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## **Amendments to Rules Relating to Admission to the Bar**

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR OCTOBER 3, HERE, AT THE FLORIDA SUPREME COURT. THE FIRST CASE WE HAVE ON THE CALENDAR THIS MORNING IS AMENDMENTS TO THE RULES OF, RELATING TO THE ADMISSION TO THE BAR. I NOTE THAT SPEAKING AS THOSE WHO HAVE FILED COMMENTS IN OPPOSITION TO PORTIONSFS E, THAT THERE ARE THREE WHO ARE GOING TO DIVIDE THEIR TIME, AND I WOULD ASK EACH OF YOU TO RESPECT EACH OTHER'S TIME, BECAUSE WE WILL STRICTLYERE TO THE TOTAL TIME PERIOD. SO IF YOU WOULD KEEP THAT IN . MR. POBJECKY, WOULD YOU PROCEED FIRST.

MAY IT PLEASE THE COURT. MY NAME IS THOMAS POBJECKY, AND I AM HERE TO SPEAK TO THE FLORIDA AMENDMENTS TO THE RULES OF THE FLORIDA BAR. I AM HERE WITH REGARD TO ONE OF THOSE PROPOSED RULES. AFTER THE BAR FILED THE RULE WITH THE COURT, THE PENDING RULE INVITED PUBLIC COMMENT. ONE OF THOSE RULES IS THAT THE PASS OR FAIL LEVEL FOR THE BAR EXAM BE INCREASED, IN A TWO-STEP PROCESS. STEP ONE WOULD TAKE IT FROM 131 TO 133 AND STEP TWO, THEN, TAKING IT FROM 133 TO 136. WITH THE COURT'S PERMISSION, I WILL RESTRICT MY PRESENTATION HERE, TODAY, TO THAT PROPOSAL AND WILL RELY ON MY SUBMISSIONS FOR THE OTHER PENDING RULE AMENDMENTS. IF YOU WERE TO READ ONLY THE COMMENTS SUBMITTED IN OPPOSITION TO THE BOARD'S RECOMMENDED INCREASE, YOU WOULD PROBABLY CONCLUDE THAT SUCH PROPOSAL WAS TOTALLY UNREALISTIC, TOTALLY UNREASONABLE, AND THAT THE BOARD WAS UNSYMPATHETIC IN EVEN THINKING ABOUT PROPOSING SUCH A RULE. IN FACT, ONE OF THE COMMENTATORS DESCRIBED THE BOARD'S ACTION AS IRRESPONSIBILITY IN THE EXTREME. I WOULD LIKE TO TAKE A FEW MINUTES AND GO THROUGH EACH ONE OF THESE CRITICISMS. FIRST OF ALL, LET'S LOOK AT IT. IS THE BOARD'S PROPOSAL UNREALISTIC?

WELL, BEFORE YOU DO THAT, WOULD YOU JUST OUTLINE, VERY SUCCINCTLY, WHY WE ARE GOING TO DO THIS. WHAT THE BOARD SEES AS THE MAJOR REASON WE SHOULD CHANGE THE PASS-FAIL LINE.

THE BARMINSS BEEN AROUND SINCE 1955, AND THERE HAS BEEN A BAR EXAM GIVEN EVER SINCE THAT DATE. IN FACT I THINK IT IS IN ONE OF THE BEGINNING RULES AND YOUR RULES, SAYING THAT ALL PEOPLE WANTING TO BE ADMITTED TO FLORIDA BAR MUST TAKE THE BAR EXAM. NEVER BEFORE 1998, HAS THERE BEEN A STUDY TO DETERMINE WHAT IS THE APPROPRIATE PASS/FAIL LINE. IN THE EARLY YEARS, I THINK PRIOR TO 1961, THE PASS/FAIL LINE WAS SIMPLY GET 70 PERCENT. I ASSUME THAT WAS FROM THE EDUCATIONAL STANDARDS OF THE DAY DAY. YOU GET THE 69, YOU FAIL. IF YOU GET A 70, YOU PASS. FROM 1961 TO 1982, THE STANDARD WAS YOU TAKE THE TOP TEN SCORES. YOU AVERAGE THOSE SCORES, AND THEN YOU DROP DOWN 20 POINTS. APPARENTLY DURING THAT TIME, THAT WAS CONSIDERED THE WAY OF DOING IT. BUT THERE, STILL, WAS NO BASIS. IT WAS JUST THAT WAS THE WAY EVERYBODY WAS DOING IT, SO THAT IS THE WAY WE ARE GOING TO DO IT HERE, IN FLORIDA. IN 1982, YOU SWITCHED AND MADE SOME SIGNIFICANT CHANGES, IN 1981, TO THE BAR EXAM, THE NBE PART A, PART B, AND AT THAT TIME THE COURT WENT TO A 133. TWO YEARS LATER OR ONE YEAR LATER, THE COURT, THEN, REDUCED IT TO 131.

I THINK THE QUESTION IS WHAT IS THE PROBLEM THAT IS BEING ADDRESSED?

WELL, I THINK YOU HAVE TO LOOK AT WHAT IS THE STANDARD. THE -- I REMEMBER FRANKLIN HARRISON, WHO WAS THE CHAIR OF THE BOARD AT THAT TIME BACK IN 1988, AND SOME OF YOU

WERE THERE AT THE BAR PRESENTATION THAT WE MADE, AND MR. HARRISON NOTED OR OBSERVED THAT, IN CHARACTER AND FITNESS, THE BOARD IS RECOGNIZED AS HAVING THE GOLD STANDARD. IT IS CONSIDERED TO HAVING THE, PROBABLY, MOST THOROUGH, MOST COMPREHENSIVE INVESTIGATIONS IN CHARACTER AND FITNESS, BUT THAT IS NOT TRUE WHEN IT COMES TO THE BAR EXAM, TO THE PASS/FAIL LINE. IN FACT WE ARE IN THE BOTTOM END WE HAVE HEARD THIS OVER THE YEARS, IN 1998, THE BOARD SAID IT IS TIME TO STOP SPECULATING. IT IS TIME TO DECIDE. IS 131 APPROPRIATE? SHOULD IT BE HIGHER? SHOULD IT BE LOWER -- SHOULD IT BE HIGHER? SHOULD IT BE LOWER? AND THAT IS WHAT PROMPTED THE 12-MONTH STUDY.

BUT LET ME TRY JUSTICE SHAW'S QUESTION FROM THIS ANGLE. WHAT IS THE PURPOSE OF MAKING THE PEOPLE WHO HAVE GRADUATED FROM ACCREDITED LAW SCHOOLS TAKE THE BAR EXAM?

I QUOTED DEAN GRISWALD, WHO IS THE SOLICITOR GENERAL, AND I CAN'T BE AS SUCCINCT AS HIS WORDS, WHICH IS THEY ARE NECESSARY TO MAKE SURE THAT BAR SCHOOLS DON'T SLOUGH OFF THEIR JOBS TO EDUCATE THEIR STUDENTS, AND I THINK THAT IS WHAT WE ARE LOOKING AT.

HAVE YOU SEEN MORE UNQUALIFIED LAWYERS AS OF LATE? IS THAT THE REASON THAT WE ARE DOING IT?

I THINK THE STUDY WAS PROMPTED, YOUR HONOR, BY THE FACT THAT IS 131 A VALID, IS IT AN APPROPRIATE PASS/FAIL LINE, AND WE DIDN'T KNOW, AND SO THAT IS WHY WE STUDIED IT. NOW, AS TO THE --

WHAT MAKES AN APPROPRIATE PASS/FAIL LINE? WHAT DETERMINES WHAT IS AN APPROPRIATE PASS/FAIL LINE?

THE LITERATURE THAT I QUOTE IN THE REPLY, AND THE EXPERTS THAT I HAVE READ, AND, ONCE AGAIN REFERRING TO TESTING AND MEASUREMENT EXPERTS, ALL SAY THERE SHOULD BE SOME TYPE OF SYSTEMATIC, SOME TYPE OF COMPREHENSIVE STUDY DONE IN GOOD FAITH, TO TRY TO ESTABLISH WHAT IT WAS, AND THAT IS EXACTLY WHAT THE BOARD DID DURING A 12-MONTH PERIOD. GETTING TO YOUR ISSUE OF COMPETENCY, I PERSONALLY WAS A LITTLE BIT SURPRISED BY THE REFERENCE, AND I THINK IT WAS THE MINORITY'S REPORT, THAT, DURING, AND I THINK IT WAS 1998 '99, THERE HAD ONLY BEEN, LIKE, THREE CASES REPORTED BY THE BAR, OUT OF SOME 300 CASES, WHATEVER IT WAS. I KNOW IT WAS, LIKE, LESS THAN 2 PERCENT, AND I DON'T KNOW IF IT IS A CLASSIFICATION ERROR OR WHATEVER, BUT THIS COURT WELL KNOWS THAT, IF YOU GO BACK AND LOOK AT YOUR BAR DISCIPLINE CASES JUST IN THE LAST COUPLE OF MONTHS, WHICH HAVE BEEN REPORTED IN THE BASE HAS BEEN A FAILURE OF COMPETENCY. I WENT BACK THROUGH THE OCTOBER ISSUE OF THE BAR NEWS, IN SEPTEMBER, AND, ALSO, THE AUGUST, AND THE NUMBER IS ACTUALLY A LOT HIGHER, IF YOU ARE LOOKING FOR CASES WHERE THERE WAS A SPECIFIC FINDING THAT A PERSON FAILED TO ACT IN A COMPETENT MANNER, AND I THINK IT WAS UP TO SOMEWHERE AROUND 15 PERCENT.

WHAT I AM CONCERNED ABOUT IS IT STRIKES ME THAT WE HAVE HAD 45, 46 YEARS WITH EXPERIENCE OF A BAR EXAM IN FLORIDA, THAT, AND ABOUT THAT SAME EXPERIENCE ACROSS THE COUNTRY, AND RATHER THAN RELYING UPON THEORY, AS FROM, BY DEAN GRISWALD, IS THERE NOT A WAY THAT WE CAN HAVE AN EMPIRICAL STUDY OF WHAT WE ARE REALLY ACCOMPLISHING BY THE BAR EXAM AND SOME TYPE OF LEVEL THAT THE SCORES WOULD INDICATE THAT WE ARE ACCOMPLISHING THAT. I AM NOT SURE THAT GRIEVANCE PROCEDURES WOULD, REALLY, BE AS EFFECTIVE AN ANALYSIS AS MALPRACTICE CLAIMS. I MEAN, WE PUT A LOT OF PRESSURE ON PHYSICIANS, TO ROOT OUT INCOMPETENCE, AND CERTAINLY WE HAVE THAT RESPONSIBILITY, OURSELVES, SO THAT IS WHAT I AM TRYING TO GRAPPLE WITH. WOULD YOU?

