

**TASK FORCE On  
COMPLEX CIVIL LITIGATION**

***Panel Discussion & Public Hearing***

Orlando, Florida  
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REPORTED BY:  
Tiffany N. Phillips,  
Court Reporter

**Panel**

***CHAIR: JUDGE TOM BATEMAN***

**Judge Velasquez , California**

**Judge Fields, Arizona**

**Mr. Haig, New York**

**Judge Lauten, Florida**

**Judge Nielsen, Florida**

## PANEL DISCUSSION

CHAIR: I'm going to go ahead and call the meeting to order. We are a couple minutes behind but I want to make sure that everybody arrives, that are supposed to be here. And those that generally that are left, 3 people said they definitely would not be here. So welcome to everyone, uh this is, I hope going to be an informative session for our Task Force folks that are here today, that are either going through it, are living it, have gone through it, the things that we've been talking about in hopes to get some information that will help us make some recommendations on our part. I do want to point out that we have a court reporter here, uh, so let me tell you this, to calm any fears about names going into the transcript; the only names going into the transcript, the only names that are going to go in the transcript are the people that are speaking, so I warn you ahead of time. The transcript will show question, and then it will hopefully have the response from the person, so we know from that perspective of whose whose thought was being made. I want to, what we did, we put together what we are hoping are some areas for discussion, this is - - we're not going to go down and ask all of those questions, but there are areas for discussion sent to you ahead of time so you can be thinking about things perhaps you want to uh ask, and ask the Task Force members if you have questions or comments, please speak up, don't be - - speak up, we want to - - the depths of the knowledge of these folks, we can do that. I want to welcome Chief Justice Lewis who is not a member of the task force but obviously has an interest in this issue. He's going to be

coming in and out he has other things to do. We also have Justice Pariente here also, and I'm not sure how long you are going to be able to stay. She will ask questions, I guarantee you that she will ask questions. Mr. Theodore Babbitt, and Judge Lynch from Broward County. Let me, let me do this;; let me start by introducing to you our panel members. I'm going to, I will start over here, I will go from left to right and start with Judge Velasquez, and a little bit of information on each of them. So let me tell you a little bit about them so that we will have an idea of who they are and what they do. Judge Velasquez is um trained at the University, at the Loyola University Law School in Los Angeles, and holds a Bachelors of Arts degree from California State University. He's been on the Superior Court which I think is the general jurisdiction court in California since lets see, 1990. He sits on the Civil Panel, what they call it in California, and now is the supervising judge for the Complex Civil Panel now. He has chaired the Trial Court Coordination Rules and Forms Subcommittee and has also been a member and a current member of the Superior Court Rules and Forms Committee, so he has a lot of experience to bring and we welcome you, and thank you for coming all this way to help us try to move forward. Next to him is Judge Kenneth Fields. Judge Fields is specially assigned to the Special Assignment/Civil Judge for the Superior Court of Arizona in Maricopa County, Phoenix. That also is the general jurisdiction Court, correct? And I believe you are retiring as of last Saturday or this Saturday? This coming Saturday he will be

retired but continuing to sit as a Senior or retired Judge. He is from Kentucky and went to Kentucky, University of Kentucky Law School and also has been on the bench since 1989 and we are really interested in hearing about from you is this paperless and electronically filing of documents. You know a lot of us have their own - - in that area, so since 2002, he's been assigned to the Complex Civil Litigation Court which is a paperless electronic filing docket. And I believe that in California they have a couple of electronic courts too.

JUDGE VELASQUEZ: We are rolling it out to the whole court;; we are calling it paper on demand.

Paper on demand. Okay. Now you have some finalfinal projects, but now its going through the whole court?

JUDGE VELASQUEZ: Yes.

Next to Judge Fields is Mr. Robert Haig. Mr. Haig is an Attorney with the law firm of Kelley Drye and Warren in NewNew York City. He practices in commercial, products liability and other civil litigations in FederalFederal and State Courts. He graduated from Yale and Harvard Law School. He has a very extensive history with regards to commercial litigation in New York and has been, are you now the Director of the Committee for Modern Courts?

MR. HAIG: Somewhat, yes.

He, in 1995 Chief Judge of the State of New York Judith Kaye and Chief Administrative Judge Leo Milonas established the Commercial Courts Task Force of New York to create and refine the Commercial

Division of the Supreme Court of the State of New York, and Mr. Haig and Judge Milonas co-chaired that. He has created and has been involved in the creation of business courts in many states and in other countries. He has written and lectured extensively on these topics and is Editor-in-Chief on several of the publications including Business and Commercial Litigation in Federal Courts. So we welcome Mr. Haig.

Sitting next to Mr. Haig is Judge Frederick Lauten, my friend. Judge Fred Lauten is a Circuit Judge in Orlando here in the 9<sup>th</sup> Judicial Circuit. He is officiating for Judge Roche who you know is a member of the bar committee. Judge Lauten has been a Circuit Court Judge since 2000, prior to that he was on the County Court bench. He went to Rollins College J.D. Villanova University. He is the Dean of our Florida Judicial College, so all of the judges that come on the bench new to the court will go to the Florida Judicial College - - and Fred runs that program and I am proud to say that I am one of the folks who just left. Judge Lauten is in that division with Judge Roche I believe now. Two of them are in the, in their division has changed names a little bit, but it is the business court or commercial litigation court, so hopefully we will find out what they are doing and how things are going. You also have some electronic calendaring I think.

JUDGE LAUTEN: As of January all cases are electronically filed.

All electronically filed. So we are looking forward to hearing some of that as well. Then next to Judge Lauten is Judge Rick Nielsen. Judge Nielsen is in the 13<sup>th</sup> Circuit in Tampa. He went to the University of Florida Law School as Law Review Editor and as a - - undergrad at the University of New Mexico. He is currently assigned to the Complex Business Litigation division in Hillsborough Hillsborough County.

This is a new program.

JUDGE NIELSEN: January 22<sup>nd</sup>.

January okay, and that was, prior to that he did general, civil and juvenile, and also Judge Nielsen is involved in the Advanced Judicial College, he is the Civil what do they call it...

JUDGE NIELSEN: Department head.

Department Head of College of Advanced Judicial Studies. So he has been quite involved involved with that and it is my pleasure to actually teach for him. So I want to welcome all of you and uh we are really looking forward to hearing from you. So let me do this, let me start by telling you, and I don't know if you received this, a copy of our Administrative Order, but the purpose of our group is to make recommendations needed to effectively and efficiently process complex litigation, reserve judicial resources related to the resolution of discovery and other pre trial matters. Uh we want to recommend a definition of what exactly is complex litigation, is it something larger than just commercial litigation or some other kinds of cases that you can deal with. And we are also reviewing reviewing existing rules and

procedure and make a recommendation as whether those rules, systems and processes could be amended or even new ones created to enhance the litigation process.. So that's what we are trying to do. And hoping to use some of your expertise to help us get there. I guess let me start by just asking a general question about what happened in your area or your state to move the whole issue - - as in California I know that uh some years ago, when you start looking at complex cases, why is California going with complex cases as opposed to more specialized commercial or business?

JUDGE VELASQUEZ: Well the, actually in 1996 our then sitting Chief Justice - - of Supreme Court commissioned the Task Force to look at the business courts, because in the late 80's and early 90's California Courts were not in good shape in terms of managing a calendar and we were running into real resources issues, meaning we had limited judicial resources, how do we best allocate to take care of the public's business. And so the original Task Force included key members of the different constituencies who might be impacted by either business court approach or a complex court approach, it included Judges in the courts but also business leaders, members of the attorney's Business Law Section and they, over the course of about 3 years conducted surveys or tested - - not only in California but across the nation. It's my impression that the original debating was not really whether any abstract business courts are better or worse than a complex court approach, because each presents a different solution

which attends different problems. In the abstract, business courts are subject matter selected, meaning you get into business court because you fit the definition of what is a business case. A complex court deals with it from another viewpoint, which is a case management perspective; you may have a hybrid,, you may have complex business courts, which includes the case master techniques from complex which attends to just business case subject matter, or you can just have a complex court which includes complex business. So you have to first, as the jurisdiction my view is determine first what are your issues, then you have to look at what are your resources to implement the change, you have to consider the concerns of your constituency, personal injury, lawyers, the general public, business, insurance, bar and then the political reality. So after you have gone through the assessment then you look at which solution works best for your particular jurisdiction. In our case, the Task Force reports back in 2000 to current Chief Justice George that the complex court solution would be best for a couple of reasons; one is responsiveness to the public, complex courts a little bit more flexible in contracting or expanding the size of the case load, you have the issue of inclusiveness, the the circuit political reality reality in California where a business court approach could have certain negative perceptions by the public, and our case management concerns, really most of all was that we needed ways of handling court cases which most impact the resource of the court, California lets say in comparison to New York has for decades

now has expanding residential housing market so we have many construction defect cases, which can include many parties and that was a burden on the court especially where I sit in Orange County. So that was kind of our approach to the selection.

Q Okay, how about in New York Mr. Haig? You have a little different approach to compare right?

MR. HAIG: We do and New York is a pure business court um, if I may address the question a little more broadly and um I should say that this is an issue that there has been some substantial debate about across the country over the last 10 to 12 years, and I have had the privilege of being involved in many of those debates in which, and a number of which have been fairly contentious, and I certainly respect the views and the principals that underlie the different points of view. There are now in 17 states that have got either business courts or complex litigation courts. Of those 17 three of them are the complex litigation model. The three states are Connecticut, California and Arizona. The other 14 all have more or less pure business courts. That issue was debated to different extents in those states, some like New York didn't have a great deal of debate about it. Others had more substantial debates about it. Maybe it would be helpful if I just mentioned a couple of the considerations that the state is focused on, you know obviously a complex litigation court has a number of advantages, particularly in the case management area that you were talking about. Complex litigation courts enable judges

to develop significant skills in case management and those are very important skills. Um I think it's fair to say though that in many of the states that decided to go the business court model which is the vast majority of the states, that there were a couple of factors that motivated them. One of those factors was a conclusion that business courts develop significant substance of law knowledge in the judges as opposed to the case management skills that you are talking about. There is no question about the fact that a complex litigation court is best in developing the case management skills. But uh if what you are trying to do is enable judges to decide business cases more effectively with greater substance of knowledge, a business court is better and that is a factor that has affected affected states.

Q If California has an issue of cases not being consistent, or a back log of cases and their approach is the management of those cases, isn't that a good way to deal with those cases taking so long?

MR. HAIG: It is and you know I should say I don't have as much knowledge of Arizona because I just have a peripheral involvement but I was involved in California with Judge Richard Albert starting in about 1995 who is the Judge of the, Head of the Task Force that Judge Velasquez is referring to. I worked a lot with Clark Kelso who is the reporter for that, and with other people like Joe Troy and Mike Weaver and others of interest and I think it is fair to say that in both California and Connecticut and maybe to a lesser extent in Arizona that the creation of a complex

litigation court was to some extent a political compromise because of the significant political opposition that was presented in those states to the concept of the Business Court. And indeed the 137 page Task Force report that you were referring to concludes that the idea of a business court in California is “an idea whose time has not yet come” that’s the quote that which really expresses where they were coming from, and there were a lot of people in California including principally my friend Tom Stockman who was the president of the state bar and also the president before that, I guess the book was called The California State Trial Lawyers Association Association which presented significant opposition from a political perspective to a business court. So I don’t question the fact that complex litigation courts are good for managing complex litigation I am only saying that most states have gone in the other direction. The one other thing that I mention as being a reason that states have considered a lot was um you can make a pretty strong argument that a business court and the skills of business judges focus to a substantial extent on motion practice. You know the most important thing that happens in a lot of business cases are motions to dismiss and motions for summary judgment; whereas in tort cases as you all know, trials are more important. You don’t get motions to dismiss frequently, you don’t get them nearly to the same extent in tort cases as you do in business cases and that’s because negligence is frequently an issue and other things that are not susceptible to resolution by motion practice. So one can argue that

and a lot of the states that I am talking about concluded that the kind of judge who is really good in a business court is often somebody who is really good at deciding complex motions with voluminous papers and that the kind of judge that is frequently better in a complex tort kind of case is more of a trial judge and not necessarily one who is good on most, though all the judges at the end of this table are wonderful in both aspects of that, so that isn't a commentary on it at all. They are all good, they are the greatest trial judges in the country and they are the greatest motion judges in the country. A lot of other judges, you know they can't do both of those equally well, and not just a matter of their abilities, there are a lot of judges that like to try cases and there are a lot of judges that don't mind, you know the heavy motion practice. And the suggestion is that putting them in the same court is not necessarily the best way to do it.

Q Let me cut you off for one second. The Task Force report that Mr. Haig, you were talking about how California is part of our material on law and common law. Justice Pariente, did you want to...

Q I had a question, talking about you know all the states but the Federal Courts, have they gone to a business court model?

MR. HAIG: Not at all, the only specialization that is done in the Federal Courts really, is um, there is a patent court of appeals, and I mean your point is well taken that federal judges frequently, generally have decided, in fact in New York state and some other states, cases are moving back from the federal courts to the state courts

if they are business cases, because the business community has concluded that the states had developed a greater ability to handle business cases than the federal courts are.

Q One of my concerns, and I want to focus on New York City might be comparably different. Uh in a situation I think - - um how many judges do you have for a hearing on business cases??

MR. HAIG: Uh in ManhattanManhattan there are six, we have business courts, our commercial division now operates in ten counties, so there are a total of twenty-three.

Q Of the six judges that are working in and out or or are they the same judges?

MR. HAIG: There has been some rotation over the years, but a number of them have stayed for quite a few years.

Q Now has anyone raised concern on either side of the issue is that because we have as you mentioned a few jury trials, and actually the numbers are low whether it be tort or commercial. In our case - - 5% raiseraise in jury trials. Has anyone concurred that someone - - developed substance of law knowledge. But withwith that regard - - how the law should be interpreted, that you really end up - - kind of situation when its so limited to you know specific case type, does that issue ever come up??

