

>> HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR.

YOU SHALL BE HEARD.

GOD SAVE THESE GREAT STATE AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

THE FIRST CASE ON THE DOCKET IS
THE AMENDMENTS TO THE FLORIDA
EVIDENCE CODE.

I BELIEVE MR. HOGAN'S UP FIRST.

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT, I'M
HERE ON APPOINTMENT BY THE CODE
AND RULES OF EVIDENCE COMMITTEE
ESTABLISHED BY THIS COURT AND
THEN PUT IN PLACE BY THE FLORIDA
BAR.

THE COURT SENT THREE STATUTES TO
THE COMMITTEE FOR
RECOMMENDATIONS AND DIRECTED AT
A CERTAIN POINT IN THERE THAT IT
BE CONSIDERED BY THE BOARD OF
GOVERNORS OF THE FLORIDA BAR.
THEY WERE.

IN THIS INSTANCE, ANDREW
HAMILTON IS HERE ON THE
RECOMMENDATION BY THE COMMITTEE
AND THE BOARD THAT THE COURT
REJECT AND NOT ADOPT AS A RULE
OF COURT THE "SAME SPECIALTY
AMENDMENT" THAT WAS IN THE
STATUTE.

WE'VE ALLOTTED THREE MINUTES
WITH ANY REMAINDER TIME
ACCRETING TO US ON THE ISSUE OF
FRYE AND DAUBERT, WHERE I'LL BE
SPEAKING.

THE COMMITTEE AND THE BOARD
RECOMMEND THAT THIS COURT REJECT
AND NOT ADOPT AS A RULE OF COURT
THE EXPERT WITNESS PROCEDURE
AMENDMENTS.

I'M ALLOTTED 14 MINUTES TOTAL,
INCLUDING THIS INTRODUCTION.
COMMENTERS HOWARD COKER AND DAN
CYTRYN WILL HAVE FIVE MINUTES

LEFT AND I'LL RESERVE THREE
MINUTES TIME FOR REBUTTAL, IF
ANY AVAILABLE.

ANY TIME THAT IS NOT USED EITHER
WITH MR. HAMILTON'S PRESENTATION
OR THE PRESENTATION THAT JUDGE
ISUM WOULD HAVE MADE WE WOULD
APPRECIATE ACCRETING TO OUR
EFFORTS ON THE ISSUES OF FRYE
AND DAUBERT.

JUDGE ISUM WAS NOT ABLE TO BE
HERE.

SHE WAS TRYING TO LEAVE HER HOME
IN SOUTH TAMPA AND COULD NOT
BECAUSE OF THE WATER CONDITIONS
THAT WERE THERE RELATED TO THE
STORM AND HAS ASKED ME TO MAKE
ANY PRESENTATION THAT THERE
MIGHT BE IF THERE ARE QUESTIONS
BY THE COURT ON THE HEARSAY
EXCEPTION THAT IS THE THIRD
STATUTE.

AT THIS TIME, I WOULD ASK THAT
ANDREW HAMILTON COME FORWARD AND
SPEAK WITH REGARD TO CHAPTER --
OR SECTION 766-102 THAT WAS
PROPOSED BY THE LEGISLATURE.

>> MAY IT PLEASE THE COURT, MY
NAME IS ANDY HAMILTON.

I'M HERE ON BEHALF OF THE
COMMITTEE TODAY IN SUPPORT OF
OUR RECOMMENDATION THAT THIS
COURT DECLINE TO ADOPT, TO THE
EXTENT THAT IT IS PROCEDURAL,
CHAPTER 2013-108 OF THE FLORIDA
LAWS.

THAT IS THE SAME SPECIALTY
AMENDMENT TO SECTION 766.102.

I'M GOING TO BE VERY BRIEF
BECAUSE THIS HAS BEEN A VERY
NONCONTROVERSIAL RECOMMENDATION
TO THIS STAGE.

THE BOARD OF GOVERNORS VOTED
UNANIMOUSLY 37-0 IN FAVOR OF
THIS RECOMMENDATION AND AGAINST
ADOPTION OF THE AMENDMENT.

IT IS OUR POSITION THAT THE
AMENDMENT VIOLATES THIS COURT'S
RULE-MAKING AUTHORITY
UNCONSTITUTIONALLY AND ALSO THAT
IT UNDERMINES AND IS
INCONSISTENT WITH THE
LONGSTANDING EVIDENTIARY RULE
CONTAINED IN 90.702 AND WOULD

FORCE TRIAL COURTS TO EXCLUDE EXPERTS WHO WOULD OTHERWISE BE QUALIFIED TO RENDER TESTIMONY BASED ON THEIR KNOWLEDGE, SKILL, TRAINING, EDUCATION AND EXPERIENCE.

AND WITH THAT, I'LL BE HAPPY TO TRY TO ANSWER ANY QUESTIONS FOR THE COURT.

AND OTHERWISE I WILL TURN MY TIME OVER TO MR. HOGAN.

THANK YOU.

>> THIS CASE, FULLY-BRIEFED RULES CASE, PROVIDES THE COURT WITH AN OPPORTUNITY FOR THIS BRANCH TO ADDRESS IMPORTANT ISSUES IMPORTANT TO THOSE WHO SEEK ACCESS TO JUSTICE IN THIS COURT AND THE SYSTEM THAT IT OVERSEES, AND WE ARE CONFIDENT THAT WE BELIEVE THERE ARE KEY THINGS THAT THIS COURT, PRINCIPLES YOU CAN SUPPORT AND ANNOUNCE, THAT ARE CRUCIAL TO THIS BRANCH.

>> THE RECOMMENDATION IS NOT TO ADOPT IT, BUT IN A RULES CASE YOU'RE TALKING ABOUT MAKING BROAD PRONOUNCEMENTS OF POLICY. YOU'RE AWARE THAT WE WOULD DO THAT IN THE CONTEXT OF THE CASE IN CONTROVERSY.

SO IF THE ISSUE BEFORE US AS I UNDERSTAND IT IS SHOULD WE ADOPT IT TO THE EXTENT IT'S PROCEDURAL.

WE DO NOT RULE ON THE CONSTITUTIONALITY IN A RULES CASE.

SO IF YOU COULD JUST I THINK LIMIT YOUR ARGUMENT TO THE REASONS WHY THIS COURT SHOULD NOT BE IN ITS POSITION AS RULE-MAKING POSITION NOT ADOPT THE AMENDMENT.

AND WE NEVER HAVE HAD -- WE KEEP FRYE OR THE LEGISLATURE CHANGES, FRYE'S NOT IN A RULE OF EVIDENCE, SO WOULDN'T MAKE ANY SENSE TO HAVE IT IN A RULE OF EVIDENCE.

BUT SO COULD YOU ADDRESS, JUST THAT ISSUE?

AND DO YOU UNDERSTAND WHAT I'M

SAYING?

>> YES, YOUR HONOR.

>> ABOUT THIS BROAD
PRONOUNCEMENT?

>> I BELIEVE SO.

THE EVIDENCE CODE WAS ON THE
BOOKS FOR YEARS BEFORE THIS
COURT DECIDED THE STOKES CASE,
IN WHICH IT SURVEYED DIFFERENT
APPROACHES TO HOW TO ADDRESS
THIS EXPERT WITNESS ISSUE.
AND IN THE STOKES CASE, SAYING
THAT IT WAS ADOPTING THE FRYE
PROCEDURES, IT DID SO TO AVOID
AND TRY TO PROTECT AGAINST
TIME-CONSUMING AND EXTREMELY
EXPENSIVE PROCEDURES THAT WOULD
ADDRESS THE QUESTION OF NEW
SCIENCE, NEW OR NOVEL SCIENCE
EVIDENCE.

NOW, THIS COURT HAS THAT
CONSTITUTIONAL POWER TO DO THAT,
AND IT IS THIS IMPORTANT ISSUE.
THE COURT COULD NOT HAVE ADOPTED
FRYE IF THE MATTER WERE NOT
PROCEDURAL BECAUSE THE POWER OF
THIS COURT IS TO ADOPT RULES AND
PRACTICE FOR THE COURTS,
PROCEDURAL RULES.

THIS COURT DID ADOPT IT AT THAT
TIME IN STOKES AND TIME AND TIME
AGAIN HAS MAINTAINED THAT THAT
PROCEDURAL RULE STAYS IN PLACE
FOR THE HANDLING OF NEW SCIENCE.
THIS COURT ALSO HAS SAID WITH
REGARD TO THE USUAL KINDS OF
NONSCIENTIFIC EVIDENCE THAT WE
SEE IN CASES ALL ACROSS THE
STATE, WHETHER IT'S AN EMINENT
DOMAIN CASE ABOUT THE VALUATION
OF PROPERTY OR A TREATING
PHYSICIAN IN AN AUTOMOBILE
ACCIDENT CASE OR A VARIETY OF
OTHER THINGS THAT MIGHT RELATE
TO HOW AN ACCIDENT OCCURRED AND
WHAT THE SPEED OF THE CARS MIGHT
HAVE BEEN.

ALL OF THOSE KINDS OF USUAL
TYPES OF TESTIMONY, THIS COURT
FROM A PROCEDURAL STANDPOINT HAS
SAID THAT EVIDENCE IS NOT
FRYE-TESTED UNDER THOSE FRYE
PROCEDURES.

AND SO THE COURT HAS MADE THAT

CLEAR ANNOUNCEMENT, COULD NOT HAVE ADOPTED FRYE UNLESS IT WAS PROCEDURAL AND DID ADOPT IT AND MAINTAINED IT AND ADHERED TO IT OVER THE YEARS BECAUSE OF ITS NEED TO AVOID AND DESIRE TO AVOID EXTREMELY EXPENSIVE AND TIME-CONSUMING PROCEDURES FOR TESTING THESE.

