

>> PLEASE BE SEATED.

>> THANK YOU.

MAY IT PROCEED THE COURT AND  
GOOD MORNING.

MY NAME IS DAVID RASH.

I REPRESENT THE PETITIONERS,  
ABLE LIMONES, SR., AND HIS  
WIFE, SANJUANA CASTILLO, AS  
PARENTS AND NATURAL GUARDIANS OF  
THEIR SON, ABEL LIMONES, JR. MY  
ESSTEEMED COUNSEL  
ELIZABETH RUSSO IS NOT HERE  
TODAY.

IT HAS BEEN 20 YEARS SINCE I  
LAST PRESENTED ARGUMENT TO THIS  
HONORABLE COURT.

HOPEFULLY IF MY HONORS IS NOT  
SO GREAT, YOUR HONORS WILL  
LOOK AT HER MAGNIFICENT BRIEFS  
WRITTEN UNDER PERSONAL  
CIRCUMSTANCES AND MR. LIMONES'S  
FAMILY CAN NOT THANK HER ENOUGH.  
IMPORTING NEBRASKA PLAY TO  
CREATE ADDITIONAL STEP IN  
ANALYSIS AND APPLICATION OF THE  
DUTY ELEMENT IN THIS NEGLIGENCE  
CASE, THE SECOND DISTRICT  
OPINIONS'S DIRECTLY AND  
EXPRESSLY CONFLICTS WITH  
WELL-ESTABLISHED FLORIDA LAW AS  
PROMULGATED BY THIS COURT IN  
McCAIN AND MOST RECENTLY  
DORSEY.

>> LET ME ASK ABOUT THAT.

TRYING TO MAKE SURE I UNDERSTAND  
WHAT YOU MEAN BY THAT.

SEEMS TO ME YOU'RE SUGGESTING  
THAT IN MAKING A LEGAL  
DETERMINATION WHETHER THE  
PARTICULAR DEFT HAD A DUTY TO  
THE PARTICULAR PLAINTIFF IN THE  
CIRCUMSTANCES OF THE CASE, THAT  
THE, THAT IT IS IMPROPER FOR THE  
COURT TO TALK ABOUT THE SCOPE OF  
DUTY IN CONNECTION WITH THAT  
LEGAL DETERMINATION?

>> IT IS IN THE WAY THE SECOND  
DISTRICT DID IT BY DOING THAT.  
BY USING A REASONABLY PRUDENT  
PERSON STANDARD, AND, THAT

CONFLICT WITH FLORIDA LAW.  
FLORIDA LAW, IN THIS CASE, THE  
DUTY WAS ALREADY ESTABLISHED.  
AND, SO WHAT THE SECOND DISTRICT  
DID IS THEY DETERMINED THE SCOPE  
AND EXTENT BY IMPLEMENTING THIS  
ADDED STEP OF SAYING YOU HAVE TO  
DECIDE WHAT REASONABLY PRUDENT  
PERSON WOULD HAVE DONE UNDER  
LIKE CIRCUMSTANCES BUT IN THIS  
CASE WE ALREADY HAVE THE DUTY  
AND, IN ALLIANCE WITH McCAIN  
AND ITS PROGENY--

>> SO WHAT IS THE DUTY?

>> THE DUTY ASSET FOR STUDENT  
ATHLETES IN THE LEAHY CASE AND  
PRIOR TO THAT THE GENERAL DUTY  
ESTABLISHED BY-UP, IS THAT, THEY  
HAVE TO TAKE-- ARE UP.

THEY HAVE TO RUPP.  
TO TAKE PROCEDURES TO PROTECT  
STUDENT ATHLETE FROM AGGRAVATION  
OF THE INJURY.

THE FACTS IN THIS CASE  
ESTABLISHED THAT THE SCHOOL  
DISTRICT ADMITTED THEY HAD AN  
AED WITHIN 10 TO 20 FEET OF  
WHERE ABEL COLLAPSED ON THE  
SOCCER FIELD.

-- ABEL COLLAPSED, HIS COACH  
CALLING FOR IT SEVERAL TIMES  
WHEN HE ASSESSED DETERMINED THAT  
THE ABEL NEEDED THE AED, THE  
SCHOOL DISTRICT ADMINISTRATORS  
WHO WERE TRAINED TO USE IT,  
STANDING RIGHT THERE DID NOT  
PROVIDE IT TO HIM.

THE EXPERT TESTIMONY ESTABLISHES  
AS A RESULT OF THIS DELAY IN NOT  
PROVIDING AED TO THE COACH, THE  
INJURY ES SUSTAINED BY ABEL WAS  
PROXIMATELY CAUSED BY THAT  
DELAY.

THIS IS CASE IS A CASE FOR THE  
JURY.

THE DUTY HAS BEEN ESTABLISHED.  
WE'RE NOT ASKING TO FORMULATE  
AND PRONOUNCE BROAD SWEEPING  
RULES WHEN AN AED MUST BE USED,  
HOW IT MUST BE MAINTAINED OR HOW

IT MUST BE MADE AVAILABLE.  
THAT IS NOT IMPLICATED BY THIS  
CASE AND THE FACTS IN THIS CASE.  
WHAT SIMPLY INDICATED HERE IS  
WITH THE DUTY TO PROVIDE  
APPROPRIATE POSTINJURY  
PROJECTION, THEY DIDN'T DO.  
THAT THEY HAD AN AED THERE.  
>> SO YOUR POSITION THERE WAS A  
DUTY TO USE THAT DEVICE.  
AT LEAST GIVEN THE CIRCUMSTANCES  
THE DEVICE WAS READILY  
AVAILABLE?  
>> THAT BRINGS US TO THE JURY  
QUESTION, YOUR HONOR.  
AND, WHAT WE'RE, WHAT WE'RE  
SAYING IS THERE IS A DUTY TO  
PROVIDE THESE MEASURES,  
POST-INJURY PROTECTION SO THAT  
THE INJURY IS NOT AGGRAVATED.  
>> LET'S MAKE SURE.  
THAT'S THE BROAD STATEMENT, NO  
ONE IS ARGUING WITH THAT.  
>> EXACTLY.  
>> COMMON LAW DUTY TO USE  
APPROPRIATE POST-INJURY EFFORTS  
TO PROTECT THE INJURY AGAINST  
AGGRAVATION.  
>> EXACTLY.  
>> WHICH IS DIFFERENT THAN WHAT  
MIGHT HAPPEN FOR A BUSINESS  
OWNER BECAUSE WE'RE DEALING WITH  
A SCHOOL?  
>> 100%.  
>> OKAY.  
SO, WHAT IT LOOKS LIKE, WHAT  
MUST HAVE HAPPENED IS THAT THE  
SECOND DISTRICT MADE A DECISION  
THAT, THEY EXERCISED REASONABLE  
CARE.  
IN OTHER WORDS, WHICH, WOULD BE  
A SECOND STEP, THEY TOOK EVERY  
EFFORT AND IT WAS REASONABLE BUT  
WHAT THEY SAID IS THAT, IT CAN  
NEVER INCLUDE A DUTY, REGARDING  
THIS AED, NO MATTER, THAT IS  
YOUR--  
>> THAT IS WHAT THEY SAID.  
>> I THINK THEN THE QUESTION FOR  
JUSTICE CANADY AND, HOW IS THAT

IN CONFLICT WITH ANY OF OUR  
CASES IN IT MAY BE WRONG BUT HOW  
IS IT?

>> ONCE THE DUTY IS ESTABLISHED,  
IN THIS CASE, THEY MAILED IT  
TOGETHER THE DUTY AND THE BREACH  
ELEMENTS AND BY DOING THAT, THAT  
IS IN CONFLICT, DIRECTLY AND  
EXPRESSLY.

I MEAN THE SECOND DISTRICT  
SPECIFICALLY STATED IT IN THEIR  
OPINION.

IT WASN'T DIFFICULT TO FIND.  
AND IT CONFLICTS WITH McCAIN  
BECAUSE, YOU KNOW,  
FORESEEABILITY, THE DUTY WAS  
ESTABLISHED HERE.

SO YOU CAN'T, YOU CAN'T MIX THE  
DUTY AND THE BREACH ELEMENTS,  
TAKING IT FROM THE JURY.

