
YOUNG MEN'S CHRISTIAN  
ASSOCIATION.  
>> HAY IT PLEASE THE COURT, I'M  
PHIL PADOVANO FOR THE  
PETITIONER, HEATHER WORLEY.  
ON THE CERTIFIED CONFLICT ISSUE,  
WE URGE THE COURT TO ADOPT THE  
DECISION OF THE 2ND DISTRICT  
COURT OF APPEAL IN THE KICKER  
CASE.  
THE HOLDING IN THAT CASE IS  
CONSISTENT WITH THE TEXT OF THE  
EVIDENCE CODE REVISION AS IT  
RELATES TO THE ATTORNEY-CLIENT  
PRIVILEGE, AND I THINK THAT THE  
HOLDING IN THIS CASE IS NOT.  
ON THE BROADER DISCOVERY ISSUE,  
WE'RE HOPEFUL THAT THE COURT  
WILL ADOPT--  
>> WHAT DOES-- YOU SAY IT'S  
CONSISTENT WITH THE TEXT.  
WHAT, WOULD YOU QUOTE THE TEXT?  
>> SECTION 950 TO 2, TEXT OF THE  
EVIDENCE CODE.  
>> I'M NOT ASKING YOU TO REFER  
TO THE STATUTE, WHAT DOES IT  
SAY?  
>> OH, I'M SORRY.  
WELL, CERTAINLY.  
THE POINT--  
>> THAT'S WHAT YOU'RE RELYING

ON, I THINK IT'D BE HELPFUL  
TO--

>> YES, SIR.

I WAS JUST TRYING TO SUMMARIZE  
THE ISSUES BEFORE I GOT INTO IT,  
BUT I'M HAPPY TO ANSWER THE  
QUESTION.

THE ARGUMENT THAT IS BEING MADE  
IS THAT THIS REFERRAL BY A  
LAWYER OR THE QUESTION OF WHO  
REFERRED YOU TO THE DOCTOR IS  
NOT LEGAL ADVICE.

BUT THE EVIDENCE CODE IN ITS  
TEXT DOES NOT USE THE TERM LEGAL  
ADVICE.

ALL THAT IS NECESSARY IS THAT  
THERE BE A COMMUNICATION IN THE  
COURSE OF A CONVERSATION BETWEEN  
A LAWYER WHO'S REPRESENTING A  
CLIENT.

SO SPECIFICALLY WHAT I'M  
REFERRING TO IN THE TEXT IS  
THIS: 95021C, IT SAYS A  
COMMUNICATION BETWEEN A LAWYER  
AND A CLIENT-- DOESN'T SAY  
LEGAL ADVICE, IT SAYS  
COMMUNICATION-- IS CONFIDENTIAL  
IF IT IS NOT INTENDED TO BE  
DISCLOSED TO THIRD PERSONS.

SO THE IF YOU HAVE A SITUATION  
IN WHICH A PERSON IS IN A  
LAWYER'S OFFICE TALKING ABOUT A  
CASE AND THE LAWYER MAKES A  
COMMENT OR THEY HAVE A  
DISCUSSION ABOUT SOME SUBJECT,  
THE ENTIRE COURSE OF THAT  
CONVERSATION IS, IS PRIVILEGED  
AND SUBJECT TO THE  
ATTORNEY-CLIENT PRIVILEGE.

WE DON'T GO BACK THROUGH AND  
PARSE OUT, WELL, WHAT ABOUT  
THIS?

WAS THIS LEGAL ADVICE OR WAS  
THAT LEGAL ADVICE IN THE WHOLE  
DESIGN OF IT IS TO INSURE THAT  
THE CONVERSATION IS PROTECTED.

>> YOU MEAN TO TELL ME THAT IF A  
LAWYER TALKS TO A CLIENT AND  
THEY'RE ACTUALLY TALKING ABOUT  
LEGAL MATTERS AND THE CLIENT

SAYS I'VE GOT SOMETHING ELSE I WANT TO TALK TO YOU, I DON'T WANT YOU TO REPRESENT ME ON THIS, BUT YOU NEED TO KNOW THIS--

>> I THINK IF IT WAS CLEAR THAT IT WAS OUTSIDE THE CONTEXT OF A LAWYER-CLIENT PRIVILEGE, BUT THEN WE WOULD HAVE, WE WOULD HAVE, I THINK WE WOULD STILL HAVE THE QUESTION OF WHETHER OR NOT IT WAS INTENDED TO REMAIN PRIVATE.

I TRIED TO THINK OF A LOT OF OTHER EXAMPLES LIKE THIS TOO. SUPPOSE A LAWYER RECOMMENDS A GOOD RESTAURANT.

I THINK THE EXAMPLE LIKE THAT AND THE ONE THAT YOU GAVE ARE A LITTLE BIT CLOSER TO THE LINE THAN THIS CASE THOUGH, BECAUSE IN THIS CASE MRS. WORLEY WAS TALKING TO HER LAWYER, THE LAWYER SHE HIRED TO REPRESENT HER.

AND IT WAS A PERSONAL INJURY CASE.

AND SHE WAS ASKING THE LAWYER ABOUT MEDICAL CARE--

>> WELL, WE REALLY DON'T-- YOU SEE, THE PROBLEM THAT I HAVE WITH THIS ISSUE ABOUT CAN YOU ASK WHO REFERRED YOU TO THE DOCTOR.

FIRST OF ALL, WE KNOW-- WHAT, WHAT'S BEHIND-- WHAT DOES REFERRAL EVEN MEAN?

YOU SAID THAT, WELL, IT COULD BE THAT MAYBE THE LAWYER GAVE THE PERSON FOUR DIFFERENT NAMES OF DOCTORS.

MAYBE THE-- AND WE DON'T KNOW, AND I THINK EVERYONE WOULD AGREE, THE SUBSTANCE OF WHY THE REFERRAL WAS MADE IS PROTECTED. YET THE FACT OF IT, AND THIS IS MY-- WHETHER IT'S-- IS THAT THE FACT IS THAT IT IMPLIES A NEFARIOUS MOTIVE.

AND NOW I DON'T KNOW IF THAT'S

UNDER ATTORNEY-CLIENT PRIVILEGE,  
BUT THE FACT IS-- SO MY FIRST  
QUESTION IS WHAT DOES REFERRAL  
MEAN WHERE WE'RE BEING ASKED THE  
QUESTION WERE YOU REFERRED BY A  
LAWYER.

>> WELL, WE DON'T KNOW IN THIS  
CASE, BECAUSE SHE DECLINED TO  
ANSWER THE QUESTION--

>> BUT DOESN'T IT PUT-- AGAIN,  
IF WE GET INTO THAT FIRST  
QUESTION, DOESN'T THE NEXT  
QUESTION IN ORDER TO BE, IT'S  
BEING ABLE TO BE ASKED FOR A  
JURY, THE NEXT QUESTION IS,  
WELL, WHY DID I SUGGEST YOU GO  
TO DR. SO AND SO?

WELL, YOU TOLD ME TO GO TO  
DR. SO AND SO BECAUSE, AS IN THE  
WORDS OF, YOU KNOW, HE'S A  
REPUTABLE AND COMPETENT DOCTOR  
WHICH IS-- SO THE ASSUMPTION IS  
I DID IT FOR A GOOD REASON.  
BUT REALLY WHAT'S HAPPENING HERE  
IS WE'RE TRYING TO IMPLY THAT  
THIS IS ALL BAD, AND I THINK  
THAT'S THE BIGGER EVIL OF IT  
WE'RE NOT DISCUSSING WHEN WE  
TALK ABOUT THAT THRESHOLD  
QUESTION.

>> RIGHT.

>> SO WHAT IS, WHAT'S YOUR  
ANSWER ON THAT?

>> WELL, I THINK, I CERTAINLY  
THINK THAT THERE COULD BE-- IF  
WE HAD A SITUATION, FOR EXAMPLE,  
THE PROBLEM IS WE DON'T KNOW THE  
CONVERSATION, AND NO ONE  
ACTUALLY CHALLENGED, NO ONE  
ACTUALLY CHALLENGED MRS. WORLEY  
ON THE QUESTION OF WHETHER SHE  
HAD INTENDED TO DISCLOSE THAT TO  
A THIRD PARTY.