>> I JUST TAKE ISSUE WITH YOU -- I'M LOOKING AT STOKES, WITH THE IDEA THAT WHEN THIS COURT HAS SPOKEN -- AGAIN, THE MERITS IS NOT WHAT WE'RE TALKING ABOUT. BUT YOU'RE CLAIMING THAT EVERY CASE THAT THIS COURT HAS ISSUED ON FRYE, INCLUDING MARSH AND THE PURE OPINION, WE WERE DOING SO AS A MATTER OF PROCEDURE AS OPPOSED TO LOOKING AT EVIDENTIARY ISSUES.

AGAIN, SOMETIMES THIS BLURS, BUT THE IDEA THAT WE INCORPORATED FRYE AS A RULE OF PROCEDURE AS OPPOSED TO THE LAW IN THIS STATE, I'M JUST NOT SEEING THAT. AND SO, AGAIN, I THINK THAT THERE ARE OTHER REASONS THAT YOU SAY, WELL, FRYE'S BEEN LONGSTANDING.

THIS IS AT ODDS WITH OUR JURISPRUDENCE.

BUT TO SAY THAT IT IS -- WE HAVE PRONOUNCED THAT IT'S PROCEDURAL IS -- I DON'T SEE THAT.

>> I UNDERSTAND YOUR HONOR'S -->> I MEAN, IS EVERY PRONOUNCEMENT -- WAS MARSH ABOUT PURE OPINION, WAS THAT A CASE INVOLVING PROCEDURE?

>> MARSH, THAT HAD TO DO WITH THE QUESTION OF HOW ONE ASSESSES WHETHER THAT TESTIMONY IS GOING TO COME IN.

AND SO IN THAT SENSE, FROM THE VIEWPOINT OF THE COMMITTEE AND FROM THE VIEWPOINT OF THE BOARD OF GOVERNORS, IT IS A PROCEDURAL MATTER.

>> ARE YOU SAYING EVERYTHING ABOUT HEARSAY, THAT THAT'S -- WHETHER SOMETHING'S HEARSAY IS NOT IS A MATTER OF PROCEDURE?

>> DEPENDS ON THE --

>> IT'S A MIXED ISSUE.
AND THAT'S WHY THE EVIDENCE
CODE, TO THE EXTENT WE DON'T
WORRY ABOUT THE LINE, IF WE --
CORRECT?
>> I UNDERSTAND.
AND THAT'S -- AND THAT IS THE
WAY THAT THE COURT COOPERATIVELY
PUT THE CODE AND RULES INTO
PLACE.
BUT EACH TIME THAT THE COURT
SENDS THESE MATTERS TO THE RULES
COMMITTEE, IT ALSO SAYS DON'T --
IF IT'S PROCEDURAL, DON'T ASSUME
THAT THE COMMITTEE IS SUPPOSED
TO ACCEPT WHAT IT IS THAT THE
LEGISLATURE HAS PASSED.
THE KEY POINT ON WHETHER THIS
COURT SHOULD OR SHOULDN'T ADOPT
THIS HAS TO DO WITH, ONE, THE
WAY THAT IT PASSED.
IT PASSED IN A -- WITH THE USE
OF WHAT I WOULD CALL A LOBBYING
BUMPER STICKER TO SAY THAT THE
DECISIONS THAT THIS COURT MAKES
IN THE CASTILE CASE OR MARSH,
THAT THOSE CONSTITUTED JUNK
SCIENCE.
THE JURISPRUDENCE OF THIS COURT,
YOU CAN BE THE JUDGES OF THAT,
OF COURSE, DOESN'T MAKE FLORIDA
A HAVEN FOR JUNK SCIENCE.
BUT THAT IS THE WAY THAT THIS
MATTER GOT THROUGH THE
LEGISLATURE.
AND THEN TO GO BACK TO THE
REASONS THAT FRYE WAS ADOPTED,
ACROSS THIS STATE IT IS BEING
APPLIED BY DISTRICT COURTS OF
APPEAL, AND IT'S BEING APPLIED
RETROACTIVELY, AND THEY ARE
HOLDING THAT IT IS PROCEDURAL.
THEY CAN'T APPLY IT
RETROACTIVELY UNLESS THEY HOLD
THAT IT'S PROCEDURAL.
AND SO THEY DO.
AND THEY SAY IN THE OPINION,
SOME OF THEM, THE PEREZ CASE
FROM THE THIRD DISTRICT, SAY
THAT WE ASSUME OR WE TAKE
COMFORT IN THE IDEA THAT THE
SUPREME COURT ALWAYS ADOPTS
THESE.
BUT IT DOESN'T.

IT HAS A HISTORY OF DECLINING TO ADOPT THEM AS RULES OF PROCEDURE WHEN THEY ARE PROPOSED BY THE LEGISLATURE.

AND IN THIS INSTANCE, NOW, MR. COKER IS HERE, HAS REQUESTED ORAL ARGUMENT, MR. CYTRYN. BECAUSE THEY HAVE THE KIND OF TRIAL EXPERIENCE AND THEY'VE SEEN THIS HAPPEN IN REAL LIFE OUT THERE AND ARE FOCUSED ON HOW TO HELP THE COURT SEE WHAT IT IS DOING ALL ACROSS THIS STATE, EFFECTIVELY DOING PRECISELY WHAT IT WAS THE COURT ATTEMPTED TO AVOID IN THE STOKES CASE, BY THE REASSERTION OF FRYE IN THE HADEN CASE AND BY THE PRONOUNCEMENTS IN THE CASTILE CASE IN WHICH THE COURT SAID WE VET THESE THINGS OR JUNK SCIENCE.

THAT'S WHY WE HAVE THESE PROCEDURES IN PLACE.

IT'S IMPORTANT COMING OUT OF THIS PROCEEDING THAT THE DISTRICT COURTS OF APPEAL AND THE TRIAL COURTS UNDERSTAND THAT THEY SHOULD NOT ASSUME THAT THERE'S SOME UNWRITTEN RULE OR UNWRITTEN POLICY, AS IT'S REFERRED TO IN SOME CASES, THAT THIS COURT IS AUTOMATICALLY GOING TO ADOPT WHAT IT IS THAT THE LEGISLATURE DID.

THEY NEED TO UNDERSTAND THAT IT IS THIS COURT THAT MAKES THESE RULES ON THESE KINDS OF SUBJECTS.

NOW, THE OTHER THING IS THIS. IT'S IMPORTANT FOR EVERYONE TO UNDERSTAND THAT IT IS NOT THE BAILIWICK OF THE LEGISLATURE, AS IT DID IN THE PREAMBLE OF THIS LEGISLATION, TO ATTEMPT TO DIRECT ALL THE COURTS OF FLORIDA TO DISREGARD DECADES WORTH OF DECISIONAL LAW THAT THIS COURT HAS PUT INTO PLACE TO CAREFULLY PROTECT AGAINST NEW OR NOVEL SCIENCE, BUT ALSO ALLOW THE JURY, THE FACT-FINDER, TO HEAR THE OTHER KINDS OF HELPFUL EXPERT WITNESS TESTIMONY THAT COMES IN IN CASES OF ALL SORTS.

AND SO COMING OUT OF THIS PROCEEDING, THERE IS A LOT THAT CAN BE DONE TO HELP TO CLARIFY THE RULES AND HOW THE COURTS ARE SUPPOSED TO APPLY THEM.

AND AT THIS POINT, I'D -- AND RESERVING TIME, I'D LIKE TO TURN THE PODIUM OVER, UNLESS THERE ARE OTHER QUESTIONS FROM THE COURT, TO MR. COKER, WHO CAN SPEAK ABOUT THE PRACTICAL EFFECTS OF THIS STATUTE ACROSS THE STATE OF FLORIDA OVER THIS PAST TWO OR THREE YEARS. THANK YOU.

>> I WOULD LIKE TO LIMIT MY REMARKS TODAY TO BASICALLY THE REAL WORLD APPLICATION OF WHAT WE'VE SEEN FROM THE DAUBERT LEGISLATION.

IT'S REAL TIME.

IT'S THE CONSEQUENCES OF AN UNNEEDED PIECE OF LEGISLATION. MY EXPERIENCE CONSISTS OF 44 YEARS OF BEING A TRIAL LAWYER, TWO AS A PROSECUTOR, 12 AS A DEFENSE LAWYER AND 30 AS A PLAINTIFF'S LAWYER.

DURING THAT PERIOD OF TIME, I HAVE TRIED SOMEWHERE BETWEEN 300 AND 400 CASES TO JURY.

TRIED MANY BEFORE THIS LEGISLATION WAS PASSED IN 2013 AND SINCE ITS PASSAGE IN 2013. I HAVE TRIED FOUR OR FIVE CASES A YEAR, TOTALING SOMEWHERE BETWEEN 12 AND 15 CASES.

I SEE WHAT GOES ON IN THE TRIAL COURTS.

I'M HERE TO REPORT --

>> DO YOU TRY CASES IN FEDERAL COURT?

>> I DO.

>> AND SO IN FEDERAL COURT YOU HAVE TO USE THE DAUBERT STANDARD?

>> IT IS USED, YES.

>> AND SO I GUESS -- I'M NOT SURE THAT IT'S ACTUALLY PERTINENT TO THIS, BUT WHY DO YOU BELIEVE THAT THE FRYE STANDARD [INAUDIBLE].