>> YOU ARE SAYING, THEY WRITTEN,  
HAD THE COMMON LAW DUTY BUT THEY  
DIDN'T BREACH IT BECAUSE THEY  
EXERCISED REASONABLE CARE AS A  
MATTER OF LAW.

>> EXACTLY.

>> MIGHT BE A DIFFERENT  
SITUATION?

>> THEY, THEY TOOK THAT ELEMENT  
FROM THE JURY.

AND--

>> BUT WHAT SPECIFIC STATEMENT  
IN McCAIN ARTICULATES THE  
POINT OF LAW WITH WHICH THE  
SECOND DISTRICT CONFLICTS?

>> WELL, IN A SENSE, THE  
CONFLICT WITH McCAIN IS NOT  
THE ESTABLISHMENT OF A DUTY.  
IT IS THE FACT THAT THEY THEN  
WENT THE SECOND STEP IN THE  
SECOND DISTRICT, IN THIS CASE  
AND DECIDED, WHAT A REASONABLY  
PRUDENT PERSON WOULD HAVE DONE  
UNDER LIKE CIRCUMSTANCES.  
WHICH IS THE BREACH QUESTION FOR  
THE JURY.

AND THEY SUBSUMED THAT INTO THE  
DUTY QUESTION AND BECAME--

>> BUT McCAIN TALKS ABOUT, IT  
SAYS FORESEEABILITY IS CLEARLY

IS CRUCIAL IN DEFINING THE SCOPE OF THE GENERAL DUTY PLACED ON EVERY DUTY TO AVOID NEGLIGENT ACTS OR OMISSIONS.

SEEMS LIKE TO ME WHAT THEY'RE SUGGESTING THERE IS THAT, THAT YOU'VE GOT, IN DEFINING THE DUTY, YOU'RE LOOKING AT WHAT THE, YOU'VE GOT TO THINK ABOUT COPE.

I MEAN, THERE IS A GENERAL DUTY, EVERYBODY'S GOT, ALL THE TIME, TO USE REASONABLE CARE.

BUT THIS, BUT THIS NOTION, THERE'S A RENATIONLATIONAL ASPECT TO-- RELATIONAL ASPECT TO DUTY, THE DEFINITION OF DUTY. WHEN JUSTICE CARDOZO TALKS ABOUT THIS, HE TALKS ABOUT THE ORBIT OF THE DANGER AS DISCLOSED TO EYE OF REASONABLE DILIGENCE WOULD BE THE ORBIT OF THE DUTY. SEEMS LIKE TO ME, THAT I MEAN, I BELIEVE OUR ANALYSIS IN McCAIN IS CONSISTENT WITH WHAT JUSTICE CARDOZA SAID.

SEEMS LIKE YOU'VE GOT A DIFFERENT TAKE ON THAT.

>> I THINK DUTY IS THE STANDARD OF CONDUCT GIVEN TO THE JURY FOR GAUGING THE DEFENDANT'S FACTUAL CONDUCT.

SO IN THIS CASE THEY TOOK THAT DETERMINATION BY THE JURY TO DETERMINE, BASED UPON THE FACTS IN THIS CASE, WHETHER THEY BREACHED THAT DUTY TO PROVIDE POST-INJURY PROTECTION SO THAT ABEL'S INJURY WAS NOT AGGRAVATED.

AND THEY DETERMINED AS A MATTER OF LAW, THAT THEY DIDN'T HAVE TO PROVIDE AN AED AND THEY DIDN'T HAVE TO USE IT AND THEY DIDN'T HAVE TO MAKE IT AVAILABLE SO THAT, IN THIS CASE, THEY'RE SAYING NO JURY OR NO, THERE IS NO SINGLE INFERENCE THAT COULD SAY UNDER THE DUTY THE SCHOOL DISTRICT WAS NEGLIGENT AND

BREACHED IT.  
SO THEY REMOVED THAT ELEMENT  
FROM THE DECISION AND THAT  
CONFLICTS DIRECTLY WITH McCAIN  
BECAUSE McCAIN SAYS THAT ONCE  
YOU HAVE THE DUTY, THE ISSUES OF  
BREACH AND PROXIMATE CAUSE,  
ABSENT A VERY, VERY, YOU KNOW,  
SMALL SET OF CIRCUMSTANCES,  
WHERE, REASONABLE MINDS COULD  
NOT DIFFER AND THERE IS ONLY ONE  
SINGLE INFERENCE, THE JURY  
DECIDE THOSE ISSUES.

IN THIS CASE THE JURY NEEDS TO  
DECIDE, GIVEN THIS DUTY, WHETHER  
OR NOT PROVIDING THE AED THAT  
WAS THERE AND PEOPLE TRAINED TO  
USE IT TO THE COACH WHO HAD  
ALREADY MADE THE ASSESSMENT AND  
ALREADY MADE THE DETERMINATION  
THAT IT WAS NEEDED AND THAT  
DELAY, WHETHER THAT WAS A BREACH  
OF THE GENERAL DUTY AND WHETHER  
THE INJURIES SUSTAINED WERE  
PROXIMATELY CAUSED AND THE  
FACTUAL ISSUES IN THIS CASE  
CLEARLY WOULD PREVENT A SUMMARY  
JUDGMENT IF THIS COURT ACCEPTS  
JURISDICTION AND DETERMINES THAT  
IT IS IN CONFLICT WITH McCAIN  
AND ITS PROGENY, THAT IS ASKING  
THIS COURT TO DO, NUMBER ONE.  
WE'RE ASKING THIS COURT TO QUASH  
THE SECOND DISTRICT'S DECISION  
AND, AS BEING IN CONFLICT WITH  
McCAIN.

>> LET ME ASK YOU THIS QUESTION.  
TAKE A DIFFERENT, THIS HAPPENED  
AND WHAT YOUR ARGUMENT WAS IS  
THAT, CALLED FOR A HELICOPTER TO  
COME DOWN AND TAKE THIS INJURED  
PERSON TO THE NEAREST TRAUMA  
CENTER AND THEY DIDN'T DO THAT  
MANY WHERE WOULD THAT, WHERE  
WOULD THAT FIT IN UNDER THE  
McCAIN, YOU KNOW,  
FORESEEABILITY DUTY BREACH  
ISSUE?

IN OTHER WORDS, WOULD THAT, AND  
WOULD THAT BE A PROPER CASE FOR

SUMMARY JUDGMENT AND ON WHAT ISSUE WOULD IT BE PROPER TO GRANT?

>> IT MIGHT BE, BUT IT'S A FACTUAL ISSUE IN THAT CASE, OVERLAYING THE DUTY.

>> BUT ISN'T IT, THERE IT IS REALLY FORESEEABILITY, WHETHER IT IS, THAT, AND ISN'T IT, UNDER SCOPE OF DUTY, THAT THE DUTY JUST AT SOME POINT IT BECOMES, THAT YOU ARE NOT GOING TO IMPOSE THOSE TYPE OF OBLIGATIONS AS A MATTER OF LEGAL PUBLIC POLICY UNDER THE COMMON LAW, ON DEFENDANTS?

>> THAT MAY BE THE CASE, IN A SITUATION LIKE THAT, BUT WE DON'T HAVE THAT SITUATION HERE, YOUR HONOR, BECAUSE, EVERYBODY ACKNOWLEDGES THAT THE AED CAN IT IS FORESEEABLE THAT STUDENT ATHLETES WILL SUFFER THIS TYPE OF INCIDENT.

>> HERE, AS YOU SAID, THE FACTS ARE THIS AED WAS THERE.

>> EXACTLY.

>> SO YOU DON'T HAVE A FORESEEABILITY ISSUE ON NIGHT EXACTLY.