BUT LET'S SUPPOSE THE  
CONVERSATION WENT SOMETHING LIKE  
THIS.

THE LAWYER WAS TALKING TO HER  
ABOUT THE KIND OF INJURY SHE  
HAD.

THE LAWYER WAS AN EXPERIENCED

PERSONAL INJURY LAWYER, AND THE LAWYER KNEW THAT THERE ARE SOME DOCTORS WHO ARE PARTICULARLY GOOD AT EXPLAINING THIS KIND OF INJURY.

NOW YOU HAVE A CONVERSATION THAT IS KIND OF PRETTY MUCH INTERTWINED WITH THE ADVICE--

>> BUT THAT'S NOT, THAT WASN'T YOUR INITIAL ARGUMENT.

AND THAT'S WHY-- IT'S NOT THE FACT OF HOW THE PERSON GOT THERE, BUT IT'S REALLY WHAT THEY WANT TO GET INTO OR IMPLY WAS THAT THE REASON WAS NOT AN APPROPRIATE REASON.

>> RIGHT.

>> AND IN THIS CASE, AS I UNDERSTAND IT, THEY ALREADY HAVE THE BILLS WERE ABSURDLY HIGH AND THAT THIS DOCTOR'S BUSINESS IS ALL LITIGATION BUSINESS.

>> RIGHT.

>> SO YOU WERE GOING TO GET THE SECOND ISSUE ABOUT WHAT KIND OF DISCOVERY ARE WE GETTING INTO IN A PERSONAL INJURY CASE.

>> YES, I WOULD LIKE TO DO THAT. BUT LET ME MAKE A COMMENT ABOUT THAT VERY IMPORTANT POINT.

THEY STARTED OUT THINKING THEY NEEDED TO GET EVIDENCE OF THE REFERRAL FROM THE LAWYER TO THE PATIENT BECAUSE THAT, UNDER EARLY CASES IN THE 4TH DCA'S LINE OF CASES, THAT WAS THE TRIGGER TO OPEN THE DOOR TO THIS DISCOVERY.

BUT THEN AS THE LAW EVOLVED, THE 4TH DISTRICT ULTIMATELY CAME TO THE CONCLUSION THAT THE REFERRAL WASN'T REALLY A SIGNIFICANT FACTOR.

AND SO NOW WE HAVE THIS, WE HAVE THIS OPINION FROM THE 5TH DCA THAT YOU HAVE ON REVIEW WHICH SAYS, ESSENTIALLY, WELL, THEY HAVE TO GET HER TO ANSWER THIS QUESTION.

THEY'VE EXPLORED ALL OTHER  
ALTERNATIVES.  
THEY HAVE NO CHOICE.  
BUT THEN THEY WENT AHEAD AND  
ORDERED ALL THIS DISCOVERY  
ANYWAY.  
THEY ORDERED ALL OF THIS GOING  
NEW ALL OF THE MORGAN AND MORGAN  
FILES ANYWAY.  
SO ONE WOULD HAVE TO ASK, I  
MEAN, THIS STARTED OUT AS BEING  
THE REASON TO EMBARK UPON  
DISCOVERY, AND IT ENDED UP TO  
BE, IT ENDED UP TO BE ALMOST AN  
IRRELEVANT ARE POINT.  
IRRELEVANT POINT.  
NOW, I TAKE IT FROM YOUR  
QUESTION THAT YOU WANTED ME TO  
MOVE QUICKLY TO THE OTHER  
POINT--  
>> WELL, I THINK THERE'S AN  
ARGUMENT TO BE MADE THAT THE  
FACT OF REFERRAL IN A, JUST A--  
MAY NOT ITSELF BE THE  
ATTORNEY-CLIENT PRIVILEGE.  
AND THAT'S, I THINK, AND I DO  
HAVE THAT CONCERN--  
>> YES.  
>> BUT I THINK IT'S BECAUSE IT'S  
PART OF A CONVERSATION.  
AND BY PICKING OUT THIS ONE  
SUPPOSED FACT WHICH MAY NOT EVEN  
BE-- THAT'S WHY I ASKED, WHAT  
DOES A REFERRAL MEAN.  
AND THIS PERSON NEEDED TO SEE A  
DOCTOR, AND SHE DIDN'T HAVE  
INSURANCE.  
HERE ARE DOCTORS THAT WILL SEE  
YOU WITHOUT INSURANCE.  
IS THAT THE REFERRAL.  
>> RIGHT.  
>> I KNOW DR. SO AND SO IS  
VERY-- YOU HAVE A KNEE  
INJURY-- IS VERY GOOD IN KNEE  
INJURIES.  
YET WE'RE NOT GOINGS TO GET--  
GOING TO GET INTO THAT, BUT IT'S  
GOING TO FORCE THAT CONVERSATION  
BECAUSE OTHERWISE THE  
IMPLICATION WAS THAT IT WAS TONE

TO, YOU KNOW, ED PAD THE BILLS OR TO GET A FAVORABLE OPINION OR SOMETHING LIKE THAT.

>> I THINK THAT'S, I THINK THAT'S-- I AGREE WITH ALL OF THAT.

AND I THINK THERE ARE CASE LAW THAT SAYS THAT THE FACT OF REPRESENTATION IS NOT PRIVILEGED, THAT YOU ARE, IN FACT, REPRESENTED BY A PARTICULAR LAWYER.

BUT I THINK PARTLY FOR THE REASONS THAT YOU'VE JUST BEEN DISCUSSING, THIS WHOLE-- WHEN WE VENTURE INTO THE AREA ABOUT WHO, WHAT THE LAWYER SAID IN THE COURSE OF THAT REPRESENTATION ARE, THAT CREATES SOMEWHAT OF A DIFFERENT--

>> I MEAN, ISN'T THE UNDERLYING ISSUE HERE, THIS FIRM IS MORGAN AND MORGAN, AND EVERYBODY KNOWS, AND THE RECORD SHOWS THAT THIS IS A NATIONWIDE FIRM BE, AND THEY'VE GOT-- I MEAN, ARE WE GOING TO PUT-- I MEAN, MY CONCERN, WHETHER IT'S A CONCERN OR NOT A CONCERN, THAT THIS PLAINTIFF ENDS UP BEING THE PROXY FOR PUTTING MORGAN AND MORGAN ON TRIAL.

AND TRUTHFULLY, IF THEY'RE ENGAGED IN UNETHICAL PRACTICES OR IF THIS DOCTOR IS, THAT'S FOR THE FLORIDA BAR, THAT'S-- AND THERE WAS IMPLICATIONS THAT THERE'S BILLING FRAUD. THAT'S FOR ANOTHER FORUM.

>> YES.

I TOTALLY AGREE, AND I WOULD LIKE TO SAY TO THE COURT I THINK THAT'S ONE OF MY MAIN CONCERNS ABOUT THIS WHOLE CASE, IS THAT IN THE ELKIN AND BOUCHER LINE, MOST OF THAT IS DIRECTED, ALL OF IT REALLY IS DIRECTED TO UNCOVER BIAS ON THE PART OF THE WITNESS, THE RETAINED EXPERT. NOW FOR THE FIRST TIME WE'RE

REALLY GETTING INTO THIS THING WHERE WE'RE ALMOST IMPUGNING THE INTEGRITY OF THE LAWYER ALONG WITH IT, WHICH I THINK OPENS KIND OF A DANGEROUS, A DANGEROUS DOOR.

BECAUSE IT IS NOT JUST THAT THESE-- THE IMPLICATION HERE IS NOT JUST THAT THESE DOCTORS OVERCHARGE OR THEY'VE GOT THIS WHATEVER IT IS THEY THINK THEY'VE GOT GOING HERE, THIS OPERATION OF SOME SORT, BUT THAT THE LAWYERS HAVE, IN HIS TERM, A COZY RELATIONSHIP.

MAYBE IN THE COURT'S TERM, I DON'T KNOW.