>> JUSTICE, WITH ALL DUE RESPECT, I WILL GET INTO THAT

AND I WILL TELL YOU WHY.
AND IT'S BECAUSE OUR COURTS AT
THIS JUNCTURE ARE EXTREMELY
OVERBURDENED.
THEY'RE BREAKING AT THE SEALS.
I HAVE ONE JUDGE IN DUVAL COUNTY
WHO IS HOLDING DAUBERT HEARINGS
ON SATURDAY IN A COURTROOM IN
ORDER TO SAVE THE TAXPAYERS
MONEY FROM OPENING THE
COURTHOUSE.
I HAVE PERSONALLY BEEN INVOLVED
IN THESE CASES.
I HAD ONE CASES WHERE THERE WERE
FOUR DAUBERT MOTIONS.
ANYTIME YOU HAVE THOSE, IT'S
TIME-CONSUMING, IT'S EXPENSIVE.
IN THAT CASE IT TOOK FOUR DAYS
OF JUDICIAL TIME.
SO COSTS ARE BECOMING A HUGE
FACT.
AND AT THE END OF THE DAY THE
HEARINGS COST MORE THAN \$40,000.
>> THERE'S A SUGGESTION IN THE
COMMENTS THAT WE TYPICALLY THINK
OF THE COMPLICATED ISSUES IN
PRODUCT LIABILITY CASES OR
DEFENSE LAWYERS HAVE TALKED
ABOUT THE STATE USING IT.
THERE WAS A SUGGESTION THAT
THERE ARE LAWYERS THAT ARE
TRYING TO USE THIS TO KEEP OUT
DOCTORS' TESTIMONY ON CAUSATION
OF A PERSONAL INJURY.
SO LET'S TALK ABOUT THE FACT
THAT IF YOUR REAL LIFE
EXPERIENCE IS THAT IT'S ACTUALLY
MAYBE BEING MISUSED, AND IS
THERE SOME OTHER WAY TO DEAL
WITH THE MISUSE AS OPPOSED TO
JUST SAYING IT'S ACROSS THE
BOARD A BAD THING.
>> AND I'M GOING TO RUN OUT OF
TIME VERY QUICKLY HERE, BUT LET
ME ADDRESS THAT POINT VERY
QUICKLY.
THE DAUBERT MOTION IS NOW BEING
USED IN ROUTINE MATTERS OF
CAUSATION AND PERMANENCY THAT
UNDER FRYE ARE PERMISSIBLE.
IT HAS BECOME A TACTICAL TOOL,
AND THE TACTICAL TOOL HAS BECOME
THE NORM.
THE TACTICAL TOOL CAUSES LAYER

UPON LAYER OF WASTED TIME AND UNNECESSARY EXPENSE.

IT OPERATES, IN MY OPINION, AS A FINANCIAL AND PROCEDURAL BARRIER TO GET A CASE TO A JURY.

>> I KNOW YOU WANT TO USE THE REST OF YOUR TIME, BUT HERE'S MY QUESTION.

IF IT'S BEING MISUSED IN A SITUATION THAT NO ONE WOULD HAVE INTENDED IT, SAY IN AN ORDINARY PERSONAL INJURY CASE INVOLVING A DOCTOR'S TESTIMONY, WHY -- WE HAVE NOT -- OF COURSE, IT'S NOT COME TO OUR COURT IN A CASE IN CONTROVERSY.

ISN'T IT REALLY INCUMBENT ON TRIAL JUDGES AND THEN ULTIMATELY THIS COURT TO SAY IT IS-- DAUBERT IN ORDINARY MEDICAL TESTIMONY HAS NO APPLICABILITY. THAT'S A RULING ON A CASE AS OPPOSED TO SAYING -- BECAUSE WHAT YOU'RE SAYING, IT'S BEING MISUSED.

>> I BELIEVE THAT.

>> OKAY.

SO ISN'T THERE A WAY TO DEAL WITH THE MISUSE AS OPPOSED TO SAYING IT'S TOTALLY BAD OR IT'S TOTALLY GOOD?

>> I THINK THAT UNTIL THIS COURT GIVES ITS LOWER COURTS A BRIGHT LINE, THAT IT'S GOING TO BE EXTREMELY DIFFICULT.

AND I BELIEVE IT WILL BE INCONSISTENT.

THE WEIGHT UPON THE JUDICIARY, THE DAUBERT MOTIONS -- TO ME, CREATE UNDUE BURDENS ON THE COURTS.

THEY CERTAINLY DON'T AID THE ADMINISTRATION OF JUSTICE.

IT'S A SITUATION WHERE THE JUDGES ARE PUT IN A POSITION OF DECIDING FACTUAL ISSUES THAT ARE NORMALLY LEFT FOR THE JURY.

IT BURDENS THE JUDGES, IN THE WORDS OF JUSTICE LINGUIST, WHO HAVE BECOME AMATEUR SCIENTISTS. HOW ARE THEY MORE QUALIFIED THAN A JURY?

CERTAINLY IT HAS IMPLICATIONS ON TRIAL BY JURY AND CERTAINLY IT

SLOWS JUSTICE DOWN AND HAVE
ACCESS TO THE COURTS ISSUES.
I'M GOING TO START NOW BECAUSE
IF I START ANOTHER THOUGHT --
>> HOW MANY FRYE HEARINGS HAVE
YOU HAD OVER YOUR 300 OR 400
TRIAL CASES?
>> NONE.
>> AND HOW MANY DAUBERT HEARINGS
HAVE YOU HAD IN THE LAST --
>> THEY ARE BECOMING A MATTER OF
COURSE IN EVEN THE MOST ROUTINE
CASES THAT WE HAVE.
THEY ARE BEING USED TO CHALLENGE
CAUSATION, PERMANENCY IN THE
SIMPLEST OF CASES.
AND WHAT IT'S GOING TO DO IN THE
LAW TERM IS ALLOW OR DISALLOW
PEOPLE WHO HAVE CASES OF LESS
FINANCIAL VALUE BECAUSE LAWYERS
ARE NOT GOING TO BE ABLE TO TAKE
ON THEIR CASES BECAUSE OF THE
SIMPLE COST BURDEN INVOLVED.
I THANK THE COURT.
>> HAS ANY JUDGE KEPT OUT A
MEDICAL DOCTOR'S CAUSATION
TESTIMONY BECAUSE OF DAUBERT?
>> I WANT TO BE CANDID WITH THE
COURT.
I CAN'T REMEMBER WHETHER OR NOT
THAT'S BEEN DONE.
BUT LET ME SAY THIS.
HERE'S WHAT'S GOING TO HAPPEN IN
THAT.
THEY'RE GOING TO KEEP KNOCKING
ON THAT DOOR.
AND HERE'S WHAT'S GOING TO
HAPPEN.
DOCTORS, WHO ARE THE TREATERS,
ARE GOING TO SAY I DON'T WANT TO
TREAT AND PUT UP WITH THIS.
SO WHAT'S GOING TO HAPPEN?
THE WORLD IS GOING TO SHRINK AS
FAR AS THE PEOPLE OF PEOPLE WHO
WILL HELP THE INJURED VICTIM.
>> IF THE COURT HAD A CASE AND
SAID DAUBERT DOESN'T -- WASN'T
INTENDED TO APPLY SIMPLE MEDICAL
TESTIMONY, I AS A TRIAL JUDGE AM
NOT GOING TO HAVE A DAUBERT
HEARING ON SOMETHING THAT
EVERYONE KNOWS WAS NEVER
INTENDED TO BE EITHER
FRYE-TESTED OR DAUBERT-TESTED.

THAT WOULD DO IT TOO, RIGHT?
>> AND LET ME SEE THIS.
I'M TRYING TO GET THIS CASE TO
YOU.
I CAN TELL YOU THAT.
THANK YOU.
>> WELL, AS WE STAND RIGHT NOW,
DAUBERT WOULD APPLY IF SOMEONE
SEEKS TO APPLY IT, WHETHER THEY
WOULD HAVE ASKED FOR A FRYE
TESTING OR NOT.
>> I THINK YOU'RE CORRECT.
>> I MEAN, IT'S A DIFFERENT BALL
GAME NOW.
>> WELL, I DON'T KNOW THAT IT'S
A DIFFERENT BALL GAME.
>> WELL, SAME BALL GAME,
DIFFERENT UMPIRE.
>> WELL, MAYBE.
I'M NOT GOING TO ARGUE WITH YOU
ON THAT.
>> OKAY.
>> THANK YOU.
>> GOOD MORNING.
DAN CYTRYN.
SO WE ARE GOING TO START SEEING
DAUBERT HEARINGS ON EVERYTHING
IN PERSONAL INJURY CASES THAT
NORMALLY YOU JUST CAME IN
THROUGH A MEDICAL DOCTOR'S PURE
OPINION.
AND THE COMMITTEE NOTES, I
BELIEVE IT IS, MANDATE THAT WE
FOLLOW THE FEDERAL COURT SYSTEM.
SO PURE OPINION IS FULL GAME
HERE.
AND SO THAT MEANS THAT WHETHER
SOMEBODY SUSTAINED A NECK
INJURY, WHETHER SOMEBODY HAS A
PERMANENT INJURY WITHIN A
REASONABLE DEGREE OF MEDICAL
PROBABILITY, WHETHER SOMEBODY
HAS SUSTAINED AN AGGRAVATION OF
A PREEXISTING INJURY, THE
MEDICAL BILLS ONE WILL INCUR IN
THE FUTURE, EACH ONE OF THESE
ITEMS WILL BECOME THE SUBJECT OF
A DAUBERT HEARING IN EVERY CASE.
>> WHAT IF WE WERE TO PASS A
RULE -- AGAIN, AS JUSTICE LEWIS
SAYS, DAUBERT RIGHT NOW IS A
STATUTE.
FRYE WAS THE CASE LAW.
BUT WHAT YOU'RE TALKING ABOUT IS