IT CONFLICTS WITH MCCAIN, ONCE THAT DUTY, BASED UPON THE ZONE OF RISK ANALYSIS AND FORESEEABILITY, THAT DOES RELATE IN SOME REGARDS TO THE LEGAL QUESTION AS WELL AS THE FACTUAL QUESTION, AS TO PROXIMATE CAUSE ONAND BREACH BUT IN THIS CASE, THE BUT IN THIS CASE THE AED WAS THERE, THE ASSESSMENT WAS ALREADY MADE THAT HE NEEDED THE AED, AND THE QUESTION IS, WHETHER SCHOOL DISTRICT DID NOT, PICKING IT UP AND HANDING IT TO THE COACH, WAS A BREACH OF THEIR OBLIGATION AND DUTY TO THIS STUDENT ATHLETE TO PROVIDE PROPER, POST-INJURY PROTECTION TO KEEP FROM AGGRAVATING HIS INJURY, WHICH THE EXPERT

TESTIMONY ESTABLISHES IS WHAT HAPPENED.

SO--

[INAUDIBLE]

WAS THE SCHOOL BOARD IMMUNE FROM LIABILITY UNDER THIS STATUTE? BECAUSE THE STATUTE, AS I READ IT, SEEMS TO SAY, THAT, YOU HAVE TO HAVE ONE OF THESE AEDs, PEOPLE HAVE TO BE TRAINED ON IT, BUT THERE IS NOTHING IN THERE THAT REQUIRES YOU TO USE IT?

>> EXACTLY.

AND, IN THAT--

>> AND THEN YOU'RE IMMUNE FROM LIABILITY IF YOU IN FACT HAVE IT AND PEOPLE ARE TRAINED.

>> WELL, I THINK--

>> THAT'S WHAT THE STATUTE SEEMS TO SAY.

>> WELL I AGREE, YOUR HONOR, IT MAKES NO SENSE TO US EITHER. COMMON SENSE TELLS US THAT THE PURPOSE OF THESE STATUTES, THE GOOD SAMARITAN STATUTE AND CARDIAC ARREST SURVIVAL ACT, TO HAVE PEOPLE GRATUITOUSLY PROVIDE CARE OR USE AN AED WHEN THERE IS AN EMERGENCY SITUATION.

WE ALSO KNOW THAT THERE WILL BE INSTANCES PROVISIONS OF CARE IN AN EMERGENCY SITUATION OR THE USE OF AN AED WILL NOT RESULT IN A VICTIM GETTING BETTER.

AND THAT, THEREFORE, IS THE PURPOSE OF THE STATUTE IS PROVIDE SOME SO SORT OF IMMUNITY WHO ACTUALLY USE THE AED AND ONE STEP FURTHER, THAT IF YOU USE IT, THE PEOPLE WHO ACQUIRED IT AND GAVE IT TO YOU, WOULD ALSO HAVE SOME IMMUNITY.

[INAUDIBLE]

GET AROUND THIS STATUTORY LANGUAGE, THERE IS IN ADDITION, NOTWITHSTANDING THE PROVISION, ET CETERA, ANY PERSON WHO ACQUIRED A DEVICE AND MAKES IT AVAILABLE FOR USE INCLUDING BUT NOT LIMITED TO ALL THESE PEOPLE



IS IMMUNE FROM SUCH LIABILITY.

>> I THINK THAT, WHEN YOU READ THAT, YOUR HONOR, IT IS TALKING ABOUT ACQUIRING IT AND MAKING IT AVAILABLE FOR SOMEBODY TO USE. THERE HAS TO BE ACTUAL USE OF IT TO HAVE IMMUNITY.

>> FIRST PART OF IT DOES INCLUDE THE LANGUAGE, USES OR ATTEMPTS TO USE BUT IN THE NEXT SENTENCE IN ADDITION, THERE IS NO REQUIREMENT FOR USE OR ATTEMPT TO USE.

>> I THINK--

>> I MEAN, TELL ME WHY THAT READING OF THE STATUTE IS INCORRECT.

>> WELL, I READ THE STATUTE THAT THAT SECOND LANGUAGE THAT YOU'RE TALKING ABOUT STILL REQUIRES USE OF THE AED.

IF FOLLOWS THE SENTENCE BEFORE AND PLUS--

>> DOESN'T, DOESN'T IT REFER BACK TO SUCH LIABILITY, SUCH LIABILITY BEING THE CIVIL LIABILITY FOR ANY HARM RESULTING FROM THE USE OR ATTEMPTED USE OF SUCH DEVICE?

>> WELL I COULDN'T THINK OF ANY POSSIBLE SCENARIO WHERE SOMEBODY WOULD BE SEEKING IMMUNITY, EXCEPT IN THIS CASE, WHERE AN AED WASN'T USED.

I MEAN, ISN'T THAT THE PURPOSE OF THE STATUTE IS TO ENCOURAGE THE USE?

WHEN IT IS USED YOU'RE GETTING SOMETHING IN RETURN AND THAT IS IMMUNITY IMMUNITY FROM CIVIL LIABILITY.

PUTTING IT ON THE WALL, SAY IF L.A. FITNESS THEY HAD THE AED ON THE WALL IN THAT CASE AND AND PEOPLE, EMPLOYEES OF THE BUSINESS WERE ASKED TO GET IT AND THEY REFUSED TO GET IT, AND IT WASN'T USED, THAT IS THE TYPE OF SCENARIO WE HAVE HERE.

HOW CAN YOU HAVE IMMUNITY--

>> I DON'T THINK YOU REALLY WANT TO GO THERE TO TRY TO CONFUSE L.A. FITNESS WITH THE CASE-- FITNESS, THOSE TWO DUTIES ARE TOTALLY DIFFERENT AND YOU WILL RUN DOWN A RABBIT HOLE IF YOU TRY TO FIX THIS CASE WITH THAT.

>> WHAT I'M TRYING TO DO, YOUR HONOR, THERE HAS TO BE USE OF AN AED IN ORDER TO HAVE IMMUNITY.

>> MY QUESTION WAS ACTUALLY A FRIENDLY QUESTION.

BUT, IT WAS FRIENDLY QUESTION, FOCUSED ON THE TEXT OF THE STATUTE BECAUSE, WHEN, IF WHEN, IT TALKS ABOUT SUCH LIABILITY IN THE PROVISION THAT SPECIFICALLY REFERS TO THE LIABILITY OF THE PERSON WHO REQUIRED THE DEVICE OR MAKES IT AVAILABLE FOR US, IT SEEMS TO ME THAT YOU HAVE AN ARGUMENT THAT THE ONLY, TO UNDERSTAND WHAT SUCH LIABILITY IS, YOU HAVE TO LOOK EARLIER IN THE, IN THE TEXT HERE, WHERE IT DESCRIBES THE LIABILITY FOR HARM, RESULTING FROM THE USE OR ATTEMPTED USE OF THE DEVICE?

>> THAT IS A GOOD, A GOOD ANALYSIS, YOUR HONOR.

>> I THOUGHT YOU WOULD AGREE WITH THAT.

>> I AGREE WITH THAT.

>> TO PROTECT UNDER THESE CIRCUMSTANCES IS THAT YOU CAN DO HARM TO SOMEONE BY USING THE DEVICE AND THIS IS GIVING IMMUNITY FROM THAT HARM.

>> POSSIBLY, YES, YOUR HONOR.

>> SEEMS TO ME WHAT MAKES SENSE ON IT.

THESE THINGS CAN CAUSE BURNS AND OTHER TYPE--

>> IT IS RARE THAT HAPPENS BUT IT CAN.

THEY'RE PRETTY FOOLPROOF, YOU PUT THEM ON AND AED TELLS YOU WHAT TO DO BUT THE--

>> YOU'RE DEEP INTO YOUR REBUTTAL.

GO ON IF YOU WANT TO.

>> THANK YOU, JUDGE.

I'M NOT GOING TO HAVE MUCH REBUTTAL REGARDLESS BUT I WILL HAVE A COUPLE OF MINUTES OF THAT.

THANK YOU VERY MUCH FOR YOUR ATTENTION.

>> MAY IT PLEASE THE COURT.

GOOD MORNING YOUR HONORS, MY NAME IS TRACEY MCKEE ALONG WITH CO-COUNSEL, SCOTT BAIT I WITH A FRANKLIN STERNS, AND HOLT. WE REPRESENT THE RESPONDENT, LEE COUNTY SCHOOL BOARD.

THIS IS A TRAGIC CASE.