JUDGE FIELDS: It came up in Arizona. It definitely came up in Arizona. We didn't have the political opposition that I think you may have anticipated. The business community saw what was happening

in North Carolina, New York and California and went to our Chief Justice at the time, who had been a commercial litigator who said it sounds like a good idea to look at. We are kindkind of like Microsoft, we watch what everybody else does and then copy the best and bury the mistakes and adjust them. So went forfor the complex court simply because after assessing our needs, we don't have the demand in New York or North Carolina or California for perhaps the business courts. And we have some construction defect issues, but not as much as in California, so we decided to go with the complex court model, but how was it on the evaluation committee that set this up or the committee looking at it. I was called one day and said you are going to be assigned to the complex court. My concern as an outsider looking at it was I don't want to be a - - of the industries and business courts because I, its been my experience, that is when that happens there is a danger, pretty soon you have 20, 25 years as a judge and all you are doing are motions involving stock options and that sort of thing. You tend to socialize with that group, you tend to get your training because you are always short of money for training paid for by a group like the U.S. ChamberChamber of CommerceCommerce for example; that was my concern, but after being on this complex court, and doing something other than just business cases by definition, I am using the New York commercial division definition; business cases; its my experience that's not a problem that you are aware of. Now 80%, 60% to 80% of my cases are business related, but we also have in the

complex, have been assigned family court cases. Guess what... it's not a divorce involving children...

Q It's the money.

JUDGE FIELDS: It's the money. ItsIts business evaluating stock, but because of the expertise we have developed over the last 4, 5 years, you get the case. I've got a 10 month criminal trial; again presiding judge going there saying I know this case is not certified but it's a spin off of the Anderson case, we have spent a lot of money training you, accounting and that sort of thing; guess what, so I get a 10 month jury trial. And some other judge had worked the case up. I suspect that's that's why it had been assigned to me because there is some issues, but anyways it's a business community motivation. And there is still a push by the business community as we are still a project to go to business court model. We have decided not to, its now permanent court. But about 90% of the lawyers that participated over the last 5 years recommended continuing the same model we have. And 80% of them are going to be business court lawyers.

Q I don't think Mr. Haig got a chance to answer my question. And it's really, its not, I think you, he and I, we had this discussion in New York where I expressed expressed my concern - - but I, the question really may may not have to do with a, trying to track - - the genuine concern especially is in the past up in - - here in Orange CountyCounty or Miami. One judge hearing all the cases.

MR. HAIG: Well I think it's a very good question and it's also the question that all of these states had been debating, and in addition to the 17 or so states that have now got business courts or complex litigation courts there are a lot of other states around the country that are considering it, and they are doing the same kind of analysis and debate that you are. Just two points Judge, and one to answer your direct question and then to move to a second one. Business courts generally have got disputes between two or more businesses. They don't have disputes between a business and an individual for the most part. So if your concern is that the judges may adopt the business point of view or that they may be perceived as prejudiced or bias or show favoritism or you know, any way you may characterize it; maybe not intentionally but maybe because of the exposure that they have. It simply isn't an issue because you've got one business suing another business; you don't have you know, an individual suing another one. To make your argument for you a little bit better to be fair, there is one kind of case that does present that issue, and this is the one that some states are concerned about, and that is consumer class actions, because that's the one kind of case that might come into a business court where you have on the one hand a business or several businesses and the little guy, you know, on the other side. And that's something that states have dealt with in a variety of ways, but other than that it is business to business. Just to address though that the more general all-ies-mal-ies-m concern, you know what states worry about is, are business courts

allies, are they a diversion of scarce resources from the kind of litigant that needs them the most, people who don't have resources, and are they diverting those resources to the rich people to the corporations. And that is something that there are concerns about from the perception and the reality perspective. I think the answer or an answer to that is that if you went and spent a lot of money on a business court and you put the best judges there, and you took them away from other parts of your court system that would be a horrible thing. And no responsible court administrator could do anything like that. If you look at it from a minimalist perspective when you don't spend any more money on it, and its simply assigning business cases to judges that are interested in that kind of work and have got expertise and experience in it and like to do that kind of work, its simply a reassignment of cases that doesn't involve additional expenditure of money and the kind of perceptions that you are concerned about should be less, now I would be naïve if I didn't say that this issue is not present you know, not just in Florida but in other states meaning there are constituenciesconstituencies that would worry about that and their concerns are legitimate and they have to be responded to.

Q           Let me ask Judge Nielsen, from your prospective; you are the newest here, although Miami court is, but Judge Freeman couldn't be here., what made Hillsborough County, what made you go to a business model as opposed to just a complex case division?

JUDGE NIELSEN: Well I know that LaRose is on your group, so you might have heard some of this history so I will try to just summarize it, but of my understanding it is a group of business litigation of lawyers with a couple judges started with the permission of our chief judge began a process of exploring the options and uh decided to follow; of course we were looking with interest at the Orlando division to see how they were doing things and so we settled on this business model which I guess some of the focus came out of the uh looking at the North Carolina court, and we explored somewhat; I became involved in that process, that committee I guess half way through their efforts, so I don't know all of that history, but uh...

Q The reason I ask is that I know that you visited with Judge Velasquez in California looking at business complex.

JUDGE NIELSEN: That is correct. I had the opportunity to attend the seminar out in California and so I met with Judge Velasquez knowing that their model was a little different, but assuming that; and I was corrected that many of the case management and other issues like the E-filing which we were and are exploring in the 13<sup>th</sup> Circuit; would be common among whether its complex civil or complex business litigation.

Q Just looking at our definition of what constitutes a complex case, we have some examples of the team actually - - with permission of the senior judges and looking through that list although its not - -there are things like structure defects cases, cases involving

class action suit, toxic tort, property issues, security transactions, all of those are cases where you have sometimes an individual against a big business; I just finished 26 cases - - plaintiffs that will probably fall in the lines of business courts; my question to all of you; if you have laid out the rule that allows each judge or each division to handle complex matters whether its business related or not business related; and you lay out the guidelines for doing that, with each judge in every division, what's what's the justification for having any specialized courts?

JUDGE FIELDS: In Arizona, the biggest complaint; and it was a valid complaint we believe in having our own calendaring, we don't do a central calendaring system, and we do believe strongly in rotating judges among assignments, especially with newer judges. So the complaint was that we have educated a judge, he has sat for his 2 year mark or his 3 year mark, she or he now have to rotate from the civil division to a family division to juvenile court. So that was the biggest complaint; and the, plus with the business community are medical or the toxic tort community, or whatever it is, is that you are guarantee in the complex court that this judge is going to be in place for at least 5 yrs, my assignment was 8 yrs, but I'd also rotated into all these other assignments before, and I suspect I know that's why the presiding judge selected me; I've done all these other assignments over 12 years, 10 years I guess, and uh got to serve in specialized training as a part of that and said that's what you are going to do, because I can

leave you in place for at least five years. That's a plus, so you educate the judge not only in the case, but you all gain education and training.

Q Well what bothers me with this, let's take the most simplest case I can think of, a slip and fall, or a rear end collision. The slip and fall - - special - - doesn't the guy who brings that case, have the right to have a judge who is specially educated in slip and falls, and specially educated in whether its - - or medical malpractice. I mean we seem to be in the argument of a specialized division, you say well lets have a doctorlawyer as a medical malpractice judge, lets have an engineer as a - - liability judge, and lets have a traffic cop judge for, you know, I mean it just, I don't understand if there were a process in place where every judge, here is how you handle a complex case whatever it is, isn't it fair to every one; that they take the luck of the draw who they get.

Q You are talking about the management of the case?  
Judge Velasquez.

JUDGE VALASQUEZ: Well I guess you addressed several concerns, you are right; that every case should have the equal access to justice, preferably to be able to get the case to trial in a reasonable time. What you have described here suggests that, that's not really a complex court solution; it's just that judges are individually educated on how to handle a complex case, so they are to random assignment of cases. The way complex courts as an idea works; as a solution to a problem, for example our court, is that it allows the general civil case

to get to trial quicker because the one problem case does not bog down the system. Complex courts are designed to alleviate the burden upon the general case load. If you look at your definition which is patterned after California, complex cases are defined as those which would impose an undue burden on the regular case load and therefore we found in contracting out, that it has allowed us to stick to our state mandated time standards. In California, in the early 90's we were under state rules of court which require disposition cases within a certain time frame. I believe it was 75% by 9 months, 85% by a year or 18 months or something like that, 75 cases have to be disposed of within 12 months, 85% within 18 months and 100% within 24 months, because at the time these rules were implemented, it was taking 4 ½ years to get to trial, so as you say the little guy with the slip and fall case, would have to wait 4 ½ years because the system not having had the resources. So we pick complex courts, not only is it a political concern, but because it really helped us solve our problem which was to get the courts more streamline and how they handle cases. Now if it's a question of expertise that can be handled through education and judge selection. If there was a problem with a deficiency in a jurisdiction which have a lot of business cases, the presiding judge or whoever makes the assignments, could assign cases based on expertise. But it really depends on how deep your bench is meaning how many experts do you have in a particular subject matter. You may not, you may have to make due with what you have, and

that's why continuing education through the course could help solve the problem without a real increase in resource. In Orange County, we are not a financial center or a banking center or perhaps Charlotte or Manhattan are, but we - - because we are a growth area, so 60% of our civil case load would qualify for business court, so in that sense everything is business court, so that wouldn't solve our problem, in fact up until 1992 we divided our civil panel, personal injury over civil. And two thirds of the cases went over to civil and most of that would qualify for business courts, so by having a case management approach or business law approach, whatever it is, it could solve your problem which is getting expertise and the judges who handle the cases and then maybe it's a solution that works for you.

JUDGE FIELDS: Yea for example, I'd like to say we only took complex cases. Unfortunately the presiding judge said you are going to take the complex cases and you are going to maintain a regular civil calendar and I did that for 4 of the 5 years. TheyThey didn't put me on a special assignment calendar quite frankly because these problem cases were clogging up other judges dockets. They shipped them to me, well guess what, I can not, I can no longer devote the time to the routine case, so they put me on the special assignment calendar with about a half routine civil case load and the complex cases. Because our definition is much like California's, we don't have - - cd cases and special - - cases not - - to be complex. Its any case that causes - -

burden that requires continuous management and with the benefit of justice before you get selected to be in our complex court.

MR. HAIG: I think you asked a very good question, and perhaps I could respond to it with an example which I think makes a point. Um, your question was about specialization and how desirable that is and is it fair to have specialization and take a situation where a judge has got a motion or a conference calendar of some kind. And there is a case #3 on the calendar, a business case, a complicated business case. And as case #4 there is a personal injury case, and the lawyers on case #4 have all got to be some place else. They are in a hurry to get to another conference,, they've got other obligations, and the business case is in front of the judge and the judge just really is not interested in business cases and doesn't terribly understand the law in them. Um, and the lawyers on the personal injury case are waiting and looking at their watches, and you know they want to get on and get their case handled and the lawyers in case #3, the business case you know, keep bringing up issues that the judge you know just doesn't really want to deal with but he can't seem to get rid of the case, and on. If you had a judge who specialized in business cases, handling case #3 on that calendar he or she would be able hopefully to resolve it pretty quickly in a fraction of the time, and that means that case #4 would be moving, you know they wouldn't be sitting there in that courtroom and waiting for them, and that is an example that in a lot of states around the country has persuaded people

that subject matter specialization and expertise is helpful and it doesn't just help case #3, the business case, it helps case #4 too because that case is moving more quickly also, and those lawyers don't have to spend an hour and a quarter waiting while the judge you know, is trying to deal with the business case. If you had a judge presiding over a series of case #3's and another judge handling cases like case #4 your whole court system would be operating more efficiently.

Q           Why couldn't we set, what I do is I put all my - - on one calendar and all of my other kind of cases on one day, and other cases on another day, isn't that just a function of management by the judge?

MR. HAIG:       No, because I am talking about a judge who just doesn't really like to do the business cases and just doesn't understand them.

Q           There are a lot of things I don't like to do.

MR. HAIG:       Well I understand, but I think that the conclusion that a large number of states have come to is that whether than forcing judges that really don't like to handle a certain kind of case, to do that kind of case; on the basis of some principal that it does make sense to allocate the cases among judges in a way that makes your whole court system function more efficiently.

Q           I have just a question on, we talked about products liability, and as I was thinking of that, and I am thinking well if we had a division in which we had in Florida just in on products liability just

that as a case we can have a greater extension for the - - but my question to you, I know you do - - for products liability, in terms of those issues which can be very complex - - the discovery on products cases, it is an enormous part with the discovery now, how does it in New York, I mean the guy or girl or the woman who doesn't like to do the slip and fall doesn't want to do the products case; doesn't want to do the complex business, where does that complex products case go in New York? Again, I think we all talk about the slip and fall as a prototype case that no judge in their right mind or no lawyer in their right mind wants to have you know, so does that just go to you know...

MR. HAIG: The answer in New York, and I think the answer in a number of states, and this goes back to a question that you asked earlier, is that products liability case would not go into the business court, because if it did, it would raise the kind of issues that you were concerned about before, that you might have a business court where there was a perceptionperception that the judges might favor business against individuals, and that creates problems. The complex products liability case might either go, because we do have some judges that handle that type of thing on a more informal basis, you know those cases tend to get assigned to them, or they might be part of the general docket, but again...

Q How, the general alignment of cases, I mean will go to business court, I mean I don't understand...

MR. HAIG: We have some judges that get assigned complex cases, like asbestos for example, which is a complex products liability case...

Q Is it the fact that if you have it the fact of a complex, other business just doesn't get involved with that?

MR. HAIG: Well in Manhattan there is a, I mean I am trying not to focus on one example because I think that's not typical of other states. In ManhattanManhattan we happen to have one person who handles a lot of the asbestos cases. I think in other states in general though judge, the way that it would work, is that complex product liability case would be handled as part of another docket of one kind and it would move more effectively for two reasons. One, it wouldn't have to wait behind the business cases, it could you know move more quickly because its not being impeated by the business cases, and two there is a pretty good argument which varies, depending on the judge, that the judges who like tort cases the best should focus on tort cases and others should do the business cases, and the products liability cases are more likely to be tried than a business case. You are always going to have more trials in tort cases than you will in commercial litigation cases. You allocate the judges based on their interest and their abilities.

Q This is a multi-part question. The first part, Judge VelasquezVelasquez and Judge Fields. It's a multi-part question. First part to Judge VelasquezVelasquez and Judge Fields, in California

and in Arizona, do you have a complex division in every single circuit of your state?