AN ABUSE OF THE PROCESS.
IT HAPPENS IN DISCOVERY ALL THE
TIME.
WHY HASN'T ANYONE PROPOSED IN
THESE TWO YEARS RULES SAYING
THAT SOMEBODY COULD BE
SANCTIONED FOR BRINGING A
FRIVOLOUS DAUBERT MOTION WHEN IT
CLEARLY DOESN'T APPLY TO THINGS
-- WHAT YOU SAY, THE ORDINARY
AUTOMOBILE ACCIDENT.
AND BECAUSE, AGAIN, YOU'VE GOT
CRIMINAL DEFENDANTS THAT SAY
THEY WILL BENEFIT FROM DAUBERT
BECAUSE THEY PUT IN SCIENCE OR
SCIENCE THAT IS NOT RELIABLE.
AND NOW YOU WANT AN
ACROSS-THE-BOARD RULING.
HAS ANYONE LOOKED AT THAT, ABOUT
TRYING TO REIN IN THE PROCEDURES
FOR HOW DAUBERT HEARINGS ARE
CONDUCTED?
>> DAUBERT IS DEVASTATING TO --
ACROSS THE BOARD TO THESE SMALL
CASES WITH BASIC PURE OPINION,
AND PURE OPINION APPLIES IN
FEDERAL COURT.
EVERY ONE OF THESE THINGS I
MENTIONED ARE SUBJECT IN FEDERAL
COURT AND IN MANY STATES THAT
HAVE ADOPTED DAUBERT TO DAUBERT
TESTING.
SO DAUBERT NOT ONLY AFFECTS THIS
SMALL CASE, BUT IT PUTS THE
SITUATION WHERE WE CANNOT TAKE
CASES WORTH HUNDREDS OF
THOUSANDS OF DOLLARS, WE CAN NO
LONGER TAKE SOME OF THESE CASES.
AND AS FAR AS CRIMINAL IS
CONCERNED, EVERY LAW REVIEW
ARTICLE SHOWS THAT WHERE THE
PROSECUTION'S WITNESSES ARE
CHALLENGED, THE CRIMINAL
DEFENDANT IS VIRTUALLY NEVER
SUCCESSFUL.
ON THE OTHER HAND, THE SUCCESS
RATE WHERE THE PROSECUTION
CHALLENGES THE CRIMINAL
DEFENDANT'S EXPERT, THEY ARE
SUCCESSFUL ABOUT TWICE AS MUCH
IF YOU READ ALL OF THESE LAW
REVIEW ARTICLES.
SO IT'S NOT JUST IN THIS PURE
OPINION, AND THERE'S NOTHING IN

ANY FEDERAL COURT THAT'S EVER
SANCTIONED ANYBODY FOR BRINGING
ANY TYPE OF CHALLENGE TO A PURE
OPINION TEST.

FOR EXAMPLE, IF SOMETHING FELL
OFF -- SOMETHING IN WALMART FELL
ON SOMEBODY'S HEAD AND SOMEBODY
CAME IN ABOUT MAINTENANCE
PROCEDURES ABOUT HOW TO PUT
SOMETHING ON A SHELF, THAT'S
SUBJECT TO A DAUBERT HEARING.
SO A MANAGER OF A STORE WHO
NORMALLY WOULD JUST COME IN AND
SAY HERE'S THE PROCEDURES,
THAT'S NOW -- THAT'S FAIR GAME
FOR DAUBERT.

AND THAT'S PRETTY MUCH PURE
OPINION.

RULE 1.10 PROVIDE THAT'S THESE
RULES SHALL ENSURE THE JUST,
SPEEDY AND INEXPENSIVE
DETERMINATION OF EVERY ACTION.
DAUBERT IS GOING TO ENSURE THAT
WE HAVE THE UNJUST, SLOW AND
EXCRUCIATINGLY EXPENSIVE
DETERMINATION OF EVERY ACTION.
OUR COURTS ARE NOT EQUIPPED LIKE
THE FEDERAL COURTS.

WE DON'T HAVE -- OUR TRIAL
JUDGES DON'T HAVE TWO LAW CLERKS
WHO CAN SIT THERE AND IN EVERY
CASE PLOW OUT TWO, THREE, FIVE,
20, 40-PAGE OPINIONS OF EACH
EXPERT THAT IS -- I WAS
PRACTICING 32 YEARS BY THE TIME
DAUBERT WAS ADOPTED.

I HAVE NEVER HAD A DAUBERT
HEARING -- I'M SORRY -- A FRYE
HEARING IN MY LIFE.

IT NEVER CAME UP.

AND NOW WE HAVE ALL THESE THINGS
SET AND IT'S JUST -- IT IS GOING
TO ADD PROBABLY TO THE AVERAGE
PERSONAL INJURY CASE, PROBABLY
40% MORE IN TIME, 40% MORE IN
COSTS.

THANK YOU VERY MUCH.

>> THE PUBLIC DEFENDER
ASSOCIATION ON BEHALF OF THE
DEFENDANTS IN FLORIDA WOULD LIKE
TO ASK THIS COURT TO ADOPT
DAUBERT --

>> WOULD YOU ADJUST THE MIC?

>> OH.

MY APOLOGIES.

IS THIS BETTER?

>> YEAH.

>> THERE.

THE FPDA WOULD LIKE TO URGE THIS COURT TO ADOPT DAUBERT TO THE EXTENT THAT IT IS PROCEDURAL.

>> WHAT PART OF IT IS PROCEDURAL?

THEY SAY IT'S ALL PROCEDURAL.

>> I UNDERSTAND THAT PETITIONERS HAVE SUGGESTED IT'S ALL PROCEDURAL.

I BELIEVE IT IS ALSO SUBSTANTIVE.

MY SHORT ANSWER IS IF PROCEDURE AND SUBSTANCE IS WHAT VERSUS HOW, WHAT DAUBERT IS IS A DECISION OF WHAT IS GOOD SCIENCE.

IS IT THE KNOWLEDGE OF THE WISE PEOPLE?

THAT'S GENERAL ACCEPTANCE IN THE FIELD.

THAT'S FRYE.

OR IS IT RIVAL SCIENTIFIC METHODOLOGY?

I THINK THAT IS A WHAT QUESTION. I THINK TO THAT EXTENT THE LEGISLATION WAS APPROPRIATE TO ENACT DAUBERT AND I WOULD ASK THIS COURT TO THEN ADOPT THE REST OF IT AS PROCEDURAL.

>> THIS QUESTION IS REALLY -- THEY'RE SAYING IN THE CIVIL CASES IT'S JUST -- ESPECIALLY THE ORDINARY PERSONAL INJURY CASES WHERE IN MY VIEW I COULD NEVER IMAGINE IT APPLYING. BUT PEOPLE ARE BRINGING THESE MOTIONS.

IN CRIMINAL CASES YOU POINT OUT ISSUES SUCH AS THE KNIFE ANALYSIS.

I'VE SEEN SOME STATES -- AND I HAVEN'T LOOKED AT IT, BUT WHERE THEY APPLY IT IN CRIMINAL AND NOT IN CIVIL OR VICE VERSA. HAS ANYONE DISCUSSED -- AND, AGAIN, I DON'T KNOW WHERE -- IF THERE IS MAYBE GOOD REASONS TO APPLY IT IN CRIMINAL CASES TO WHAT IS WE KNOW SCIENCE, BUT NOT IN CIVIL CASES?

>> GENERALLY, YOUR HONOR, FROM THE PUBLIC DEFENDER PERSPECTIVE, WE LIKE THE RULES OF EVIDENCE TO APPLY ACROSS THE BOARD.

WHEN THEY ONLY APPLY IN CRIMINAL CASES AND THERE'S DIFFERENT RULES IN CIVIL CASES --

>> ANOTHER QUESTION I HAVE IS THEY WERE TALKING ABOUT JUVENILE CASES AND DAUBERT HEARINGS THERE.

ISN'T THE DANGER THERE IS IF THESE ARE BEING USED AS MORE POWERFUL AGAINST THE LESS POWERFUL OR THE LESS RESOURCES, THAT IT'S GOING TO BE TURNED AGAINST YOU, THAT IS -- AND WHAT THE LAW REVIEW IS SHOWING IN OTHER STATES, THAT APPARENTLY THE STATE DOESN'T END UP HAVING -- THEY'VE GOT ALL THE RESOURCES, BUT NOW WE'VE GOT A JUVENILE DEFENDANT WITH A YOUNG PUBLIC DEFENDER WHO HAS TO FACE A REVERSE ISSUE.

IS THAT ANY OF THE CONCERNS --

>> YOUR HONOR, NEITHER DAUBERT NOR FRYE IN THE CRIMINAL CONTEXT ARE SPECIFICALLY DEFENSE FAVORABLE OR PROSECUTION FAVORABLE.

>> WHAT ARE THOSE STATISTICS SHOWING WHEN YOU TRY TO GET SOMETHING IN, IT'S LIKE NO. IT'S NOT SCIENTIFICALLY RELIABLE.

AND THE STATE DOES IT AND, YES, IT IS SCIENTIFICALLY RELIABLE.

>> UNDER FRYE IT'S WORSE, YOUR HONOR.

I ACCEPT THOSE STATISTICS.

THEY ARE PROBABLY TRUE.

AND IT SADDENS ME GREATLY THAT THAT'S WHAT WE SEE IN THE LOWER COURTS.

UNDER FRYE IT IS WORSE, FOR TWO REASONS.

ONE, FRYE'S GENERAL ACCEPTANCE IN CRIMINAL CASES, GENERAL ACCEPTANCE MEANS GENERAL ACCEPTANCE OF THE LAW ENFORCEMENT PROFESSIONALS IN THE LABS.

THAT IS A HUGE PROBLEM WITH FRYE

FOR US.

SECOND, PURE OPINION IS NOT TESTABLE UNDER FRYE BECAUSE YOU CAN'T HAVE GENERAL ACCEPTANCE OF THE -- OF A SPECIFIC OPINION. YOU CAN DO THAT WITH DAUBERT TESTING.

>> IS DAUBERT THE EMBODIMENT OF THE PRINCIPLE THAT SCIENCE AND SCIENTIFIC PRINCIPLES ARE SO SPECIFIC THAT THEY ARE NOT SUBJECT TO DIFFERENCES OF OPINION?

>> I'VE NEVER UNDERSTOOD THAT TO BE THE CASE, YOUR HONOR.