THIS IS CASE AS ATTORNEY WHO REPRESENTS THE SCHOOL BOARD MY CLIENT AND MYSELF HATE THESE CASES BUT WHAT THE PLAINTIFF IS SEEKING TO THIS DO IN THIS CASE IS HOLD A SCHOOL BOARD, WHO IS COMPRISED OF LAYMEN, TO THE STANDARD OF A MEDICAL MALPRACTICE ACTION.

THAT'S WHAT THE RULING IS.

THAT IS WHAT THEY ARE SEEKING IN THIS CASE.

I WOULD LIKE--

>> YOU DO AGREE, THE FLORIDA LAW AS LEAST FOR 40 YEARS, HAS SAID, HELD THAT SCHOOL BOARDS AND THOSE IN POSITION OF AUTHORITY OVER OUR YOUTH DO HAVE A DUTY TO USE REASONABLE CARE?

>> I WOULD AGREE.

AND IN FACT--

>> CERTAINLY, 50 YEARS AGO, THESE DEVICES WERE POSSIBLY NOT ON THE MARKET EVEN, OR THE KIND THAT YOU CAN OPENLY, ANYONE CAN PICK THEM UP AND THEY NEEDED THAT KIND OF SUPERVISION.

I MEAN, HOW ABOUT IF THIS YOUNG MAN IS BLEEDING TO DEATH ON THE FIELD, DOES THE SCHOOL BOARD JUST SAY, YOU KNOW, WE DON'T HAVE ANY OBLIGATION TO GO OUT, THAT IS A MEDICAL CONDITION, THEREFORE WE HAVE NO OBLIGATION

TO GO OUT AND STOP THE BLEEDING?  
>> ABSOLUTELY, I AGREE WITH YOU.  
THEY DO HAVE AN OBLIGATION TO DO  
SOMETHING, BUT WHAT IS AT ISSUE  
WHAT IS THE SCOPE OF THAT  
OBLIGATION IS.

AND IN FACT--

>> IS THAT NOT FOR REASONABLE  
PEOPLE WHO ARE EXPERTS IN THIS  
FIELD TO COME IN AND SAY WHAT  
THAT OBLIGATION AND A JURY TO  
DECIDE?

OUR COMMUNITY WILL DECIDE, AT  
COMMON LAW WHAT IS EXPECTED OF  
US AND WHY IS THAT NOT, WHAT  
HAPPENED HERE?

I DON'T KNOW WHETHER IT WOULD BE  
LIABILITY OR NOT BECAUSE YOU GOT  
ALL KINDS OF ISSUES HERE BUT--

>> YES, YOUR HONOR.

>> WHY IS THAT NOT A FUNCTION TO  
DETERMINE WHAT THE FULL SCOPE  
IS, A MIXED QUESTION, THAT NEEDS  
THE JURY'S INVOLVEMENT AND  
DETERMINATION?

>> YOUR HONOR, BECAUSE THIS  
COURT HAS CONSISTENTLY  
DETERMINED THAT THE SCOPE OF THE  
DUTY OF CARE OWED BY A DEFENDANT  
TO A PARTICULAR PLAINTIFF UNDER  
THE FACTS AND CIRCUMSTANCES OF  
THE CASE IS A DECISION AS A  
MATTER OF LAW FOR THE COURT TO  
MAKE.

IN FACT--

>> WELL IF THAT IS THE CASE  
THEN, WE'RE GOING TO BE INVOLVED  
IN DETERMINING WHETHER CERTAIN  
SPEEDS AND CAR CRASHES ARE  
APPROPRIATE AND WE'RE HOLDING  
THEM TO A DIFFERENT STANDARD.  
ONE DRIVER TO ANOTHER, WEATHER  
CONDITIONS, ROAD CONDITIONS,  
ISN'T THAT WHERE WE'RE HEADED IF  
WE START GETTING INTO EVALUATING  
WHAT THE FACTS ARE AND SCOPE OF  
REASONABLE CARE?

REASONABLE CARE IS TO BE FIXED  
BY THE TRIER OF FACT, IS IT NOT?

>> WHETHER A PARTICULAR

DEFENDANT ADHERED OR USED REASONABLE CARE WITH RESPECT TO A PARTICULAR DUTY AND IN FACT, IT IS THE COURT THAT DETERMINES WHAT THE REASONABLE DUTY IS FOR THAT DEFENDANT.

BUT I AGREE WITH YOU, THAT IT COULD BE FOR THE JURY TO DETERMINE, UNDER A SPECIFIC SET OF CIRCUMSTANCES, ONCE THE COURT DEFINES SCOPE OF OF APPLICABLE DUTY REASONABLE DUTY FOR THE DEFT, JURY TO DETERMINE WHETHER THAT DEFENDANT USED REASONABLE CARE TO UPHOLD THAT DUTY.

>> WHY IS THAT NOT THE STANDARD OF REASONABLE CARE?

>> IT'S A FINE DISTINCTION. I THINK THE CONTROLLING CASE HERE, I THINK MCCAIN IS NOT THE CONTROLLING CASE. THIS COURT'S DECISION IN 1982 IN RUPP, IN THE RUPP CASE, RUPP VERSUS BRYANT IS REALLY CONTROL ON THIS ISSUE.

WHAT IS IMPORTANT IN RUPP THIS COURT STATED AND ACKNOWLEDGED IN THAT CASE SCHOOL BOARD OWES A GENERAL DUTY TO SUPERVISE ITS STUDENT, THERE ARE CIRCUMSTANCES WHEN THAT SUPERVISION, THERE ARE ALLEGATIONS OUTSIDE OF THE SCOPE OF A SCHOOL BOARD'S DUTY.

THAT CASE HAD TO DO WITH INJURY TO A STUDENT RELATED TO HAZING.

>> OFF CAMPUS, RIGHT.

>> ABSOLUTELY.

OFF CAMPUS.

>> THAT IS WHAT THEY WERE TALKING ABOUT.

THEY WERE NOT TALKING ABOUT THE DUTY OF REASONABLE CARE.

THE PLAINTIFF HERE, EVEN IF WE WERE TO ASSUME THIS IS REVERSED, WHICH I'M JUST DOING HYPOTHETICALLY, BUT EVEN IF IT WERE REVERSED HERE, THEY STILL HAVE A MOUNTAIN TO CLIMB WITH REGARD TO BRINGING IN TESTIMONY

WITH REGARD TO ESTABLISHING  
REASONABLE CARE ON BEHALF OF  
SCHOOL OFFICIALS IN CONNECTION  
WITH EXTRACURRICULAR ACTIVITIES.

>> I WOULD AGREE BUT, WOULD I  
LIKE TO GET BACK TO YOUR FIRST  
COMMENT ABOUT THE FACT THAT RUPP  
IS NOT CONTROLLING BECAUSE IT  
INVOLVED AN EVENT OFF CAMPUS.  
BUT WHAT IS IMPORTANT IN RUPP,  
IS THAT RUPP QUOTED TO THE  
BENTON CASE.

BENTON WAS A CASE THAT PRECEDED  
RUPP THAT INVOLVED TWO STUDENTS  
INJURED WHEN THEY WERE INVOLVED  
IN A TUG-OF-WAR WITH A BATHROOM  
DOOR.

ONE OF THE KIDS GOT INJURED.  
AGAIN THIS WAS DURING THE SCHOOL  
DAY.

WHAT THIS COURT DID IN RUPP IT  
ACKNOWLEDGED AND APPROVED OF  
BENTON WHEN THE BENTON COURT HAD  
DETERMINED EVEN THOUGH A SCHOOL  
BOARD AND TEACHERS OWE A GENERAL  
DUTY TO SUPERVISE THEIR  
STUDENTS, THAT THEY ARE NOT  
TASKED WITH SUPERVISING STUDENTS  
AT ALL TIMES AND IN ALL  
MOVEMENTS OF THE STUDENTS, EVEN  
DURING THE SCHOOL DAY AND--

>> LET ME ASK YOU.

THEY CLAIM IN THEIR BRIEF THAT  
SECTION 106.165, SPECIFICALLY  
SAYS, EACH OF PUBLIC SCHOOL,  
MEMBER OF THE FLORIDA HIGH  
SCHOOL ATHLETIC ASSOCIATION BE I  
TAKE IT THIS SCHOOL WAS?