JUDGE VELASQUEZ: In California we don't, um we have 6 courts, our courts, our superior courts are on a county footprint, so every county has their own Supreme Court district. There are 6 pilot programs which get funded by the state and that's to support a complex court, meaning judges of various numbers are assigned strictly complex cases, then there are - - of other counties that do it on their own, and then its really kind of a unique procedure to each of those counties. But of the 6 pilots, there is a uniformity, there is a cross pilotization because of a bi-annual meeting, things like that.

JUDGE FIELDS: In Arizona, much like California, there is one state superior court. It's a county footprint. But two thirds of the states population is in one county. I mean one county is bigger than some New England states in Arizona. Tucson, Pima County was supposed to be a part of the complex court. The only political opposition that we've had in court in terms of judges; we've had judges show up at our committee meeting saying I hate - - courts, I am getting assigned crap cases. Well these are the judges that wouldn't take the complex cases anyway, they recused themselves, but they like to take them and play with them for a while and then get off the case. Let's be real, we have judges that no matter how much education; not just in Arizona, you give them, they don't wont do them, can't do

them, whatever the reason, they are there. And so you have to deal with them, so.

Q Are your judges selected there?

JUDGE FIELDS: Well in 2 counties - - were selected, the other counties are elected judges in part of the selection.

Q When you were shaking your head about, something that you were going to say about an idea that, what I'm hearing, well the - - thinks that you are saying, is that you've got this small number of judges that are hearing these business disputes - - bias, and if they are a little bit bias, not favoring in any one way or another, but that that wouldn't work if you brought other cases in, because they developed a bias. That's what I wanted to know.

JUDGE FIELDS: Well what I am saying, in complex tort cases mostly, for the most part settle. I mean you may try some small aspect of it. One case out of say ten cases that have been consolidated in front of you is a complex case. But I was also thinking about stock holders - - actions. I am not saying massive corporations go against each other in those cases. You may have a group of unhappy share holders for example, and there are a lot of hoops to jump through under state and federal law. And I'm not saying its not always two businesses going at each other, I mean that does happen. But I was just thinking about a toxic tort case involving a big chemical plow that went out. And in that case you had a coverage dispute, you had a big plant - - you had another two cases involving over 3,000 individual

claimants. You also have businesses suing each other, and there were about 12 cases total. All 12 cases were certified as complex and assigned to me. Some of them are consolidated for management, but I would have a 1 day meeting about every 90 days with all the lawyers on this case and calendar them in such a way that they didn't all have to come at 9:00 in the morning, they could come in and observe and deal with whatever they want. But it was like I had set an agenda for example. We'd deal with some motions, some things to avoid filing motions we'd deal with. But that was a business dispute, a toxic tort case, a class action. Businesses just suing each other, plus an insurance coverage dispute over - - and that's the type of case that the courts had felt - - should come to a complex court as opposed to a business court. And then there is case management.

JUDGE LAUTEN: I think Mr. Babbitt raised an interesting issue that's broader than business courts or complex litigation courts and that is just how do we assign judges to any particular court.

Let'sLet's say you had an aspiration in my circuit to become a member of the judiciary and you got elected or appointed. I presume your background is in commercial litigation; I don't really know, I may assume that, maybe it is maybe it isn't. But let'slet's say that it were. And you got to be a circuit judge in our circuit. Under our assignment system, you would probably start your judicial career in criminal court. You may have never tried a criminal case, handled a criminal case, had a criminal client, that's probably where you would start or you might

start in juvenile. I don't really think in the criminal side of our court system, there has been a big healing cry about well we have judges that have never tried a criminal case presiding over criminal cases. But there is a lot of concern in the civil courts when a judge becomes a judge maybe who has no complex commercial litigation experience all of a sudden presiding over complex commercial litigation cases. And there are probably 20 different systems around the state of Florida for how a judge in any particular circuit starts in the assignment that they start in. So I work with brand new judges in the education system about how are you going to do the job that you have been elected or appointed to do with whatever skill set you bring to that job, and we spend a lot of time addressing that and we spend a lot of time with new judges about what biases or preconceptions might you bring to the bench. And I don't know the great answers to those questions, but I can tell you we throw them out for discussion among new judges. I don't know Mr. Haig, whether it's about judges liking to try a particular case or not liking to try a particular case. But I've been in criminal and I am now in the business court, and my impression which is newly formed, is that its more about a skill set that gets developed by the judge. If you are in the criminal division, you are going to do trials whether you like it or not. That's just how they are designed, they get resolved. Well honestly 98% of them get resolved by plea, but there are so many of them that 2% of them get resolved through trials. In my circuit, that means you are going to try 50 or

more jury trials a year when you are assigned to criminal. In our business court if you try 50 cases a year, well that's just physically impossible. And so your skill set is more about managing cases so they don't just sit there and languish and nothing happens to them. And managing them so something continues to happen in the case so they either get to where they are ready for trial or get resolved short of trial. Most of them get resolved short of trial when you manage them, when you make the lawyers come up with a schedule for discovery, when you make the lawyers exchange expert discovery, when you make the lawyers file motions by a certain deadline. When you give a deadline for a series of events, the cases then seem to get resolved one way or the other. I am intrigued by this concept of you know a preference for businesses, if you're in the business court or not, I don't know that I really see it yet, or maybe it's just difficult to see it and identify it.

JUDGE FIELDS: I agree. I think it's a skill set and a by product of this movement around the country whether you call it a complex court, or a business court. If I can pick up the phone and talk to my colleague colleague in Manhattan, if I have a business issue, I know I can call Judge Lowe in Manhattan Manhattan who specializes in business matters.

Q What would you ask him?

JUDGE FIELDS: Well it depends on what type of case. Mostly how to manage the case.

Q Management.

JUDGE FIELDS: Manage the case. Have you ever had this type of case...

Q My fear that in -- Judge Lauten -- guy head of philosophy in our judges which we don't, are not elected by division, they are all general jurisdiction judges, and they should be able to try every kind of case; juvenile cases, talking about case management, but my concern is that -- chief justices are interested in training business judges and justifying the substance severity -- that kind of substance of knowledge. Is that something that's happening around the country?

JUDGE FIELDS: I'm not talking to Judge Lowe about New York law, I'm you know just talking about managing this type of case. There is a National Association of Business Court Judges, set up by Ben Tennille, and it's in the North Carolina business court. It's just an approach to cases and also training for judges.

Q If you took in a criminal case, civil try issues or -- and the issue was should this type of evidence come in. And everybody is learning that that kind of evidence really shouldn't come in. I mean it could be happening and just because...

JUDGE FIELDS: I don't think. It's been my experience, you get a bunch of judges together, you are never going to agree, but that's the way it should be done. You've got 50 judges;; you've got 50 different ways. But we for example, we do talk about try issues, we don't follow, we have a modified slide system, we don't follow the

federal system. So I know in Arizona is going off all by itself so no matter what other jurisdiction is going to do, I still have to follow Arizona law.

Q One of the things that we as a Task Force are struggling with is trying to do; I think we've almost come to a definition, but there is still some debate about that. But the rules, do the rules apply statewide, because we have circuit jurisdictions with two judges, well one judge or three judges, and then we have circuit jurisdictions where I practice in Miami, we get 80 judges, and there are 4 or 5, I think everyone in this room would agree, 4 or 5 or 6 huge judicial commercial centers in the state, 3 of them have business courts, 2 of them are looking at business courts. The rest of the state, and the judges who sit on this Task Force with us, and some of them aren't here today will admit when the complex case comes, they manage it the way they manage everything else. And I think one of the things that Ted was referring to, had, in your 2 states, do the rules, and even in New York where the commercial jurisdiction is in place in 7 or 8 jurisdictions, can the rules be used statewide by any judge; are they part of the rules and procedure as opposed to what we have here in Florida, in Miami, in Orlando and in TampaTampa, a specific set of rules that the chief judge and the business court judges came up with, with the bar and worked together, I think we all modeled them after New York and other places. How have you dealt with that issue, because I think that's one of the critical issues that our Task Force is

looking at, we are so spread out, we have grown in the last 20 years since I started. I moved down here from New York in 1987 when I got out of - - we were a little itty bitty state back then, I mean we had 10 or 12 electoral votes; we have doubled in size, and we, our judiciary is trying to catch up and we've seen things grow enormously. We have become much more significant in the political aspect.

Q           What Rick is talking about is in the individual reports in the circuits, and came up with administrative orders and put the - - in the report.

Q           So we are trying to figure out whether we do a hybrid, do we go with business courts on some extent and have a set of complex rules, do we set up complex courts in every jurisdiction, which I don't think any of us think would work. I mean how do we deal with that issue; and I think in California and Arizona especially, and California even more than any other, and probably New York where you have like 5 or 6 model courts, and New York has 7 or 8 jurisdictions out of a multitude up in New York. How do you deal with the other jurisdictions in the state?

JUDGE VELASQUEZ:   We do have statewide rules, which are applicable only to complex litigation, sets the definition of what is a complex court, and the main distinction is that complex cases are individually managed versus our imposed differential case management rules which have these time standards, and so the goal for all the courts in California is to go with consistency and continuity so

there is a trend and has been a trend to have a statewide rule applying to all courts, um one thing I hear in your question is how should complex courts be set up, in other words, if every judge assigned to civil can do a complex case and apply the rules in that one case then they work that one jurisdiction. In Orange County, we found that doesn't really work because the differential case management rules require an ongoing processing of cases. You got to get those time standards and manage cases and get them to trial. So that's why we've selected 5 judges in our county to do nothing but complex; so we pulled them from the system,

JUDGE FIELDS: In Arizona we have complex court rules that are statewide, but we also, every county, every judge manages their individual calendar. The rules specifically provide they can adopt these complex court rules for all their case, five of them, whatever they want to do. They can use the same rules and it allows us to spend the same time standards that we are talking about in an individual case. It also requires some more work on behalf of the judge, because you have to have periodic meetings, it suspends discovery disclosures, for example until there is an initial meeting. So the judges are free to adopt and have adopted them in the cases that weren't certified.

Q Can judges do it on digital remote or do you have to - -

JUDGE FIELDS: No, you don't have to, you can just say. And I've done that, cases that weren't certified, I said well that's fine, I am

going to apply the certified rules because I think this case needs more continuous judicial management, in other words, I want you in here on a more periodic basis, because of discovery disputes, because of the need to bring in more parties and set some standards up in bringing third parties, for example.

Q And that's covered in the rules?

JUDGE FIELDS: It is.

Q So as opposed to it up against our rules provide where a judge - - case management - - we have a general rule like that which provides a - -

JUDGE FIELDS: Our rules also provide the same thing, but it also gives us the opportunity under the complex court rules of imposing some different standards, so... we can, based on the complex rules, we can suspend part of the rules of civil procedure under certain circumstances. We are going away from local rules. Our Supreme Court has decided we had all these counties, all these judges making all these kingdoms, if you will, and now they've said okay, we are doing away with local rules. And you can only have a local rule now if the Supreme Court blesses it and they haven't blessed it.

Q Yea, we have that too. You have to - - a local rule, it had to be approved by the Supreme Court.

JUDGE FIELDS: Well we have been using administrative orders ...

Q What it sounds like though, - - and Maricopa County and I know in those counties and circuits in California which are so large

that you need to have the specialized complex court, you set that up. It's the rules - - when the judges want to use them, but you've identified the certain jurisdictions which have so many judges and so many citizens and so many people trying to accept the courts. Like we have here, where you set up a complex court as opposed to just doing a hybrid in those big jurisdictions, just letting each judge make a decision.

Q How is it in New York courts Mr. Haig?

MR. HAIG: We have a general procedural statute, the civil practice law and rules that apply to all cases in New York, all civil cases in New York. We also have a set of rules for our commercial division courts in the 10 counties in which it operates and those rules are now uniform. When we started out, we had a peliphoration of local rules and individual rules. And in the same way that the business community was unhappy generally with the way our court system functioned before we had the commercial division, then they became extremely unhappy about the peliphoration of rules, and what they were saying in effect was why should we have to have our lawyers get up to speed on you know, different rules for different counties, etc., and at great pain and effort we have a uniform set of rules; this I think it, you know its probably fairly relevant to Florida, because our counties differ a lot, we've got ManhattanManhattan which has got enormouslyenormously big and sophisticated cases but we've got some upstate counties in which we have the commercial division

functioning, and we had to have a set of rules that would work both for Manhattan and for other counties as well. That process required 27 drafts over 20 months;; I understand you are having some similar challenges. Well it ultimately worked and although not everybody is 100% happy with it I think that there was a perception that there was a significant benefit of having uniform rules around the state that would govern the operation, in our case the commercial; that may apply to what you are doing as well.

Q           Actually Judge Fields and Judge Velasquez, I am interested in your thought process, because it seems to me you had case management rules and then you decided to do the complex rule to the case management. Did you look at what wasn't working; how did that apply, because it seems like you now have complex litigation case management rules, correct. I am just interested how that kind of developed and what was your thought process, because if you have certain things that within your primary case management, what wasn't working, or how did you incorporate so that you don't have to, for example litigants, well I am going to try to get it to complex because that is going to fast track...

JUDGE FIELDS:   No, for example, in Arizona, in Maricopa County, if you've done nothing on a case in 9 months, its administratively dismissed. You have to file a motion to set within 9 months. If you don't file a motion to set, the case is administratively dismissed. You can't do that in a business case or a complex court case. So you have

to basically suspend the rules, so that's when the lawyers want to come in for special handling, to say the routine slip and fall case is not going to work with the rules that apply. In cases of \$50,000 or less are mandatory arbitration by a lawyer, so you can't even get in front of a judge until you have gone through mandatory arbitration, and that's state wide. So those rules don't apply in complex cases, and you know it going in the door, so why make some administrator, some other judge jump through all these hoops. Save time and computer time now.