>> WELL, IF YOU'RE GOING TO APPLY IT TO SAY YOU CANNOT HAVE AN OPINION TESTIMONY THAT YOU CALL PURE, WHATEVER THAT MEANS, PURE OPINION TESTIMONY, WHY IS THAT NOT?

IT SEEMS TO ME THAT AS IT'S BEING APPLIED NOW -- AND IT MAY BE DIFFERENCES IN CRIMINAL AND CIVIL, BUT IT IS DEMONSTRATING THAT A PHYSICIAN CAN HAVE AN OPINION BASED UPON HIS MEDICAL TRAINING THAT MAY NOT BE ADMISSIBLE UNDER A DAUBERT THEORY.

>> YOUR HONOR, IF I MAY, MY WIFE IS A PHYSICIAN, AND I WAS EXPLAINING WHAT THE ISSUE WAS, AND SHE SAID TO ME THAT HER ENTIRE TRAINING IN MEDICAL SCHOOL WAS ABOUT EVIDENCE-BASED MEDICINE, BE ABLE TO TIE WHAT YOU ARE DOING IN A CASE TO VERY SPECIFIC SCIENTIFIC EVIDENCE. AND IF YOU ARE NOT DOING THAT, YOU ARE NOT PRACTICING MEDICINE. AND WHAT SHE THEN SAID WAS I GUESS IT'S TAKING THE COURTS A WHILE TO CATCH UP, WHICH I THOUGHT WAS A SAD COMMENT, BUT I THINK THAT MAY BE TRUE UNDER FRYE VERSUS --

>> I DON'T BELIEVE THAT. AFTER 45 YEARS OF DOING THIS, THAT YOU HAVE THAT MANY CASES -- IF A PHYSICIAN OR AN EXPERT COMES IN AND FLIES BY THE SEAT OF THEIR PANTS WITH SOME STUPID THEORIES, OUR LAWYERS ARE PRETTY

GOOD TO GO AFTER THEM AND
ESTABLISH THE FALLACY OF THEIR
POSITIONS.
SO, I MEAN, THAT'S TO SAY OUR
ADVERSARIAL PROCESS DOESN'T WORK
AND I'M NOT --
>> NO, YOUR HONOR.
AND I'M NOT ADVOCATING THAT.
I BELIEVE THAT DAUBERT KEEPS THE
OUTLIERS OUT, KEEPS THE EXTREME
OUTLIER OPINION THAT'S NOT BASED
ON EVIDENCE-BASED MEDICINE.
>> WELL, FRYE COULD DO THAT AS
WELL.
>> I DO NOT BELIEVE IT DOES
BECAUSE PURE OPINION, FOR
INSTANCE, THAT IS ALL THE ARSON
CAUSATION EXAMPLES.
AND THAT WAS THE EXAMPLE IN
TEXAS, WHERE A MAN GOT TO HAVE
HIS THREE CHILDREN DIE IN A FIRE
AND THEN WAS ACCUSED OF ARSON
BASED ON PURE OPINION TESTIMONY
AND EXECUTED BY THE STATE OF
TEXAS FOR A CRIME HE DID NOT
COMMIT.
IT DOES NOT GET MUCH WORSE THAN
THAT IN THE LAW.
AND, FRANKLY, THAT IS A PROBLEM
WITH FRYE.
>> NOR DOES IT GET MUCH WORSE
THAN SOMEONE INJURING A CHILD
AND PLACING A CHILD IN A
VEGETATIVE STATE BASED -- AND
THEN THE TESTIMONY'S BASED ON
OPINION, A CRIMINAL VERSUS A
CIVIL KIND OF APPLICATION ON
THESE THINGS WITH REGARD TO
THAT.
BUT JUSTICE PARIENTE IS TALKING
ABOUT.
BUT IT DOESN'T SEEM TO ME THAT
EITHER ONE IS PERFECT.
IF WE'RE TRYING TO TALK ABOUT
GETTING SOMETHING CORRECT.
YOU KNOW, IF THIS CUT IN FAVOR
OF THE PUBLIC DEFENDERS, YOU
WOULDN'T BE HERE ARGUING THIS.
THIS IS -- IT'S
SIDE-DETERMINATIVE HERE, YOU
KNOW.
YOU SIT UP HERE AND WATCH THE
ARGUMENTS BEING MADE.
YOU'RE A WONDERFUL LAWYER, BUT

YOU COULD JUST AS EASILY TAKE
THE OTHER POSITION IF YOU WERE
REPRESENTING THE STATE.
THAT'S WHY THIS IS.
THIS IS POSITION-ORIENTED.
>> RULES ARE NOT PERFECT, YOUR
HONOR, BUT DAUBERT IS MUCH
BETTER SCIENCE THAN FRYE.
>> HERE'S THE THING WE GO BACK
TO.
YOU'VE GOT THIS ISSUE OF THESE
DOGS THAT ARE FINDING THAT
THERE'S MARIJUANA AND, WAIT A
SECOND.
GENERAL ACCEPTANCE THERE.
NEEDS TO BE SUBSTANTIATED.
SO THEN THERE'S A LACK OF
RELIABILITY.
SO IT JUST SEEMS TO ME THAT THE
ISSUE ABOUT WHO'S THE GATEKEEPER
-- AND I THINK THAT'S WHAT
JUSTICE LEWIS IS TALKING ABOUT.
IN CIVIL CASES BECAUSE, YES,
THERE ARE BIG STAKES, BUT THERE
SEEMS TO BE SOME MISTRUST OF A
JURY BEING ABLE TO FERRET OUT IN
A PRODUCTS LIABILITY CASE WHEN
SOMEBODY'S [INAUDIBLE] SPRAYED
WITH A PESTICIDE AND SOMEBODY
WAS INJURED.
WELL, WERE THERE TESTS DONE ON
IT?
NO.
YOU DON'T HAVE TESTS ON HUMAN
BEINGS.
SO THIS IDEA THAT THERE HAS TO
BE STATISTICS JUST DOESN'T SEEM
TO WORK.
WHERE IN THE SCIENTIFIC
COMMUNITY, FOR DEATH CASES THE
IDEA THAT WE DON'T HAVE A
RELIABLE WAY TO SHOW ARSON IS
MORE ENDEMIC TO THE SYSTEM OF
JUSTICE.
>> THE PUBLIC DEFENDER ARE VERY
NERVOUS ABOUT ANY RULE WHICH
SEPARATES OUT CRIMINAL CASES
FROM CIVIL CASES.
IT TENDS TO NOT BE IN OUR
CLIENT'S FAVOR.
IT TENDS TO CREATE SYSTEMS OF
LAW WHERE OUR CLIENTS ARE GOING
TO GET A MUCH WORSE OUTCOME THAN
WHAT YOU'VE ALREADY SEEN THE

STATISTICS SHOW.
UNIFORM APPLICATION OF LAW IS
THE BEST PROTECTION FOR INDIGENT
CRIMINAL DEFENDANTS.
AND THAT IS WHAT WE WOULD URGE
THIS COURT -- AND WE'D URGE THIS
COURT TO ACCEPT DAUBERT.
IT IS MUCH BETTER SCIENCE.
FRYE OR DAUBERT ARE BOTH WAYS OF
EXCLUDING EVIDENCE FROM THE
JURY.
THE QUESTION IS WHICH IS BETTER
SCIENCE.
IT IS DAUBERT.
THANK YOU.

>> WELL, GOOD MORNING.
AND MAY IT PLEASE THE COURT,
LARRY METZ APPEARS IN BOTH THE
CAPACITY OF THE 2013 LEGISLATION
AND ALSO AS A 32-YEAR PRACTICING
LITIGATOR.
WANTED TO FIRST BEGIN BY
THANKING THE COURT FOR PROVIDING
US THE OPPORTUNITY TO HAVE ORAL
ARGUMENT ON THIS ISSUE AND I
WANTED TO TOUCH ON PROCEDURAL
VERSUS SUBSTANTIVE.
I THINK MR. MORRISSON DID STEAL
MY THUNDER WHEN HE MENTIONED THE
WHAT AND HOW DICHOTOMY.
I VIEW THAT AS AN IMPORTANT
DISTINCTION.
I INDICATED IN MY WRITTEN
COMMENTS THAT I THOUGHT THAT THE
STANDARD WE APPLIED IN THIS
LEGISLATION WAS SUBSTANTIVE, BUT
I DO REALIZE THAT THERE'S
PROCEDURAL COMPONENTS WRAPPED UP
IN THIS.
THE ORIGINAL STATUTE WASN'T
CHANGED IN ITS ENTIRETY.
WE SIMPLY ADDED SOME ADDITIONAL
LANGUAGE TO IT.
THE LANGUAGE IN THE BILL ADOPTS
THE DAUBERT STANDARD TO THE
FACTS OF THE CASE.
>> DID YOU EVER ENVISION, THOUGH
-- YOU HEAR THESE STORIES ABOUT
-- AND I DON'T KNOW WHAT TYPE OF
LAW YOU PRACTICE, BUT LET'S JUST
SAY IT'S A SIMPLE AUTOMOBILE
ACCIDENT CASE AND SOMEBODY IS
REAR-ENDED AND NOW THE ISSUE IS
DID THE DAMAGE COME FROM THE

COLLISION.

YOU DON'T NEED EXPERT TESTIMONY
FOR THAT.

NOW YOU HAVE A DOCTOR
[INAUDIBLE] THESE MULTIDAY
HEARINGS WHERE IT WOULD BE
CHALLENGING THAT KIND OF
TESTIMONY.

WAS IT ENVISIONED THAT IT'S
ACROSS THE BOARD THAT YOU WANTED
THAT THE LAW OF THE STATE AND
OVERRULE FRYE?

>> WELL, THE NOTION OR THE
ARGUMENT THAT WE'RE GOING TO
HAVE DAUBERT HEARINGS IN EVERY
CASE, EVEN THE SIMPLE VARIETY
GARDEN TYPE CASE YOU MENTIONED,
IS MISPLACED.