>> YES, YOUR HONOR.

>> MUST, MUST, HAVE AN  
OPERATIONAL, AUTOMATED EXTERNAL  
DEFIBRILLATOR ON SCHOOL GROUNDS.  
WHY DOESN'T THAT, WHY CAN'T WE  
READ INTO THAT THE LEGISLATURE  
IS ESTABLISHING A DUTY ON THE  
PART OF ANY SCHOOL THAT PROVIDES  
ATHLETIC-- SUCH AS SOCCER,  
FOOTBALL, BASEBALL, GET HIT IN  
THE HEAD WITH A BASEBALL, HEART  
CAN STOP.

WHY ISN'T, WHY CAN'T WE  
INTERPRET THAT TO MEAN THAT THE  
LEGISLATURE AS A MATTER OF  
POLICY HAS DECIDED THAT THERE IS  
THIS RESPONSIBILITY, THERE IS  
THIS DUTY?

>> YOUR HONOR, I THINK WHAT WE  
HAVE TO DO IN LOOKING AT THAT  
STATUTE IS LOOK AT THE SPECIFIC  
EXPRESS LANGUAGE OF THE STATUTE.  
THE STATUTE REQUIRES THAT A  
SCHOOL, AND IN THIS CASE  
RIVERDALE HIGH SCHOOL, BEING A  
VERY SPRAWLING HIGH SCHOOL HAVE  
ONE OPERATIONAL AED ON SCHOOL  
GROUND AND HAVE PEOPLE TRAINED  
TO USE IT.

WE KNOW IN THIS CASE, MY CLIENT  
COMPLIED WITH THAT STATUTE.  
IN FACT IT EXCEEDED THE STATUTE,  
BECAUSE IT HAD TWO  
OPERATIONAL--

>> THAT IS LIKE HAVING A FIRE  
EXTINGUISHER AND NOT USING IT.  
BUY IT BECAUSE IT LOOKS GOOD.  
THERE IS A REASON FOR IT.

>> I WOULD ALSO POINT TO THE  
FACT THAT, WHAT IS OMITTED FROM  
THAT STATUTE AND THE  
LEGISLATURE, IF THEY HAD WISHED  
TO IMPOSE AN OBLIGATION ON THE  
SCHOOL, WHICH IS AN AREA THAT  
HAS NEVER BEEN DELVED INTOED BY  
THE COURTS OF THIS STATE, IF  
THEY WISHED TO INCLUDE THAT THEY  
COULD HAVE INCLUDED THAT CREST  
LANGUAGE IN THE STATUTE AND THEY  
CHOSE NOT TO.

>> THE LEGISLATURE SAID YOU MUST  
HAVE ONE AVAILABLE.  
THEY DID IN FACT HAVE ONE  
AVAILABLE.

DOES THAT MEAN IT IS SUPPOSED TO  
ACTIVATE ITSELF?  
TO HAVE SOMEBODY THERE TO, WITH  
THE ABILITY TO USE IT?

>> YOUR HONOR, THEY DID HAVE  
SOMEBODY THERE.  
THEY HAD TWO PEOPLE THERE WHO  
WERE CERTIFIED IN THE USE OF

AEDs.

>> SO WHEN IT WAS CALLED FOR BY THE COACH, WHY DIDN'T SOMEBODY--

>> THE IMPORTANT FACTUAL DISTINCTION IS THAT NOT ONE PERSON ON THE FIELD THAT DAY, WE HAVE THE TESTIMONY FROM COACH G USADA, WHO TESTIFIED HE CALLED FOR AN AED BUT THERE IS NO EVIDENCE IN THIS RECORD THAT ANY PERSON ON THE SCHOOL THAT DAY--

>> ISN'T THAT A FACTUAL ISSUE THAT A JURY SHOULD BE DETERMINING?

>> I DO NOT THINK IT IS BECAUSE FIRST OF ALL, WHAT WE'RE TALKING ABOUT HERE IS THE SCOPE OF THE LEGAL DUTY AND IT IS THIS COURT, AS TRIAL COURT'S TASK TO DETERMINE THE SCOPE OF THE LEGAL DUTY AND IN DETERMINING THAT SCOPE, THE COURT LOOKED AT L.A. FITNESS AND LOOKED AT THE RESTATEMENT, 314-A.

>> THIS IS REAL, REAL DIFFERENCE BETWEEN THE COMMERCIAL ESTABLISHMENT, ITS OBLIGATIONS, OBLIGATIONS OF A SCHOOL WHO HAVE BEEN HELD, HAVE SPECIFICALLY BEEN HELD TO OPERATE AS PARENTS PATRIARCH FOR OUR CHILDREN.

>> I DO NOT THINK THAT THERE IS, YOUR HONOR.

I THINK IF--

>> WOW.

WOW, IS ALL I CAN SAY IF THAT WHAT IS YOUR INTERPRETATION OF THE LAW IS.

I DON'T THINK IT COULD BE ANYMORE CLEAR.

IF YOUR ARGUMENT IS PREMISED ON THAT, I DON'T SEE HOW YOU CAN PREVAIL IN THIS CASE.

>> YOUR HONOR, WE HAVE SEVERAL ARGUMENTS HERE.

THE FIRST IS JURISDICTIONAL ONE. I WOULD ALSO POINT YOUR HONOR AND BASIS FOR THAT IS EXACTLY THE ANALYSIS THAT THE SECOND



DISTRICT USED IN THIS CASE WITH REGARD TO THE DUTY OF A SCHOOL BOARD IN THAT, BASICALLY IN REVIEWING THE CASES THAT THE DUTY WAS A REASONABLE DUTY. AND IN FACT WOULD I ALSO STATE THAT IF YOUR HONOR LOOKS AT RESTATEMENT 314-A, WHICH IS REALLY WHAT THIS AREA OF CASE SAW, ESPECIALLY WHEN WE'RE TALKING ABOUT A CASE OF MISFEESANCE, VERSUS NON-FEES SANS, WHICH IS ALSO AN IMPORTANT ISSUE IN THIS CASE, WE'RE TALKING ABOUT A FAILURE TO PROVIDE AFFIRMATIVE AID TO SOMEBODY, RATHER THAN BASICALLY CREATING A NEGLIGENT ACT WHICH SETS UP A WHOLE ANOTHER SET OF, WHICH IS REALLY WHERE THE DUTY OF THE SCHOOL BOARD ARISES. BUT IF YOU LOOK AT THE RESTATEMENT, 314-A, IT GIVES SPECIFIC ILLUSTRATIONS WHEN A SPECIAL RELATIONSHIP EXISTS THAT GIVES RISE TO A REASONABLE DUTY OF CARE AND IN THE RESTATEMENT 314-A, IT STATES THAT THE DUTY IS TO GIVE BASIC FIRST AID AND TO SUMMON IMMEDIATE MEDICAL ASSISTANCE. IF YOU LOOK AT THE ILLUSTRATIONS IN 314-A OF THE RESTATEMENTS IT GIVES A, IT GIVES A PASSENGER IN A TRAIN EXAMPLE. IT GIVES AN EXAMPLE OF A BUSINESS AND A PATRON AND A GIVES AN EXAMPLE OF A KINDERGARTNER TO A SCHOOL. AND THAT--

>> ORDER DOESN'T FOLLOW THAT RULE WITH REGARD TO CHILDREN, IS TAKE A LOOK AT THE RUPP CASE.

>> YOUR HONOR, I AGREE WITH THE RUP PURCHASE CASE.

WE BELIEVE THAT ACTUALLY THIS, THIS COURT, THE DUTY THIS COURT, IF YOU LOOK AT, FIRST OF ALL, THAT THIS COURT DOES NOT HAVE JURISDICTION BECAUSE OF THE RUPP

ANALYSIS AND THE FACT THAT RUPP v. BRYANT STANDS FOR THE PROPOSITION THAT THE GENERAL DUTY OWED BY A SCHOOL BOARD DOES NOT ALWAYS ENCONCLUDE BASICALLY THE DUTY TO PROVIDE ANY AND ALL AID AND THAT THERE ARE SITUATIONS WHEN THE ALLEGATIONS OF A PARTICULAR CASE ARE OUTSIDE OF THE SCOPE AFTER SCHOOL BOARD'S DUTY.