I THINK YOU HAVE TO START WITH THE PROPOSITION THAT THE BAR EXAM DOES, IN FACT, . . .

MEAN, THERE HAVE BEEN STUDIES TO SHOW. THAT THERE HAS BEEN STUDIES SHOWN IN CALIFORNIA AND ON THE NATIONAL LEVEL, BY THE NATIONAL CONFERENCE BAR EXAMINERS. IN FACT, AND I THINK PERHAPS THE COURTS HAVE REFERRED TO COPIES OF THIS IN THE PAST. THERE IS A MANUAL, THE SUMMARY OF THE RESEARCH ON THE MULTI-STATE BAR EXAM, AND IT GOES INTO SOME DETAIL THAT THE BAR EXAM IS, IN FACT, THE MEASUREMENT OF KNOWLEDGE AND SKILLS RELATED TO THE PRACTICE OF LAW. NOW, IF YOU ACCEPT THAT PROPOSITION, WHICH I ASSUME WE DO AND THAT IS WHY WE GIVE THE BAR EXAM, THEN DOES IT NOT MAKE MORE SENSE THAT THE HIGHER YOU GO, THE HIGHER SCORE YOU GET, THE GREATER DEMONSTRATION YOU HAVE MADE. NOW, I ASKED YOU A QUESTION HAS THERE BEEN AN EMPIRICAL STUDY, I WOULD SAY, YES, THERE HAS. THE BOARD STUDIED THIS ISSUE FOR 12 MONTHS. THEY WENT OUT AND THEY HIRED THE LEADING EXPERT, DR. STEVEN KLEIN WHO ALSO JUST HAPPENS TO BE THE SAME DR. STEVEN KLEIN WHO PUBLISHED THIS MANUAL. IS HE THE KNOWN EXPERT, AND I WOULD JUST REFER YOU TO MY REPLY FOR SOME OF HIS CREDENTIALS. THERE WAS ONE COURT, I BELIEVE, WHO TOOK ALMOST A FULL PAGE TO DESCRIBE WHAT HIS CREDENTIALS ARE. SO HE HAS OUTSTANDING CREDENTIALS. HE WAS THE OUTSTANDING LEADING AUTHORITY ON THE BAR EXAM AND THAT IS WHY HE GUIDE US, AND WE CONDUCTED A COMPREHENSIVE, THOROUGH STUDY, AND WITH THE ASSISTANCE OF JUDGE LEWIS, WE HAD A BLUE RIBBON PANEL CONSISTING OF JUSTICES, LAW EXPERTS, PRACTICING ATTORNEYS, AND THAT IS PRESENTED IN THE BOARD'S PETITION AND, ALSO, HIGHLIGHTED AGAIN IN MY REPLY.

COUNSEL, COULD WE JUST FOCUS, JUST FOR ONE MOMENT, IF WE MAY THAT, IT APPEARS THAT, THROUGH THIS STUDY PROCESS, AND CERTAINLY I THINK IT TAKES EFFORT TO DO IT IN A PROPER WAY, BUT THE ACTUAL READERS SEEM TO PLACE, THOSE ARE READERS WHO READ THE EXAMS, WOULD PLACE THE LINE ABOVE 133, 133 .5, I UNDERSTAND, AND THEN THIS OTHER GROUP WOULD PLACE THE PASS RATE AT 130 I ASSUME THAT WHAT THAT IS SAYING IS THAT PEOPLE WHO EVALUATE AND PEOPLE WHO ARE IN PRACTICE THINK THIS IS THE LEVEL, WHETHER YOU CALL IT A TENOR A 138. THIS IS WHAT THEY CONSIDER THE LEVEL TO BE, SO ONCE WE GET OVER I GUESS, REALLY, THE QUESTION IS GOING TO BE, IS DID THEY USE THE PROPER CRITERIA TO REACH THAT LEVEL? WERE THEY CONSIDERING THE RIGHT THINGS, AND THEN SECONDLY, WHERE DOES THIS MULTIPLE CHOICE ASPECT OF THE TEST FIT IN, BECAUSE I HAVE SOME CONCERNS THAT I SEE STUDIES THAT INDICATE THAT THE MULTIPLE CHOICE PART OF THE EXAM DOES NOT NECESSARILY INCREASE, SO WE LOOKED AT JUST ESSAY PART, CORRECT?

YES.

THIS TEST. AND DO WE HAVE A VALID MEASUREMENT? IS THERE A PROBLEM, BECAUSE WE HAVEN'T, ALSO, LOOKED AT THE MULTIPLE CHOICE PART OF THE TESTING, TO REACH THIS LINE? BECAUSE IT IS AN AVERAGEING, RIGHT, A STANDARD THAT YOU COME UP WITH?

YES, SIR.

THAT SEEMED TO BE SOMEWHAT OF A VALID QUESTION THAT WAS POSED, RATHER THAN NAME-CALLING THAT HAS GONE ON HERE AND THOSE KINDS OF THINGS THAT ARE MOST INAPPROPRIATE.

I AM GOING TO RELY UPON THE REMARKS IN MY BRIEF AND MY REPLY BUT I THINK THERE WAS TWO READER STUDIES CONDUCTED. ONE OF THEM SHOWED 133.5 AND I THINK THE OTHER ONE WAS MUCH HIGHER, AND I THINK IT MIGHT EVEN HAVE BEEN AS HIGH AS 141, SO TWO DIFFERENT READERS HAVE, IF YOU AVERAGE THERE, IT WOULD PROBABLY COME A LITTLE BIT CLOSER TO 136. WHAT IS THE PROPER STANDARD? IF YOU ARE GOING INTO AN AREA AND YOU WANT TO CONDUCT A COMPREHENSIVE TEST, I CAN THINK OF NO BETTER WAY OF DOING IT BUT THAN BY GOING OUT AND RECRUITING THE LEADING AUTHORITY ON BAR EXAMS.

THE CRITICISM WAS THAT THESE FOLKS ARE LOOKING AT A PRACTICING LAWYER LEVEL, NOT AN

ENTRY LEVEL OF POSITION, THAT THIS IS REALLY MEASURING FOR ENTRY-LEVEL LAW STUDENTS AND NOT SOMEONE WHO HAS BEEN PRACTICING FOR TEN OR 15 YEARS. THAT SEEMED TO BE, AS I KULLED THROUGH IT, ONE OF THE CONCERNS.

WELL, THERE WAS A SHEET THAT WAS GIVEN TO ALL OF THE PARTICIPANTS, AND I DON'T HAVE IT MEMORIZED IT AS TO THINGS THEY WERE ADVISED. THEY WERE TOLD REMEMBER THESE PEOPLE ARE UNDER STRESS, WHEN THEY ARE TAKING THIS EXAM, AND I DON'T RECALL WHAT IT SAID, BUT I DO THINK IT IS IMPORTANT TO NOTE THAT, ALTHOUGH IS AN ENTRY-LEVEL EXAM, YOU ARE NOT ISSUING A LICENSE FOR A COPILOT HERE. YOU ARE ISSUING A LICENSE FOR A PILOT. WHEN THAT PERSON GETS A LICENSE FROM THIS COURT, HE OR SHE CAN GO OUT THE NEXT DAY AND SET UP AN OFFICE AND BE A SOLO PRACTITIONER, SO IT IS NOT LIKE THIS MAY BE AN ENTRY-LEVEL EXAM, BUT IT IS, ALSO, GIVING THEM AN ABSOLUTE RIGHT THERE. IS NO MANDATORY INTERNSHIP HERE, IN FLORIDA, NO REQUIREMENT THAT YOU HAVE TO BE AN APPRENTICE. THERE IS NO RESTRICTION. IT IS AN UNRESTRICTED LICENSE TO DO WHAT YOU WANT. YOU CAN SET UP YOUR PRACTICE AND BE A SOLO PRACTITIONER THE NEXT DAY.

LET ME, ON THIS, BECAUSE I AM CONCERNED, ALSO, THAT, ALTHOUGH, AGAIN, I DO NOT AT ALL QUESTION THE GOOD FAITH OF THE BOARD IN GOING THROUGH THIS, AND I AM SOMEWHAT CONCERNED THAT, BEFORE THIS TIME, THERE WAS SOME ARBITRARY SETTING OF NUMBERS, WITHOUT ANY UNDERSTANDING OF WHAT THOSE NUMBERS MEANT, BUT THE CRITICISM OF THIS STUDY THAT I AM LOOKING AT IS THE SUPPLEMENTAL FILING THAT WAS DONE ON THE MINNESOTA STUDY, BY DR. KLEIN, THAT THERE WAS ANOTHER EXPERT THAT REVIEWED DR. KLEIN'S STUDY, AND CAME UP WITH SOME SERIOUS QUESTIONS ABOUT FLAWS IN THE, I DON'T KNOW IF IT IS THE METHODOLOGY OR IN THE APPLICATION OF THE METHODOLOGY. YOU ARE FAMILIAR WITH THAT STUDY.

YES, MA'AM.

IT SEEMS THAT, AGAIN, IF I WERE HERE AT THE TRIAL OR TRYING TO QUESTION YOU ABOUT IT, I WOULD SEE SOME VERY SERIOUS QUESTIONS ABOUT WHETHER LEIN'S PROCEDURES AND HIS CONCLUSIONS ARE VALID, BASED ON THE CONCERNS RAISED BY THE OTHER TESTING EXPERTS THAT LOOKED AT THE MINNESOTA STUDY, AND HERE WE ARE, AND, AGAIN, WITH THOSE CONCERNS, FIRST OF ALL, DO YOU SHARE -- LET ME SORT OF ASK YOU IN GOOD FAITH. DO YOU SHARE ANY OF THOSE CONCERNS, HAVING READ THE CRITICISM OF THE MINNESOTA STUDY THAT, THIS IS SOMETHING THAT THE BOARD MAY WANT TO SAY, YOU KNOW WHAT? MAYBE WE DO NEED TO LOOK AT AND GET ANOTHER INDEPENDENT EXPERT TO LOOK AT THESE, THIS STUDY, BEFORE WE JUST GO AHEAD AND RELY ON IT. FIRST OF ALL, DO YOU HAVE ANY CONCERNS?