BUT THAT'S THE PART OF IT, I THINK, THAT IS REALLY THE MOST DANGEROUS.

BECAUSE WE'VE REALLY NEVER ALLOWED-- I'M SORRY, JUSTICE POLSTON, WERE YOU GOING TO ASK--

>> IS IT APPROPRIATE FOR A DEFENSE FIRM TO EVER OR A PARTY TO EVER DISCOVER WHETHER THERE'S A SPECIAL RELATIONSHIP FINANCIALLY OR OTHERWISE BETWEEN A PLAINTIFF'S FIRM AND THE TREATING PHYSICIAN?

>> I THINK THERE COULD BE SOME CASES WHERE THAT IS APPROPRIATE, YES, I DO.

BUT I DON'T KNOW THAT JUST HAVING A LETTER OF PROTECTION AND SHOWING THAT THE BILLS WERE EXTRAORDINARILY HIGH IN THIS CASE WOULD OPEN THAT DOOR.

>> BECAUSE IF THE BILLS ARE EXTRAORDINARILY HIGH, IT SEEMS TO ME-- AND MAYBE I'M WRONG-- BUT DON'T YOU HAVE THE OPPORTUNITY TO PUT ON SOMEONE THAT WOULD GIVE YOU INFORMATION ABOUT WHAT IS THE STANDARD IN THE COMMUNITY FOR A SURGERY OF THIS KIND OR WHATEVER IT IS TO SHOW THAT THIS BILL IS REALLY OUTSIDE OF THE NORM?



>> YES.  
ABSOLUTELY.  
AND I THINK THAT QUESTION GOES  
TO THE VERY HEART OF MY  
ARGUMENT.  
WE'RE ACTUALLY, WE'RE ACTUALLY  
IN THIS CASE SEEKING DISCOVERY  
ON A COLLATERAL MATTER, BIAS.  
IT IS NOT THE MAIN CASE, IT'S  
NOT WHETHER SHE SLIPPED, IT'S  
NOT WHETHER SHE HURT HER KNEE,  
IT'S NOT WHETHER SHE NEEDED  
SURGERY, IT'S A COLLATERAL  
MATTER.  
>> WELL, ARE THEY ATTACKING--  
YOU'VE GOT TO PROVE REASONABLE.  
LOOKS LIKE THAT'S GOING TO BE A  
PRETTY-- THEY'VE GOT SOME  
PRETTY-- THIS IS PRETTY  
STARTLING AMOUNT OF MEDICAL  
BILLS.  
>> YES, YES.  
>> REALLY OBSCENELY HIGH.  
AND, YOU KNOW, I THINK THAT  
ALONE, I MEAN, I CAN'T-- I  
DON'T KNOW WHAT KIND OF SLIP AND  
FALL CASE IT IS, BUT, YOU KNOW,  
GOOD LUCK ON THIS CASE FOR THE  
PLAINTIFF.  
BUT THE SECOND PART IS THAT THE  
IDEA WAS IT NECESSARY.  
IS THERE AN IMPLICATION IN THIS  
CASE THAT THIS PERSON DIDN'T  
HAVE ANY INJURY AND THAT SOMEHOW  
MORGAN AND MORGAN COLLUDED WITH  
THIS DOCTOR TO HAVE THE, THIS  
PERSON WHO'S AN UNWITTING VICTIM  
HAVE UNNECESSARY SURGERY?  
>> I DON'T THINK SO, YOUR HONOR.  
I THINK IT'S MORE THE CASE THAT  
THE BILL WAS HIGH.  
BUT HERE'S THE PROBLEM WITH IT,  
AS I THINK JUSTICE QUINCE WAS  
ALLUDING TO, IS THAT WE'VE  
ALWAYS BEEN CAREFUL NOT TO ALLOW  
COLLATERAL MATTERS TO OVERTAKE  
THE MAIN SHOW.  
AND SO IN THIS CASE IF THE BILLS  
ARE TOO HIGH, THEY HAVE A LETTER  
OF PROTECTION.

THERE'S CASE LAW THAT SAYS THEY CAN INTRODUCE THIS LETTER OF PROTECTION AS POTENTIAL BIAS. YOU KNOW, I THINK THAT'S KIND OF MARGINAL, BUT, I MEAN, THEY CAN DO THAT.

THEY CAN SHOW THAT THE BILLS ARE TOO HIGH.

WOULD IT MAKE, WOULD IT REALLY MAKE ANY SENSE IF THEY CAN JUST CALL A WITNESS TO SAY THE PREVAILING RATE FOR A TORN MENISCUS IN ORLANDO IS X? THEY CAN DO THAT INEXPENSIVELY, QUICKLY.

BUT INSTEAD WE'RE SPENDING ALMOST \$100,000 TO CREATE AN INNUENDO THAT THESE LAWYERS ARE IN A COZY RELATIONSHIP--

>> WHO PAID \$100,000?

>> WELL, UNFORTUNATELY, JUSTICE QUINCE, WE DO.

THAT'S ANOTHER ARGUMENT--

>> WE MEANING--

>> WE, MEANING THE PLAINTIFF.

YES, YOUR HONOR.

AND I WOULD ARGUE TO YOU THAT I THINK THIS LITTLE ECONOMICS IN THE LAW ARGUMENT I'M MAKING RIGHT NOW, I THINK THAT IF MR. FLOOD HAD TO PAY \$100,000 TO DO THIS, HE MIGHT GO HOME AND SAY, WAIT A SECOND, THIS ISN'T A WISE USE OF OUR MONEY.

LET'S JUST GO INTO COURT AND PROVE THAT THE BILL WAS TOO HIGH.

WE CAN EASILY DO THAT.

IT WILL COST US VERY LITTLE MONEY.

>> SO YOU'RE SAYING THIS WHOLE THING STARTED BECAUSE THERE ARE CASE LAW THAT SAYS YOU CAN'T GET INTO THE RELATIONSHIP BETWEEN THE DOCTOR AND THE LAWYER UNLESS YOU ESTABLISHED IN THAT CASE-- IS IT THAT CASE THE REFERRAL CAME FROM THE LAWYER, AND THEN THAT'S THE-- THAT'S THE TRIGGER?

>> THAT'S THE TRIGGER.  
AND WE TAKE ISSUE WITH THAT TOO,  
BECAUSE, I MEAN, A LAWYER COULD,  
A LAWYER COULD REFER A CLIENT TO  
A PARTICULAR DOCTOR FOR LOTS OF  
REASONS.

AND WE WOULD HOPE BE THE WE WANT  
TO ATTRIBUTE SOME GOOD MOTIVES  
TO DISTURB MOTIVES TO OUR  
DOCTORS, THAT WE COULD DO IT--

>> IN THIS CASE HAVE THEY  
ESTABLISHED ANYWAY THAT THIS  
DOCTOR ONLY TREATS LITIGATION  
CASES?

>> I THINK THAT MIGHT BE  
CORRECT.

>> I'D SAY THAT BIAS, THAT'S  
PRETTY SIGNIFICANT--

>> RIGHT.

>>-- STUFF FOR IMPEACHMENT OF  
HIM.

>> RIGHT.

AND SO THEN YOU WOULD HAVE TO  
ASK WHAT IS THE VALUE OF, WHAT  
IS THE VALUE OF ADDING THIS  
CUMULATIVE EVIDENCE THAT BRINGS  
INTO, BRINGS INTO QUESTION THE  
MOTIVES OF THE LAWYERS.

AND WHAT I'M CONCERNED MOST  
ABOUT THIS IS, YOU KNOW, I KNOW  
THIS COURT WANTS TO GET THE  
RIGHT DECISION IN THIS CASE.

BUT WHATEVER RULE THE COURT  
ADOPTS HAS TO FIT ALL TREATING  
PHYSICIANS.

AND SO I'M VERY CONCERNED  
THAT WE DON'T HAVE SOMETHING  
THAT STARTS WITH A PRESUMPTION  
OF BIAS.