THAT IS WHAT RUPP SETS UP.

>> WHAT IF, IF YOU HAVE A FORESEEABILITY ISSUE?

AREN'T WE AGAIN, IF WE'RE ALL DOING IT, CONFLATING, THERE IS A DUTY, WHICH IS PART, A MATTER OF LAW, AND WITHIN THAT FORESEEABILITY IS PART OF ESTABLISHING DUTY.

BUT WHETHER THE PERSON OR ENTITY EXERCISED REASONABLE CARE GOES TO THE BREACH.

WOULD YOU ACCEPT THAT THOSE ARE TWO SEPARATE ELEMENTS THAT YOU LOOKED TO, THAT IS DUTY, AND THEN, WHETHER THERE'S A BREACH OF THE DUTY?

>> I MEAN I AGREE THAT IS PART OF THE ELEMENTS.

>> SO THE ISSUE IS ALREADY, YOU AGREE THAT THE COMMON LAWN DUTY IS, FOR A SCHOOL BOARD IS TO APPROPRIATE POST-INJURY EFFORTS, TO PROTECT AN INJURY AGAINST AGGRAVATION.

THAT IS UNIQUE IN OUR SCHOOLS. WE DON'T HAVE THAT DUTY PESTIFIED FOR BUSINESSES OR TRAINS AND, WHATEVER YOU'RE, OTHER SITUATIONS.

SO NOW, THE ISSUE AS TO WHETHER YOU'RE SAYING, WELL, THE COURT, AS A MATTER OF LAW COULD LIMIT THAT DUTY TO SAY IT ONLY MEANS FIRST AID, AS A MATTER OF LAW, AS OPPOSED TO SAYING WHAT THEY DID IN THE CIRCUMSTANCES WAS EITHER REASONABLE OR NOT.

AND, THAT'S WHERE I'M STILL, I

FEEL LIKE WE'RE PASSING ON THIS BECAUSE IN THIS CASE AS, AS WAS STATED, THERE WAS A FUNCTIONING AED.

THERE IS TESTIMONY, AT LEAST IN THE RECORD THAT THE COACH CALLED FOR IT.

AND IT WASN'T USED.

I DON'T, I'M TRYING TO UNDERSTAND, WHY ISN'T THAT, AT THAT POINT A QUESTION OF WHETHER THEY BREACHED IT BY NOT BRINGING THIS FUNCTIONING AED TO BE USED?

>> BECAUSE THE SCOPE OF THE SCHOOL BOARD'S OBLIGATION WAS THE OBLIGATION TO PROVIDE BASIC FIRST AID AND--

>> YOU JUST ADDED SOMETHING IN THERE ABOUT A SCOPE THAT I DON'T, AND YOU'RE SAYING RUPP, IF WE LOOK AT RUPP, THE SECOND DISTRICT'S CASE IS CONSISTENT WITH RUPP?

IS THAT WHAT YOU'RE SAYING?

>> WHAT I'M SAYING I BELIEVE RUPP IS MORE CONTROLLING ON THIS CASE BECAUSE RUPP ACKNOWLEDGES EVEN THOUGH A SCHOOL BOARD HAS A GENERAL DUTY TO SUPERVISE ITS STUDENTS THAT IT IS NOT RESPONSIBLE AT ALL TIMES IN ALL PLACES FOR ANY INJURY THAT MAY HAPPEN TO A STUDENT.

>> THAT WAS WITH REFERENCE TO OFF, CAMPUS, WASN'T ISN'T.

>> YES IT WAS BUT IT ACKNOWLEDGED BENTON.

I THINK BENTON WAS ON SCHOOL, IT HAPPENED IN THE BATHROOM AT SCHOOL.

>> ISN'T DIFFERENCE ATHLETIC EVENT WHERE YOU EXPECT SOMEBODY TO GET HURT?

THEY OBVIOUSLY EXPECTED IT BECAUSE THEY HAD AED IN THE GOLF COURT.

THEY FORESAW THIS OBVIOUSLY.

>> AND YOU'RE HONOR, .

>> THAT IS DIFFERENCE FROM KIDS FIGHTING IN BATHROOM.

NOBODY IS SUPERVISING.  
YOU HAVE ACTUALLY PEOPLE  
WATCHING GAME, WITH IS THE AED  
AUTOMATIC THERE.  
COACH ASKED FOR IT.  
MAYBE I'M MISSING SOMETHING.  
>> ONE OF THE KEY ISSUES IS  
AGAIN, IT IS NOT THAT NOBODY  
SAT, I THINK IT IS IMPORTANT TO  
BRING OUT THIS IS NOT A  
SITUATION WHERE PEOPLE SAT IDLY  
BY AND WATCHED THIS STUDENT ON  
THE GROUND.  
THE FACT--  
>> YOU WOULD CONCEDE IF THEY DID  
THAT THEY HAVE A DUTY NOT TO DO  
THAT?  
>> THEY HAVE A DUTY NOT TO DO.  
THAT THEY HAVE A DUTY TO RENDER  
BASIC FIRST AID AND SUMMON 911.  
>> LET'S TALK ABOUT THAT.  
SOME A DECISION IN 1950, THAT  
THE SCHOOL BOARD HAS AN  
OBLIGATION TO USE FIRST AID, AND  
AS MEDICAL SCIENCE IMPROVES OVER  
THE NEXT 50 YEARS, IS THAT, YOUR  
POSITION IS THAT IT SHOULD STAY  
AS 1950s AND NOT HAVE EVIDENCE  
AS TO THE STANDARDS FOR CURRENT  
DAY FIRST AID TO BE RENDERED TO  
OUR CHILDREN.  
>> NO, YOUR HONOR.  
I'M NOT SAYING THAT.  
>> OKAY SO THEY SHOULD BE.  
SO WE SHOULD HAVE EVIDENCE AS TO  
WHAT THAT STANDARD IS, EVEN  
WITHOUT, EVEN WITHOUT A STATUTE,  
WHY SHOULD WE NOT PERMIT  
EVIDENCE AND THEN LET THE  
COMMUNITY, THROUGH THE JURY,  
DECIDE WHAT OUR STANDARD OF DUTY  
IS AND WHAT THE WHETHER IT HAS  
BEEN BREACHED BY DOING OR NOT  
DOING THIS?  
WHY IS THAT NOT THE LAW?  
>> WELL, I THINK THAT THE COURT  
EXPRESSLY RECOGNIZED THAT THIS,  
THIS IS EXACT WORDS WERE BY THE  
SECOND DISTRICT, THIS IS NOT A  
STAGNANT PROPOSITION, OKAY?

THAT AS AID IS CONSTANTLY  
EVOLVING, THAT THEY CAN FORESEE  
CIRCUMSTANCES WHERE POSSIBLY  
DOWN THE ROAD THEY THINK THAT  
THAT IS REQUIRED.

BUT AT THIS STAGE, AGAIN WE'RE  
TALKING ABOUT ALSO--

>> BASED ON WHAT?

THIS IS ALWAYS THE COURTS THAT  
DO THIS?

WE DON'T BASE THAT ON THE  
EVIDENCE AND ALLOW A  
DETERMINATION, WE HAVE A BROAD  
PRINCIPLE, AS TO WHAT FIRST AID  
AND IF THAT'S DIFFERENT FROM  
1950 UNTIL TODAY, THAT WE DON'T  
NEED EVIDENCE TO DO THAT?  
JUST LEAVE IT TO A BUNCH OF US  
IN BLACK ROBES SITTING ON THE  
BENCH TO COME UP, PULL IT OUT OF  
THE AIR, THAT IS WHAT THE  
DECISION IS?

>> I THINK WHAT THE COURT LOOKS  
TO AND WHAT THE COURT DID IN  
THIS CASE, LOOK AT THE FACTS AND  
CIRCUMSTANCES, LOOKED AT THE  
CASE LAW IN THIS AREA, LOOKED AT  
RESTATEMENTS AND LOOKED AT WHAT  
THE GENERAL ATMOSPHERE WAS,  
DETERMINED AT THIS POINT IN TIME  
WHEN THIS INCIDENT OCCURRED BACK  
IN 2008, THAT THE OBLIGATION WAS  
NOT TO HAVE TO AFFIRMATIVE DUTY  
FOR A SCHOOL BOARD, WHO IS  
COMPANLY PRIZED OF TEACHERS--  
COMPRISED OF TEACHERS,  
ADMINISTRATORS, LAYMEN, TO  
DIAGNOSE--

>> ATHLETIC TRAINERS.