NO, YOUR HONOR, I DON'T. IN FACT, HAVING READ THE DR. CANE REPORT OUT OF MINNESOTA I THINK SOME OF IT WAS QUITE ENCOURAGING, BECAUSE IF YOU WERE TO READ THE MERIT EXPERTS AND THEIR ARTICLES, WHICH WAS IN THE INITIAL DEAN'S RESPONSE, THEY WERE JUST SAYING EVERYTHING WAS FLAWED. YOU SHOULDN'T HAVE BEEN USING JUST ESSAYS. THEY SHOULD HAVE BEEN DOING THIS. THEY SHOULD HAVE BEEN DOING. THAT AND THE FIRST THING THAT BASICALLY DR. CANE SAYS IS THIS IS AN ACCEPTED METHOD.

WHAT HE ENDS UP SAYING IS THAT RAISING THE PASSING SCORE IS LIKELY TO INCREASE FAILURE RATES AND TO HAVE SOME ADVERSE EFFECT ON GROUPS WITH RELATIVELY LOWER SCORES, WHICH WOULD BE, UNFORTUNATELY, SOME OF THE MINORITY GROUPS. THEN HE SAYS THAT THE CHANGES NECESSARY TO ENSURE THAT NEW LAWYERS ARE MINIMALLY QUALIFIED, THE CHANGE SEEMS JUSTIFIED. IF THE CHANGE IS NOT NECESSARY, IT IS NOT JUSTIFIED, SO WHAT WE ARE CONCERNED WITH HERE IS, BY RAISING THIS BAR, ARE WE GOING TO INCREASE THE FAILURE RATES FOR CERTAIN GROUPS ACROSS THE BOARD, SO WE HAVE MORE PEOPLE FAILING THE BAR, AND NOT HAVE ANY TRADE-OFF WITH HAVING AN INCREASE IN COMPETENCE IN THE LAWYERS THAT WE BRING INTO THE BAR, AND THAT WOULD BE A TERRIBLE, TERRIBLE THING TO DO,

WITHOUT KNOWING THAT WE ARE GOING TO GET A BENEFIT THAT IS GOING TO OUTWEIGH THE DETRIMENT.

AND I THINK THE FOCUS SHOULD BE ON WHAT IS THE APPROPRIATE STANDARD. THERE MIGHT HAVE BEEN ARBITRARY WAYS OF COMING AT THAT STANDARD IN THE PAST. THERE IS NO BASIS FOR 131. THERE IS JUST NONE, NOT IN THE RECORD BEFORE THIS COURT. OF COURSE THE BOARD SHARES THE CONCERNS THE COURT HAS, ABOUT DIVERSITY AND PASSING GRADES OF MINORITY GROUPS, BUT LET ME SHARE A STATISTIC WITH YOU, AND THIS IS OUR NEIGHBOR TO THE NORTH, YOU KNOW, JUST GO 20 MILES TO THE NORTH, TO GEORGIA. THEY RAISED THEIR PASS/FAIL LINE TO 135. NOW, THE STATISTIC, THE INFORMATION ABOUT ALL OF THE DIFFERENT JURISDICTIONS IS PUBLISHED BY THE NATIONAL CONFERENCE OF BAR EXAMINERS, SO IF YOU LOOK UP HERE, YOU WOULD SEE THAT GEORGIA, AT 135, ON THE JULY 2000 EXAM, 84 PERCENT OF THEIR FIRST-TIME TAKERS PASSED THAT EXAM AT THE HIGHER STANDARD OF 135, WHEREAS IN FLORIDA ONLY 79 PERCENT. WHAT IS THAT TELLING US? HOW COME THE STUDENTS TAKING THE BAR EXAM FOR THE FIRST TIME IN GEORGIA, ARE CAPABLE OF ASING THE -- OF PASSING THE BAR EXAM AT 84 PERCENT, AT A HIGHER STANDARD THAN THE STUDENTS HERE, IN FLORIDA? DOES THAT NOT GIVE CONCERN TO ANYBODY? IT GIVES CONCERN TO THE BOARD, AND THAT IS WHY THE BOARD EDODA ENSIVE STUDY.> WEN? U CONCERNED THAT FLORIDA LAW SCHOOLS ARE NOT DOING A GOOD JOB AT PREPARING PEOPLE FOR THE FLORIDA BAR EXAM?

I THINK THAT HAS TO BE AN OBVIOUS CONCERN THAT A RISES FROM THE STUDY.

SO WHAT YOU ARE SAYING, THEN, PART OF WHAT YOU ARE SAYING IS THAT THE LAW SCHOOLS SHOULD GIVE MORE ATTENTION TO ACTUALLY PREPARING PEOPLE FOR THE EXAM? I MEAN, HOW WOULD THAT SHAKE OUT AND ACTUALLY JUST TEACHING THE LAW? INSTEAD OF TEACHING AN EXAM.

I WILL REFER TO THE EXPERTS THAT I REFERRED TO IN MY REPLY, AND THE COMMENTATORS THAT HAD LOOKED AT THE STUDY. I ASSUME THAT ALL MEMBERS OF THE COURT ARE FAMILIAR WITH THE COMPREHENSIVE STUDY THAT I TRACKED 23,000 LAW STUDENTS, BEGINNING IN 1993, AND THE CONCLUSION WAS GENDER-RAISED, ETHNIC GROUP, DOES NOT DETERMINE WHETHER YOU PASS OR FAIL THE BAR EXAM. THE QUALIFICATIONS, GETTING INTO LAW SCHOOL, YOUR LSAT SCORE, YOUR UNDERGRADUATE SCORE, AND THEN HOW YOU PERFORM IN LAW SCHOOL. YOUR RAINING IN THE CLASS. THERE IS A DIRECT CORRELATION BETWEEN THE PEOPLE AT THE BOTTOM OF A LAW SCHOOL CLASS AND THEIR PERFORMANCE, LOW PERFORMANCE, ON THE EXAM. SO I WOULD REFER TO THOSE PEOPLE WHO TALKED ABOUT SOME THING THAT IS NEED TO BE DONE, AND, YES, ONE OF THE INDIVIDUALS, I BELIEVE, WAS PROFESSOR VAUGHAN, SAID LAW SCHOOLS DO NEED TO TAKE UP THE SLACK. UNTIL THE SECONDARY EDUCATION TAKES UP THE SLACK, WHICH IT HASN'T, THEN THE LAW SCHOOLS NEED TO TAKE UP THE SLACK, AND I BELIEVE A U.S. BANKRUPTCY JUDGE, SWAN, HAD SIMILAR COMMENTS TO MAKE, ALSO.

YOU ARE WELL INTO YOUR REBUTTAL.

I JUST WANT TO ASK THIS ONE ABOUT THIS. SO ARE YOU SAYING THATCREVELS GOING TO INCREASING THE PASSING SCORE IS GOING TO ACTUALLY INCREASE THE NUMBER OF INDIVIDUALSAT PASS EE TE CORRELATI? THAT YOU AREO HAVE MORE PEOPLE PASS, IF YOU GO TO A HIGHER RATE, BECAUSE WHY?

IT ALL DEPENDS ON THE RESPONSE. IF THERE IS NO BYE STUDENTS, IF THES NO RESPONSE BY THE LAW SCHOOLS, THEN CLEARLY THERE WON'T BE. THERE WILL BE A DECREASE IN THOSE PEOPLE PASSING THE EXAM, BUT THAT HAS NOT BEEN THE HISTORICAL EXPERIENCE. AS I TOLD YOU ABOUT GEORGIA, THEY ARE ACTUALLY PASSING MORE PEOPLE AT A HIGHER STANDARD. OHIO. ANSED TOE THEIR STANDAR THEOBEA COUPLS . RAISED THEIR/F LINE. WT ISHI. BUT EING THAT BECAUSE WE ARE GOING TO CHAE FM6CENTEBEE LL IT W,9 P THENSWERS, THAT SWGG TO

MAGICALLY ACTE EVWORK HARDRINW SCHOOLDORE FOR E BM?

WELL, I WON'TENY TO THE JUSTICE THAT IT IS A MODEST PROPOSAL, BUT I WOULD LIKE TO THINK A MODEST PROPOSAL CAN HAVE RAMIFICATIONS. DR. KLEIN TALKS ABOUT STUDIES DID, FOR EXAMPLE, AT THE THURGOOD MARSHAL LAW SCHOOL, AND HOW HE HAD DRAMATIC INCREASES IN THE PASSING RATE. I THINK IT WSJUED THAT I HEARD SOMETHING OF A SPEECH THAT HE HADN, WE YOU NEVERW THTLST THAT YOU THROW IN THE, THL MAKE AND THE RIPPLES IT WILL SEND OUT, AND I THINK THAT ISEEY HOPEFUL THAT WILL HAPPEN HERE. I AM WELL INTO MY TIME, SO ILL SIT DOWN AND LET THE OTHERS TALK FOR A MINUTE. MR. CHIEF JUSTICE: THANK YOU. MR. LAR BECAUSE. -- MR. HARBAUGH.

MR. CHIEF JUSTICE. MAY IT PLEASE THE COURT. I AM JOSEPH HARBAUGH, THE DEAN OF THE SHEPPARD BORROW LAW SCHOOL AT NOVA UNIVERSITY, AND I APPEAR ON BEHALF OF THE SEVERAL LAW SCHOOLS WHO FILE A JOINT STATEMENT OF OPPOSITION FOR THE BOARD'S PROPOSAL TO INCREASE THE SCORE. I WOULD LIKE TO DIRECT MY ATTENTION AND MY TEN MINUTES TO EE OF THE STANDARD-SETTING PROCESS THAT WAS USED BY DR. KLEIN AND ADOPTED BY THE BOARD.E RAISEDHER ISSUESN OUR JOINT STAT, AND I BE Y COLLEAGUESL BE ADDRESSING D THE.

JUST LET ME ASK YOU A PRELIMINARY QUESTION. DO YOU AGREE THAT THERE SHOULD BE A SOMEWHAT SCIENTIFIC WAY OF COMING UP WITH STANDARD-SETING FOR A BAR EXAM? IN OTHER WORDS THAT WE SHOULDN'T JUST COME UP WITH A NUMBER AND SAY, WELL, LET'S GET 50 PERCENT, 60 PERCENT, THAT THERE SHOULD BE SOMEHER YOU CALL IT SCIENTIFIC OR SOMETHING THAT EAN O, TO VERIFY THAT THE PASSING SCORE IS AN APPROPRIATE SCORE.