Q           Yea, actually one of the things we are not only debating, but the issue here is in fact the administrative order, was what is causing the delay in getting things resolved; I would like to hear from all of you - - initial expertise. Do you have the - - might apply in other cases. What about, you said - - okay do you have judicial law clerks, do you have trained mediators that are trained in complex litigation, do you have trained magistrates you know for discovery disputes, do you have any other resources that are made available to you in your divisions? Then I guess on the flipside of it is, have you really developed in your jurisdiction the other method for the not complex cases - - because you just mentioned something that would be very helpful for us to consider - - address other resources that have been assigned to you or whether the key is judicial interest and case management - -

JUDGE VELASQUEZ: Well in California the complex courts do get special resources, and the interesting thing now, is now that our complex court system is about 10 years old and we have developed expertise in case management and also the use of technology in the handling of cases and management of cases, complex courts have kind of been an incubator of ideas which are now rolling out to all of the courts. We do have luxury for example;; the complex judges usually get a ratio of 1:1...

Q You call them complex judges?

JUDGE VELASQUEZ: Yes. We try not to say simple judges. Complex court judges... but we have the luxury of having a 1:1 ratio of resource attorneys and our - - panels will have 3 lawyers amongst 5 judges on the floor. But we've we've gotten a lot of resources in terms of the electronic presentation of evidence, and also training and how to make use of technology to handle the large cases.

Q What goes as far as electronic case management. Do you have that?

JUDGE VELASQUEZ: We have started with mandatory E-filing. We had it in house;; we are going to start shipping that out to a private vendor.

Q I want to take some time to specifically talk about technology.

JUDGE VELASQUEZ: Really in a nutshell, we get a lot of resources, they usually address the case management side of things

and from that expertise, the other courts now can take advantage of what we've learned. It changed the political climate.

Q What other additional - -

JUDGE VELASQUEZ: Well because we are a separate center, we are an annex to the main courthouse. You have to factor in additional court management, any equipment, if you have special facilities to...

Q Additional space...

JUDGE VELASQUEZ: Yes, additional space. The funny thing is when we start going to these paper on demand system, meaning electronic archiving of court documents, Fort Knox you actually gain space, there is no filing involved, so we were able to add conference rooms to reemphasize settlementreemphasize and so we were able to take advantage of that.

Q Any changes in judicial education in Florida has followed a model, of decentralized conflicts, some of them as Judge Lauten's, to uniform school if we had a conference on education and it has been a general mistake that at first you have to have so many hours, but you know you can have 400 and still not cover the, but still has there been any changes as to how you educate judges, and if so, what did you do?

JUDGE FIELDS: Focusing a little bit on Arizona, we had to do it out of whatever resources we had. We did not get any extra resources. But the presiding judge was in support of this, our gatekeeper that we had initially was not in support of this complex court, but the presiding judge was, so he made sure in our electronic courtrooms, we started

off the mandatory E-filing, also rolled out to our entire court, based on what we were doing. My job as one of the complex court judges was to look at the education part of it. So it's amazing, I found a way of giving lots of education around the country without us having to pay for it. But you have to be careful...

Q           You were relying on the Chamber of Commerce and the researches?

JUDGE FIELDS:   Right, and Brookings, AEI and that sort of thing. There are people willing to pay to educate business court judges, but you have to be very careful about what you do.

Q           We intended to stay away from sending our judges to these other places. I mean really, if I can do it in house, what was your experience on these other vendors?

JUDGE FIELDS:   I think it's a good thing to send your judges out of state, because you learn case management techniques, you know we all think we have the answer in our home jurisdiction, but it is helpful to find out how Delaware Delaware or New York, and others handle a complex business court case. We also, because Arizona and California have been using a lot of electronic presentation methods of evidence as well as electronic filing; we were able to share some of those with people on the east coast. So we have to come out of the house with everything. I mean I don't have special masters, arbitrators, mediators in on staff. But through education to both the lawyers bench and bar, they now can come out on a complex case and say we want X for our

discovery masters, we want Y for our mediator, they pay for it, because we simply don't have the resources; we also have changed our rules within the recent - - even on a routine case, you have to tell the judge assigned to your civil case, this is a method of ADR that I am going to use, if not I can have a court staff specialist evaluate the case. Complex cases, they have already solved that issue when they come to me for the first meeting.

Q           What about California?

JUDGE VELASQUEZ:   We have a blended approach; most of the education is in house because under a change in the rules, judges are required within 6 months of a new assignment, to undergo training related to their new assignment. So we have stressed continuing education throughout...

Q           You want to tell the other judges how many staff California has - -

JUDGE VELASQUEZ:   On a statewide basis, it's over 100... We operate under a judicial council which sets the state wide policy, but then we have an administrative office of the courts which is the key administrator office for all the courts, and under that is the in house educational system and the staff does grow, but the policy makers in California had to put a great deal of weight in keeping the judges educated, not only in general but for new assignments. Its kind of what Judge Lauten Lauten was describing, when a new judge comes in, the dues be paid, so you want - - limited jurisdiction, your

misdemeanors, and you work your way up. And also because of the way the judges for the most part are appointed in California, there are political decisions behind that. You don't have the judiciary proportion of being trained in all areas of the law for example, during the ReganRegan years, only prosecutorsprosecutors are being appointed, in Orange County we have very little crime, we have more than twice as many civil judges than criminal judges, but you had to do something with these judges, so you have to retrain and my idea is a smart person can be trained, so there might be a learning curve, but the idea is you bring them along, you have to work with the resources you have so you can allocate them, so.

JUDGE FIELDS: I am thinking, if you have a limited number of judges assigned to your complex court, The National Center for State Courts and others will pay or give you at least partial scholarships to go to places like the E-court conference they have once a year, you learn a lot not only about electronic filing, but just electronic presentation of evidence, and you can bring that back and as we've done, roll it out to other divisions that are not complex and they're not civil, or criminal or whatever.

Q Let me ask Judge Lauten and Nielsen, what rules, your local rules or state you use. Say in Hillsborough, do you use a combination of the rules, or do you have your own in-house rules that you all use?

JUDGE NIELSEN: We've adopted a separate set of complex business procedures that are modeled to a great extent after the 9<sup>th</sup> Circuits, uh we took theirs and I had spoke to Judge Roche and borrowed liberally from those, tweakedtweaked them somewhat to our procedures. And I have had recent conversations with both Judge Roche and Judge FreemanFreeman about perhaps trying to standardize those rules;; we talked about that issue a moment ago. Uh, we are not there yet but you know the 9<sup>th</sup>, excuse me the 11<sup>th</sup> and the 13<sup>th</sup> are the new kids on the block so we are still talking.

JUDGE LAUTEN: I talked to judge Roche about this specifically, and because she drafted these rules, but really she borrowed from North Carolina and she borrowed from New York in drafting this set of rules, which supplement the rules of civil procedure and its interesting because occasionally you will get an argument about whether you have supplanted the rules of civil procedure, and that's an interesting argument to listen to. And the rules are designed to move the cases along; what gets frustrating is every now and then, a litigant will use the rules to try to delay rather than advance a cause and so that's interesting when that happens. But we borrowed from other places, and these rules don't replace the rules of civil procedure, we don't have that power. They just...

Q Can the parties agree, that's the question, do the parties agree to use, just say we are going to abide by a local rule as opposed to those rules of civil procedure?

JUDGE LAUTEN: Well I don't, we don't really get into that kind of conflict. Um I have had an argument where just procedurally something happened under the business court rules where the litigants argued; that's just indirectly in conflict with the rules of civil procedure and my position was then the rules of civil procedure apply if that's what happened in that setting.

Q In terms of the special masters and magistrates, do you use that?

JUDGE LAUTEN: We have a series of;; we have magistrates in the 9<sup>th</sup> circuit,

Q For civil cases?

JUDGE LAUTEN: For civil cases. And one magistrate in particular is very good, and he is very adapted in handling discovery disputes, so we, to keep the case we encourage the attorneys to go to that magistrate to resolve discovery disputes. If they won't go, they don't have to go, but you know, you can imagine the power of persuasion, why don't you go there, because you can get it addressed pretty quickly?? And usually the lawyers will agree because it helps their cause to keep the matters moving also.

Q If the parties agree to - - that they may use, it takes someone to devote a year and a half...

JUDGE LAUTEN: Well, I talked again to judge Roche who's been there for 3 years, and I've been there 6 months; and she; the parties proposed to her in one case, because they used a senior judge

who is well respected, to set up a discovery schedule for that individual case, which made a lot of sense. And they paid for that senior judge to sort of manage that aspect of the case, and it worked very well, to organize the case. If I can go back for just a minute to Justice Pariente's Pariente's question though, about the ideal resources. We kind of created our business courts. We didn't have any, no one gave us any extra money, no one gave us any extra positions, we just did it. And in working with our Chief Judge, we asked can we ultimately cut out a staff attorney for the 2 judges in business court, rather than share that staff attorney with some of the other civil judges, and initially we didn't, we just shared the resources we had, and eventually that person kind of ended up just working for those 2 judges. But the ideal business court from my perspective would be, if you could have a staff attorney for the division, if you could have a case manager for the division, and if you could have a magistrate to handle discovery. The truth is though, that kind of allocation of resources would benefit any judge in any division and so it's not necessarily just that it's, you know you should design that for a business court judge. On the other hand, in the criminal division, where I sat for awhile, if you came to me and said well we have limited resources, what would benefit you the most, my experience has been I don't know that I need someone to deal with discovery issues in criminal, what I need is someone who can try a case for me, if I have 10 cases to try in one week, because when you tell the lawyers in a

criminal case, you are going over to Judge Nielsen for trial, that case will get resolved if it's going to be resolved short of trial, and if its not it will be tried.

Q Do you actually really for the same type of case, I mean the jury trial, I know that I had Jackson - - Jackson apparently met with - - on that day some commercial vendor and they got some kind of a trial team concept where they are all backing each other up and that apparently created a separate division can solve one aspect of it, did you, did you...

JUDGE LAUTEN: My impression is that in the business litigation area, if you came in and said you had limited resources, what do you need, would you like another judge to help you try cases or would you like a staff attorney or a magistrate in the pre trial motion discovery area; my experience would be I would like someone in the pre trial and the discovery motion area.

Q We happen to have what the Federal Court has, but what I keep on saying here is that every judge has 2 or 3 magistrates.

MR. HAIG: Just to follow up with your questions, I think it's fair to say that a lot of the states that have created business courts had not used any significant additional resources for doing them. In New York, at the time that we started we had a billion dollar court budget, and a total of \$100,000 was spent, but that was spent on technology that was tested out in the business court and was thereafter expanded to other parts of our court system, and indeed that

expenditure was one of the questions that our personal injury bar raised a questions about, they said why should \$100,000 go to the business court and not to the other parts of the court system, and they were readily persuaded by the argument, that if you are implementing technological innovations, you don't do it system wide, you start at one place, you work out the kinks and then you expand it, and it was after, you know the promise was kept, it was later expanded. Um that is something that, you know I think that technology is a good thing to start out with as an additional resource in a business court because of the potential for doing it elsewhere. The businesses understand it and they can without actually spending money, because they use the technology themselves...

Q           What technology are we talking about, technology to try the case, electronically get tried, or is it like in Orange County, where they've got the filing?

Q           You are talking about electronic filing?

Q           Yea.

JUDGE LAUTEN:           We have a courtroom that is pretty advanced.

Q           Is it a trial judge or a magistrate?

JUDGE FIELDS:           If I am getting from the business community lawyers, a CD that's hyper linkedCD then I can carry that all across the country, because I've got hyperlinks case sites and everything else. These are very sensitive to business, they are not

going to complain and the attorneys are doing that for me, and that is very helpful.

Q Did you get, so you didn't get from a law firm or case management, mediators...

MR. HAIG: No, well we did get mediators, but, and this is something that a couple of people mentioned that I just wanted to touch on. There is a very strong argument that ADR can be used even more effectively in business cases and complex cases than can in others, but maybe used in a different way, and in New York we have recruited as some other states have, a substantial panel of volunteer mediators who have to undergo training specifically in commercial litigation mediation, and you know the arguments there is that the kind of thing that a mediator does in a business case is different from what a mediator does in a tort case. In a tort case, it is frequently fixing a dollar figure. You know, you settle the case by recommending a dollar figure that is fair. In a business case, often the role of the mediator is to try and devise a solution, a new relationship between distributors, suppliers, manufacturers, customers, because so often in business cases, the relationships will continue after the litigation is over and one of the things that the parties care about frequently, not always, but they frequently care about maintaining those relationships and not harming them while the litigation process goes on. So it really lends itself to a so to speak business solution and if you can convince your bar as we did in New York that it's it's prestigious to be a commercial mediator.

We had 300 commercial mediators in New York County, and people put it on their resume.

Q Do they charge?

MR. HAIG: Without charge, it's absolutely voluntary.

Q Great idea.

Q But we don't have that issue, because we have, we have mediators in the big commercial areas who own, who have a specialty in business cases. I'm not sure if that's mandatory mediation. We are unusual.

Q I want to clarify mediation as opposed to those who we are calling mediators, actually making some decisions.

MR. HAIG: No, they are pure mediators. It is pure mediation, because some of them, they vary a little bit. Some of them use an evaluative model, some of them use a facilitative model, some of them are more like neutral for early neutral evaluation, and in fact one of things that a business court judge learns is how to interact with the mediator to get rid of the case and that's a somewhat different skill than it is to use a mediator in a tort case just because the mediator in the tort case functions differently. You know, he or she does something different than what a commercial mediator does.

Q There is a limit on communication between the mediator and the judge too.

MR. HAIG: I agree. Absolutely.

JUDGE VELASQUEZ: The topic came up of volunteer mediators; that works in the limited jurisdiction case, meaning cases under whatever it is, states are different, in California it is \$25,000 or less because time commitment, or time requirements is very - - an hour or two, so we had a long list of volunteers who want to mediate those cases, though complex, the time requirements are much greater, and cultures develop because people want to hire for their own case. A mediator who comes in at some point when the case is ready to discuss settlement at the beginning of the case, as a referee, primarily a discovery referee who can handle discovery disputes, and under our local rules there are certain due process built in if there is a disagreement. But generally we look to the recommendation of the discovery referee and just by the nature of it being a complex case;; there is an extreme amount of time that will go into a discovery dispute. But the volunteer process would work in a complex case.

Q Now let me ask you a question about that, do you, can you refer the parties to a discovery referee with their objection?