NOW, LIKE IN ELKINS AND TOUCHER,  
I THINK IT'S FAIR TO START OUT  
WITH THE IDEA THAT THESE VICTIMS  
ARE GOING TO BE BIASED.

THEY'RE NOT ADVOCATES, THAT'S  
PROBABLY TOO STRONG A WORD.  
BUT THE LAWYER WOULDN'T HIRE AN  
EXPERT WITNESS IF THE LAWYER  
DIDN'T THINK THEY WERE GOING TO  
GIVE POSITIVE DISCOVERY.

AND THE COURT ADOPTED A

PROCEDURE FOR IT.

IT WORKS, IT'S INEXPENSIVE, AND PEOPLE CAN CARRY IT OUT.

>> BUT THE REALITY IS, ISN'T IT, THAT THERE'S SOMETHING MORE INSIDIOUS ABOUT HAVING A TREATING PHYSICIAN THAT IS IN AN INAPPROPRIATE RELATIONSHIP WITH A REFERRING LAWYER.

BECAUSE I THINK MOST JURIES ARE GOING TO VIEW THE TREATING PHYSICIAN AS JUST TREATING PHYSICIAN.

IT'S GOING TO BE, I THINK, WITH MANY JURORS A HEALTHY SKEPTICISM ABOUT EXPERT WITNESSES UNDERSTANDING THAT THEY BROUGHT IN TO OFFER THEIR OPINIONS, BUT THEY'VE BROUGHT IN BY A PARTICULAR SIDE.

THE TREATING PHYSICIAN WOULD NOT NECESSARILY BE ASSOCIATED IN THE MINDS OF THE JURORS WITH A PARTICULAR SIDE IN THE LITIGATION.

AND ISN'T THAT REALLY A SIGNIFICANT PROBLEM HERE THAT'S AT THE HEART OF THIS MATTER?

>> IT COULD BE, BUT I WOULD SUGGEST TO YOU THAT I THINK SOME OF THESE PROBLEMS ARE BETTER DEALT WITH BY THE BAR AND THE MEDICAL PROFESSION.

I DON'T THINK WE SHOULD ADOPT A RULE THAT ESSENTIALLY-- IF YOU APPLY A STRICT RULE TO ALL TREATING PHYSICIANS, AND LET'S JUST ASSUME THAT SOME OF THEM ARE WHAT YOU SAY THEY ARE OR WHAT YOU SUSPECT THEY MIGHT BE, BUT 95% OF THEM ARE NOT, THEN WHAT'S GOING TO HAPPEN TO THE CIVIL JUSTICE SYSTEM?

WHO'S GOING TO GET THE PERSONAL INJURY LAWYER?

WHO'S GOING TO GET A LAWYER?

NO LAWYER'S GOING TO ADVANCE \$100,000 IN COSTS TO HANDLE A SLIP AND FALL--

>> WELL, LAWYERS THAT DON'T HAVE

NEFARIOUS RELATIONSHIPS WITH CONCERN.

>> WELL, BUT THE PROBLEM, WELL, BUT THE PROBLEM, I THINK THAT'S A GOOD POINT, YOUR HONOR, BUT THE PROBLEM WITH THAT IS THAT ALL OF THESE DOCTORS WHETHER THEY'RE INNOCENT OF MISBEHAVIOR OR NOT ARE GOING TO BE PUT THROUGH THE DRILL.

THAT'S THE PROBLEM.

>> YOU'RE DEEP INTO YOUR REBUTTAL.

>> I AM.

THANK YOU, YOUR HONOR.

>> GOOD MORNING.

I'M JOSEPH FLOOD ALONG WITH JESSICA CONNOR ON BEHALF OF THE RESPONDENT, CENTRAL FLORIDA YMCA.

MAY IT PLEASE THE COURT.

THE QUESTION PRESENTED TODAY IS WHETHER A PLAINTIFF CAN HIDE THE FACT OF HER ATTORNEY'S POTENTIALLY EXTENSIVE RELATIONSHIP WITH TREATING DOCTORS AND SELECTIVE COUNSEL THEREBY MISLEADING THE COURT AND THWARTING THE TRUTH-SEEKING FUNCTION OF THE TRIAL PRODUCE.

>> EVEN THAT STATEMENT TO ME SEEMS TO IMPLY THAT THE PLAINTIFF, THE PERSON WHO CAME INTO THE DOCTOR'S OFFICE, KNOWS OF ANY KIND OF RELATIONSHIP BETWEEN THE DOCTOR AND ANY KIND OF, A DOCTOR AND THE LAWYER. AND I THINK THAT'S A WRONG PREMISE TO EVEN START ON, THAT THIS PLAINTIFF KNEW OF ANY KIND OF RELATIONSHIP.

>> VIRTUALLY THE EXACT SITUATION ON THE FLIP SIDE OF THE COIN WAS THE CASE OF THE SPRINGER V. WEST CASE FROM THE 5TH DISTRICT COURT OF APPEAL WHERE A DEFENDANT IN AN AUTO ACCIDENT CASE WAS SERVED WITH BOUCHER DISCOVERY, ASKED HOW MANY TIMES I THINK THE CME OR THE TRIAL EXPERTS HAD BEEN

RETAINED, AND THAT EXACT ARGUMENT WAS MADE.

I, THE PARTY, I DON'T HAVE ANY INFORMATION ABOUT THAT, HOW CAN YOU ASK ME--

>> MAYBE THAT WAS INCORRECT.

>> CAN I-- YOU SAID SOMETHING ABOUT THAT THE REFERRAL BE, YOU WENT BEYOND.

YOU SAID THAT YOU NEED THAT INFORMATION TO THEN ESTABLISH THE EXISTENCE OF A INAPPROPRIATE OR EXTENDS I RELATIONSHIP-- EXTENSIVE RELATIONSHIP BETWEEN THE LAWYER AND THE DOCTOR.

AND IN YOUR BRIEF, AND I THOUGHT IT WAS A VERY CANDID AND VERY HELPFUL BRIEF, YOU SAID THAT THE PREDOMINANT REASON THAT A ATTORNEY SHOULD EVER RECOMMEND A PARTICULAR TREATING PHYSICIAN IS THAT THEY CAN OBTAIN THE NECESSARY MEDICAL CARE.

NOW, IF MRS. WORLEY ANSWERS THE QUESTION MY ATTORNEY REFERRED ME TO THE DOCTOR-- WHICH, AND IT LOOKS PRETTY OBVIOUS SINCE THIS DOCTOR ONLY DOES PLAINTIFFS, I MEAN, ONLY TREATS LITIGATION CLIENTS WHICH ARE ALL PLAINTIFFS PRESUMABLY, THAT THERE MAY HAVE BEEN, THAT THERE WAS MOST LIKELY A REFERRAL.

BUT THE NEXT QUESTION IS WHY DID THE REFERRAL TAKE PLACE.

AND WHAT YOU REALLY WANT TO BE ABLE TO ARGUE TO THE JURY, AND THIS IS WHERE THIS INNUENDO COMES IN, IS THAT THE REFERRAL WAS THERE BECAUSE THEY KNEW THEY WERE GOING TO GET AN EXCELLENT-- A BETTER, THEY WERE GOING TO GET INFACILITATED BILLS WHICH, OF COURSE, IS TO THE DEBT CRIMINATE OF THE-- DETRIMENT OF THE CLIENT.

AND THEY WERE GOING TO GET AN UNNECESSARY SURGERY WHICH IS TO THE DETRIMENT OF THE CLIENT.

AND THAT'S THE CONCERN.

SO IF YOU ASK THE QUESTION OF REFERRAL, WHAT'S THE NEXT QUESTION THAT YOU CAN ASK ABOUT WHAT ELSE, WHAT DID YOUR LAWYER TELL YOU ABOUT WHY YOU SHOULD GO TO SEE THIS DOCTOR?

CAN YOU GET INTO THAT QUESTION?

>> YES, JUSTICE.

AND THAT'S THE DISTINCTION THAT WE'RE TRYING TO MAKE--

>> SO YOU CAN.

SO ISN'T THAT-- OR YOU CAN'T?