YES, WE DO, JUSTICE PARIENTE. THE QUESTION TRULY IS, IS THE STUDY THAT WAS CONDUCTED BY DR. KLEIN ON BEHALF OF THE BOARD THAT SCIENTIFIC STUDY, OR DOES IT, DOES THE STUDY THAT HE PRODUCED GIVE US A MISLEADING AURA OF SCIENTIFIC AUTHENTICITY? OUR CONCERN FROM THE OUTSET, WAS THAT THE KLEIN STUDY DID NOT MEASURE WHAT IT WAS INTENDED TO MEASURE, IN A SCIENTIFICALLY-VALID WAY. SINCE WE FILED OUR JOINT STATEMENT, TWO INDEPENDENT STUDIES OF DR. KLEIN'S METHODOLOGY HAVE BEEN CONDUCTED. THAT IS THE ONE BY PROFESSOR MERIT AND HER COLLEAGUES, PUBLISHED IN CINCINNATI LAW REVIEW, AND BY DR. CANE, COMMISSIONED BY THE MINNESOTA BOARD OF BAR EXAMINERS.

BUT, NOW, THE CANE ANALYSIS THAT WAS THE SUPPLEMENTAL FILING AFTER THEY HAD THE RESPONSE OF DR. KLEIN, IT SEEMS TO ME THAT, WHEN YOU COME BACK TO THE CANE ANALYSIS, IS THAT HE AGREED WITH THE METHODOLOGY, THAT HE WAS UPSET BECAUSE THERE WASN'T ANY DOCUMENTATION, SO IF THE DOCUMENTATION IS THERE, THAT IS SATISFIED, AND HIS IS BASED, AS I READ IT, AND HE STATES SPECIFICALLY IN THE FIRST PARAGRAPH, THAT IT IS BASED ON HIS PERSONAL JUDGMENT, NOT ANY KIND OF SCIENTIFIC STUDIES. I AM CONCERNED WITH THE CANE RESPONSE.

MR. JUSTICE LEWIS, I READ THE CANE RESPONSE SLIGHTLY DIFLY THAN YOU HAVE. -- DIFFERENTLY THAN YOU HAVE. INDEED IT SEEMED TO ME THAT DR. CANE WENT OUT OF HIS WAY TO POINT TO THE PSYCHOLOGICAL AND PSYCHO METRIC STANDARDS THAT WOULD BE APPLIED TO THIS SITUATION AND THEN MEASURED WHAT HE KNEW ABOUT THE KLEIN STUDY, AGAINST THOSE STANDARDS. HIS CONCLUSION, AFTER RECEIVING THE KLEIN RESPONSE, WAS STILL THAT THE STUDY CONDUCTED BY DR. KLEIN DID NOT JUSTIFY THE INCREASE THAT WAS RECOMMENDED IN THE STUDY.

BASED UPON HIS PERSONAL JUDGMENT.

WELL, BUT, IT IS HIS PERSONAL JUDGMENT AS A PSYCHO METRICIAN, INDEPENDENTLY EXAMINING IT, AND HE SET OUT FOR US, IN HIS FIRST STATEMENT, THE STANDARDS AND THE CRITERIA ADOPTED GENERALLY WITHIN THE PROFESSION, AGAINST WHICH HE WOULD MEASURE

THE KLEIN STUDY. , DOEHS STIFICATION FOR 131?

THAT IS TRULY I INTERESTING QUESTION, MR. CHIEF JUSTICE. AND MR. POBJECKY IS CORRECT THAT THE COURT NOR THE BOARD EVER CONDUCTED A STUDY PRIOR TO THIS, AND IT WAS ADDRESSED IN THE QUESTION BY THE COURT, AS TO WITHOUT SUCH A STUDY, CAN YOU JUST ARBITRARILY SET 131. WELL, 131 WAS SET, IF YOU WILL, ARBITRARILY, IN 1983. WE HAVE, NOW, HAD 18 YEARS OF EXPERIENCE WITH THAT STANDARD. WHAT WE HAVE, AS A RESULT OF THAT STANDARD, A BAR THAT I BELIEVE IS VIEWED INTERNALLY WITHIN THE STATE, AND EXTERNALLY FROM THE OTHER JURISDICTIONS, AS A VERY COMPETENT BAR. WHAT I HEAR MR. POBJECKY SAYING IS THAT, SOMEHOW IF WE INCREASE THE SCORE ON THE NVP, WE WILL INCREASE THE COMPETENCY OF THE FLORIDA BAR. THAT, I SUGGEST THAT THAT IS NOT APPROPRIATE. LOOKING AT 18 YEARS OF EXPERIENCE, IF YOU ARE GOING TO MAKE A CHANGE, THEN THERE MUST AND SHOULD BE A VALID STUDY. OUR CONCERN IS NOT THAT IT SHOULDN'T BE STUDIED BUT IT OUGHT TO BE STUDIED IN A SCIENTIFICALLY-VALID WAY, AS INDICATED BY THE TWO INDEPENDENT STUDIES.

BUT WE, ALSO, KNOW THAT, SINCE 1982, THAT WE HAVE HAD A TREMENDOUS EXPLOSION OF LAWYERS IN FLORIDA. I MEAN, WE HAVE GONE EVEN THE TIME THAT I WAS APPOINTED TO THE COURT, THE POPULATION OF LAWYERS IN FLORIDA HAS GROWN BY ABOUT 25 PERCENT, AND THAT IS IN SEVEN YEARS. NOW, OBVIOUSLY WITH THAT TYPE OF EXPLOSION, WE HAVE TO BE CONCERNED ABOUT WHO WE ARE SANCTIONING TO BE, PROVIDE REPRESENTATION TO THE PUBLIC. AND SO TO SIMPLY SAY THAT WHAT WE ADOPTED IN 1983, WITHOUT ARBITRARILY IS ACCEPTABLE, SEEMS TO ME, TO BE FRAUGHT WITH PERIL.

AND WE, THE DEANS, AGREE WITH THAT, MR. CHIEF JUSTICE. WE ARE NOT OPPOSED TO THE STUDYING OF THE APPROPRIATE STANDARD THAT OUGHT TO BE APPLIED. WHAT OUR CONCERN IS, AND WHAT WE MADE CLEAR, WE BELIEVE, IN OUR JOINT FILING, IS THAT THE STUDY THAT WAS CONDUCTED, ON BEHALF OF THE BOARD, BY DR. KLEIN, IS SO FLAWED THAT THIS COURT SHOULD NOT ACCEPT THE RECOMMENDATION OF THE BOARD, BASED UPON THAT STUDY STUDY. WHAT I AM, ALSO, SAYING, HOWEVER IS, WITH A 131 PASS RATE, UP UNTIL THIS POINT FOR 18 YEARS, EVEN THOUGH THE BAR HAS INCREASED DRAMATICALLY THERE DOESN'T APPEAR TO BE AN OUTCRY BY THE PUBLIC OR BY THE PROFESSION THAT SOMEHOW OUR BAR IS SERIOUSLY INCOMPETENT.

WELL, BUT, WE, JUST BY COMPARISON, OF WHERE WE STANDNIOR STATES, IS, GIVES US SOME REASON TO RECOGNIZE THAT WE HAVE GOT TO HAVE SOME CONCERN IN THIS AREA, PLUS WHAT ABOUT THE STATISTICS THAT MR. POBJECKY SAYS ABOUT GEORGIA AND THE FACT THAT, IN GEORGIA, THEY HAVE 84 PERCENT PASS AT 135 LEVEL, AND IN FLORIDA WE HAVE 79 PERCENT AT 131. WHAT DOES THAT MEAN?

OF COURSE THAT SHIFTS EVERYITYRATION OF THE BAR EXAM -- EVERY ITERATION OF THE BAR EXAM, BUT INHERENTY WHAT MR. BO -- POBJECKY SAYS IS THAT THE HIGHER THE LEVEL, THE MORE COMPREHENSIVE THE LEVELS. THERE IS NONE ASSERTED AT THAT LEVEL BY DR. KLEIN OR NONE ASSERTED BY ANY OTHER PSYCHO METRICIAN THAT SAYS THAT RAISING THE SCORE ON THE MBE WILL RAISE THE LEVEL OF THE BAR.

YOU ARE TALKING ABOUT MBE --

MULTISTATE BAR EXAM.

YOU SEEM TO BE ARGUING FOR THE PROPONENTS THEN. WHAT IS THE STANDARD? WHAT DO OTHER STATES USE? WHERE DO WE GO?

IT SEEMS TO ME THAT WHERE WE GO IS THE CONDUCTING OF THE TYPE OF STUD THAT I WE SUGGESTED, THE TYPE OF STUDIES THAT WE SUGGESTED, AND PICKING UP THE SUGGESTIONS MADE BY THE TWO INDEPENDENT STUDIES OF DR. KLEIN WHO DESCRIBED HIS METHODOLOGY,

HIMSELF, AS AN ECLECTIC METHODOLOGY, SOMETHING HE HAD TO ADAPT TO THE, THIS PARTICULAR SITUATION. THIS IS NOT ONE THAT IS SET BY PSYCHO METRICIANS AS AN APPROPRIATE AND VALID APPROACH.

REALIZING THAT THIS IS, OBVIOUSLY ACTION A VERY COMPLICATED ISSUE, AND JUST BASED ON THE RESPONSES THAT WE HAVE RECEIVED ALREADY, THE HARD WORK THAT EVERYBODY HAS PUT IN, I WOULD LIKE YOU TO RESPOND SORT OF HEAD-ON, TO TWO SORT OF GROSS PROPOSITIONS, AND I MEAN GROSS HERE, IN THE SENSE OF APPARENT, IN VISIBLE. OKAY. THE ONE GROSS PROPOSITION MENTIONED BY MR. POBJECKY, IS THE FACT THAT FLORIDA IS IN THE LOWER ONE-THIRD OF -- THERDZ -- IN OTHER WORDS TWO-THIRDS OF THE STATES HAVE HIGHER STANDARDS, IN TERMS OF PASSING SCORES, THAN FLORIDA, DOES AND JUST HOW THE AVERAGE CITIZEN WOULD RESPOND TO THAT, IN TERMS OF STANDARDS. SECONDLY, AND REALLY IT IS A COMPONENT OF THAT FIRST QUESTION THAT I HAVE, IS THE ALMOST UNIVERSAL RECOGNITION, DESPITE THE HOT DEBATES ABOUT IT IN OUR PUBLIC SCHOOL SYSTEMS AND EVERY PLACE ELSE, THAT TESTING IS ABOUT ALL THAT WE HAVE, YOU KNOW WHETHER IT IS TESTING AT AGE 16 IN SOME EUROPEAN COUNTRY, IT TO DEPEND ON WHETHER YOU ARE GOING TO GO TO THE UNIVERSITY OR, YOU KNOW, BECOME A WORKMAN OR WHATEVER, OR IT IS TESTING IN THE PUBLIC SCHOOLS IN THIS COUNTRY, IN ORDER TO RAISE THEM UP. OBVIOUSLY THE MARKETPLACE RELIES ON TESTING. LAW SCHOOLS RELY ON TESTING. AND THEY COMPETE FOR THE STUDENTS THAT SCORE THE HIGHEST ON THE LSAT'S AND HAVE THE HIGH HIGHERS GRADE POINT AVERAGEING OUT THERE. THEY, IN FACT, THE MARKETPLACE DOES DEPEND ON THAT, SO WHY, AND I AM ADDING THERE FOR THAT THERE IS THESE TWO THINGS, ONE THAT FLORIDA, HERE THAT, WE HOLD OURSELVES UP AS A GOLD STANDARD OR WHATEVER, AND YET WE ARE IN THE LOWER ONE-THIRD, AND THEN, WITH REFERENCE TO THE TESTING, OF WHY SHOULDN'T THIS BE AN OBVIOUS THING, IN TERMS OF INCREASING THE PROFICIENCY? I MEAN, AS A QUESTION WAS HERE, THROW IT OUT ENTIRELY, IF YOU ARE NOT GOING TO, SO THOSE, COULD YOU JUST RESPOND HEAD-ON, TO THOSE SORT OF THINGS THAT NEED, AS OPPOSED TO THE COMPLICATED ASPECTS OF THE ANALYSIS AND STUDY.