JUDGE VELASQUEZ: We can, we have voluntary references if the parties agree, we have mandatory if the parties don't agree to court order, however in a regular case, the court has to make a finding before they can do that. In a complex case, we have a lot more descretiondescretion to require the parties to go to a discovery referee, and even to suspend the rules of discovery for a period of time, to allow a specialized discovery procedure. And often what the

court has now developed, the lawyers always agree anyways, they want that structure that they've built themselves to take them out the normal discovery factor.

Q            If they don't, if they don't agree, if the parties don't agree on what the referee has found, they can come back to the court, and ask the referee that. Let me tell you the reason I am asking, because we had a complex in our rules simple, if we have a rule that's advised for sending discovery just to the magistrate but it requires agreement of the parties, otherwise they are unconstitutional; so they have elected a judge and they want the judge to make a decision. Then we have another rule that you can refer any matter on the whole case, any residual matter, on the whole case to mediation or arbitration to resolve that issue. But if you've got a complex going on, it is our focus of having some issues now with getting - - surly its not something that we should be looking at to resolve that case.

JUDGE FIELDS:            Talking about complex court, we had a rule dealing with special masters;; the 3 complex judges were having these huge discovery disputes. We decided to take a different reading of our rule, basically to follow the federal when doing special masters. We adopted it, we started using it; just referring them out over their objection, and the discovery masters ruling on factual matters is basically binding on the trial judge, and unless its clearly erroneous than I can set it aside, I can follow the mods and all the interpretation of law. The Supreme Court gets one challenge to the 3 of us doing it,

they then change the rules to adopt the federal rules and made it more expansive, so they follow it based on our needs in complex cases to allow easier referral to a special masters - -

Q We are going to have to deal with case laws - -

JUDGE FIELDS: The lawyers tend to select the specialty that they want as a discovery masters. If it's a computer issue, you know the source code;; they don't want it floating around out there, no matter which side of the case you are on so they will pick somebody who is highly specialized to do that.

Q I guess where I am kind of asking the question where you have is really continuous, constant, constant, constant involvement, and he said well I just can't get any more court time from other litigants who deserve my time, and we - - to try to manage it a little bit and its kind of - -

JUDGE LAUTEN: Well we send every case to mediation that comes into the division, and there are some mediators who are just better at it, complex and I think its largely what you said, you know they just have that skill of understanding complex matters and building relationships and getting them resolved, and the parties pay for the mediation and we rarely get anyone to object. The art is discussing with the litigants, is, is this case best mediated early, in the middle or after some period of time. And I wish I had a crystal ball for that, because that can very often resolve the cases; if you mediate it too soon, it's a waste, if you mediate it in the end in some cases people are

entrenched, so its just sort of where do you do it. And I don't have the answer but I wish I did.

Q I want to talk about results, that perhaps Judge Velasquez and Fields would be, and maybe Mr. Haig as well in New York, well you spend a lot of time dealing with drafting, or documenting, or adjusting case management rules, we want to give them generally complex cases, presumably because if you believe that the complex cases are holding up the whole system or vice versa or maybe the other cases are helping you delay the complex cases that need to be dealt with. My question is from a results point of view, what mechanisms have been placed in California or Arizona to quantify or otherwise set whether or not the propagation of these complex rules have had any effect on getting these complex cases more efficiently tried to conclusion, and also whether or not dealing specifically or acceptably to the complex cases that has benefited the other 9 complex cases from getting dealt with more efficiently.

JUDGE FIELDS: If I could address that, we were a project that finally became permanent in early 2007, and so one thing I highly recommend if you are going to do this, they set up an evaluation committee and the 3 of us met just about once every 6 months over a period of 5 years, essentially. The bench bar and administrators from our local as well as the Supreme Court Administrative Offices, to track what was going on, what we need to fix, how is the project going, do we need to expand it, shrink it, that sort of thing.

Q Who came up with these ideas?

JUDGE FIELDS: Well the administrators from both the Supreme Court and AOC, the bar had a group of lawyers, business as well as construction defects lawyers, tort as well as business, so it was kind of a large, not large, probably 15 people, and the three complex court judges weren't a part of that committee but we were asked to attend every meeting because of input. And these are public meetings, so any member of the bar or community could show up and give their input. The recommendation, the final court recommended continuing this special relationship between administrators and this bench bar committee, staying with the complex court because we found it so beneficial, and general counsel from several large corporations were also a part of this evaluation committee, so it was the business committee. The results were 96% of the attorneys that were surveyed, that participated in this, recommended continuing the program. Only 55% wanted to expand it because they wanted to keep their judges, they didn't want to lose the time they had with us. 80% of the people surveyed, that's clients as well as attorneys, wanted to keep it without any changes whatsoever. Keep the complex court. And its interesting that, we got, the 3 judges got high marks for consistency, predictability, communication with attorneys, because we had periodic meetings. Every 3-4 months; we had a meeting like set up an agenda with the attorneys involved in these cases. They were happy the

judges are familiar with the case and the law in the case. And they also like the active case management in the case.

Q Did your circuit see a benefit in the non complex cases moving more quickly as a result of the complex being sent to the judge?

JUDGE FIELDS: Well the presiding judge is my source of information of this, if we have a new one and she decided to keep it. Because that's our resource, whether its complex or not. If she has a problem case, she will send it to one of us so it's a plus. The other judges that were unhappy have now retired, moved on, my colleaguescolleagues were very happy to give me a complicated case, and they also, and it's time for us to move on, we will all be rotated out.

Q How did you collect the data?

JUDGE FIELDS: That's computerized collection between our administrative office of the Supreme CourtCourt and our local county court.

Q So do you have something that says that says like a product liability has taken this long before and now its taken this long.

JUDGE FIELDS: Yes, they are just like that and statistics are you know.

Q Because I've been trying to get you know, one of the strange things about Florida, although we had a unified court system since the early 70's because we have less resources of course, we don't

have centralized data management and I extracted some comments that I've heard from chief judges as well as litigants to try and find out well how many cases statewide do we have, whether civil, whatever they are they were over 2 years, its like a best kept secret, we have jury trial rates and they are so low than civil, I mean we have both for negligence and - - with that complex case that you are talking about - - so what he is asking about is certainly a developing issue, because although I think satisfaction of litigants is useful, its not just when you get in some factor, the issue is are the people that come through the system satisfied, and I think that any litigant - - a judge that is listening and respectful and knowledgeable in the law and rules promptly is what we, you know is our goal throughout the system. So what's the - - effect then?

JUDGE FIELDS: One of the things that our evaluation committee did was meet with the computer people, we do have a separate case - - system, separate and apart from our elected clerk, we have set up our own over the years so that we can track our own cases. We've got a monthly report on all of our cases, in addition to the number of how the complex cases are doing. It's still being evaluated because 4 or 5 years is not really enough to see a trend. Now the cases are going to be age different, because you have suspended the time limits because they are complex cases. I don't know if our individual counties or circuits have got a chance to evaluate and compare the standard routine civil docket versus this one

because we also have civil cases we have to manage, we just give priority to the complex cases.

Q You still don't hear other cases?

JUDGE FIELDS: Yes we do. Then we'd have no law clerks. The benefit is...

Q You know everyone looks good in Maricopa County and you would think you know I can't decide - -

JUDGE FIELDS: No, one of the benefits of a complex court is that we've got the 'I won' for 3 judges. But we have to generate the revenue.

Q Don't tell it, this is going be on one of our - -

MR. HAIG: You asked about whether you can quantify the improvements, if any, in the business cases or complex cases, and also can you quantify improvements in the rest of the court system. In New York, on the business cases, we have fairly well developed data created by the court system, or compiled by the court system, that show reductions in case times from inception to completion, settlement, you know essentially reducing the cycle time of litigation and the argument is that if you reduce the amount of time, it improves the efficiency with which it's conducted. You know, more general sense in New York, it is clear that all constituencies are happy with our business court. The business lawyers and the businesses are ecstatic for reasons that you can appreciate, and the ones, the other constituencies, although maybe they are not ecstatic, they are

satisfied because they think that the business cases are out of their way so that they can get about their business more efficiently. On the other issue that you raised, about can you quantify what impact its had on the rest of the court system; we can't quantify it statistically in New York, and I don't know any state that's been able to do that so far, in terms of being, and I'm not sure that you ever could, because your fluctuations in statistics might depend on the institution of a business court, but there are so many other factors, that isolating it out would be hard to do, however we did conduct a series of focus groups in New York recently over the last couple of years on the operation of our business courts, the commercial division, and the principal product of that is a report that's available on our court systems website, which recommended that innovations developed in the commercial division be expanded to other parts of the court system, and our state bar association reviewed that report and our state bar association is hardly a rubber stamp for anything, let alone for our business court, I mean it raises the issues because we have different constituencies, but the state bars executive committee unanimously approved the recommendations of that focus group report which was the commercial division innovations be considered in other parts of the court system, and just to give you one example of how that mean, what it means of getting into it; in our business court that is the only place right now in our state court as far as I know where we formerly deal with electronic discovery up front in a certain way. It is not a formalized procedure

elsewhere, and the feeling was that those innovations to try and get your hands around electronic discovery as part of an initial preliminary conference were working so well there, that it ought to be expanded to other parts of the court system. And I think it's fair to say that people feel that that's a benefit that's come out of the business court that is helping in other parts of the court system.

Q I was going to ask that same thing, in California and Arizona.

JUDGE VELASQUEZ: This is true. One thing about doing comparative studies is that it is difficult to compare complex cases with regular cases in terms of whether they, the resolution time frame speeded up, because complex cases should take longer, so it is a little bit of comparing apples and oranges. In California, it was probably the case, statewide case management rules which were primarily responsible for streamlining the backlog and our cases getting to trial. But the complex cases, our view has been monkey wrenches in the works. So it has eliminated those from the system so that the differential case time standards can do their work, what they were accomplished to do.

Q Let me ask you all a question;; it is 10 minutes to 11. Would you all like a 10 minute break and come back at 11? What I was wondering if everyone wants to take a 10 minute break or keep going? I've been accused of going 4 hours, 8 hours and not taking a break, and the court reporter could use a drink.

Q Judge Velasquez, question for you, in your paper by request system, how do you deal with in camera submissions?

JUDGE VELASQUEZ: We do have blocks on our public access to certain files, and this especially true in family law, there are a lot of personal identifiers that you don't want to make public, but we have a lot, and especially with respect to trade secrets, all that is filed under seal. And so there is a block which only the court can get at.

Q You just file it electronically like everything else?

JUDGE VELASQUEZ: We file electronically, but we also allow the special case hard copy filing. We can't file everything electronically, for example we have certain protocols for a number of dots for PDF, the files could be very large, so we have exceptionsexceptions for technological restrictions, but for in camera matters, then there is either an electronic block or we allow the hardcopy filed under seal.

Q Those are - -

JUDGE VELASQUEZ: Well we have special rules, and there were litigation and concerns about access and information, but there is this overriding principal such as trade secret protection.

JUDGE FIELDS: There are some things that you can do, again it depends on parties having to stipulate to some of this, but one of them came out in the business community; all sides agree that I can go into the corporate network if you will; to review a particular type of information, so I was given access I can view. Now you can also file

it under a Lexis NexisNexis system. They can file whatever it is electronically and it is blocked to everybody but me and the party submitting it, so I review it, it is made a part of the record in case the appellateappellate court wants to review it electronically later. But this all came from working with the business community. And there are a lot of different ways;; it used to be electronics made it a lot more flexible than a paper system.

Q           What I'd like to do is this whole business of electronic filing, E-filing of electronic discovery and how you do it, I'd like to give some time to talking about that. So why don't we take our recess and start back when we come back.

[BREAK]

Q           We were talking about, I want to really spend as much as we can for the rest of the time talking about the electronic issues. We have about 45 minutes. And I guess, let me do this first, lets talk about electronic filing, paperless report, lets talk about that first, lets leave the discovery issues to the side for just a moment. So lets talk about the electronic filing and how cases get started. Fred, well you are using something now that your clerks office created; how long have you been using electronic filing?

JUDGE LAUTEN:           We were by administrative order required that business, complex commercial litigation cases be electronically filed in our circuit beginning January of '07.

Q           What gets electronically filed, the complaint?

JUDGE LAUTEN: Everything, but the complaint gets filed, the answer gets filed, the motions get filed.

Q The contract, with the contract attached attached to the complaint, does that get filed?

JUDGE LAUTEN: That gets scanned in and filed, um and interestingly, this kind of echo's echo's what Mr. Haig said, we are meeting next week as a general civil division, because this technology that started in business court, going next to general civil and then its going to juvenile, its going to ultimately probably be in every division in our court. There are some interesting issues, in a mortgage foreclosure case, the note, how that would be filed, and that might be paper filed, there is probably going to be some paper filing that's inevitable, but most of, most of the file is electronically filed.

Q With the complaints, I - - how do you do the E-file of the complaint. I mean I practice in the middle district and the 7<sup>th</sup> district and we file everything except the complaint. Because that has to be served, some of this has to be issued. I am just wondering, how do you do; I think its great and we would be looking at that issue in the 11<sup>th</sup> circuit also judicial circuit, but how do you do the complaint?

JUDGE LAUTEN: Well I'm not sure you know, because I just open up, I just open a screen and things pop up.

Q Is that what's what's hand filed and what is scanned in, because it's it's an original file?

JUDGE LAUTEN: What I understand, and I may be mistaken about this because I am just on the receiving end, but I thought that the complaint was typed and then it's sent electronically to the clerk and electronically billed and that's how it starts.

Q Do you use, do they have to fill out the civil coversheet too?

JUDGE LAUTEN: Yes.

Q That's all done electronically?

JUDGE LAUTEN: Yes.

Q And it tells you what type of case it is?

JUDGE LAUTEN: Yes.

Q Is that data collected somehow? Is that the reason behind electronic filing?

JUDGE LAUTEN: Is that the reason the civil sheets; I am not sure, I'm not sure of the reason behind it, this has, for the benefit of our guests, we all know this kind of intimately, I mean we work, you know we are dealing with an independent constitutional office of the clerks who don't work for us and so you know, there is this interesting tension between the technology system that we have as judges and the technology system that the clerks have and how they interface and whether they interface and that presents lots of challenges.

Q And they may not notice, you may not notice on your end, is that the clerks say that this information is, this is their, these are their records. They say that they're their records. Not our records. So

they are going to manipulate and then do what they need to do. Not necessarily the agreement.