IT'S NOT THE CASE.

>> SO WHAT THEY'RE SAYING --
EVEN THOUGH WE JUST HEARD THIS
MORNING IS NOT ACTUALLY NOT THE
CASE?

AND, AGAIN, MOST RESPECTFULLY,
WE DON'T USUALLY HAVE A CHANCE
TO TALK ABOUT WHAT THE INTENT
WAS AND WHETHER IT'S BEING --
EVEN IF IT'S A GOOD STANDARD FOR
CERTAIN TYPES OF CASES, WHETHER
IT'S BEING MISUSED AND IT'S
CONSUMING INORDINATE AMOUNT OF
COURT RESOURCES.

>> WELL, I BELIEVE MOST LAWYERS
ARE PROFESSIONAL.

MOST JUDGES ARE HIGHLY
COMPETENT, PROFESSIONAL AND
THEY'RE GOING TO FERRET OUT THE
FRIVOLOUS MOTIONS.

LAWYERS ARE VERY CAUTIOUS I
THINK OVERALL IN PICKING THEIR
BATTLES.

THIS IS MY EXPERIENCE IN 32
YEARS OF LITIGATING.

I DON'T ACCEPT THE IDEA THAT
EVERYBODY IS GOING TO FILE A
DAUBERT MOTION AUTOMATICALLY
BECAUSE THEY CAN.

THREE DISTRICT COURT DECISIONS
THAT HAVE COME OUT SINCE 2013,
ANDREWS, PEREZ AND GIAIMO,
PROVIDE INTERESTING INSIGHTS
INTO HOW THE COURTS ARE HANDLING
THIS.

IN ANDREWS, A MENTAL HEALTH

EXPERT TESTIMONY UNDER THE RICE ACT WAS INVOLVED AND JUDGE LAWSON OF THE FIFTH DISCUSSED THE FLEXIBILITY APPROACH APPLIED IN THOSE CASES AND CAME TO THE CONCLUSION THAT THE TESTIMONY WAS ACCEPTABLE, WHEREAS IN PEREZ, WHICH INVOLVED WORKPLACE STRESS THEORY OF PLACENTAL ABRUPTION, IT WAS REJECTED BECAUSE THERE WAS NO SCIENTIFIC BASIS.

IT WAS APPLYING A FALLACY. AND IN THE GIAIMO CASE IT WAS REJECTED BECAUSE THERE WAS ABSOLUTELY NO BASIS FOR IT AND THE EXPERT WAS CANDID ENOUGH TO SAY THAT THE REASON HE GAVE THOSE PERCENTAGES WAS THAT WHEN HE WAS ASKED ABOUT IT AND THOUGHT ABOUT IT, THAT WAS THE ANSWER THAT HE CAME UP WITH. HE HAD NO BASIS FOR IT.

THESE ARE THE EXACT TYPES OF CASES THAT WE WERE TRYING TO ADDRESS WITH THE LEGISLATION. AND WE ALSO HAVE NOT ONLY THE THREE-YEAR OPERATING HISTORY IN THE STATE OF FLORIDA, BUT DAUBERT HAS BEEN IN EFFECT IN THE FEDERAL COURTS FOR 23 YEARS AND WE DON'T HEAR THE PARADE OF HORRIBLES COMING OUT OF THOSE JURISDICTIONS LIKE WE'RE HEARING FROM THE OPPONENTS OF THIS LEGISLATION.

I THINK THAT'S A VERY IMPORTANT CONSIDERATION. AND I DO WANT TO MENTION IF I COULD THE LEGISLATIVE INTENT CONCEPT COMES UP A LOT. IT'S SOMEWHAT OF AN ESOTERIC CONCEPT BECAUSE THERE'S 160 LEGISLATORS AND SOME VOTE FOR LEGISLATION, SOME VOTE AGAINST. SOME ARE RELYING ON THE SPONSOR. SOME ARE RELYING ON THE COMMITTEE PROCESS. SOME ARE VESTED IN THE ISSUE BECAUSE THEY PRACTICE LAW. SO IT'S HARD TO DISCERN THAT. BUT MY VIEW OF IT WHEN I FIRST RAN IT IN 2011 WAS THAT I INSISTED THAT WE ADOPT THE PURE

DAUBERT STANDARD THAT'S BEEN PROVEN IN FEDERAL COURTS AND I RESISTED EFFORTS TO COMPROMISE POLITICALLY AND CREATE NEW AND DIFFERENT APPROACHES TO GET VOTES.

THAT'S WHY IT TOOK THREE YEARS, BECAUSE I FELT THIS IS AN IMPORTANT PUBLIC POLICY CHOICE AND WE SHOULDN'T BE EXPERIMENTING WITH THIS VERY IMPORTANT ISSUE.

SO I WANTED TO TAKE IT OFF THE SHELF FROM OTHER STATES IN THE FEDERAL COURT SYSTEM AND BRING IT TO FLORIDA AND I'M VERY GRATEFUL FOR THIS PROCESS WHERE THE COURT CAN WEIGH IN ON IT.

I THINK THE FLORIDA EVIDENCE CODE IS, TRADITIONALLY HAS BEEN, A COLLABORATIVE EFFORT AND THE LEGISLATURE PROPOSES STATUTES. THE COURT THEN REVIEWS THAT AND WEIGHS IN.

AND THE RESULT IS WE HAVE FOR THE MOST PART A LONG HISTORY OF COLLABORATION IN THAT REGARD.

>> YOU SEE, THOUGH -- AND, AGAIN, I DON'T KNOW IF WE'VE SEEN ANY OF THE STUDIES, BUT THAT THE INDIVIDUAL JUDGE IN FLORIDA, DESPITE REPEATED REQUESTS FOR ADDITIONAL STAFF ATTORNEYS, DOESN'T HAVE EVEN CLOSE TO THE COMPLIMENT OF STAFF ATTORNEYS PER JUDGE AND THE FEDERAL COURTS DON'T HAVE -- AT LEAST THAT I KNOW, THE BREAD AND BUTTER PERSONAL INJURY CASES, SO WE HAVE MAYBE SOME UNINTENDED CONSEQUENCES AND THEN DRAINS ON THE SYSTEM OF JUSTICE.

AND I REALIZE THIS IS -- SINCE WE'RE HERE AND YOU'RE HERE AS THE SPONSOR OF THE BILL, WE RESPECT THAT AND WE APPRECIATE YOU COMING, THAT THERE IS A QUESTION ALSO OF THE RESOURCES OF THE STATE COURT SYSTEM AND THE TYPE OF CASES APPARENTLY IT'S COMING UP IN.

>> WELL, I BELIEVE THAT'S A VERY VALID POINT.

THE RESOURCES HAVE TO FOLLOW

POLICY.

THE BUDGET IS ANOTHER ASPECT OF THE LEGISLATURE THAT WE DO EVERY YEAR, AS THE COURT WELL KNOWS, AND THERE'S MANY INPUTS ON THAT. I CAN SAY THAT IN THE THREE YEARS SINCE THIS OCCURRED, TWO OF THOSE I WAS CHAIR OF THE JUSTICE APPROPRIATIONS SUBCOMMITTEE AND WE HAVEN'T HAD ANY SPECIFIC REQUESTS RELATED TO THE DAUBERT STANDARD IMPLEMENTATION.

WE CERTAINLY WOULD CONSIDER THOSE REQUESTS.

TO THE POINT OF THE FEDERAL JUDICIARY HAVING TWO LAW CLERKS AND OUR JUDGES NOT HAVING THAT, THERE ARE FAR FEWER FEDERAL JUDGES IN THE COUNTRY THAN THERE ARE TRIAL JUDGES AT THE STATE LEVEL, SO THEY HAVE MORE COMPLEX AND WIDE-RANGING CASES TO DEAL WITH.

THEY ARE BETTER RESOURCED, ADMITTEDLY, AND IT WOULD BE BETTER IF WE HAD MORE SUPPORT FOR OUR TRIAL JUDGES ON ISSUES LIKE THIS.

BUT WE CAN'T DO EVERYTHING WE WANT TO DO.

THERE'S LIMITATIONS.

BUT I THINK THE COURTS ARE DOING AN EXCELLENT JOB AS A PRACTITIONER AND THEN ASKING THE QUESTION WHEN I RUN INTO OTHER PRACTITIONERS AND SOMETIMES HAVING CONVERSATIONS WITH JUDGES THAT ARE NOT ON MY CASES, I FIND THAT THEY'RE APPROACHING THIS VERY PROFESSIONALLY AND DOING A GREAT JOB.

ALL THE DCA OPINIONS THAT HAVE COME OUT SHOW GREAT THOUGHTFULNESS ON THIS IN HOW THEY'RE APPLYING IT. AND THEY ARE USING FEDERAL PRECEDENTS WHICH ARE THERE AS GUIDANCE.

THE COURTS ARE FINDING THOSE HELPFUL IN PROVIDING GREAT ADVICE TO THE TRIAL COURTS. THESE OPINIONS ARE -- THERE'S ABOUT EIGHT OR NINE OF THEM I

THINK THAT I LOCATED SINCE 2013.
SO IN CLOSING I WOULD JUST LIKE
TO MENTION -- WELL, I WANT TO
JUST MENTION THAT THE OVERALL
POLICY OF DAUBERT, THE PURPOSE
OF IT, WHY WE THOUGHT IT WAS AN
IMPORTANT PUBLIC POLICY CHOICE
IN THE LEGISLATURE, IT GETS TO
THE FUNDAMENTAL PURPOSE OF
COURTS.

WHEN I WAS A YOUNG LAWYER, I
WENT TO THE MIAMI-DADE
COURTHOUSE AND IN THE COURTROOM
THERE WAS A SIGN ABOVE THE BENCH
AND IT SAID WE WHO LABOR HERE
SEEK ONLY TRUTH.