WITH DUE RESPECT, I CERTAINLY WILL BE DOING THAT, MR. JUSTICE, AND MY HOPE IS THAT THE COURT WILL LOOK VERY CAREFULLY OF THOSE DETAILS OF THOSE STUDIES, BUT AS TO THE LOWER ONE-THIRD, IT IS CLEAR, BY EVERYONE WHO DOES ANY KIND OF MEASUREMENT THAT, SIMPLY CHANGING THE SCORE IS NOT GOING TO HAVE AN EFFECT ON THE COMPETENCY, ITSELF, THAT THE GOAL IS TO MEASURE MINIMUM COMPETENCE, AND THAT CAN BE SET THROUGH SOME KIND OF PRECISE STUDY.

SO YOU ARE NOT GOING TO HAVE A BETTER LAW STUDENT, IF YOU HAVE THE REQUIREMENT OF A HIGHER GRADE POINT AVERAGE AND A HIGHER L S.A.T. TEST SCORE.

NOT NECESSARILY. IN FACT, THE LAW SCHOOL ADMISSIONS COUNSEL TELLS US -- COUNCIL TELLS US, OVER AND OVER AGAIN, THAT PLEASE DO NOT OVER RELY ON THOSE MEASURES AS SAYING THAT YOU ARE GOING TO HAVE BETTER LAW STUDENTS OR BETTER LAWYERS.

AND WHY IS THAT USED IN THE MARKETPLACE?

BECAUSE IT IS THE ONLY DEVICE THAT WE HAVE, OTHER THAN A PROGRAM SUCH AS OURS, WHERE WE HAVE AN ADMISSION PROGRAM, WHERE YOU ACTUALLY TAKE COURSES TO PROVE THAT YOU CAN SUCCEED IN LAW SCHOOL. BUT THE VERY FACT THAT YOU HAVE LOWER TEST LSAT SCORES, WE KNOW THAT PEOPLE WHO SCORE IN LOWER L S.A.T. SCORES PERFORM IN LAW -- IN LOWER LSAT SCORES PERFORM IN LAW SCHOOL AT MUCH HIGHER LEVELS FORM THE AVERAGE AROUND THE COUNTRY HOVERS AROUND --

I AM SORRY, BUT YOU ARE SERIOUSLY INVADING THE OTHER'S TIME.

THANK YOU. THANK YOU VERY MUCH.



MAY IT PLEASE THE COURT. COUNSEL. I AGREE WITH YOU, JUSTICE ANSTEAD. TO ANSWER YOUR QUESTION HEAD ON, I WILL TAKE IT O WHEN YOU LOOK AT OTHER STATES IN THE ACTUAL SCORE THAT THEY HAVE, TO DO JUST AN ON-SITE COMPARISON IS NOT FAIR. FOR EXAMPLE, IN GEORGIA, MOST OF THE STATE TEST IS AN ESSAY TEST, AND SO YOU CAN'T JUST TAKE THE SCORE, ITSELF, AND JUST SAY THAT GEORGIA HAS A 133 OR 134535 AND WE ONLY HAVE A -- OR 135 AND WE ONLY HAVE A 131. ANOTHER NUMBERS ARE DIFFERENT.

THEY MEAN DIFFERENT. SO WHEN YOU COME AND SAY ON SITE 131, WE ARE DOING BAD THAT, IS NOT FAIR, BECAUSE YOU, THEN, HAVE TO GO AND LOOK WHAT DO OTHER STATES TEST IN THEIR TESTING, SOTHTT IS A BEGINNING OF WHERE YOU HAVE TO START, AND AS WE HAVE SAID ALL ALONG, THE METHODOLOGY, AS RELATES TO HOW YOU LOOK AT WHAT WE TEST AND HOW WE TEST IT, MEANS A LOT.

IN THAT SAME VEIN, WHEN YOU GET TO THE STATE PORTION OF THESE BAR EXAMS, I WOULD IMAGINE THAT EACH STATE COMPILES THAT BAR EXAM IN A DIFFERENT MANNER. THEY HAVE DIFFERENT PEOPLE WHO ACTUALLY COMPOSE THE QUESTIONS THAT MAKE UP THE EXAMS?

EXACTLY. IT IS A VERY -- WHEN YOU THINK ABOUT ESSAY TESTS, IN AND OF THEMSELVES, THEY ARE VERY SUBJECTIVE. THEY ARE NOT AS OBJECTIVE AS WHEN YOU ARE DOING A MULTIPLE MULTIPLE-CHOICE TEST, AND SO I THINK ALL OF THAT COMES INTO PLAY, JUSTICE QUINCE, WHEN YOU ARE LOOKING AT IT, AND SO I THINK IT IS SORT OF UNFAIR THAT, WHEN YOU LOOK AT IT JUST IN THAT PRETENSE, BUT EVEN GOING BACK TO THE TEST THAT WE DID HERE, THE STUDY THAT THE BOARD OF BAR EXAMINERS, DID THEY HAD PRACTICING LAWYERS, AND I THINK WE HAVE TO AGREE, JUSTICE LEWIS, WITH YOUR COMMENTS, IF YOU HAVE PRACTICING LAWYERS VERSUS A PERSON WHO JUST LEFT LAW SCHOOL TAKING THE EXAM, THE PERCEPTION OF THE LAW IS GOING TO BE TOTALLY DIFFERENT, WHEN YOU DO A COMPARISON OF THE SAME. JUSTICE PARIENTE, I THINK THAT THERE ARE SERIOUS QUESTIONS, AS RELATES TO THE METHODOLOGY AND THE APPLICATION OF THE TESTING.

I WOULD LIKE YOU TO ADDRESS, SPECIFICALLY, YOUR CONCERNS AS AN AFRICAN AMERICAN LAWYER, AS TO WHAT EFFECT ENACTING THIS INCREASED RATE WOULD HAVE. YOU SEE WOULD IT HAVE AN ADVERSE EFFECT ON PAINTING AND QUALIFICATION OF MINORITY LAWYERS OR WOULD IT PROVIDE THEM AN INCENTIVE TO DO BETTER? WOULD THEREA DISPARATE EFFECT OR IS THAT ONE OF YOUR CONCERNS?

IT IS ONE OF MY MAIN CONCERNS. IF YOU LOOK AT THE NEWSPAPERS THAT ARE GIVEN, ALTHOUGH THE OTHER NUMBERS INCREASE, THE GREATER INCREASE IS TO THE MINORITY STUDENTS AS THE SCORE RISES, THAN IS JUST BASED UPON THE TWO STUDIES THAT HAVE BEEN FILED WITH THE COURT HERE, TODAY IN THIS ISSUE HERE. I THINK, WHEN YOU LOOK AT THIS, WE ARE GETTING INTO A SITUATION WHERE PEOPLE ARE GOING TO LAW SCHOOL WITH THE HOPE OF I ONLY NEED TO PREPARE FOR ON THE BAR EXAM. I BELIEVE THAT CONCEPT, IN AND OF ITSELF, IS WRONG. YOU ARE TRYING TO DEVELOP COMPETENT LAWYERS. TO CREATE A MIND-SET THAT WE WANT PEOPLE TO JUST PREPARE FOR AN EXAM SHOULDN'T BE OUR PURPOSE. AND AS WE CONTINUE TO INCREASE THE SCORE, WE FALL INTO A SITUATION WHERE WE ARE BUYING INTO THAT CONCEPT.

WELL, DO YOU SEE THE PASSING OF THE BAR EXAM AS HAVING ANY RELEVANCE TO SOMEONE'S ABILITY TO PRACTICE LAW? IN OTHER WORDS, I AM SEEING THAT RIGHT NOW, PEOPLE HAVE TO ONLY GET 56 PERCENT OF WHATEVER THEY ARE ASKED, CORRECT, AND YOU KNOW I THINK THAT MOST OF US WOULD AGREE, WHETHER IT IS 56 PERCENT OR 59 PERCENT, THAT IS A PRETTY LOW PERCENTAGE OF MINIMUM COMPETENCE, IF WE ARE EXPECTING THAT THIS EXAM TRULY TESTS KN. DOTRWSY GETTING, YOU KNOW, NOT KNOWING 40 PERCENT OF EVERYTHING, SO WHAT -- DO YOU HAVE CONCERNS ABOUT THE ACTUAL EXAM, ITSELF, OR DO YOU HAVE CONFIDENCE THAT

THE EXAM IS AN APPROPRIATE EXAM, BUT WE HAVE GOT TO DO BETTER IN SOME OTHER AREAS?

WELL, I THINK IF I COULD JUST GIVE MY OWN PERCENTAL TESTIMONY TO THAT -- PERSONAL TESTIMONY TO THAT ISSUE. I THINK, AS RELATES TO A LSAT SCORE, I THINK I HAD WHAT IS A RELATIVELY LOW LSAT SCORE. RELATIVE TO PERCENTAGE, THAT WAS THE SAME. HOWEVER, WHEN IT CAME TIME FOR THE BAR EXAM, I DIDN'T HAVE TO WORK, SO I SCORED IN THE MID-140S ON THE EXAM. NOW, THAT WAS BECAUSE I COULD STUDY NIGHT AND DAY AND MAKE THE SCORE, AND SO IF YOU HAVE THE TIME TO STUDY NIGHT AND DAY, YOU CAN MAKE THE SCORE, IF YOU DON'T HAVE TO WORK, SO THE FINANCIAL ISSUES, ALSO, COME INTO PLAY. IF YOU CAN AFFORD NOT TO, YOU KNOW, WORK, AND TO STUDY FOR THE EXAM, SO THAT IS THE PARADOX THAT I THINK WE ARE STARTING TO CREATE, AS WE GET INTO IT.