JUDGE LAUTEN: And we had a big, we have an ongoing debate because they labeled their system as case maintenance and if we want to manage that data and that information; because they are not, their thing is that we're not charged with case management. We don't have to do that by legislation, we have to maintain files.

Q So we, so we will stay focused on this, if I can for everyone say that the FloridaFlorida technology software technology commission is working much better now with the circuit court to try to come up with a statewide case management electronic filing protocol. We are - - Manatee county has been designated as having a pilot program and I think the thing that is for this to be a whole other issue is to have the access to the records - - committee is the fear people have of the release of the information; that is really two different things, one is that there is not an access to the party, the other is the statements being made available to the public. But I think that probably beyond the scope of this, although I would maybe after we are finished talking to Judge Fields, we understood that Arizona is going gun ho and all of a sudden the issue came up with that security and then it stopped everything, so this is...

Q We have some things going and I know the Manatee project is going to happen and my understanding is the way you will be able to do this is you will go to a single - - drop down to what

circuit you are going to go and you try to file in, and then go to the same place and then you will go and file it into that individual file.

Q But it's an enormously confidential, it's enormously complex, but this is where the - - community just taken over to solve it, so how do you do business when you have to go to 6 or 7 different places in the state - - judiciary being centralized we've got this, that's our own separate problem. But we'd like to know really how in the business - - and able to do and having done it.

Q Rick what are you doing in the 13<sup>th</sup> Circuit?

JUDGE NIELSEN: In the 13<sup>th</sup> we have a good relationship between the court and the clerk and we are since January, been talking together about putting together an E-filing project much like the 9<sup>th</sup> does, and I understand the clerks application is almost ready to go up through the channels for approval.

Q Will it be available at, will the information generally be available - -

JUDGE NIELSEN: It is initially just parties specific.

Q One of the prior things we had before was trying to keep track of what happened here and every circuit ends up - - and I am wondering now if you all are doing it a little differently instead of re inventing the wheel as opposed to trying to get a standardized protocol.

Q It is supposed to be a standardized protocol and - - in each of the circuits.

JUDGE NIELSEN: And that's my understanding of what the 13<sup>th</sup> is doing and it would be adaptable to whatever the Supreme Court ultimately approves statewide.

Q How about telling us what's going on with the E-files, filing I should say, getting the case going and that kind of thing, not discovery, we will talk about that later.

JUDGE FIELDS: It's interesting;; we in the complex court, the initial pleadings are scanned in if the case is certified as complex. We were 100% E-file from day one. Well no, I take that back; we were about four months before they got it set up and running. But we use Lexis for the complex court, but the initial paperwork was scanned in so it was available to us. We have gone 100% E-file in all of our other divisions with the exception of family court, because there are some issues with social security numbers and that sort of thing, but the - - cases, I don't know if you are familiar with family court, but there are, yea child support, and there are thousands of these cases. The law firms that file those on a contract basis in some states apparently have solved the problem with electronic filing of complaints. I listened to a presentation in Las Vegas Vegas in December of last year about how they handle that, and I worked with - - I am a user too, I just turn on the computer and it drops down, but now that our system has gone state wide, I am sorry, county wide for us in Maricopa County, we also have an elected clerk of the court that runs their own independent operation. But our constitution gives the

administrative supervision to the chief justice of all the elected clerks. So eventually they have to come around to do what the chief justice wants to do, so the clerks system is not as good as Lexis, its got some problems, its not as user friendly and I can't use it; just go to our web site and sign in and do like I do with Lexis and access our court file. They are promising me they are going to do this in the first quarter of 2007.

Q Do you have to actually sign in onto their computer?

JUDGE FIELDS: Yea, you have to go through 3 fire walls, and from each computer you operate. I was on a - - in the UK several years ago and an emergency motion, I go to Lexis, read it, make a ruling sitting in an internet cafe, I wouldn't call it a pub; but that's the type, if you are a judge in a complex case, and you are familiar with the case, that's the type of technology you want. I read the pleadings, I make a ruling and I go on and finish my beer and do another hike. If the clerk sets them, the cause and the concerns that we talked about, you have to go thru 3 fire walls to get into it. Only the judges and the insiders in the courthouse now can access. It'sIt's not right;; the parties should be able to access this court file too remotely from a website.

Q What about in New York, what do they do in New York?

MR. HAIG: Uh the big problem in New York has been that electronic filing for political reasons has been voluntary, not mandatory. My impression is that around the country the

technological issues have been overcome and the issues that remain are the kind of issues that you are talking about here which are political ones, and it's interesting that in New York the court system has been reluctant to mandate electronic filing and has undertaken a process going on for several years of trying to persuade people to do it, which has not worked terribly well over the last couple of years. Finally just recently our state bar association which is sometimes behind the judiciary got out in front of it on this issue and has recommended that electronic filing be made mandatory for the obvious kind of efficiency reasons, and we have some issues that are not dissimilar to the ones that you are talking about, about clerks and about individual clerks wanting to do it their way rather than doing it in the uniform way. And you know clearly the technology is there, it ought to be uniform so that people can do it the same way every place and it saves so much money for the parties and lawyers and everybody else, doing it in some other way is really kind of like wigs and quilt pins. But there are still some people that insist on that.

Q           Why, at least for the business cases, the business community with the demand that all of these that we are talking about, and then what I can't believe, we have - - Miami, the record was not ever, it was in, it took up like 2 or 3 rooms in the courthouse, you know to those who actually go through a paper record. And I think that we can't - - upon this to show that for example, if your record is electronically transmitted to the appellate court so that you

know, instead of the first hearing a record on appeal, click of a button -  
- and this is my other vision of what has to happen, the  
appellateappellate court says not only is there the transcript that you  
need to read, and it says records reference here, and you push it, and it  
goes to case records...

JUDGE FIELDS:           When we started it, I called out the court,  
the chief judge of the court of appeals and I said we are getting ready  
to do this thing, you and I should talk and he said, I am retiring.

Q           Right now, with all of our judges, to be frank about it.

JUDGE FIELDS:           We are fighting that now, it's amazing.

Q           Those that are here for the most part, I think are willing to  
do this and - - but a 7 year judge, some of this is going to be just  
dragged and...

Q           Well the key is paper on demand.

Q           Paper on demand, that is all that it is.

Q           Interestingly in the federal system as you know, the  
software has gotten on board, but the appellateappellate court  
apparently has been resistent. In our state we are you know, the  
appellateappellate court, we are, all the appellateappellate court is you  
know, we are doing electronic filing, but if the record isn't  
electronically available...

Q           Having to scan, I guess is what it comes to.

JUDGE FIELDS:           That's a whole different topic.

Q           Lets talk about that in just a little bit, paper on demand.

JUDGE VELASQUEZ: Well paper on demand is sort of a euphemism to get away from paper, Because of - - for certain topics like what you want, a hard copy; - - motions are easier for me, with a hard copy but my children - - paper, they are - - comfortable in a different arena. So we have to make accommodations, but it hasn't really been a problem. It, when you talk about electronic files in Orange County in California, its really 3 main areas, one is electronic archiving of the court document, and that actually started about 15 years ago with family law and that then rolled out to the rest of the court about 10 years ago, and that is very labor intensive because you have to receive the hard copy filing unbundle them and then scan them into the system. The retrieval is very easy. Every judge can log on to the civil index, pull up a file and actually see the actual page, if you want to print it you can print it, and it's in a read only format so you can't tamper with the public record. So that was stage one in the history. After that came electronic filing, and that started in complex where it's mandatory and that just permits the filing of any documents, including the complaint and any attachments, and you log in, you subscribe and then you just transmit your documents.

Q Is there a cost?

JUDGE VELASQUEZ: In our complex right now, and its an in house system, and because we save money by saving the labor hours than we do it for free to urge people to use it and right now...

Q Is there a filing fee?

JUDGE VELASQUEZ: There is a filing fee and other mandatory state assessment. But the cost of the filing is free for now. However the problem with doing it in house is that government always falls behind in state of the art in an industry that is of the latest and greatest on how to do things. And so now on a multi county approach we are changing our system to a more unified approach to have archiving and filing on the same system. Filing however through a private vendor, so there would a cost for E-filing which is permissive in a general sense, it still would be mandatory for complex. And then the third aspect after...

Q Who is the private vendor through?

JUDGE VELASQUEZ: We have a list of approved vendors and there are several of them out there. Lexis Nexis is one. E-case, there are several.

Q I am very, very skeptical about giving records to other than...

JUDGE VELASQUEZ: Well they transmit, they transmit the, they transmit the document, and they can do that now. We have professional services that will fax, file and E-file. But the reason that we are going with the vendors, is then that ties in the third aspect of electronic files which is E Service. E Service to the extent is permitted by statute, so for example the original complaint still has to be personally served, order to show cause, that will be personally served and injunctions, that will be personally served. How everything else,

like bond motion or after the answers, can be electronically filed or at the same time served on the...

Q Is this just in complex cases?

JUDGE VELASQUEZ: The roll out to the rest of, to all of the Orange County court, it will be permissive E Service and permissive E-filing. In complex they are going to be mandatory, and again, there are some political issues, there is a perception that not all the public has access to computers which is not, becoming and less and less so. I am sure there are people who, particularly are pro se who don't have access to computers, so that's why we allow hard copy filing, but everybody is happy with it and the next step is right now for accessing archive documents, you have to go to a terminal at the courthouse, and instead of pulling a hardcopy file off the shelf, you just log on to the system with assistance from the court personnel and you can get your view of the documents.

Q How do you protect confidentiality?

JUDGE VELASQUEZ: There are certain blocks in family law, and also if you have, in any case, we are developing rules right now, but they are not quite clear, with the electronic blocks or anything sensitive like social security numbers will be limited to require only the last 4 numbers, something like that. The next step is to have remote access to archived documents. So anybody with a PC or access to a PC connect to the record search from wherever they're at.

JUDGE FIELDS: Well in a complex court it is mandatory. It is mandatory you service also. ItsIts \$5 per pleading and that is no cost in a complex court to the parties and lawyers. The benefit is, its web based and the lawyers are used to using that, and when you roll out the system court wide, it doesn't have access on your PC in your office. That's making the bar and the clients very unhappy because they want this service and you have to solve this problem.

Q And what would the problem - - over there in Arizona?

JUDGE FIELDS: Confidentiality. We are a major center for identity theft, so we did not want to continue to be the #1 county in the country where people can come to, to get personal information. But we have solved it by coversheets and also in family court, putting in the block and that sort of thing.

Q - -

JUDGE FIELDS: Well we are still talking with the clerk of the court. I mean we need these other services so we have to find a solution for those problems.

Q Now you use Lexis NexisNexis as your vendor?

JUDGE FIELDS: For complex. Now you get a charge for three on their roll outs. With Lexis Nexis, - - and something else. Depending on how much money you want to spend; and again this is a clerk thing, no mandatory E Service with the clerk system. But same problem, it's a government system;; we are about 2 years behind us, with the government and computer system. In the end Lexis makes

changes instantly and they are very responsive. They also archive us; they have their own data storage of our court files, plus our clerk also has PDFPDF documents that Lexis generates also. So we have a backup.

Q When you say mandatory, is that the judiciary mandated preferring that all these services be available - - through your clerk to allow this to happen?

JUDGE FIELDS: Uh the clerk, because of our administrative order, the Supreme Court had blessed us by our Supreme Court ruling saying there will be a complex court. So the clerk has to do what we want them to do. Now do they put road blocks up occasionally? Yes, and we have to have periodic meetings to talk about what the chief justice wants done.

Q What about economics? Has there been discussions about what needs to be done with - -

JUDGE FIELDS: Uh yes; a law clerk for one thing, we want; yes, one of the things in complex court judges want is a law clerk. And once we've got enough money and now we find out that \$70,000 a year is not going to get you a good law clerk in Phoenix. We can't get anybody to apply so now we are asking for more money, so eventually we will have a law clerk, but it's been 5 years, and we can't seem to generate enough money and no one's going to give us the extra money. That is a real political issue with the other judges.

Q This E Service, are rules in place in both California and Arizona?

JUDGE FIELDS: Complex court rules.

JUDGE VELASQUEZ: By rule or agreement of the parties.

Q I serve all of my orders by electronically and save in an envelope, and stamp. I serve everything by email.

JUDGE FIELDS: Talking about one of the efficiencies, lawyers, we in Arizona, if I don't make a decision within 60 days or anything out under advisement, they hold up my paycheck, it's a state constitutional rule. Unless I go to the chief justice and beg, occasionally she might grant it. But in the complex court, with Lexis, unless the judge turns it off, and I've never turned it off, they now know, the lawyers know when my judicial assistant sends it to me for a decision, so they are not calling constantly saying the judge hasn't made a decision, they get notified that everything has been put together, the motion, the response, the replies, all the exhibits has been shipped electronically and it pops up on my computer for ruling.

Q So you are using Lexis?

JUDGE FIELDS: Oh yes, so, yea.

Q Actually, the rule. We do that on administrative orders. Now my, my website it has practice guidelines. You know 45 days go by and we haven't heard from them and I advise - - to go. I don't know about the paycheck part.

JUDGE FIELDS: Saves my assistant some time but yes I just got it from the judge or no I didn't give it to him.

Q Well the federal system has that in house state - - nation wide.

Q I have 2 questions. One about the preservation of evidence for appeal and the other question deals with how do you maintain an audit trail of who has access especially for privileged or confidential documents?

JUDGE VELASQUEZ: Well in California the attorney still has to prepare the record for appeal. We are not at the point where you can simply hit a button and then transmit a transcript. Because counsel doesn't always, an appealing party or respondent do not necessarily always want the entire record, so they still select what they want to go on appeal. If it's an appeal from a trial I'm sure that by rule you have to send up the whole transcript, but the clerks record, separate from transcript does not necessarily have to go all the way up and some appeals go just on a clerks record and not the transcript. So the lawyers still have to deal with that. On preserving confidential evidence introduced into trial, it is extremely rare that evidence introduced at trial still has protection of confidentiality, again because in California, trials are open to the public.

Q Well how do you deal with the trade secret case?