>> BUT NOT ALL HIGH SCHOOLS HAVE  
ATHLETIC TRAINERS, YOUR HONOR.

>> THAT IS ANOTHER POINT THAT  
COMES INTO THE FACTUAL EQUATION.

>> CORRECT.

>> NOT FOR A COURT BUT FOR A  
JURY TO MAKE THAT DETERMINATION.

>> AND YOUR HONOR, I DISAGREE  
BECAUSE I BELIEVE THAT THIS  
COURT'S LONG-STANDING PRECEDENT  
IS, THAT THE SCOPE OF A

DEFENDANT'S LEGAL DUTY AND WHETHER THEY HAVE TO USE A PARTICULAR, IN THIS CASE AN AED IS A DECISION THAT IS DECIDED BY THE COURT.

>> WHAT IF SOMEBODY HAD GOTTEN THE AED FROM THE GOLF CART AND PUT IT ON THE GROUND, THEY'RE WORKING ON THIS STUDENT.

WOULD THERE BE A LEGAL OBLIGATION TO USE IT OR NOT?

>> NO, YOUR HONOR, I DO NOT BELIEVE THERE IS BECAUSE THE LEGAL OBLIGATION IN THIS CASE, PUTTING IT ON THE GROUND NEXT TO SOMEBODY DOES NOT HEIGHTEN THEIR LEGAL OBLIGATION.

AND I THINK IT WOULD REALLY BE A DISTORTION OF THE UNDERTAKER'S DOCTRINE.

>> YOU HAVE A COACH, QUALIFIED, I ASSUME TO USE THIS DEVICE, RIGHT.

>> YES, YOUR HONOR.

>> DEVICE IS THERE.

AND THERE WOULD BE NO LEGAL OBLIGATION FOR THAT COACH TO USE IT?

>> YES, YOUR HONOR.

AND IN FACT, ONE OF THE CASES THAT WE CITED IN OUR BRIEF IS A NEWYORK CASE CALLED DEJULIO.

THIS IS PERFECT EXAMPLE WHY LAYMAN CAN NOT BE RESPONSIBLE FOR THIS HEAVY ONUS.

IN DEJUIO, RECOGNIZING IT IS NOT A BUSINESS, BUT A HEALTH CLUB. THEY HAD A PATIENT WHO COLLAPSED AND--

>> ISN'T THAT AKIN YOU KNOW CPR BUT YOU HAVE NO OBLIGATION TO USE IT ON THIS DYING KID?

>> THAT IS WHAT THE LAW IS. BUT THEY DID DO CPR IN THIS CASE.

>> I UNDERSTAND.

BUT ISN'T, IF YOU HAVE A DEVICE THERE, YOU'RE TRAINED TO USE IT AND MAY SAVE THEIR LIFE BUT YOU HAVE NO OBLIGATION TO DO THAT?

>> WELL I THINK THERE IS NO  
LEGAL OBLIGATION AND YOUR HONOR,  
WHAT HAPPENED IN DE JULIO, I  
THINK REASON WHY LAYMEN CAN NOT  
BE TASKED WITH THIS  
RESPONSIBILITY.

WHAT HAPPENED IN DE JULIO, THE  
PERSON TRAINED IN THE USE OF AED  
AND RECOGNIZED ONE WAS  
NECESSARY, WENT TO GO FIND IT.  
HE WENT OVER TO THE GLASS WHERE  
IT WAS HELD, SIMILAR TO THE AED  
THAT YOU HAVE OVER HERE BEHIND  
GLASS.

WENT OVER TO THE GLASS WHERE IT  
WAS HELD, AND PANICKED.

HE PANICKED BECAUSE HE COULDN'T  
FIND THE KEY.

TURNS OUT IT WAS UNLOCKED THE  
ENTIRE TIME.

BUT WHEN YOU ASK FOR A SCHOOL  
BOARD WHO IS COMPRISED OF  
LAYMEN, OF TEACHERS, WHO HAVE  
ONLY TAKEN A THREE-HOUR RED  
CROSS COURSE ON HOW TO USE AN  
AED AND PERFORM CPR, YOU ALWAYS  
HAVE THE RISK THAT THEY COULD  
PANIC.

THEY COULD FREEZE IN AN  
EMERGENCY.

>> PERHAPS THE PROBLEM HAVING  
YOUR ARGUMENT IS, REALISTIC BUT  
I'M STILL STUCK ON 1006.165.  
LEGISLATURE REQUIRES SCHOOLS TO  
HAVE THIS AND TO TRAIN PEOPLE ON  
HOW TO USE IT.

YOU HAD IT.

IT WAS--

[INAUDIBLE].

YOU HAD PEOPLE WHO KNEW HOW TO  
USE IT.

THERE IS NOT A DUTY THERE.

>> THAT STATUTE IN OF ITSELF  
DOES NOT HAVE LANGUAGE  
AFFIRMATIVELY REQUIRES IT TO BE  
USED--

>> SO YOU THINK THE STATUTE SAYS  
AND YOU HAVE IT THERE, YOU DON'T  
HAVE TO WORRY ABOUT USING IT?  
THAT DOESN'T MAKE SENSE.

THAT IS NONSENSICAL READING OF  
STATUTE.

>> I DON'T THINK IT IS NONSENSE  
CAL READING AT PAUL.

LEGISLATURE KNOWS HOW TO CREATE  
A CAUSE OF ACTION IF THEY  
REQUIRED AFFIRMATIVE ACTION TO  
SCHOOL BOARD TO USE IT.

>> HAVE AED S IN A SCHOOL AND  
YOU FIND IT.

>> I GOT IT.

>> I THINK THE PURPOSE,  
OBVIOUSLY THE PURPOSE IS TO  
PROMOTE THE USE AND PROMOTE THE  
USE OF THESE IF YOU HAVE A  
SITUATION WHERE YOU HAVE SOMEONE  
WHO DIAGNOSE SUCCESSES THE NEED  
FOR IT AND WHO IN, PEOPLE WHO  
KNOW WHERE IT IS, AND HEAR IT,  
AND IF THEY DIAGNOSE, USUALLY  
IT'S A CASE OF A DOCTOR AND IN  
THIS CASE WE HAD A CARDIAC NURSE  
THERE, WHO DIDN'T DIAGNOSE AND  
WHO DIDN'T CALL FOR IT.

BUT IF YOU HAVE A SITUATION--

>> ALL THAT MEANS, THAT IS PART  
OF THE FACTUAL PREDICATE AND YOU  
CAN PUT ON EVIDENCE WITH REGARD  
TO THAT AND THAT IS WHY WE HAVE  
JURIES TO DECIDE WHO IS CORRECT.  
I MEAN, THIS IS, YOU TO ME, THAT  
IT IS, IN 2014, THAT IT IS,  
VERY, VERY OF QUESTIONABLE LOGIC  
TO SAY THIS STATUTE MEANS  
NOTHING AND YOU CAN HAVE IT OUT  
THERE, YOU LAY THIS EQUIPMENT ON  
THE GROUND, DON'T HAVE TO USE IT  
WHEN THE LEGISLATURE HAS SAID  
YOU MUST HAVE ONE OF THESE.

WE'RE EVEN GOING TO GIVE YOU  
IMMUNITY IF YOU USE IT.

I MEAN, I'M SORRY, I'M JUST  
MISSING THIS IS GOING RIGHT OVER  
MY HEAD, AS, VIRTUALLY  
NONSENSICAL.

>> YOUR HONOR, YOU HIT A GREAT  
POINT IS THAT, WHICH, AN  
ARGUMENT, I HAVEN'T GOTTEN TO  
SPEND MUCH TIME ON WHICH IS THE  
FACT THAT THE IMMUNITY IS



PROVIDED UNDER THE CARDIAC  
ARREST SURVIVAL ACT.