>> WE DON'T INTEND TO GO INTO ECONOMY COMMUNICATIONS--

>> BUT DOESN'T THAT PUT, AGAIN.

SO YOU PUT UP THE FACT THAT THERE'S A REFERRAL.

THE INFERENCE, IF YOU ASK THAT QUESTION AT TILE, IS THAT IT WAS, THEREFORE, SHOWS BIAS ON THE PART OF THE DOCTOR THAT THERE WAS A REFERRAL FROM THE LAWYER?

MANY HOW DOES THAT SHOW--

BECAUSE THAT'S THE ISSUE, IS BIAS OF THE DOCTOR CAN, RIGHT?

>> THE FACT--

>> OR IS IT THE BIAS OF, ARE YOU PUTTING MORGAN AND MORGAN ON TRIAL?

WHICH I'M SURE YOU WOULD LOVE TO DO.

AND I DON'T SAY THAT IN A, YOU KNOW, I MEAN, IT'S CLEAR WHEN YOU READ THE BRIEF OF THE FLORIDA REFORM INSTITUTE THAT THAT'S WHAT THEY'RE LOOKING AT. SO WHAT'S THE NEXT QUESTION AT TRIAL?

>> THERE ARE NO NEXT QUESTIONS TO THE PLAINTIFF SEEKING ANY COMMUNICATIONS.

WE ARE NOT SEEKING ANY PRIVILEGED COMMUNICATIONS.

WHAT IS BEING SOUGHT HERE IS THE FACT OF THE REFERRAL.

AND THIS COURT IN BOUCHER, THE COURT IN THE KATZMAN CASE, JUSTICE CANADY'S COMMENTS A MINUTE AGO HAVE RECOGNIZED OVER

AND OVER AND OVER AGAIN--

>> DID YOU GET THAT FACT FROM THE DOCTOR HIMSELF?

>> I'M SORRY, WHAT FACT?

>> WELL, WHAT FACT ARE WE TALKING ABOUT?

WHETHER THE LAWYER SENT THE CLIENT TO THAT DOCTOR.

>> AS IN MANY OTHER CASES IN THIS CASE AFTER BEING SENT BY PLAINTIFF AND PLAINTIFF'S COUNSEL THROUGH THE MASSIVE LABYRINTH OF OBSTACLES TO TRY AND FIND THAT ANSWER OUT, INCLUDING ASKING THE DOCTORS, THE CEOS OF C SPINE, THE DOCTORS' MEDICAL COMPANY, CORPORATE REPRESENTATIVES OF C SPINE AND OTHER, WE ENDED UP BACK AT THE DOOR TO THE LABYRINTH WITH NO MORE INFORMATION THAN WHEN WE STARTED.

THE COURTS HAVE DESCRIBED THIS AS NEBULOUS TESTIMONY.

THE DOCTOR--

>> COULDN'T YOU GET FROM THE MEDICAL PROVIDERS THAT YOU'RE TRYING TO ESTABLISH 90% HAS COME FROM THEIR FIRM, THEREFORE, THEIR TESTIMONY IS NOT CREDIBLE, AND YOU WANT TO PRESENT THAT, WHY CAN'T YOU GET THAT INTO FROM THE MEDICAL PROVIDERS?

>> THEY TOLD US THEY DIDN'T KNOW.

WE ASKED THEM--

>> THEIR RECORDS DO NOT INDICATE--

>> THAT'S CORRECT.

>>-- SHOW THE PATIENT COMING IN THE DOOR, THEY DON'T KNOW HOW THE PATIENT ARRIVED THERE.

>> THE TREATING PRINCIPAL OF C SPINE TESTIFIED HE BELIEVED SHE WAS REFERRED BY FLORIDA HOSPITAL EAST WHERE SHE WENT A COUPLE OF DAYS AFTER THE ACCIDENT--

>> AND THEIR RECORDS DON'T INDICATE HOW MANY TIMES THEY



TESTIFIED ON BEHALF OF  
PLAINTIFFS FOR--

>> THEY DO NOT.

>> I THOUGHT IT SHOWED THAT ALL  
THEIR PRACTICE ARE LITIGATION  
CASES.

>> THE--

>> DID YOU GET, IS THAT  
INFORMATION YOU OBTAINED?

>> THE CEO OF C SPINE INDICATED  
THAT THEY TREAT ONLY PATIENTS  
PURSUANT TO LETTERS OF  
PROTECTION.

THE INFERENCE WOULD BE THAT  
THEY WOULD ALL BE PEOPLE IN  
LITIGATION, WHO ELSE WOULD HAVE  
LETTERS OF PROTECTION?

>> THEY DON'T TREAT, THEY DON'T  
TAKE INSURANCE?

>> THEY DID NOT TAKE INSURANCE.

>> THEY DO NOT TAKE INSURANCE  
PAYMENTS?

>> THEY DIDN'T.

>> IS THAT WHAT THE EVIDENCE IN  
THIS CASE SHOWS?

>> THE CEO INDICATED AT THE TIME  
OF MS. WORLEY'S TREATMENT, THEY  
TREATED ONLY PURSUANT TO LETTERS  
OF PROTECTION.

>> WELL, I CAN UNDERSTAND IF  
THERE'S NO INSURANCE.

MY QUESTION IS-- I DIDN'T ASK  
YOU THAT.

I ASKED YOU IS THERE AFFIRMATIVE  
TESTIMONY THAT THESE PHYSICIANS  
JUST TAKE NO, NO TYPE OF  
INSURANCE AT ALL?

>> THEY DID NOT TAKE INSURANCE.  
I BELIEVE THAT--

>> DID THIS PARTICULAR CLIENT  
HAVE INSURANCE.

>> HE DID NOT.

>> IT'S MY UNDERSTANDING SHE  
COULDN'T AFFORD A TREATING  
PHYSICIAN, AND SHE WENT TO  
THE EMERGENCY ROOM A FEW TIMES  
TO GET TREATMENT BECAUSE SHE DID  
HAVE ONE.

SHE GOES TO THE ATTORNEY, THE  
ATTORNEY REFERS HER TO SOMEONE

WHO WILL TAKE HER CASE WITHOUT MONEY.

THAT GOES BACK TO THE ECONOMIC. I DON'T SEE WHAT'S SO NEFARIOUS ABOUT THAT.

THE FACT THAT THEY CHARGE UNREASONABLE FEES, HOW DOES THAT INJURE THE ATTORNEY?

WHAT'S THE RELATIONSHIP?

>> THE QUESTION THAT'S IMPORTANT IS THE ISSUE OF THE ONGOING RELATIONSHIP--

>> BUT, BUT THE PROBLEM IS, THIS IS-- WE'RE TALKING ABOUT THE TREATING PHYSICIAN.

NOW, HE GIVES HIS OPINION, AND AND YOU HAVE YOUR PEOPLE TO SAY SOMETHING DIFFERENT.

IN THIS PARTICULAR CASE, I THINK LIKE \$59,000, THAT'S CERTAINLY NOT A HUGE CASE.

I MEAN, IS IT?

IN TERMS OF HOW MUCH HAS TO BE SPENT TO FIGURE OUT, WELL, DO THEY HAVE A CLOSE-- IF THEY DO, THIS IS NOT THE CASE FOR IT.

>> ALL OF THESE COSTS COULD HAVE BEEN EASILY AVOIDED IF FACT OF THE REFERRAL RELATIONSHIP WERE SIMPLY DISCLOSED IMMEDIATELY JUST LIKE DEFENDANTS HAVE TO DO IN EVERY SINGLE CASE.

[INAUDIBLE CONVERSATIONS]

>> A HIRED GUN, YOUR EXPERT AND A TREATING-- THIS DOCTOR'S HIPPOCRATIC OATH SAID HE'S SUPPOSED TO TREAT, DO WHAT'S BEST-- DO NO HARM TO THE PATIENT AND TRY TO GET THE PATIENT WELL.

WHERE ON THE HIRED CUP ON THE DEFENSE SIDE, YOU'RE TRYING TO GET SOMEBODY TO ATTACK THE CREDIBILITY OF THE WHOLE PROCESS.