AND WHAT IS THE -- HOW DOES THE MINORITY FACTOR PLAY INTO THAT? YOU WERE ANSWERING JUSTICE PARIENTE'S QUESTION THAT WE WERE STUDYING FOR THE BAR EXAM, BUT HOW DOES THE MINORITY QUOTIENT PLAY INTO THAT?

THE REALITY IS --

WHAT IS THE NEGATIVE EXACT ON THE MINORITY?

MOST -- THE NEGATIVE IMPACT ON THE MINORITY?

MOST MINORITIES HAVE TO WORK, AND WHEN THEY HAVE TO WORK, THEY HAVE LESOY,.

IS THAT A STATISTICALLY STATISTICALLY-DOCUMENTED FACT, OR IS THAT AN ANECDOTAL?

ANECDOTAL, JUSTICE. I THINK THAT IS ONE OF THE FACTORS. I THINK OUR POSITION IS HAS BEEN TO DECLINE THE RULE CHANGE. HOWEVER, THE DEANS ARGUE THAT THAT IS A TYPE OF ISSUE WE SHOULD STUDY, BEFORE WE ACTUALLY INCREASE THE PASS/FAIL LINE.

BUT YOUR POSITION, THEN, IS THAT THIS SHOULD NOT BE RAISED, BECAUSE THE MINORITY IS ADVERSELY IMPACTED, BECAUSE THEY HAVE TO WORK IN ADDITION TO STUDY FOR THE BAR EXAM.

CORRECT, YOUR HONOR. I THINK THAT WE ARE AT A POINT, NOW, AND EVEN AS EXPRESSED BY THIS PARTICULAR COURT, IN YOUR RACIAL AND ETHNIC BIAS REPORT IN 1991, BUT, ALSO, I THINK THAT, IF YOU LOOK AT THE COMMENTS THAT THE D OF GOVERNORS MADE IN APRIL OF LAST YEAR, THEY, TOO, HAD A CONCERN AS TO WHAT EFFECT WOULD THIS HAVE ON MINORITIES, AND EVEN THE DATA THAT YOU HAVE BEFORE YOU, THE TWO DATES THAT WERE REQUESTED, SMFCKLY SHOW THAT -- SPECIFICALLY SHOW GREATER DISPARITY BETWEEN THE TWO GROUPS.

I AM SEEING, FOR EXAMPLE, UNIVERSITY OF MIAMI AFRICAN-AMERICAN PASSAGE RATE 90 ABOVE 90 PERCENT. HISPANIC PASSAGE PERCENT FLORIDA STATE UNIVERSITY, WAY THROUGH THE CEILING. JUST MAGNIFICENT NUMBERS. HAVE WE DONE ANY ANALYSIS OF THOSE? I MEAN, THESE NUMBERS ARE NOT JUST ACCIDENTS. IT DOESN'T SEEM, TO ME. HOW DOES THAT PLAY INTO THIS ANALYSIS? ARE THEY, THOSE SCHOOLS DOING SOMETHING DIFFERENTLY?

I DON'T KNOW HOW TO ANSWER THAT, JUDGE. THANK IS ONE OF THE ISSUES THAT OUR BOARD OF BAR EXAMINERS SHOULD LOOK AT, BEFORE THEY MAKE THE DECISION TO INCREASE THE PASS/FAIL LINE. AND I THINK AS YOU LOOK INTO IT, AND MY TIME IS UP AND I WILL ALLOW THE NEXT SPEAKER TO COME UP, AS RELATES TO MINORITIES, WE HAVE REACHED A POINT WHERE WE HAVE MADE A LOT OF HEADWAY INTO INCREASING MINORITY REPRESENTATION IN THIS PROFESSION, AND I THINK, BEFORE WE MAKE AN ARBITRARY AND CAP REERB US MOVE TO INCREASE THE PASS/FAIL LINE, I THINK WE SHOULD LOOK AT IT, DEFINITELY, BEFORE WE MAKE THAT MOVE. THANK YOU. MR. CHIEF JUSTICE: THANK YOU, MR. PARKS. MR. HERMAN.

MAY IT PLEASE THE COURT. I AM HARLEY SCOTT HERMAN, ON BEHALF OF THE FLORIDA EDUCATION COMMITTEE AND ON BEHALF OF THE FLORIDA LAW STUDENTS, AND THEY JOINED IN WITH ME WHILE I SERVED AS CHAIR OF THAT COMMITTEE. SOME OF THE QUESTIONS THAT HAVE BEEN ASKED HERE, I HAVE SOME PERSONAL EXPERIENCE DEALING WITH PARTICULARLY RELATING TO THE AREA OF MINORITY ADMISSIONS TO LAW SCHOOL AND ULTIMATELY INTO THE PROFESSION. BECAUSE I, AT THE TIME I FILED OUR COMMENTS, I WAS A PROFESSOR AT SAVANNAH STATE UNIV. AND I CAN TELL YOU THAT SOME OF OUR BEST PROSPECTS OF LAW SCHOOL CHOSE NOT TO GO TO LAW SCHOOL, BECAUSE OF THE DISMAL PROSPECTS FOR BECOMING A LAWYER AND BEING ADMITTED INTO THE BAR, AND IF THE JULY STATISTICS OR THE JUNE STATISTICS ARE ACCURATE, IN TERMS OF THE PASSAGE RATE OVERALL, FOR AFRICAN-AMERICANS APPLICANTS, DROPPING TO ABOUT 58 PERCENT, I CAN TELL YOU THAT WILL HAVE A CHILLING EFFECT ON TRYING TO CONVINCE QUALIFIED APPLICANTS, WHO COULD GET JOBS IN THE CORPORATE ARENA AND ARE ACTIVELY RECRUITED FOR THAT, WITH SIX-FIGURE SALARIES, TO WITHDRAW THOSE OFFERS, TAKE THREE YEARS OF ESSENTIALLY POVERTY ON A 50-50 CHANCE THAT THEY MIGHT BE ADMITTED TO THE BAR. HAVING SAID THAT, THE CONCERNS OF THE NAACP ARE, BOTH, AS TO ADMISSION OF ATTORNEYS AND TO THE COMPETENCY OF PEOPLE THAT ARE REPRESENTED BY ATTORNEYS. AND OUR CONCERN IS THAT THE BAR, AS PRESENTLY CONSTITUTED, WITH ITS BASIS, AND NO TESTING OF THE BASIC SKILLS, EXPOSES THE STATE OF FLORIDA TO CONSIDERABLE JEOPARDY. IN THAT COMMENT, YOU ARE ACTUALLY GETTING IT, RIGHT, NUMBER WAS 1, 136, 125.

TO ILLUSTRATE WHY I THINK THAT LOOKING AT THE SCORE ON THIS EXAM, AS OPPOSED TO THE FACT THAT WE ARE IN A NEW CENTURY. WE HAVE TO LOOK AT WHAT KIND OF TEST WE ARE GOING TO USE, IF WE ARE GOING TO JUSTIFY OUR REGULATION OF THE PROFESSION, WE HAVE TO DO IT TWICE A YEAR WE SWEAR IN, IN THIS COURT, THOSE PEOPLE WHO HAVE EARNED IT, AND IF ANY OF OUR FAMILY MEMBERS CAME UP TO US IMMEDIATELY AFTER THAT TEARING-IN CEREMONY AND SAID I JUST GOT A FIVE-FIGURE SALARY SUIT. AND YOU, AS A PERSON WHO IS MINIMALLY QUALIFIED TO REPRESENT YOU. PICK ANY ONE YOU WILL DO JUST FINE. WE KNOW WE WOULDN'T MAKE THAT STATEMENT, BECAUSE WE WOULD GO THROUGH THOSE BASIC SKILLS, AND THE PROBLEM THAT WE HAVE WITH THE WLPUSO A LL.M., THAT I SEE IN CAMPUS, THE EMPHASIS ON THE EXAM IS DOING EXACTLY WHAT THE McCRACKEN REPORT SAID IT IS DOING.

ARE YOU, HERE, SORT OF ADVOCATING FOR A MORE CLINICAL LAW EDUCATION, AS OPPOSED TO RELYING ON THE BAR EXAM TO DETERMINE THE MINIMUM COMPETENCY?

I BELIEVE THAT THE BAR EXAM OFFERS US THE OPPORTUNITY FOR BASICALLY A FIELD OF DREAMS. IF YOU TESTED, THEY WILL TEACH IT. IF YOU TEST IT, THE STUDENTS WILL STUDY IT, AND CONVERSELY IF YOU DON'T TEST IT, I KNOW, AND THE MCE TESTS, THE LAST STUDY IT. AND AMONGS, TRAINING HAS TAKEN PLACE. I HAVE SERVED AS CHAIR OF THE BAR SCHOOL, FOR ALMOST A DECADE, AND THAT IS WHERE YOUNG LAWYERS CALL UP EXPERIENCED LAWYERS ON FRIDAY AFTERNOON AND SAY I HAVE GOT A CASE MONDAY MORNING. I DON'T KNOW WHAT TO DO. AND IT IS VERY CLEAR, WHEN I TALK WITH THEM, THEY DID NOT TAKE SKILLS COURSES, BECAUSE THEY WERE COGNIZANT OF THOSE ISSUES THAT THEY ARE TOLD ARE PART OF THE BAR EXAM.

ARE THERE ANY STATES THAT DO TEST THE WAY -- > NOBODY EXCLUDES SKILLS, BUT SEE PERFORMANCE THERE, AND MANY STATES, INCLUDING CALIFORNIA, DO HAVE THAT COMPONENT IN THEM.

CALIFORNIA IS ONE OF THE STATES THAT HAS AMONGST HIGHEST NUMBER FOR PASSING, A MUCH HIGHER, I THINK THEY ARE AT THE TOP OF WHAT IS REQUIRED.

RIGHT.

AND THERE WAS REFERENCE TO THE FACT THAT YOU HAVE TO LOOK AT WHAT THE TEST IS. SO IS

PART OF CALIFORNIA'S TEST THAT THEY SCORE A PERFORMANCE PERFORMANCE-TYPE TEST?

PART OF IT IS A PERFORMANCE TEST.