AND THAT IS THE PURPOSE OF THE
DAUBERT BILL THAT WE RAN.
IT WAS TO PROVIDE A GREATER
STANDARD OF RELIABILITY FOR
EXPERT TESTIMONY IN THE FLORIDA
COURTS SO THAT WE CAN GET TO THE
TRUTH IN THESE CASES.

AND THAT'S THE PURPOSE OF IT.
AND I THINK IT'S SUCH AN
IMPORTANT PURPOSE.

WHEN YOU THINK ABOUT SAY, FOR
EXAMPLE, THE COMMENTS THAT WERE
SUBMITTED BY THE INNOCENCE
PROJECT, WHERE THEY TALK ABOUT A
MAN WHO WAS WRONGFULLY
INCARCERATED FOR OVER 20 YEARS
FOR A CRIME HE DIDN'T COMMIT AND
THEY GIVE GREAT DETAIL IN THEIR
COMMENTS ABOUT HOW THE TESTIMONY
THAT WAS USED TO CONVICT THAT
PERSON, MR. DYLAN, WOULD NEVER
HAVE PASSED A DAUBERT TEST, BUT
IT WAS ADMISSIBLE UNDER THE
THEN-EXISTING STANDARD.

AND I THINK IT WAS VERY
IMPORTANT THAT WE APPLY THIS
STANDARD ACROSS THE BOARD, CIVIL
AND CRIMINAL.

IN 2011 THERE WAS AN OPPORTUNITY
TO APPLY IT ONLY IN CIVIL BUT
NOT CRIMINAL, AND I REJECTED
THAT APPROACH BECAUSE IF YOU'RE
GOING TO HAVE SOMEONE'S LIFE OR
LIBERTY TAKEN AWAY, YOU BETTER
BE SURE IT'S BASED ON RELIABLE
EVIDENCE.

AND THAT'S WHY THIS IS IMPORTANT
IN THE CRIMINAL REALM AS WELL.

AND SO WITH THAT, I THANK THE COURT FOR THE OPPORTUNITY TO BE HEARD TODAY. APPRECIATE IT.

>> GOOD MORNING.

IF IT PLEASE THE COURT, I'M STEPEN MAHLE.

I'M A FLORIDA LITIGATOR AND ASSOCIATE PROFESSOR OF ECONOMICS AT HIRAM COLLEGE.

AT LEAST AS WITH RESPECT TO THE CIVIL ARENA, THIS DAUBERT V. FRYE THING IN FLORIDA HAS BEEN CHARACTERIZED AS A DEFENDANT VERSUS PLAINTIFF THING.

AND THAT'S NOT REALLY AN ACCURATE REPRESENTATION. SPECIOUS EXPERT TESTIMONY IS USED TO KEEP INJURED PLAINTIFFS FROM JUST RECOVERY IN EXACTLY THE SAME WAY AS IT'S USED TO BUY DEFENSE TEAMS.

SO JUST LIKE SPECIOUS EXPERT TESTIMONY IS USED TO JAIL INNOCENT PEOPLE, IT'S USED TO DEPRIVE CIVIL LITIGANTS OF DAMAGES THAT THEY SHOULD BE ENTITLED TO.

I WANT TO TURN QUICKLY TO THIS NOTION OF DAUBERT BEING APPLIED ACROSS THE BOARD IN SIMPLE, ORDINARY MATTERS.

THE UNITED STATES SUPREME COURT HAS ACTUALLY SPOKEN DIRECTLY ON THIS POINT AND SAID THAT KUMHO TIRE HAS SAID THERE SHOULD BE NO UNRELIABLE PROCEEDINGS IN ORDINARY MATTERS.

I NOTE THAT THE GENTLEMAN TO MY LEFT HAVE NOT BEEN TALKING ABOUT THESE TERRIBLE THINGS THAT HAVE BEEN HAPPENING UNDER DAUBERT, BUT RATHER IT'S GOING TO BE THIS WAY, JUDGE.

IT'S GOING TO HAPPEN.

IT'S GOING TO BE 40% INCREASE IN COSTS.

THAT'S EXACTLY THE OPPOSITE OF WHAT DAUBERT ASKS US TO DO, WHICH IS TO LOOK AT EVIDENCE. WE HAVEN'T HEARD THIS MORNING ANY EVIDENCE THAT DAUBERT'S GOING TO REQUIRE ALL THESE INCREASED COSTS OR INCREASED

PROCEEDINGS.

WHAT WE'VE HEARD IS THAT'S
WHAT'S GOING TO HAPPEN.

AND THE LIST --

>> THAT'S JUST WHAT MR. COKER
TALKED ABOUT.

DID YOU NOT HEAR WHAT HE SAID
ABOUT CONDUCTING HEARINGS ON
SATURDAYS IN JACKSONVILLE TO
ADDRESS THESE.

I'M SORRY.

I THINK YOU'RE BEING A LITTLE
DEMEANING TO THE FINE COLLEAGUES
FROM THE FLORIDA BAR.

I DON'T THINK THEY'RE
MISREPRESENTING TO US.

IS THAT WHAT YOU'RE SUGGESTING?

>> NO, YOUR HONOR.

I'M SAYING THAT THE EXCEPTIONS
ARE -- WITH THE EXCEPTION OF
THAT, IT'S ALL ABOUT WHAT'S
GOING TO HAPPEN.

AND THE REALITY IS IN 20 YEARS
OF FEDERAL COURTS AND ALMOST 20
YEARS IN A VARIETY OF OTHER
STATES IT JUST HASN'T COME TO
PASS.

NOW, I DON'T KNOW WHAT
MR. COKER'S EXPERIENCE WAS WITH
THE HEARINGS ON SATURDAY.

I HAVE NO INFORMATION ON THAT,
SO I CAN'T ADDRESS IT.

>> WHETHER THE DAUBERT STANDARD
-- AND I THINK THE CRITICISM HAS
BEEN -- WE TRUST THE JURY TO
UNDERSTAND WHAT'S GOING ON.

I AGREE IN A MEDICAL MALPRACTICE
YOU'VE GOT A DOCTOR COME IN AND
SAY THIS CLEARLY -- THIS
COULDN'T HAVE BEEN CAUSED BY
MALPRACTICE BECAUSE AN OBSCURE
STUDY IN SOME OTHER COUNTRY THAT
SAYS IT'S SOMETHING ELSE.

WE USED TO CALL IT THE RUSSIAN
VIRUS DEFENSE.

WASN'T MALPRACTICE.

YOU'VE GOT -- SO YOU DO HAVE
THAT, BUT YOU'VE GOT JURIES THAT
ARE -- WITH CROSS-EXAMINATION
AND WITH UNDERSTANDING WHAT THE
QUALIFICATIONS ARE OF THE
EXPERTS, TO BE ABLE TO ACCEPT OR
REJECT IT.

AND IT SEEMS THAT DAUBERT, THE

IDEA OF DAUBERT AND ACROSS THE BOARD, OVER -- PUTS THE JUDGE IN A GATEKEEPING FASHION THAT WE DON'T NORMALLY -- WE THINK ABOUT.

IS IT SOMETHING FOR THE JURY TO CONSIDER.

AND SO WHAT DO YOU SAY ABOUT THAT, THAT IT'S JUST A DISTRUST OF THE JURY SYSTEM, IS WHAT'S AT THE BASIS FOR SO MUCH OF THIS.

>> I DON'T SEE IT AS A MISTRUST OF THE JURY SYSTEM, YOUR HONOR. IF THERE'S A MISTRUST INVOLVED, I THINK IT MIGHT BE A MISTRUST OF ENTREPRENEURIAL EXPERTS AND

--

>> BUT DOESN'T THAT THEN -- ONES THAT MAKE A CAREER -- YOU KNOW, YOU GOT IN PERSONAL INJURY CASES -- I FORGET WHAT THEY'RE CALLED NOW, THAT COME IN AND SAY SOMEONE DIDN'T HAVE A PERMANENT INJURY.

THEY GET CROSS-EXAMINED ABOUT DO YOU ALWAYS TESTIFY FOR THE DEFENSE OR FOR THE PLAINTIFF. AND THEY'RE EXPOSED THEN AS TO THEIR MOTIVATION, THEIR BIAS. HAVE YOU EVER FOUND A PERMANENT INJURY IN THIS KIND OF CASE SOME YEAH, 20 YEARS AGO.

SO THAT'S HOW THEN THE JURY EVALUATES IF IT IS SOMETHING THAT IS -- SOMEBODY CAN BE TRUSTED.

PLUS YOU HAVE THE JUDGE SAYING, YOU KNOW, THEY ARE TO SAY IS THIS EXPERT TESTIMONY USEFUL. I MEAN, THERE IS SOME GATEKEEPING RULES THAT DEAL WITH MAKING SURE THAT IT'S GOING TO BE USEFUL TO THE JURY TO HAVE THIS TESTIMONY.

SO WE'VE GOT THAT IN THE EVIDENCE CODE ALREADY.

>> YES.

I THINK THE CENTRAL ROLE OF DAUBERT IN THIS CONTEXT IS THAT IT SCREENS OUTLIER TESTIMONY.

>> IF IT JUST DID THAT, I THINK THAT THERE'S A VERY USEFUL PURPOSE.