>> IF YOU USE IT.

>> I BELIEVE THAT THE, WHAT  
THAT, WHAT THAT STATUTE PROVIDES  
IS TWO LAYERS OF MANY IMMUNITY.  
ONE FOR PEOPLE WHO USE OR  
ATTEMPT TO USE IT AND ONE FOR  
ACQUIRERS.

THE REFERENCE JUSTICE CANADY  
MADE ABOUT SUCH LIABILITY REFERS  
BACK TO CIVIL LIABILITY.

SUCH, THAT AND THAT AN ACQUIRER  
IS IMMUNE AND THE REASON FOR  
THIS IS SIMPLE.

>> YOU ABOUT THE CIVIL, BUT THE  
CIVIL LIABILITY IS CIVIL  
LIABILITY FROM ANY HARM  
RESULTING FROM THE USE OR  
ATTEMPTED USE OF SUCH DEVICE.  
THAT WORD SUCH, LATER ON, IS AN  
INDICATOR, LET'S GO LOOKING BACK  
FOR WHAT SUCH LIABILITY IS.  
AND WHEN YOU GO LOOKING BACK, IT  
IS FOR, THE USE, OR ATTEMPTED  
USE OF SUCH DEVICE.

I DON'T UNDERSTAND HOW YOU CAN  
INTERPRET THAT OTHERWISE.  
HELP ME.

>> YOUR HONOR, I INTERPRET IT  
SOULIAS TO THE CIVIL LIABILITY.  
I THINK BY THE REFERENCE TO SUCH  
LIABILITY, IT RELATES BACK TO  
CIVIL LIABILITY.

AND I THINK THERE'S A REALLY,  
TRULY IMPORTANT PURPOSE.

THIS WAS THE CARDIAC ARREST  
SURVIVAL ACT UNDER FLORIDA  
STATUTE WAS PATTERNED AFTER THE  
FEDERAL ACT.

AND WE KNOW FROM THE LEGISLATIVE  
INTENT THAT THE PURPOSE AND THIS  
APPLIES NOT ONLY TO SCHOOL  
BOARDS BUT ALSO TO BUSINESSES,  
THE PURPOSE IS TO PROMOTE THE  
USE OF THEM AND TO GET AS MANY  
PEOPLE AS POSSIBLE TO ACQUIRE  
THEM.

SO THAT WE BASICALLY HAVE THEM  
EVERYWHERE.

SO IF ANYBODY SUFFERS A CARDIAC ARREST, WE HAVE THE POSSIBILITY OF A LIFE-SAVING MEASURE THERE. BY NOT PROVIDING--

>> HOW DO YOU SAVE A LIFE IF YOU DON'T USE IT?

IT IS A PRETTY PICTURE ON THE WALL?

>> YOUR HONOR EVEN IDENTIFIED THERE IS RAMIFICATIONS TO USING IT.

>> THERE MAY BE BUT YOU HAVE IMMUNITY, THAT'S WHERE IMMUNITY COMES IN.

IF YOU TRY TO USE IT AND HE SCREWS UP THEN--

>> CORRECT.

BUT TO NOT SAY THAT THE CARDIAC ARREST SURVIVAL ACT APPLIES TO AN ACQUIRER, REALLY DEFEATS THE PURPOSE OF PROMOTING BUSINESSES AND PEOPLE TO GET THESE DEVICES. AND SO, TO READ INTO THAT THAT YOU HAVE TO USE IT, WHEN YOU HAVE A SITUATION SUCH AS HERE, WHERE YOU HAVE A CARDIAC NURSE WHO IS DOING CPR ON THIS BOY AND DOESN'T RECOGNIZE THE NEED FOR AED AND DOESN'T ASK FOR ONE--

>> THAT IS JURY ARGUMENT.

THAT IS JURY ARGUMENT.

THAT MAY BE A FANTASTIC JURY ARGUMENT.

>> WHEN YOU HAVE NOBODY WHO KNOWS THAT THE AED IS THERE, AND, WHO PEOPLE WHO KNOW, WHO DON'T HEAR ANYBODY ASK FOR IT AND ARE NOT TRAINED, MEDICAL PERSONNEL, ARE AGAIN LAME MEN, HAS TO HAVE THIS ONUS I THINK IT IS UNTENABLE FOR SCHOOL BOARDS OF THIS TIME.

>> WAY OUT OF TIME.

>> THANK YOU, YOUR HONORS.

>> COUNSEL?

I WILL GIVE YOU AN EXTRA THREE MINUTES BECAUSE THAT'S WHAT SHE GOT, IF YOU WANT TO USE IT.

>> I JUST WANT TO MAKE SURE THE COURT GETS BACK TO THIS CASE.

NOT WORRY ABOUT RENOUNCING RULES  
WHEN YOU HAVE TO USE AN AED  
BECAUSE WE'RE NOT ASKING.  
WE'RE ASKING THAT A JURY BE ABLE  
TO DECIDE UNDER THE UNIQUE  
CIRCUMSTANCES OF THIS CASE,  
WHERE THE AED WAS THERE, RIGHT  
THERE, 10, 20 FEET, FROM ABEL  
LIMONES AS HE LAID ON THE GROUND  
AND STOPPED BREATHING AND  
PULSELESS, AND HIS COACH MADE  
THAT ASSESSMENT AND WANTED AED,  
AND SCHOOL ADMINISTRATORS  
TRAINED TO USE IT IN ACCORDANCE  
WITH THE STATUTE DIDN'T GIVE IT  
TO HIM.

THAT IS THE JURY QUESTION.  
WAS THIS REASONABLE ON THE  
SCHOOL DISTRICT'S PART TO  
PROVIDE POST-INJURY PROTECTION  
TO KEEP HIM FROM HAVING HIS  
CONDITION WORSEN.

>> IF THIS WAS A CASE WHERE THEY  
HAD USED IT, LIKE THEY DID CPR  
AND HE STILL DIED, WHERE WOULD  
THAT FIT INTO WHETHER, DOES IT  
STILL GO TO THE JURY ON, THEY  
DIDN'T DO ENOUGH CPR OR, AND  
THEN IMMUNITY COMES IN?  
SO WHERE WOULD THAT FIT IN THE  
CONTINUUM IF THEY HAD IN FACT  
USED IT?

>> IF THE AED HAD BEEN PROVIDED  
TO THE COACH AND HE USED IT, I  
THINK THE IMMUNITY STATUTES COME  
INTO PLAY.

>> THERE WOULD BE IMMUNITY AND,  
THEN WE WOULDN'T BE GETTING  
WHERE IT FITS INTO DUTY OR  
BREACH?

>> WELL, THE CARDIAC ARREST  
SURVIVAL ACT APPEARS TO PROVIDE  
COMPLETE IMMUNITY WHEN YOU USE  
IT, OR, THE PERSON WHO ACQUIRED  
IT AND GAVE IT TO THE PERSON--  
>> REALLY TRYING TO ENCOURAGE AT  
LEAST IT GETS USED.

>> EXACTLY.

>> HERE IN FACT, IF WE REALLY  
UPHOLD THE SECOND DISTRICT WE'RE

ACTUALLY ENCOURAGING NON-USE.

>> YES.

THE 1006 STATUTE, CHIEF JUSTICE,  
NOT ONLY DOES IT SAY THAT THEY  
MUST HAVE AN AED BUT IT REQUIRES  
PEOPLE TO BE TRAINED WHO QUOTE,  
ARE REASONABLY EXPECTED TO USE  
IT.

SO, AND THEN IT PROVIDES  
IMMUNITY FOR ITS USE.

SO I AGREE THAT IT WEIGHS ON  
THAT ISSUE OF WHETHER OR NOT IT  
SHOULD BE USED BUT, YOU DON'T  
HAVE TO DECIDE THAT IN THIS  
CASE, AGAIN.

WE THINK THE JURY DECIDE THE  
BREACH, PROXIMATE CAUSE AND  
DAMAGES ISSUES IN THIS CASE.  
THANK YOU VERY MUCH.

>> THANK YOU, COUNSEL.

COURT IS IN RECESS UNTIL  
TOMORROW MORNING AT 9:00.