IN OTHER WORDS THAT COULD ARTIFICIALLY RAISE THE NUMBER. COULD YOU GIVE ME AN EXAMPLE OF WHAT CALIFORNIA DOES IN PERFORMANCE TEST SOMETHING.

THERE ARE QUESTIONS IN SOME OF THE PERFORMANCE EXAMS THAT ESSENTIALLY TAKE WHAT WEHAVE IN THE LAWYERING SITUATION AND ASK PEOPLE TO DO THINGS. HST A PROVISION OF A CONTRACTOR TEST STATUTORY INTERPRETATION, AND SOME OF THAT ASPECT, THE STATUTORY INTERPRETATION, THIS BOARD OF BAR EXAMINERS HAS BEGUN TO INSERT IN IT, BUT THERE ARE TESTING METHODS THERE. THERE ARE NOW COMPUTER MODELS WHERE THEY ACTUALLY SIMULATE A LAW OFFICE, WHERE YOU CAN GET ACCESS TO BOOKS AND CASES AND DO WHAT LAWYERS DO.

WHAT I AM SAYING IS YOU ARE CONCERNED ABOUT THE NUMBER, BECAUSE YOU THINK IT COULD HAVE A CHILLING EFFECT ON SOMEONE SAYING, LISTEN, ONLY 50 PERCENT OF AFRICAN-AMERICANS ARE PASSING AND SO WHY SHOULD I GO TO LAW SCHOOL, IF I HAVE ONLY A 50-

CHANCE. THAT IS YOUR -- A 50-50 CHANCE. THAT IS YOUR NUMBER ONE CONCERN.

THAT IS THE SECONDARY CONCERN CONCERN. THE OTHER IDEA IS LET'S DO KNOW HARM, UNTIL WE CAN CREATE A PROPER EXAM, ONE THAT 35 YEARS AGO, WHEN A COMPUTER THE SIZE OF THIS ROOM HAD ONE TENTH THE POWER OF MY LAPTOP, THE MULTISTATE WAS THE BEST THAT WE CAN DO, BUT THAT IS NO LONGER THE STATE-OF-THE-ART TODAY. WE CAN DO BETTER. WE MUST DO BETTER FOR THE CITIZENS, AND IN THE MEANTIME, IF WE KNOW THAT THE IMPACT, DESPITE THE NUMBER OF LAWYERS COMING OUT, WE ARE STILL AT ABOUT ONE PERCENT FOR MINORITY LAWYERS F WE KNOW THAT WHAT WE WILL DO -- LAWYERS. IF WE KNOW THAT WHAT WE WILL DO WILL NOT INCREASE DIVERSITY AND THERE IS NO GOOD EVIDENCE TO SHOW IT WILL INCREASE COMPETENCY WE WANT TO DO KNOW HARM, UNTIL WE CAN DO SOMETHING BETTER.

WELL, IS CALIFORNIA THE BEST EXAMPLE THAT YOU CAN OFFER OF GUESS CLOSE TO GRAPPLE WITH THE QUESTION THAT I FIRST ASKED MR. POBJECKY, AND 245 IS WHAT -- AND THAT IS WHAT ARE WE TRYING TO DO BY HAVING A BAR EXAM. WHAT ARE WE TRYING TO ACCOMPLISH BY HAVING A BAR EXAM.

I DON'T THINK THAT ANY STATE RIGHT NOW IS A GOOD G EXAMPLE, AND I HOPE -- IS A GOOD EXAMPLE, AND I HOPE FLORIDA MIGHT AND LEADER. WHAT WE WANT TO BASICALLY ACCOH IS, BY EXAMPLE, WE WANT TO SAY TO THE CITIZENS OF FLORIDA, WE HAVE A TEST THAT, WHEN WE SWEAR IN THESE ATTORNEYS THEY CAN PERFORM BASIC MINIMAL SERVICES, AND UNTIL THE EXAM MEASURES THAT, IS NOT DPOING WHAT THIS EXAM -- IS NOT DOING WHAT THIS EXAM SHOULD DO AND UNTIL THEN WE HAVE A DIPLOMA PRIVILEGE WITH SOME TYPE OF COMPREHENSIVE EXAM AT THE END, BUT UNTIL THEN WE DON'T KNOW WHAT A COURTHOUSE IS OR WHAT A PLEADING LOOKS LIKE, TO HAVE A LICENSE TO PRACTICE ON UNSUSPECTING CITIZENS OF THIS STATE, UNTIL THEY FIGURE OUT HOW TO PRACTICE LAW.

BUT THE BAR, THIS IS A DISCUSSION THAT CAN GO ON AD INFINITUM, BUT THE BAR HAS RECOGNIZED THE PROBLEM THAT YOU STATE, AND THEY HAVE PROGRAMS THAT LAWYERS MUST,N ORDER, IN THE VARYING CIRCUITS, IN ORDER TO PRACTICE WITH PROFESSIONISM OR WHATEVER THE NAME IS, IN ORDER TO GIVE THOSE LAWYERS SOME DEGREE OF INSIGHT AS TO THE PRACTICALITIES OF THE WORLD INTO WHICH THEY HAVE STEPPED.

WE USED TO HAVE --

AND SO THERE HAS BEEN SOME EFFORT TO ALLEVIATE THE CONCERN THAT YOU HAVE

EXPRESSED.

WE USED TO HAVE THE BRIDGE OF THE GAP. NOW, WITH THE PROFESSIONISM, IT HAS LESS EMPHASIS ON THE PRACTICE, BUT WE HAVEN'T TESTED ANY OF THESE PEOPLE. WE GIVE THEM A YEAR AFTER PRACTICE JUST TO TAKE THAT, AND IN TERMS OF ASSURING THAT THEY KNOW THESE SKILLS, THAT IS NONEXISTENT, IN TERMS OF OUR TESTING PROCEDURE. MR. CHIEF JUSTICE: THANK YOU HAD, MR. HERMAN. YOUR TIME IS UP. MR. POBJECKY.

JUST A FEW REMARKS IN REBUTTAL.

COUNSEL, COULD YOU ADDRESS THE LAST QUESTION. IS OUR BOARD ATTENDING ANY CONFERENCES OR SEMINARS, TO LEARN ABOUT THESE HANDS-ON KINDS OF EXAMS, LIKE ARCHITECTURE EXAMS AND THOSE KINDS OF THINGS?

YES, SIR, WEE. THERE HAVE BEEN SOME AROUND THE COUNTRY. I HAVE ATTENDED OB. I HAVE SEEN PRESENT -- ATTENDED ONE AND I HAVE SEEN PRESENTATIONS BY DEAN HARBAUGH ON THE MATTER, AND THE BOARD HAS STUDIED IT AND IN FACT IT HAS CHANGED, BUT MAKE SURE YOU UNDERSTAND WHAT A PERFORMANCE TEST, TODAY, IS. YOU SIT DOWN AT YOUR EXAM TABLE AND YOU ARE GIVEN A LIBRARY. IT COULD BE FICTIONAL CASES TO READ OR WHATEVER. AND THEN YOU ARE TOLD TO DO SOMETHING. I BELIEVE JUST A RECENT EXAM, I HAD A KNEES WHO TOOK THE EXAM IN -- A NIECE WHO TOOK THE EXAM IN TEXAS JUST THIS LAST JULY, AND THEY DO HAVE A PERFORMANCE TEST, AND I WAS TALKING TO HER ON ON THE PHONE AND SAYING HOW WAS THE EXAM AND DID THEY HAVE PERFORMANCE, AND SHE SAID YES. I SAID HOW WAS THAT? AND SHE SAID IT WAS REALLY STUPID. I HAD TO READ ALL THIS STUFF IN THE LIBRARY AND THEY GIVE AWE HOUR AND-A-HALF TO WRITE AN APPELLATE BRIEF. NOW, WHAT ATTORNEY IS GOING TO BE ABLE TO DO ALL OF HIS OR HER RESEARCH IN AN HOUR AND-A-HALF AND THEN WRITE THE APPELLATE BRIEF, BUT WE ARE LOOKING AT IT AND WE, IN FACT, HAVE MODIFIED OUR OWN BAR EXAM TO INCORPORATE PERFORMANCE-TYPE QUESTIONS, BUT DON'T THINK THAT IS GOING TO BE THE SAVIOR OF THE BAR EXAM, BECAUSE IF YOU LOOK AT THE STUDY THERE IS A VERY HIGH CORRELATION BETWEEN HOW PEOPLE PERFORM ON THESE PERFORMANCE EXAMS AND HOW THEY PERFORM ON THE MBE, THE MULTISTATE, AND HOW THEY PERFORM ON ESSAYS. IT IS -- THEY ARE OBVIOUSLY TESTING THE SAME THINGS. I WANT TO RETURN BRIEFLY TO, ONCE AGAIN, AND I WOULD ENCOURAGE EVERYONE, AND I KNOW YOU HAVE, TO READ THE CANE AND THE KLEIN, THEY WENT BACK AND FORTH. CANE HAD A LOT OF CONCERNS, IN HIS INITIAL REPORT, THEN DR. KLEIN WAS GIVEN AN OPPORTUNITY TO RESPOND, AND THEN YOU GO BACK TO THE FINAL REPORT OF DR. CANE, AND SOME OF THOSE THINGS, HE IS SAYING, WELL, OKAY. I DON'T HAVE THE DATA, IF THAT IS WHAT THE DATA SHOWS, SO MUCH. I DIDN'T REALIZE THEY WERE PROVIDING THIS TYPE OF DOCUMENTATION TO THE BLUE RIBBON PANEL. THAT DOES MAKE A LITTLE BIT OF A DIFFERENCE, AND YOU READ HIS LAST PAGE, IT IS, WELL, THE MOST SERIOUS DEFECT FOR HIM WAS HE THINKS THE BLUE RIBBON PANEL SHOULD HAVE BEEN GIVEN EVEN MORE INFORMATION. THAT IS A JUDGMENT. I MEAN, BY TWO EXPERTS, ONE EXPERT, DR. KLEIN, AND READ HIS REASONING. HE DIDN'T WANT TO BIAS THEM. HE DIDN'T WANT TO GIVE THEM A WHOLE BUNCH OF INFORMATION AND THEN BE ACCUSED OF BIASING THAT PANEL, AND HE EXERCISED HIS PROFESSIONAL JUDGMENT. HE HAS BEEN DOING THESE STUDIES SINCE 1986, WHEN HE FIRST DID IN IN PUERTO RICO. I SUBMIT TO YOU THERE IS A CORRELATION BETWEEN THE BAR EXAM AND COMPETENCY. OTHERWISE, THERE SHOULDN'T, THE BAR EXAM SHOULDN'T BE GIVEN, AND I WOULD CITE TO THE COURT MY REPLY, AND THE DIFFERENT COURTS THAT HAVE ADDRESSED THIS ISSUE. THE FIFTH CIRCUIT, FOR EXAMPLE, QUOTED, AT PAGE 25, THAT THE MBE AND THE ESSAY EXAM ARE DESIGNED SOLELY TO ACCESS THE LEGAL -- ASSESS THE LEGAL COMPETENCE OF THE BAR EXAM.