AND I HEAR MR. METZ, VERY

SINCERE IN WANTING TO MAKE THIS
WORK IN A RELIABLE WAY.
BUT IT SEEMS THAT IT IS MUCH
BROADER THAN OUTLIER TESTIMONY.
IN THE END, IF IT'S SUBSTANCE,
THIS COURT HAS TO DEAL WITH IT
IN A CASE IN CONTROVERSY.
SO WE'RE REALLY ONLY HERE TODAY
AS TO WHETHER WE ADOPT IT ACROSS
THE BOARD AND OVERTURN FRYE IN A
CASE THAT -- RIGHT?
I MEAN, THAT'S WHAT WE'RE HERE
ABOUT.
SO THE QUESTION IS WHAT PART'S
PROCEDURE?
WHAT PART IS SUBSTANTIVE IN THIS
LEGISLATION?
CAN YOU TELL US THAT?
>> NOT AS WELL AS THESE OTHER
GENTLEMEN HAVE.
THAT'S NOT REALLY MY
ORIENTATION.
I THINK THEY SPOKE WELL TO IT.
SO I DON'T HAVE ANYTHING TO
OFFER BEYOND WHAT THE OTHER
GENTLEMEN HAVE OFFERED ON THE
QUESTION OF WHETHER IT'S
PROCEDURAL OR SUBSTANTIVE IT.
I'M REALLY ONLY INTERESTED IN
THE SUBSTANTIVE PART OF IT.
>> BUT WE DON'T RULE ON A MATTER
OF SUBSTANCE.
YOU KNOW, AS YOU SAID, THERE'S
THREE APPELLATE DECISIONS.
NOTHING HAS COME UP TO THIS
COURT TO ADDRESS THOSE.
SO WE'RE REALLY IN SOME WAYS
TALKING SORT OF HYPOTHETICALLY
UNTIL WE HAVE A CASE IN
CONTROVERSY.
>> RIGHT.
RIGHT.
I THINK THE APPROACH OF DAUBERT
IS TO ESTABLISH THAT SCIENCE
GETS INTO COURTS AND THAT -- AND
NOW, OF COURSE, KUMHO TIRE
EXPANDED DAUBERT'S ADMISSIBILITY
OF SCIENTIFIC EVIDENCE TO
INCLUDE NONSCIENTIFIC EVIDENCE.
BUT THE IDEA IS SIMPLY TO KEEP
-- TO KEEP EXPERT TESTIMONY
THAT'S NOT BASED IN KNOWLEDGE
OUT OF COURTS.
JURORS ARE WONDERFUL

CONTRIBUTIONS TO OUR SYSTEM OF JUSTICE, BUT THEY -- YOU'VE GOT EXPERTS THAT MAKE MILLIONS OF DOLLARS A YEAR CONVINCING JURORS OF THINGS THAT MAY OR MAY NOT BE TRUE.

IN THE O.J. TRIAL -- AND I WAS TIRED OF THE O.J. TRIAL WHILE THE BRONCO WAS STILL ON THE INTERSTATE.

BUT AFTER THE O.J. TRIAL SOME REPORTERS WERE INTERVIEWING JURORS, AND THEY SAID OF THE EXPERT WITNESSES THAT YOU HEARD, WHO WAS THE MOST CONVINCING? AND JUROR NO. 7 SAID, OH, DR. LEE, DR. LEE WITHOUT QUESTION.

DR. LEE WAS THE MEDICAL EXAMINER FOR LA COUNTY.

AND JUROR NO. 9 SAID DR. LEE WAS MOST CONVINCING.

THE REPORTER SAID WHY WAS DR. LEE SO CONVINCING?

AND THE JUROR SAID BECAUSE EVERY MORNING WHEN HE CAME INTO COURT HE LOOKED OVER AND SMILED AT US. EXPERTS ARE -- HONE THEIR CRAFT OF CONVINCING JURORS OF WHAT THEY WANT TO CONVINCING JURORS OF. ONE OF THE THINGS THAT CONCERNS ME ABOUT THE LIMITED REVIEW THAT WE HAVE UNDER FRYE --

>> GO AHEAD.

>> I'M SORRY.

ONE OF THE THINGS THAT CONCERNS ME IS THE LIMITED REVIEW THAT WE HAVE UNDER FRYE, IS THAT EXPERT WITNESSES ARE VERY OFTEN NOT THESE FONTS OF KNOWLEDGE.

THEY'RE ADVOCATES.

THEY'RE ADVOCATES THAT SHOW UP, YOU KNOW, IN THE GARB OF EXPERTISE.

BUT THEY'RE ADVOCATES.

AND IT'S VERY DIFFICULT FOR JURORS TO GET AROUND THAT.

THANK YOU.

THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, WE JUST GOT DOWN TO THE FUNDAMENTALS, WHICH IS THE QUESTION OF WHETHER OUR SYSTEM, WHICH HAS A CONSTITUTIONAL RIGHT

TO TRIAL BY JURY, SHOULD NOT TRUST JURORS TO BE ABLE TO DISTINGUISH BETWEEN THE TESTIMONY OF A VARIETY OF EXPERTS THAT OVER THE YEARS THE COURT HAS PERMITTED TO IDENTIFY ON USUAL ISSUES THAT ARE HELPFUL TO THE JURY BUT ARE NOT SCIENCE THAT'S VIEWED AS INFALLIBLE. THE TESTIMONY THERE OR THE STATEMENT JUST MADE BY MR. MAHLE WHO HELPED LOBBY THIS THING THROUGH THE LEGISLATURE IS DIRECTED AT TRYING TO KEEP JURIES FROM DOING WHAT JURIES ARE BY CONSTITUTION SUPPOSED TO DO AND SUGGESTING THAT INDIVIDUAL TRIAL JUDGES, I GUESS JUDGE ITO IN THE SIMPSON TRIAL, ARE BETTER ABLE TO MAKE THAT KIND OF DETERMINATION. THEY DON'T HAVE THE TIME AND THEY DON'T HAVE THE RESOURCES IN THIS STATE, GIVEN ALL OF THEIR OTHER RESPONSIBILITIES, TO TAKE ON THAT RESPONSIBILITY. YOU KNOW, IF WE WERE ONLY TALKING ABOUT DAUBERT, WHEN YOU READ THE CASES, IF WE WERE ONLY TALKING ABOUT DAUBERT AND THE APPROACH THERE THAT WAS ADOPTED BY THE SUPREME COURT OF THE UNITED STATES, IT WOULD BE A DIFFERENT CONVERSATION. BUT THE PREAMBLE TO THIS STATUTE DIRECTS ALL THE COURTS OF FLORIDA TO DEAL WITH KUMHO TIRE, WHICH SAYS THIS APPLIES TO ANYBODY WHO A JUDGE HAS EVER ALLOWED TO TESTIFY ON ANYTHING IN A COURTROOM IN FRONT OF A JURY. THAT'S AN ENTIRELY UNWARRANTED EXPANSION, GIVEN THE PRACTICALITIES OF WHY THIS COURT ADOPTED FRYE. THIS COURT SPECIFICALLY SAID IT WAS ADOPTING FRYE TO AVOID AN EXTREMELY EXPENSIVE AND TIME-CONSUMING PROCESS. IT'S NOT JUST HOWARD COKER WHO HAS COME TO THIS COURTROOM TO SPEAK WITH YOU. IT IS A WHOLE -- IT IS A DOZEN

PAST PRESIDENTS OF THE FLORIDA BAR AND A WHOLE LIST THAT IS INCLUDED IN THE COMMENTS SAYING THIS IS OPPRESSING THE ABILITY OF OUR COURT SYSTEM TO HANDLE CASES.

IT IS TIME-CONSUMING.

IT IS EXPENSIVE.

AND IT IS GOING TO DENY PEOPLE ACCESS TO THE COURTS.

>> MR. HOGAN, WOULD YOU IN A PARAGRAPH OR SENTENCE RESPOND TO THE PUBLIC DEFENDER'S --

>> I WILL.

AND MR. COKER SHOULD HAVE -- I THINK.

HE'S MODEST.

HE WAS ON THIS COURT'S INNOCENCE COMMISSION APPOINTED BY CHIEF JUSTICE CANADY AT THE TIME. THEY STUDIED THE QUESTION OF WHETHER FLORIDA SHOULD MOVE FROM FRYE TO DAUBERT AND MADE A DECISION THAT THAT'S NOT THE PROBLEM.

THAT'S NOT THE ISSUE.

JUDGE BELVIN PERRY HAS FILED A COMMENT IN THIS COURT AND ALSO A SUPPLEMENTAL.

AND SO THE INNOCENCE COMMISSION LOOKED AT THAT ISSUE AND SAID THAT'S NOT THE PROBLEM.

THE PROBLEM IS EYE WITNESS IDENTIFICATION AND DIFFICULTIES THERE.

THE LEGISLATURE DIDN'T HELP WITH THAT.

BUT IT WAS THIS COURT THAT MADE A CHANGE IN THE INSTRUCTIONS ON THAT.

YOU CREATED -- THEY SAID DISCOVERY RULES ON THE ISSUE OF JAILHOUSE INFORMANTS. YOU DEALT WITH THAT IN DISCOVERY RULES.

THIS COURT DID.

AND THEY SAID THE MAIN PROBLEM IS FUNDING.

ACCESS TO SCIENCE, BETTER TRAINING FOR PUBLIC DEFENDERS AND ALL THE KINDS OF THINGS. AND WHERE THE LEGISLATURE BEEN ON THAT?

NOWHERE.

AND YET THEY WANT TO IMPOSE ON
THE TRIAL JUDGES OF FLORIDA ALL
ACROSS THE STATE WHO ARE FULLY
OCCUPIED IN POST-CONVICTION
ISSUES RIGHT NOW THE
RESPONSIBILITIES TO DEAL WITH
ALL THESE EXPERT WITNESSES.
THIS -- THE DISTRICT COURTS OF
APPEAL HAVE HELD THAT THIS IS A
PROCEDURAL ISSUE.
I UNDERSTAND THE QUESTION THAT
JUSTICE PARIENTE ASKED.
BUT THIS COURT ADOPTED FRYE AS
THE INTERPRETATION.
I KNOW I'M AT THE END OF OUR
TIME.
WE'LL RELY ON THE PAPERS BY
JUDGE ISUM THAT ARE THE REPORT
OF THE COMMITTEE WITH REGARD TO
THE HEARSAY ISSUE.
THANK YOU VERY MUCH.
>> THANK ALL OF YOU FOR YOUR
ARGUMENTS.
HAVE A NICE STORM.
[LAUGHTER]