AND BE WHY CAN'T THIS BE DONE IN THE SAME MANNER?

>> MOST RESPECTFULLY, THIS DOCTOR IS EVERY BIT AS MUCH A HIRED GUN AS ANY DEFENSE EXPERT.

HE WAS HAND SELECTED BY--

>> NO, NO, NO.

NO, I'M SORRY, I THINK THAT YOU START, WHEN YOU START WITH THE FALLACIOUS BEGINNING, IT TAKES, IT JUST DIVERTS THE ENTIRE PROCESS.

THE BOUCHER LINE OF CASES CAME OUT OF CIRCUMSTANCES WHERE INSURANCE COMPANIES HIRED THE SAME PHYSICIAN EXPERTS NOT TREATING, NEVER TREATED ANYBODY TO JUST COME UP WITH OPINIONS. NOW WE'RE TALKING ABOUT A REALLY FACT WITNESS WHO'S INVOLVED BUT HAS EXPERT CREDENTIALS.

SO I THINK WE HAVE TO BE VERY CAREFUL IN CONFLATING THE TWO, BECAUSE THE TWO ARE NOT THE SAME.

AND IF THERE'S SOME OTHER WAY THAT YOU CAN GET THE DISCOVERY YOU NEED WITHOUT VIOLATING BECAUSE OUR CODE CLEARLY SPEAKS IN TERMS OF ATTORNEY-CLIENT PRIVILEGE AS COMMUNICATIONS, AND WE START PEELING THAT ONION, I MEAN, WE HAVE TO LOOK AT A BROAD SPECTRUM OF CASES.

IF YOU CAN DO IT HERE, WELL, I GUESS WE'RE GOING TO BE ABLE TO DO IT IN CRIMINAL CASES BECAUSE THERE'S NO ATTORNEY-CLIENT PRIVILEGE FOR CERTAIN THINGS. SO IT'S GOT BROAD RAMIFICATIONS. YOU FOLLOWING WHAT I'M SAYING? AND SO WE CAN'T, CAN'T VIEW THIS AS SO SIMPLISTICALLY.

>> WELL, I-- THE FACT OF THE REFERRAL IS NOT A COMMUNICATION, AND THAT IS THE THING THAT IS SOUGHT TO BE, THAT IS BEING SOUGHT--

>> WELL, I DON'T THINK YOU CAN SAY THAT BECAUSE BE IT CAME, IT HAD TO COME FROM SOMEBODY'S MOUTH, DID IT NOT? WHEN YOU SAY THE FACT, I MEAN CONCERN.

>> SIMPLY BECAUSE THEY TALKED

ABOUT--

>> THERE WAS A COMMUNICATION THAT TOOK PLACE.

IF THERE WAS A REFERRAL, IT HAD TO BE COMMUNICATED, DID IT NOT?

>> IT DID-- THERE WAS A COMMUNICATION.

THIS IS THE UPJOHN CASE.

YES, THEY DID TALK ABOUT IT, BUT THERE IS AN UNDERLYING FACT, THE REFERRAL ITSELF, THAT IS WHAT NEEDS TO BE DISCOVERABLE.

>> WELL, THE CODE AND THE RULE ON ATTORNEY-CLIENT PRIVILEGE HAS NEVER MADE THAT DISTINCTION BETWEEN SOME UNDERLYING FACT IN THE COMMUNICATION IN WHICH THAT FACT IS INCLUDED.

HAS IT?

>> THAT, AGAIN, THAT'S THE UPJOHN CASE, AND I THINK THAT'S A U.S. SUPREME COURT CASE, AND I THINK THEY MAKE THE EXACT--

>> WELL, ISN'T THAT A DIFFERENT STANDARD THAN WE'RE LOOKING AT WITH THE FLORIDA EVIDENCE CODE?

>> I DON'T THINK IT'S, I DON'T THINK WITH REGARD TO--

>> IT DOESN'T SAY THE SAME? THEY WERE WORDED EXACTLY THE SAME.

>> THEY ARE NOT WORDED EXACTLY THE SAME.

>> I ASK YOU, YOU GOT INFORMATION THROUGH THE AFFIDAVIT OF PLAINTIFF'S COUNSEL THAT THERE WERE 23 WITH 8 PRIOR MORGAN AND MORGAN CLIENTS OVER A THREE-YEAR PERIOD WHO HAD BEEN TREATED WITH PLAINTIFF'S PROVIDERS.

NOW, CAN YOU USE-- SINCE YOU'RE TRYING TO SHOW THAT THERE IS A RELATIONSHIP, CAN YOU USE THAT, CAN THAT EVIDENCE, REQUEST FOR ADMISSION TO MRS. WORLEY ADMIT THAT YOUR FIRM HAD 238 CLIENTS WHO HAVE BEEN TREATED WITH THE PLAINTIFF'S PROVIDERS?

IS THAT SOMETHING THAT WOULD

THEN BE A REQUEST FOR ADMISSION,  
AND WOULD THAT THEN BE PUT IN  
EVIDENCE?

I MEAN, JUST, YOU KNOW, AGAIN,  
UNDERSTANDING WHAT WE'RE DOING  
HERE AND WHAT THE CASE IS ABOUT,  
IT'S A SLIP AND FALL.

IS IT LIABILITY?

IS IT CLEAR LIABILITY?

>> I DON'T THINK SO.

>> SO--

[LAUGHTER]

>> IT'S A COMPARATIVE FAULT  
CASE.

>> THEY ASKED FOR THERE ARE  
59,000-- 59,000, AND THE BILLS  
ARE \$66,000.

IT'S, THE ABSURDITY OF THIS CASE  
IS MAYBE SHOWING THE PROBLEM  
WITH THE, WHAT'S REALLY GOING ON  
HERE WITH THE DISCOVERY, IN MY  
VIEW.

SO WHAT-- LET'S JUST ASSUME IT  
WAS CLEAR LIABILITY.

SHE FELL OVER A, YOU KNOW, IN A  
HOLE THAT WAS, YOU KNOW, WITH NO  
SIGN.

NOW WE GET TO SHE HAD A KNEE  
INJURY.

ARE YOU CONTESTING THAT SHE,  
WHETHER SHE DID OR DIDN'T HAVE  
AN ACTUAL INJURY?

>> THE TESTIMONY IS HER  
COMPLAINTS WERE ON THE LATERAL  
SIDE, THE SURGERY WAS ON THE  
MEDIAL SIDE.

THOSE DON'T ADD UP.

>> SO YOU'RE GOING TO HAVE A  
MEDICAL EXPERT TO SAY THAT THE  
SURGERY WAS NOT RELATED?

>> WAS NOT RELATED.

>> OKAY.

SO YOU'LL HAVE THAT, AND THEN  
YOU'LL ALSO HAVE THAT THEY'RE  
GOING TO BE CLAIMING \$66,000  
WORTH OF BILLS.

AND YOU'VE GOT TESTIMONY ABOUT  
THE ESTABLISHED RATES OF WHAT IS  
SUPPOSED TO BE CHARGED FOR THIS  
SIMPLE PROCEDURE WHICH IS ABOUT

\$3,000, RIGHT?

>> WE HAVE POTENTIAL TESTIMONY. I EXPECT THEY'LL BE CHALLENGING THAT JUST LIKE THEY'RE CHALLENGING EVERYTHING ELSE IN THE CASE.

>> I DON'T THINK A JURY-- SO IS IT ABOUT A \$3,000 PROCEDURE?

>> IT'S ABOUT A \$3-\$5,000--

>> AND THEY'RE CHARGING \$660,000, LETTER OF PROTECTION, SERVING THAT TO SOME KIND OF MEDICAL FIRM THAT'S IN THE BUSINESS OF TAKING THIS. YOU CAN GET ALL THAT INTO EVIDENCE?

>> HOPEFULLY.

>> ALL RIGHT.

AND BE NOW WE'RE GOING TO GO INTO THE EXTENT, ARE WE GOING TO ASK ABOUT ALL 238 CLIENTS AND FIND OUT HOW THEY GOT TO THIS FIRM?