JUDGE VELASQUEZ: Well up to the point of trial, we do have sealed documents, but if it's introduced at trial, I suppose it could

be special orders of the court to keep it sealed, extremely rare, and I guess with the exception, it would be treated as an exhibit and send it up on appeal. Probably in California we would handle it probably on a case by case basis.

Q            You don't have an electronic vault essentially that is available for you; you do have that?

JUDGE VELASQUEZ:            Right.

JUDGE FIELDS:                I do, I do.

JUDGE VELASQUEZ:            You'd have to send it up on appeal and somehow it would have to get introduced sealed at the trial and then on a record of appeal. But I don't think there's any state rule.

Q            --

JUDGE LAUTEN:                Microsoft distributes its software, its just a software in a vault, and you get a password to the vault that they put on your computer; and once you've extracted it, only you can get in it. You can store your programs in there if you want and its password controlled. The issue is partially what do you do so that if it goes up on appeal, its going to have something to look at and not say there was an exhibit. The other thing is what happens when you go out, and the party says well you can have access to our system; you can look at our system that you told us about. How do you then preserve something that, that...

JUDGE FIELDS:                If I need to review something of pertinence, for example that is confidential that has been submitted to

me, - - review. In the old days you just get a file and you look at it. With the complex court, with Lexis, I am the only one who has access to something that they filed, basically it is protected, it's blocked from everyone else. And Lexis has to track that, who's had access to it, and they do that with everything, they can see when I sign in, and the lawyers know when I sign in and when I make a ruling on it whether it be Saturday and if I am, I tend to be insomniac, so I don't make a ruling till 3am on Sunday morning.

Q So the audit trail is outsourced to Lexis?

JUDGE FIELDS: Right, but now the clerk also has the duplicate copy of all of this on his system also.

Q But not access to it?

JUDGE FIELDS: Not access to it, now wait well yes the clerk would have access to it if the clerk had a password to get into it; its there electronically. And if it goes to the court of appeals then we have had a lot of discussion with the court of appeals judges, how are they going to handle this, and they are not yet dealing with reality because we have a whole bunch of electronic filed cases. One thing and I suggested to them, get a LexisLexis account for this case, get a password, and if you want to go and look at something, there it is. You still have an electronic designated record on appeal. But if you want to look at the entire file rather than the clerk copy all this paper and sealing something as confidential as an exhibit and ship it up to court of appeals, why not do it electronically. Give them the pass, or

give them the access because your vendor, whether it is the clerk or someone else, can track this, the access, who accessed it when, they can, its amazing what they can do. They can count the key strokes, that sort of thing.

MR. HAIG: I was just going to say in response to your general questions, that handling that kind of confidential information electronically is far easier than it is to handle it in the old way. In the old way, you had to worry about pieces of paper and moving them between trial and appellate appellate court and now its just a matter of passwords and access and you can track it very simply, and the technological aspects of sealing, so to speak, are not an issue at all, they are political questions about sealing that come up from time to time.

JUDGE FIELDS: Well we brought it up to Lexis, they said sure. And it was done basically in 24 hours. We had exactly what we wanted, and so with the right technology it can be done.

MR. HAIG: Just to finish that comment, because I think you asked a good question. We used to and we still do have a problem with paper documents and trade secrets and handling them in a confidential way and our judges didn't really want to have them sitting in the courthouse because of the amount of damage that they could do, so you know they went through this kind of procedure where the um, documents might be submitted submitted to chambers to enable the judge to do or to decide what he or she needed to do and then have

them returned to the attorneys rather than going through the court system, and that is just so complicated and the potential either for losing the documents or worse, maybe not worse but you know having them fall into the wrong hands in a way that doesn't help anybody and hurts everybody is terrible.

Q Now I am wondering if, tell me again in New York, what's the political opposition when the judges - - these documents electronically, but I can't for me see a downside if there is paper on demand for judges. Because I could say you know that I, you know I'm not - - I need, - - I want to read it, so I'm not just looking at it from a screen - - electronically there. So what is the political aspect on it?

MR. HAIG: The political issue in New York and elsewhere has been two things. One is, some litigants don't want electronic filing because they think that other potential litigants are going to get access to the electronic filing and the way you deal with that, is you know um...

Q As if you are not going to access to...

MR. HAIG: See the concern was that if something is buried in a file in the court basement, it's not that easy to get to. But if what your court system is doing is scanning all that stuff so you get electronic access to it anyway, then the problem or the issue disappears, and at that point, it becomes very attractive to have electronic filing.

Q                   But to me, it is a difference between electronic filing, and then who has access, and it is so, I mean the idea that the general public wants - - and the only people who seem to really care about it in having this, are the title companies and the private investigators, but what I am saying is that the lawyers - - don't you want to be able to see a file, you know, wherever it is.

JUDGE FIELDS:           And you can sign in electronically and you can track, you can track who has... and going back to your exhibits, or you know something like in New York, the judges want to get rid of these documents they've looked at. Well what if you want to preserve that for the record of appeal so that the appellate appellate court can review your decision. It'sIt's easier to do it electronically, because I don't have to worry about sending something back and then there'd be a fight over these paper exhibits I sent back and it's not part of the record.

MR. HAIG:           Yea, I was just going to say you know, from the bars prospective, how can you justify charging your client for time required to handle paper when it could be done so much more cheaply, you know electronically. I mean, it just, it doesn't make any sense from the bars prospective to do this. And there are always going to be a few people who resist it you know, for whatever reason. But the technology has developed so much and the ease of doing this is so great that you really are not excluding any portion of the bar.

Q I have a political question, I was in shock to hear that you know, and we have a court reporter here from Florida, I don't know if its electronic or what, but - - that the cost of depositionsdepositions hasn't gone down, is there anything happening in your court as far as you know, depositions, and those who are actually being transmitted and that you are eliminating paper and you are also eliminating the expense of you know, the court reporter making multiple copies. Is that an issue - - that we are involved with?

JUDGE FIELDS: I am laughing because we have the same issue; it's a political issue. And uh, we saw that in the - - In Arizona, we changed our rules, you can't take deposition in civil cases anymore except in the 3M cases, only of parties, only of experts and only of custodians of records. So you have to get the courts permission to take anybody else's deposition. And we don't accept - - as long as if you want to stipulate the taking of the depositions, because it's a witnesses right they can say no, I am not going to do this. So you have to come get permission to take a deposition. We are trying to encourage people come, how about just coming down and talking, and do a little investigation. We are trying to reduce the cost, so we kind of went at it a different way.

Q You didn't, what about electronic filing of the depositions?

JUDGE FIELDS: No we don't file them, but yea, you submit them electronically.

Q I have a question for anyone who can answer the question. I understand pre trials containing the confidentiality of the documents - - not a problem, I don't think they - - technology that we have. My problem is and I think we discussed it, is maintaining confidentiality of the document which is introduced into evidence at the trial, - - live web cast of the entire case and everything being projected on a screen. I don't understand how you can keep something confidential that is - -

JUDGE FIELDS: A bench trial for example. You know a business situation, dealing with source codes. You know you can - - a protective order, only the judge. It's a find or fact, we can't do it.

Q What if you had coca cola say that secretary stole my formula, and the secretary said no I didn't, I got something else. You are not going to protect her formula?

Q No, no, no I am talking about passively how would we do it. You know, would you introduce that formula into evidence especially with the new sealing and confidentiality rule. I just don't know if - - how it would be done with the issue of trade secrets.

Q You all might not know about this new administrative order. We have to give notice to the media and to the public if we want to seal anything. I don't know if you all are aware of that.

JUDGE LAUTEN: I kind of share Judge Lynch's perspective. At an actual trial, bench or jury trial, I don't know how I could protect people; the court is open, I think I'd have to have a hearing under

limited circumstance where I could ever shut those doors and say you can't come in. I don't know when you get in the trial setting how you protect confidential information.

JUDGE FIELDS:            You can do it;; I mean parties have done it. They have stipulated an accordence that said you are going to have one expert access - -

Q                    We have probably have useful information here in the new administrative order where I am assumingassuming the record - - you have to give notice and it's her thing, you don't have to - - you have to give notice, you have to have a hearing, its amazing.

JUDGE LAUTEN:            No, I am not talking about pre trial, which is a different issue, but I'm thinking about I am actually now in a trial which is a public event, now I never really had the issue presented to me in that kind of content trade secret or formula or, but could I exclude people from that information in the trial with the case itself. Interesting issue.

Q                    You can do that, but you have to - -

MR. HAIG:            Just from a policy prospective you know the rule of sealing generally has to do with situations where the help or safety of the, you know the people are being threatened if something wasn't disclosed in you know a dangerous product for example; there is a strong argument that product of that nature should not be under seal and that the press ought to be able to find out about it. But that's a totally different situation from a policy perspective of, you know a

trade secret or a business secret of some kind which is routinely treated in a lot of courts as something that is subject to a protective order; and you know, if you were going to introduce it at trial, it would be marked with a number but then it would be in effect protected by the courts protective order, and then when you call that under seal, its just not distributed and made available elsewhere. I mean, I gather from what you are saying is that your rule would apply to that type of thing, not just the dangerous product where the public ought to know about it for its own health and safety.

Q            Lets just address the basics, if I have jurors there, uh how do you, do you orders the jurors then to - - and ask that the cameras be turned off?

JUDGE FIELDS:            I'm not sure. Well I am just thinking, most of these trade secrets involve chemical formulas, and that sort of thing. It's a subject of expert testimony. You can limit it to just certain experts, but the formula itself is not going to be submitted to the jury or a part of the record. I mean I think you can deal with and I have had one situation that dealt with a source code; both sides absolutely did not want the source code to be a part of the record. So they worked it out, they hired one expert they all agreed on. That expert evaluated and testified in front of me as a bench trial. I think you can get around these problems; we have a similar typed rules. But if the parties come in and stipulate the protective order, fine. But if somebody, including the press disputes that, I have to have a hearing

to make certain findings. But if presumptuably, if the parties agree, I can enter the protective order if I agree. But it's a little different than in Florida.

Q What we have is rules - -

Q Do you think we can get extra training on - - proposed; it seems to me that going back to judicial education; that and what you've said about the facts and the myths about electronically filings. Is that a subject in California or Arizona or in New York of judicial training, about the electronic agreement - - admisify it or help to advise you how does that work?

JUDGE VELASQUEZ: Well the handling of electronic documents is a big part of our educational component in California as well as just educating the judges on the use of technology. We always have, as below as simple as word training or word perfect, and apply that with the judges, or excel, you know how do you do a spreadsheet. We give that basic kind of training to our judges. But it goes all the way up to how do you handle confidential information.

JUDGE FIELDS: We did the basic training for judges also, I mean our clerks will train judges and our staff on how to access electronic files. The vendors, Lexis will send people in to do that. It'sIt's kind of a basic training. But going beyond that, the complex court, and that was my job initially is to identify educational resources. But that's when I found out about the - - and that's available by website. And I also found out, go to the website, the federal judiciary

site. I mean it's amazing what the federal courts offer and it's all free. And their manuals are free. We've even traveled to California to attend their judges meetings, and the biggest plus I think has been the Association of Business for Complex Court Judges. We have developed training programs for judges and it's not substantive law but we have the, for example.

Q            County?

JUDGE FIELDS:            The county industry has been in an upheaval because of - - brought in folks from Wall Street, their counsel from the bigger county firms; and also the other side. And just had this raging debate for about a day and a half while we sat there and absorbed it all. That's the type of...

MR. HAIG:            I was just going to say in response to that question, that this is an area in which the bar, you know the organized bar could be quite helpful, because inevitably, you are going to have greater knowledge and expertise about some of these issues some place in your bar, and you know the judiciary can reach out to the bar and invite lawyers to come in to provide education on these subjects. The judges may not agree with everything that the lawyers say, some of them may have a bias or a particular perspective, but you have that in any kind of educational process. In New York, there is a New York Judicial Institute that's got responsibility for education of judges and they have reached out to components in the New York State Bar Association and said we need to know more about electronic

discovery. We don't have that expertise in-house and we don't want to go out and pay consultants. We would like lawyers to volunteer, and the bar association goes and organizes a group of 4 or 5 or 6 lawyers to come in, and one case I can think of, a day long program about this stuff, and it was free, it didn't cost the judiciary anything.

Q Well that was the purpose anyway. I 'd like to just conclude by saying like tomorrow for example, all morning, a half of day program on E-discovery.

Q - -

Q My point is that there is a program, and judges here can attend that program at no cost. E-- - Discovery, do they somehow access discovery materials that are filed, most are not blocked to your program.

JUDGE VELASQUEZ: E-file, E-discovery is a major activity in litigation in California. We have not developed special rules yet;; they are being developed, probably patterned after the federal rules of E-discovery. We don't lodge discovery responses with the court, the culture there is to go to a private repository which can hold hard copies as well as electronic data.

Q Is something referred to something in the discovery material, if you access them, do you need to look at them. Do they ask you judge do you need to look at this?

JUDGE VELASQUEZ: We normally don't, except in the contract of law and motion or some hearing in which case they would

provide to us as an exhibit but it could be an electronic exhibit for example, a motion for summary judgment, they could be presented separately on disc, and we would access it that way; the judges in CaliforniaCalifornia do not normally access discovery or repository, but we do in complex, we require the electronic data, rather than, you know every case is different, but our preference is to require electronic data in electronic presentation at trial, because the number of documents is so voluminous. That's the only practical way.

Q How about in Arizona?

JUDGE FIELDS: I am requiring an electronic repositories; in other words, you find out from the client if you talk to your clients, that the original information is electronic in nature. So I have required now, don't go and set up a paper repository. Get a website access for only by parties and litigants in this case. I have access to it if I need it. I am trying to encourage lawyers don't attach a bunch of stuff if you want to just give me access, just bring a code number or something.

Q The same way on law, I don't want you to give me case, don't give me cases - -

JUDGE FIELDS: Exactly.

Q I am talking on behalf of Mike Pickovitch from - - counsel; and a lot of these issues are not really that novel anymore from an industry standpoint. We do due diligence now consistently by virtue of these sort of mechanisms that the judge is speaking of, where there is a repository established; and don't think there's there's not

trade secrets in those things. I mean there are trillions of dollars of due diligence being done on those size companies, and its - -

JUDGE VELASQUEZ: Well a certain part in the industry is because of, if its found that documents were not disclosed in response to a discovery request or sanctions, which had an average impact on the businesses side of the case, so with now with the request for not only trying to gather medi data, the company has to really keep now good track of what they have, and if it pops up they didn't disclose something, suffer an adverse consequence to trial. It could be critical when you start thinking along those lines.