CAN YOU ADDRESS MR. LAWRENCE LAWRENCE'S COMMENTS THAT THE GEORGIA BAR HAS MORE ESSAYS AND THAT THERE IS A DIFFERENT WAY THAT THEY ARRIVE AT THEIR NUMBERS, WHICH MAY SKEW THAT, YOU KNOW, IN OTHER WORDS, I GUESS THE QUESTION IS THAT AN EASIER EXAM

AND THAT IS WHY MORE PEOPLE ARE PASS SOMETHING DO WE KNOW THAT? THAT IS WHY COMPARISON WITH OTHER STATES, UNLESS --

YOU COULD PROBABLY DIG INTO THIS BOOK, WHICH I HAVEN'T. I HAVE REVIEWED IT. BUT GEORGIA GIVES THE MBE. THAT IS A FULL DAY TEST. MOST STATES ARE LIKE US. YOU GIVE A PART A, WHICH IS YOUR FLORIDA PORTION, ESSAYS, MULL TIP HE WILL -- MULTIPLE CHOICE, OR FULLEST I, AND THEN YOU GIVE A FULL DAY ON MBE. YOU CAN MAKE A COMPARISON ON WHAT ONE STATE DOES AND WHAT ANOTHER STATE D I DON'T HAVE THAT INFORMATION READILY AVAILABLE BUT I WILL GET IT TO YOU, BUT I SUSPECT THAT IF YOU RELATE IT SPECIFICALLY TO THE MBE SCORES, YES, THERE WOULD AND DIFFERENCE.

EVEN IF IT WERE JUST MBE, WE HAVE, OUR ACCEPTANCE IS 53 PERCENT OF QUESTIONS. THAT IS ALL THEY HAVE TO GET RIGHT. IS THAT --

THAT, ONCE AGAIN THAT, E CTU FME BAR EXAM TO ANOTHER, BECAUSE THE MBE IS ALWAYS TRYING TO EQUATE BACK TO THE ORIGINAL EXAM GIVEN BACK IN 1972, BUT, YEAH, I THINK IT WAS 56 PERCENT THAT WE QUOTED IN OUR --

AND IF WE WENT AROUND AGAIN, THE MINIMUM FOR OTHER STATES, THE HIGHEST MINIMUM WOULD BE ABOUT 60 PERCENT. IS THAT CORRECT? IN OTHER WORDS NO STATE SAYS YOU HAVE GOT TO GET ALL THE ANSWERS TO THIS MULTIPLE CHOICE CORRECT. ANOTHER HIGHEST STATE IS CALIFORNIA, AND I BE LEAVE ONE OTHER STATE, AND THEY ARE AT CLOSE DO 7 -- CLOSE TO 70 PERCENT.

THAT IS ONE QUESTION ON THE MULTISTATE.

BUT MOST STATES, LIKE FLORIDA SCALE THE OWN PORTION, THE ESSAY ESSAY'S MULTIPLE CHOICE TO THE MBE, BECAUSE THE MBE HAS A GREAT ANCHOR. IT CAN GO BACK TO 1972 AND SAY WE CAN DETERMINE, GOING BACK TO 1972, HOW DIFFICULT A PARTICULAR EXAM WAS AND ADJUST FOR THAT, SO MOST STATES, LIKE FLORIDA, WILL THEN SCALE TO THE MBE, SO OUR SCORES ON THE FLORIDA PORTION ARE, THEN, ALSO SCALED IN A LIKE MANNER TO THAT, SO I AM NOT A TESTING AND MEASUREMENT EXPERT, SO I AM NOT GOING TO GET INTO DETAILS, BUT I THINK IT BALANCES OUT, BUT IF NOT YOU CAN STILL JUST LOOK AT THE MBE SCORES. THERE WAS REFERENCE TO OTHER JURISDICTION, AND AT ONE POINT I WANT TO JUST MAKE TO THIS COURT IS I DON'T THINK THERE IS ANYTHING WRONG WITH LOOKING AT OTHER JURISDICTIONS. THIS COURT DOES T OTHER COURTS DO IT. YOU CAN JUST REVIEW SOME OF YOUR RECENT OPINIONS, AS I HAVE, AND YOU WILL SEE. I BELIEVE THERE WAS A CASE LAST JULY, A DEATH PENALTY CASE, WHERE YOU HAD TO REVERSE THE TRIAL JUDGE, BECAUSE A JUROR HAD AN EMOTIONAL BREAKDOWN DURING DELIBERATIONS, AND IN A CONCURRING OPINION, JUSTICE ANSTEAD SAID HE FOUND COMFORT IN THE FACTY LOOKING AT ALL OF RISTSD LOOKED AT THE SAME ISSUE, THEY REACHED THE SAME CONCLUSION AS THE COURT'S MAJORITY HERE, SO I DON'T THINK THERE IS ANYTHING INAPPROPRIATE, LOOKING AT OTHER JURISDICTIONS, AND REMEMBER TO MY KNOWLEDGE, ONLY ONE STATE, ONLY ONE STATE HAS RAISED ITS PASS/FAIL LINE, BASED ON A DR. KLEIN STUDY.

CAN I ASK YOU ONE THING, ON THE OTHER STATES, WE ARE AT 131. NEW YORK IS AT 132. ILLINOIS IS 132. NEW JERSEY IS 133. SOME OF THE STATES, FROM ONE SET ARE AT -- FROM ONSET, ARE AT 132. IF YOU LOOK AT STATES, I DON'T KNOW IF TO SAY THAT NEW YORK LAWYERS ARE AS GOOD AS CALIFORNIA LAWYERS, BUT IT JUST DOESN'T SEEM THAT THERE IS REALLY A RHYME OR REASON TO SAY CALIFORNIA IS AT THE TOP. THEY PROBABLY HAVE A BEST BAR, AND MINNESOTA IS DOWN TO 130. THEY HAVE PROBABLY GOT A WORSE BAR THAN CALIFORNIA. LOOKING AT MAYBE WHERE THE JURISDICTIONS ARE, IT DOESN'T SEEM TO CORRELATE WITH ANYTHING THAT WE REALLY KNOW ABOUT THE LEVEL OF THEIR, YOU KNOW, CORES OR ANYTHING ELSE. WOULD YOU AGREE WITH THAT?

I WOULD AGREE WITH IT, AND I WOULD BE MOST UNCOMFORTABLE, IF I WAS UP HERE ARGUING THAT THE ONLY REASON WHY THIS COURT SHOULD MOVE AHEAD IS BECAUSE WE WANT TO DO WHAT THE JONESS ARE DOING AND DO WHAT THE NEIGHBORS UP IN GEORGIA ARE DOING AT 135 OR WHATEVER, BUT AT MOST, THAT WAS THE MOTIVATION FOR THE BOARD TO CONDUCT ITS STUDY, AND ONCE AGAIN, I WILL JUST HAVE TO GO BACK TO IT, YOU HAD NOTHING 1316789 YOU NOW HAVE A DOCUMENTED STUD -- FOR 131. YOU NOW HAVE A DOCUMENTED STUDY GUIDED, SUPERVISED BY THE LEADING AUTHORITY, IN BAR EXAMINATIONS, DR. KLEIN.

IF WE WERE TO GO TO 136, THAT PUTS, WOULD PUT US IN THE TOP 25 PERCENT OF THE COUNTRY?

MY RECOLLECTION IS THAT THERE WOULD BE 15 JURISDICTIONS ARE AT 136 OR HIGHER. THERE IS AN ADDITIONAL FIVE THAT ARE RIGHT AT 135, SO, YEAH, IF YOU LOOK STRICTLY AT 16, WEONETP. THERE ARE 48 JURISDICTION THAT IS DO THE MBE, SO 15 OUT OF 48 WOULD PUT US IN, MY MATH ISN'T THAT GOOD, BUT IT WOULD BE AROUND THE TOP THIRD, SO WE WOULD GO FROM THE BOTTOM THIRD TO THE TOP THIRD. I WAS GOING TO HIGHLIGHT THE STATISTICS, AND I THINK JUSTICE LEWIS STOLE SOME OF MY THUNDER THAT LOOK AT SOME OF THOSE STATISTICS, AND THERE ARE, IN FACT, ONCE AGAIN, IT JUST REAFFIRMS THAT YOU CAN'T LOOK AT A PERSON'S RACE OR ETHNIC GROUP OR GENDER. THE UNIVERSITY OF MIAMI PERFORMED VERY WELL ON ONE OF THE BAR EXAMS.

HAVE YOU LOOKED AT THE INFORM BIGS ABOUT WHEN MINORITIES FAIL THE EXAM -- INFORMATION ABOUT, WHEN MINORITIES FAIL THE EXAM, THEY ARE LESS LIKELY TO TAKE THE EXAM, AND IF THAT IS TRUE, THAT, WHOSE RESPONSIBILITY IS IT TO LOOK AT THAT AND SEE IF THERE IS WAYS THAT WE CAN HELP AND ENCOURAGE PEOPLE THAT, EVEN DON'T PASS THE BAR THE FIRST TIME, TO TAKE IT AGAIN?

I WOULD JUST DEFER TOURNS THE LSAT STUDY -- DEFER YOUR HONOR TO THE LSAT STUDY, WHICH IT IS MY UNDERSTANDING THAT THE COMPREHENSIVE STUDY ADMISSIONS COUNCIL TRACKING 25,000 LAW SCHOOLS FOR A 25-YEAR PERIOD THAT, EVENTUALLY LAW STUDENTS DO GET ADMITTED, SO IF YOU HAVE 15 PERCENT MINORITIES TAKING ON ANY GIVEN TEST, 15 TEASSING IT. SOME ARE IN A REPEATER METHOD OF TAKING IT BEFORE, BUT THOSE GOING IN, THERE IS ABOUT THE SAME AMOUNT GOING OUT AS COMING IN. CHIEF. MR. CHIEF JUSTICE: THANK YOU, MR. POBJECKY. THANK FOR YOU YOUR TIME. WE APPRECIATE COUNSELS' ASSISTANCE IN THIS MATTER, WHICH IS IMPORTANT TO THE PUBLIC OF FLORIDA.