IS THAT WHAT THE NEXT STEP IS GOING TO BE?

>> THE NEXT STEP IS SIMPLY TO ESTABLISH AS THE COURTS HAVE INDICATED WE HAVE THE RIGHT TO DO OF THE RELATIONSHIP BETWEEN MRS. WORLEY'S COUNSEL AND THESE DOCTORS?

>> WELL, YOU GOT IT THROUGH.

SO THAT'S WHAT I'M ASKING YOU. YOU NOW HAVE, ASK FOR A REQUEST FOR ADMISSIONS.

YOU THINK YOU COULD ASK FOR THAT AND IT'S RELEVANT, THAT THERE WERE 238 CLIENTS OVER A THREE-YEAR PERIOD.

AND BE NOW WHAT HAPPENS?

MORGAN AND MORGAN HAS TO COME IN AND EXPLAIN THAT HALF OF THEM WERE THIS AND THE OTHER-- I MEAN, THAT'S WHAT-- I'M JUST NOT SEEING WHERE THIS GOES THAT ENDS UP BEING ANYTHING OTHER THAN, AS MR. PADOVANO SAID, A TRIAL WHERE BIAS IS THE ISSUE, BIAS OF THE TREATING DOCTOR THAT YOU GET INTO COLLATERAL MATTERS

THAT OVERSHADOW THE ENTIRE CASE,  
AND WE DO IT JUST IN THIS CASE  
OR IN EVERY CASE WHERE LAWYERS  
ARE THERE TRYING TO GET THE BEST  
MEDICAL CARE FOR THEIR COMPLIANT  
CLIENTS.

AT WHAT POINT DO WE STOP AND  
START WITH THIS?

>> I WOULD SUGGEST WHENEVER  
LAWYERS ENTER INTO THE WORLD OF  
MEDICAL MANAGEMENT, AS HERE,  
PICKING WHICH CLIENTS GO TO  
WHICH DOCTORS, THAT THEY SHOULD  
BE REQUIRED JUST LIKE DEFENDANTS  
AND DEFENSE LAWYERS AND  
INSURANCE COMPANIES HAVE FOR  
YEARS AND YEARS TO KEEP RECORDS  
OF THAT.

AND WHEN MEDICAL PROFESSIONALS  
DECIDE TO GET INTO THE  
LITIGATION WORLD, THAT THEY  
SHOULD BE REQUIRED--

>> SO WE'RE REALLY TRYING MORGAN  
AND MORGAN--

>> IT'S A FACT.

>>-- AND C SPINE.

I MEAN, THAT'S WHAT THIS CASE  
WILL BE ABOUT.

>> THE JURY IS ENTITLED TO KNOW,  
AS JUSTICE CANADY POINTED OUT,  
THAT UNLIKE WHAT JUSTICE PERRY  
SAID, THE DOCTOR IS NOT JUST A  
TREATING PHYSICIAN, A GOOD,  
KINDLY DOCTOR, MARCUS WELBY--

>> CAN'T YOU POINT THAT OUT  
THROUGH OTHER MEAN TOSS THE JURY  
IF THAT'S WHAT YOU'RE TRYING TO  
CONVEY AS OPPOSED TO--

>> NO.

>> THE RULE WE MAKE HERE IS  
GOING TO AFFECT DOCTORS IN EVERY  
CASE.

NOT JUST MORGAN AND MORGAN, ALL  
FIRMS.

IF WE MAKE SOME BAD LAW THAT'S  
GOING TO PREVENT A PATIENT FROM  
GETTING A DOCTOR BECAUSE SHE  
CAN'T AFFORD IT, YOU KNOW, ONLY  
THE RICH PEOPLE WILL BE ABLE TO  
HAVE MEDICAL COWER, AND THE POOR

PEOPLE WILL NOT HAVE ACCESS TO COURT.

YOU HAVE TO HAVE THE MEDICAL TESTIMONY TO GET IN, AND THIS HAS A CHILLING EFFECT ON DOCTORS, WOULDN'T YOU THINK? IF THEY THOUGHT IF I TREAT THIS PATIENT, I'M SUBJECT TO THIS, WHY SHOULD I DO IT?

>> DEFENSE EXPERTS HAVE TO KEEP THE SAME RECORDS-- THE SAME ARGUMENTS WERE MADE THAT YOU'D NEVER BE ABLE TO GET A--

>> BUT THOSE ARE HIRED GUNS THOUGH.

THOSE ARE HIRED GUNS.

>> SO ARE THESE.

SO IS DR. APPELL, AND THAT'S REALLY THE RELATIONSHIP, JUSTICE PERRY, AND THAT WE'RE SIMPLY TRYING TO DISCOVER HERE, IS TO THE EXTENT OF THE RELATIONSHIP THAT THIS COURT IN BOUCHER AND EVERY SINGLE COURT THAT'S ANALYZED THE ISSUE SINCE THAT TIME HAS AGREED THE PARTY'S ENTITLED TO.

>> LET ME ASK YOU THIS, HOW DOES THIS START AND STOP, OKAY? IN THIS INSTANCE, WE HAVE TESTIMONY THAT THEY HAD BEEN REFERRED 200 AND SOME TIMES. WHAT ABOUT THE CASE WHERE THEY MAY HAVE GONE TO THE SAME DOCTOR TWO OR THREE TIMES?

IS THAT-- A ALL OF THIS BECOMES DISCOVER ABLE AND ALL THOSE COMMUNICATIONS EVEN WITH THE FIRST TIME, CORRECT?

AND SO EVERY DOCTOR THAT A POOR PERSON, AS JUSTICE PERRY SAYS, DOESN'T HAVE INSURANCE BUT NEEDS SOME REPRESENTATION AND NEEDS TO KNOW THEY COULD POSSIBLY GO TO WHO WOULD HELP THEM WITHOUT AN OUTLAY OF MONEY UP FRONT IS SUBJECT TO ALL OF THIS.

EVEN THE FIRST TIME.

>> ABSOLUTELY, YES.

AND I WOULD, I KNOW IT'S NOT



BINDING ON THIS COURT, BUT IT WOULD BE PERSUASIVE.

BUT THE FLORIDA FEDERAL COURTS MOSTLY INTERPRETING THIS COURT'S BOUCHER DECISION AND ITS PROGENY UNIVERSALLY HELD THAT TO BE THE CASE.

AND I WOULD CITE THE CASE TO TOES GOOD V. DISCOUNT AUTO PARTS CASE, A MIDDLE DISTRICT CASE. IT'S CITED IN THE FDLE AMICUS. AND IT'S DIRECT ON POINT. AND I'LL READ FROM THAT DECISION.

HELMERS, THE DEFENDANT, FIFTH INTRIGUE STORY ASKED WHETHER THE PLAINTIFF'S LAWYER REFERRED HIM TO HAVE OR PROVIDED HIM TO THE NAME OF-- THE PLAINTIFF OBJECTED ON THE BASIS OF THE ATTORNEY-CLIENT PRIVILEGE. THE FACT OF THE REFERRAL IS NOT A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION.

THE COURT, THEREFORE, DIRECTS THE PLAINTIFF TO PROVIDE A COMPLETE ANSWER TO HELMER'S FIFTH INTERROGATORY, AND THERE ARE THREE OTHER FEDERAL CASES. SO IF THE PLAINTIFF'S POSITION IS ADOPTED BY THIS COURT, YOU WILL THEN HAVE A SITUATION WHERE THERE'LL BE TWO RULES IN FLORIDA.

INTERESTINGLY, THE FEDERAL COURT WILL BE ABIDING THE BOUCHER DECISION'S IDEALS OF SEEKING TRUTH, FAIRNESS AND--

>> THE FIRST TIME THAT THE FEDERAL AND THE STATE COURTS HAVE DIFFERENT RULES?

>> I'M SURE IT'S NOT.

I DON'T THINK THAT'S, I DON'T THINK THAT WOULD BE A WISE DECISION, AND IT WOULD BE IRONIC THAT THE FLORIDA COURTS WOULD THEN BE GOING BACK TO A SYSTEM WHERE THE PLAINTIFF WOULD BE ABLE TO HIDE THE TRUE RELATIONSHIP BETWEEN THIS DOCTOR

AND ITS LAW FIRM, POTENTIALLY EXTENSIVE.