Q We also do, we now do all our securities filings on the Yager system, which also has a component by which you can file things confidentially if you need to.

Q Does the security - -

Q Yes the S.C.C. has a mega database, and its incredible. We submit all our securities filings, you know voluminousvoluminous documents to them and its immediately accessible, I mean, I can see it the minute it'sit's filed, it'sit's accessible.

JUDGE FIELDS: One of the debates; ethically for judges now, that's arised in Arizona, I don't know about California, is am I limited, if I am doing research on a motion and I know I can access this stuff through the web. So right now I am doing it and disclosing it with disclosure, I am doing the jury instructionsinstructions on the bench from Google. If the lawyers can't come up with a definition or

something, I just GoogleGoogle it and give them an option, and they pick it.

Q           --

MR. HAIG:        You know, in business litigation, its rapidly becoming the entire ballgame. I mean, it's just immensely important, and it'sit's also immensely expensive and you know I think the thing that a lot of states are finding is they have got to find a way to get their hands around it at the beginning. They have to have as part of their initial conferences something on E- discovery and if the judge doesn't take control over electronic discovery issues at the beginning of a case, you've got something where there is tremendous confusion and misunderstanding over what has to be preserved under what circumstances and how its going to be treated going forward, and you can end up turning a lot of litigations into a fight about sanctions over E-discovery; rather than dealing with the merits. I mean we are supposed to be dealing with this stuff on the merits and a lot of the time, we are fighting about who had the duty to preserve what and why didn't they do it and what should be the sanction as a result of that.

Q           And that is in business court

Q           That's in every court.

Q           In one of the issues that we have to look at in dealing with it, -- discovery case -- now I am thinking of the whole E-discovery overlay. They have enough with the paper; and so how are you, how is it working for you, has it been better?

MR. HAIG: Yes it is because if the judge at that initial preliminary conference has as a required component of what has to be dealt with at that time, discussing the key electronic discovery issues, such as what are the preservation obligations going backward and going forward, and how is the electronic information going to be produced and whether if at all there is going to be cost shifting. If you deal with that up front, its always better to deal with it up front rather than not dealing with it and letting it get to be a bigger mess than it is already.

Q My segway is saying why I - - complex litigation, because lets say we change the products liability area in discovery - - and imagine the same challenges are there.

JUDGE FIELDS: It's much easier. It's so easy to do.

Q Any right or wrong with the issues, that is the business convincing some judges to take control over the case early, manage it early and getting an early trial date set and those kinds of things. I want to, we've run out of time, I want to get Judge Nielsen and Judge Lauten's comments, did you all have anything you want to add?

JUDGE LAUTEN: Well the first training that I attended was on E-discovery and it's a part of our case management order that is a topic to be discussed in case management. I just haven't had a case yet with a volume of E-discovery and it will come at some point in time; and that seminar was invaluable. I do want to - - I have been thinking about this question about you know coca colas formula; and

there must be a way in a trial to somehow protect that. But its counterintuitive to me as a judge to say, this public trial, there is an aspect of it that's not public, but there must be some device to address that issue.

JUDGE NIELSEN: On esi a lot of, a vast majority of my cases are transfers so far; and so the issue comes up at a status conference but they are so far down the road its hard to address realistically. On new cases, new files, I am attempting to address the whole issue of esi preservation very early in the case.

CHAIR: Well let me just say that on behalf of the Task Force and the Supreme Court, thank you all very much for being here. You've confirmed a lot of things of concern, and in the same you've given a lot of new information to think about. I hope you will agree to be a resource for us. We will be adjourned.

## PUBLIC HEARING

CHAIR: This is a public hearing for the Task Force on the management of the litigation in complex cases. It was published as being at 1:00, its in the materials as 1:00 but on some of the boards out here, it shows it starting at 1:30, so that's kind of why I was dragging my feet a little bit to get started. But we are in between and um I think that what I'd like to do is go ahead and get started. This Task Force was created for the purpose of studying and examining the efficient and effective management of complex litigation in the resolution of discovery and pre-trial matters in litigation. And the Task Force is to recommend actions needed to effectively and efficiently process those cases and preserve judicial resources. We are tasked with the, or charged with the idea of recommending a definition of the case types or characteristics that should be considered in determining whether a case is complex, and we are to review rules of procedure to determine whether the rule, systems or processes should be created or amended to enhance the effect of case management of complex cases. We are to include looking at case management elements, procedures and best practices for complex litigation and other court systems as well as any existing procedures. And to coordinate with other rules, committees, bar committees and with the trial court project commission. So toward that end, we are holding a couple of public hearings to allow for, to ask, to seek comments, suggestions, recommendations for the Task Force to consider in preparing its report for the Florida Supreme

Court.Florida That is the purpose of the public hearing, to get ideas about perhaps some techniques that we have not considered already. Best practices perhaps if you have seen in some courts around the state and want to share with us, or if you have other ideas. So no one I believe signed up ahead of time; correct, okay. So let me ask then, is anyone here, there a few people here, are you here to speak or to just listen. Anybody, you want to speak, just listen. Okay, sir, come on up to the microphone, and let's hear from you. If you would just for the record, tell us your name please.

PUBLIC: Yes, Brian Pitts name. I remember when the original administrative order came out;; I looked at it, similar to the diversity committee. But on this issue here, I myself personally from a pro se standpoint deal with complex, complex in a sense where I overheard in the prior panel where if you have, I will speak basically in your language; you have several joint tortfeasors on one side and you have one or two on the other side, so you have to go through each person who's fault, whatever it may be, negligence or whatever; okay next, in my area from where I am at in Pinellas, having dealt with several judges, I have found that basically a panel of judges who can not deal with it or throw up their hands because of the complexity of it; oh no I can't deal with it knowing the proper way to get rid of it. Anyone understanding practice, the easiest way to do that is with a motion to dismiss or a summary judgment whether it's right or wrong. But if he is trying to get this case off my docket

and the chief judge - - that either. So on this matter, you are talking about complex, I am talking about where it's one on one side and several joint tortfeasors, okay not only that, let's go a little bit further. You have several counts in the complaint. Not one or two like you know like an attorney would do. I mean I will try to make it simple; a typical situation, I have dealt with where I will have 8 complaints that have 5 counts. I've done in a case correctly, state cause of action where there has been up to 14 counts, now I did this all for a reason; to see if these cause of actions actually could be implemented for real. You know whatever justice would grant you. These judges in these circuits, many I know are not capable. Many asked me and forced me to have to recuse them because that's what they wanted. They actually wanted that, because they did not want this case. They knew they could not make it look so gross to where it looks like obvious to the court, because this judge didn't do anything with the case at all. Next the training is an issue. I know - - evaluation - - committee. You do have some information. It would be good to get information of, okay, well how many trials have you as a specific judge done. Okay, and setting up two and I am speaking - - two divisions probably is this, similar how you would file family court, which is attempting to be done in this state. Whereas we have some who have done with separate litigants, and have several joint tortfeasor on one side and then you have your business litigation. Now I understand the fiscal ends aspects this may occur, but this is strictly to Florida, in Florida

you have cases where you have a litigant in several joint tortfeasor but then you also have strictly business, and you have the - - go straight back. Now in order to deal with that, you need a judge that actually can deal with it. Not, okay we are talking about - - II've say this because I've already experienced it, several different judges from different walks of lifelife in this specific circuit, because of too many counts, see this is one thing that I have not talked about, what if you have a complaint that is not just a party, and has several counts. See the judge may not have no problem with one or two counts maybe, but when you start going to five, six, seven count complaints, eight counts, and like I said the recent one; this is what happened in this case.

CHAIR: Mr. Pitts, let me ask you a question, are you a lawyer, I didn't?

PUBLIC: No, no. I do strictly pro se. Thanks to West Law and - - which does a very good job.

CHAIR: My question is, do you have a suggestion, you are telling us about issues, but do you have a suggestion to change that?

PUBLIC: Okay. Okay, as you mentioned earlier in the panel, you know what, it's really - - so here is the thing, you should really deal with the training. When the - - whoever to appoints this judge, to put him in the position, you know that all over the state - - kind of cases. You know how many trials this judge, this attorney ex, it will basically be an ex attorney, has done, you need to look at whether he can do this by past history of a trial, not bench trial, not you know trials where he

won easy settlements, you know in a offer judgment, no. How many trials; because we know this judge is going to be appointed and assume this position, has dealt with complex cases and he - - Next, that is one aspect, earlier you talked about E commerce aspect, because of pro se and you have different levels of filing, and you know its going to be a problem constitutionally, to go strictly, when you talk about a pro se person, or one individual, to go strictly computerized, is not going to be accessible to a person that does not have a computer or will not hire an attorney.

CHAIR: Let me ask you a question, what if the computer terminal was available;; a public terminal was available in the clerk's clerk's office to pro se litigant?

PUBLIC: For the litigants to actually file the documents?

CHAIR: Yes, to file, to access, the filings, the access to the docket. What if that was made available to pro se litigants that way?

PUBLIC: Okay, so they would bring their paperwork to have them feed it in electronically?

CHAIR: No, Mr. Pitts you, everybody files at the clerk. The pro se would file at the clerk. I am asking in terms of access to those documents electronically, what if the clerk - - now they have microfichemicrofiche in some place.

PUBLIC: Yes okay, yes.

CHAIR: What about access via computer?

PUBLIC: Okay, access in that way, yes, but I am talking about initially filing.

CHAIR: Right.

PUBLIC: Okay, and like you discussed in your prior panel, where future filing would be strictly mandated to electronic.

CHAIR: We were talking about business litigation, you understand?

PUBLIC: Okay, well see I am dealing with two different, be it pro se complex and then business complex, which you will see a lot in Florida, it is in a lot of areas, because it is in a lot of areas. Okay, that - - in the attempt to put everything in one, dealing with the one trial or two trial in a specific - - so again, that is on a trial level that I am trying to see past - - using your time effectively. Now here is another problem that no one has dealt with. I understand this for the future. If the person were to go to an appeal in the complex case, the typical scenario is - - looking at it. Or you can look at it electronically. If you have a complex case, and you are saying okay, no I can't use this case, is it distinguishable or is it - - because you've got a wash there and you know that it may not be. Now you look at this record on review, not in trial court, now where you see is it changed and we need to reverse it. Okay, now you've got a complex case on appeal using the same material depending on how, in most cases the record, even for a pro se litigant, won't cost them much in a complex case, where it would be several joint tortfeasors - - filed, its not going to be gigantic

but it is not going to be normal, like okay, we see 1-2-3; now on appeal, I understand you have not dealt with that in the trial, but I am saying in the future, you might see now, say the trial court does that, because you do have this in place and now the appellate appellate court gets it, now its also an appellate appellate court complex case. The training needs to be in place and you need to find judges that yes, that do have experience that will take the time to do this and not brush you off. I am telling you from experience, I have seen it done just to get rid of the case. And you know how it goes. With the transcript; if you do not have the transcript for review, you can pretty much forget about your appeal because they want to view the whole record - - error contents. So if you don't have a transcript, in most cases, you might as well forget it and not do it. Now the reason why I say this is in most cases, the pro se litigant, even in complex cases can not and will not afford a transcript. So once the trial court gets rid of their case with prejudice or whatever the matter is, it's done. Okay, again, I am making it, because you mention the aspect about transcript. Here we go with complex litigation. Most cases in complex litigation it is very likely that you better have a stenographer in each hearing, even in the pre trial hearings. So again, I am trying to answer your questions you asked; you need trained judges to deal with it with temperament, you know, you look;; this is the kind of case. That's what I am saying, if they educate, but even if you were to train them, to finally do that. Now here we go again, law clerk, staff attorney; if they don't want to

save time, even more so, I'm sorry, but complex cases, and you study in court - - where you are trying to find - - start of - - you've got maybe 4 or 5 cases you've got to look at to see meticulously if it is or if its not. You need somebody on the side like the appellate even on the trial level, and now you can look at it - - point. I am supposed to - - you go to trial court not to look forward to doing an appeal. Its supposed to be settled right there, its just all there, you have - - you need all that you need right there. You are not supposed to be looking forward to an appeal. That's the next reason why I am speaking at length here. You want to stop it, it's a right - - it's a call - - this is where it stops, that's it. If the other party wants to appeal - - because - - okay, because here's here's the point; you've got your staff attorney, you have your law clerk, you have an experienced attorney - - and I make this point, trial, not bench trial but jury trial, - - complexity of a typical - - typical medical practice case, okay. You've got to be meticulous okay, fine, they had - - fine. Now the only - - statistically in each county, and I am telling you right now, in Pinellas, you will come up with that a lot, in PinellasPinellas county with complexity. My point I am hearing this a lot; the point of ending the complex case is not that I am looking forward to an appeal, I want to have a judge there and what he needs, staff attorney, law clerks, whatever, and experience. It can not be to where - - it ends here. I should not have to look forward to an appeal, if the presidency and law are in place. I am - - but again, that can be dealt with on the legislative side and the

community can deal with that. But that - - very plain and simple. You should not be going to an appeal if the trial court has all it needs, and we are not talking about a big part of the court - - two or three judges meet in a circuit court. Say even if you try to do a pilot program; you track the complex cases and some of these you can track because of the appellate court receives some of them or some of the clerk information you can look at and tell just by the title. Okay the counts, the title, the type of attorney it is, so you can tell what kind of cases are, so at first during research going through the each 20 counties and circuits, you can track and say what kind of case is that, look into it, yes it may take time but it will not be expensive and you can begin at minimal - - education, definitely make sure this judge has been through several jury trials and he understands the complexity. It seems as if I am repeating, but I am trying to make a point.

CHAIR:                    You are and I understand and we appreciate that, thank you. Anyone else? Judge do you want to say something, no? Just visiting, okay. Anyone else who wants to make some suggestions. Alright, it is 1:31 are you all okay with going ahead and talking about the rule now, and if someone else comes in, we can address, let them address us, are you all okay with that.

[END]