WE NOW KNOW FOR THE VERY FIRST TIME AT THE VERY END IN THEIR MOTION FOR RECONSIDERATION THAT THESE DOCTORS HAVE TREATED MORGAN AND MORGAN--

>> HOW MANY COMPLAINTS DID MORGAN AND MORGAN HAVE?

>> I HAVE NO IDEA.

I KNOW THERE'S SOME MENTION OF THAT IN BRIEFS, BUT THERE'S NO RECORD EVIDENCE OF THAT.

AND IT DOESN'T MATTER.

IT DOESN'T MATTER--

>> IT MATTERS WHETHER IT'S 1%, 2%, 3%--

>> THAT'S SOMETHING FOR THE JURY-- THE JURY CAN CERTAINLY ANALYZE THAT.

AND MS. WORLEY'S--

>> THAT'S JUST MY POINT.

THE JURY CAN ANALYZE, ALL OF THIS IS SUBJECT TO PROOF TO THE JURY, AND THE JURY CAN MAKE A DETERMINATION WITHOUT THE RELIEF THAT YOU'RE SEEKING.

ALL OF IT.

BIAS AND--

>> JUSTICE PERRY, THE JURY WOULD BE DUPED.

THEY WOULD BE DECEIVED INTO BELIEVING THAT DR. APPEL WAS, IN FACT, A SHEEP WHEN HE WAS A WOLF.

ON BEHALF OF THE YMCA, WE ARE ENTITLED TO DEFEND THE Y AND TO ALLOW THE JURY TO UNDERSTAND THE TRUE NATURE OF THE RELATIONSHIP. WE ARE ALLOWED TO ARGUE THAT HE IS, IN FACT, JUST AS MUCH A HIRED GUN BECAUSE THEY PICKED HIM EVERY TIME.

>> THERE'S NOTHING TO STOP YOU FROM ARGUING THAT.

>> WE NEED THE EVIDENCE, AND THAT'S WHAT THIS CASE IS ABOUT.

>> THANK YOU.

YOUR TIME IS UP.

>> THANK YOU VERY MUCH.

IT WAS AN HONOR TO DISCUSS THESE  
VERY IMPORTANT ISSUES WITH YOU.  
THANK YOU.

>> THERE WILL NOT BE TWO RULES  
IN FLORIDA.

WHEN THIS COURT SPEAKS, THE  
FEDERAL COURTS WILL FOLLOW THAT  
RULING.

THAT'S WHAT THEIR OBLIGATED TO  
DO--

>> WE'RE NOT ON RULES-- WE'RE  
HERE ON RULES OF DISCOVERY AND  
EVIDENCE.

>> WELL--

>> BESIDES WHATEVER THE FEDERAL  
COURTS ARE DOING--

>> RIGHT.

BY THE WAY, THOSE ARE  
UNPUBLISHED MAGISTRATES.

>> THEY SAY THAT REALLY WHAT  
THIS IS ABOUT IS THAT THE JURY  
IS ENTITLED TO KNOW THE FULL  
EXTENT OF THE RELATIONSHIP  
BETWEEN MORGAN AND MORGAN AND C  
SPINE AND THAT OTHERWISE THE  
JURY WILL BE DUPED.

NOW, WHAT IS YOUR RESPONSE TO  
THAT?

>> WELL, I JUST THINK THAT WHAT  
THEY'RE ASKING FOR HERE IS  
EXPENSIVE AND CUMULATIVE AND  
ADDS VERY LITTLE TO THE CASE.

>> LET'S ASSUME IT'S NOT  
EXPENSIVE.

LET'S ASSUME THAT MORGAN AND  
MORGAN--

>> WELL.

>>-- AS A ADVERTISER HAS  
DETAILED INFORMATION ABOUT EVERY  
CLIENT, WHERE THEY'VE REFERRED  
THOSE CLIENTS, HOW MUCH THEY  
OBTAINED IN THE, YOU KNOW,  
WHETHER IT WAS A LEGITIMATE OR  
ILLEGITIMATE CASE.

IS THAT BECAUSE IT'S EXPENSIVE,  
OR IS IT TOTALLY SO COLLATERAL  
THAT IT WOULD LEAD TO A MOCKERY  
OF WHAT WOULD GO ON IN THE  
COURTROOM?

>> I THINK IT'S BOTH, AND I

THINK MOSTLY THE LATTER.  
BY THE WAY, I THINK YOU HAVE TWO  
AMICUS PARTIES ON THE OTHER SIDE  
OF THIS CASE.

THEY CAN KEEP THIS INFORMATION  
TOO.

THEY CAN KEEP THIS INFORMATION  
TOO.

IT'S, AND THE INFORMATION HERE  
IS A LITTLE BIT DIFFERENT FROM  
THE BOUCHER SITUATION, BECAUSE  
THE BOUCHER SITUATION IS A  
TRANSACTION BETWEEN THE LAWYER  
AND A WITNESS HIRED BY THE  
LAWYER.

AND THERE'S A RECORD OF THAT.  
IN ORDER TO FIND WHAT THESE  
FOLKS WANT, WE'RE GOING TO HAVE  
TO GO THROUGH HUNDREDS OF  
THOUSANDS OF E-MAILS AND  
DOCUMENTS TO SEE, BY THE WAY,  
IT'S NOT JUST THE 238 THAT YOU  
CAME UP WITH OR-- NOT CAME UP  
WITH, THAT'S THE CORRECT  
FIGURE--

>> BUT THEY'RE NOT HIRED.  
JUST SO WE MAKE SURE, THIS  
DOCTOR WASN'T HIRED BY MORGAN  
AND MORGAN--

>> NO.

>> WE'RE ASSUMING THAT THEY WERE  
REFERRED--

>> NO, THAT'S--

>> I WANT TO GO BACK TO THAT.

>> THAT'S--

>> THE QUESTION IS WHY THEY WERE  
REFERRED THERE.

AND THAT'S, WE GO BACK TO THE  
ATTORNEY-CLIENT PRIVILEGE.

>> RIGHT.

RIGHT.

I THINK THAT'S RIGHT.  
AND JUST QUICKLY TO ANSWER YOUR  
QUESTION, JUSTICE PERRY, THERE  
ARE 250 MORGAN AND MORGAN  
LAWYERS IN FLORIDA, AND THEY  
HAVE 75,000 CLIENTS NATIONWIDE.  
SO IF YOU PUT THAT IN  
PERSPECTIVE, IT'S A LITTLE BIT,  
I MEAN, IT KIND OF EXPLAINS THE

NUMBER A LITTLE BIT BETTER.

>> MR. PADOVANO, WHERE'S THIS GOING TO TAKE US IF WE SAY, OH, THE COMMUNICATION BETWEEN LAWYER AND CLIENT MAY BE PROTECTED, BUT THE FACTS WITHIN THAT COMMUNICATION ARE NOT?

WHERE'S THAT GOING TO TAKE US IN OUR LAWYER-CLIENT PRIVILEGE RULE?

>> I DON'T THINK THAT'S THE RIGHT WAY TO GO, JUSTICE LEWIS. I MEAN, I THINK IT WOULD-- I THINK THEN YOU WOULD BE, YOU MIGHT END UP OPENING THE DOOR TO A LOT OF SIMILAR KIND OF INVESTIGATIONS.

I DON'T THINK WE WANT TO HAVE A LOT OF MINI HEARINGS ABOUT WHAT WAS COVERED OR WHAT WAS NOT.

IT'S BETTER, I THINK, TO HAVE A BLANKET RULE THAT ANY COMMUNICATION IN THE COURSE OF THE CONVERSATION IS PROTECTED.

I DON'T THINK WE WANT TO HAVE LITTLE MINI TRIALS ON THE QUESTION OF WHETHER SOMETHING WAS MEANT TO BE KISS CLOSED OR NOT-- DISCLOSED OR NOT.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.