NYT-Junk Science-Penn & Teller

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Watch out for *bubbe meises*: Grandma Cohen, of blessed memory, was from Hungary, spoke a little bit of fractured English. I was ready for school when the button on my pants popped, and since my parents went away for a few days *Bubbie* was in charge. I learned about fairy tales, not science. She got out her needle and thread but before she put the button on my pants, while I wore them, she cut a piece of thread and said, "Chew ziss, Zendala." I was old enough, maybe 10, to know that this was nonsense and I objected.

"Why, *Bubbie*?" I asked.

"Zo I don't sew up your brain …"

OK, good laugh but you get the point? In her culture (the land of legal theory) some stuff is a *bubbe meise;* junk science.

Please carefully read what I attach here and take this learned skepticism into your court rooms. I encounter this nonsense frequently. In one case an MD testified that children were starved based upon "looking at them." He used no medical or scientific criteria. In another case a physician's assistant concluded about the ages of alleged victims by "looking at photographs" of body parts. Without more, these are not competent medical or scientific opinions. We must challenge this sort of trial testimony. Read what Penn and Teller have to say about this death penalty casenow pending.

Feel free to call me when you need to unravel a *bubbe meise*. Any theory without objective medical and scientific evidence is not science. Subjective opinions "because I say so" are not science.

https://www.nytimes.com/2026/04/16/us/politics/the-docket-supreme-court-penn-teller.html

> A version of this article appears in print on April 18, 2026, Section A, Page 13 of the New York edition with the headline: Warning the Justices About Hypnosis: Two Magicians.
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> *Amicus Curae Brief attached: Flores v. Texas, on petition for Writ for Certiorari to United States Supreme Court, No. 25-6774, filed 12 March 2026.*

Petition: https://www.supremecourt.gov/DocketPDF/25/25-6774/395617/20260206093943164_Flores%20Cert%20Petition%20-%2002.2026.pdf

BRIEF OF PENN & TELLER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Two Magicians Warn the Supreme Court About Junk Science: by **Adam Liptak**

Penn & Teller filed a Supreme Court brief questioning the use of "investigative hypnosis" in a death-penalty case in Texas.

Penn Jillette and Teller in Las Vegas last year.Credit...Roger Kisby for The New York Times

By Adam Liptak

Adam Liptak is the chief legal correspondent and host of The Docket.

April 16, 2026

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Penn Jillette, the talkative member of the magic act Penn & Teller, knows that people will find the duo's new project a little surprising. It is a Supreme Court brief filed last month urging the justices to hear an appeal from Charles Don Flores, a death row inmate in Texas.

A key piece of evidence in the case was tainted by a police officer's "investigative hypnosis" of a witness, the brief said.

On a video call from Las Vegas, Penn was quick to tell me that he does not know much about many things. But he said — and who could disagree? — that he is an expert in misleading people.

"I am bringing this to you with the utmost humility," he said. "I am carny trash. I am uneducated. If you want to say I have a position of expertise, it is that I have lied to people onstage and gotten them to believe it. And I think I could do what that police officer did."

But first Penn wanted me to know a couple of things. He said he had no idea if Flores is guilty of a 1998 murder of a woman in Texas. He added that, in his view, Flores should not be executed even if he is.

"I am completely against the death penalty in every single case," Penn said. "If I saw Bin Laden killing my mother in Times Square, and taking 1000 people with her, would I then be in favor of the death penalty? The answer is 'no.'"

Then he got to the point. "On top of that," he said, "I think this evidence is bogus."

Ardent Skeptics

Penn & Teller, as Jason Zinoman wrote last year in an appreciation in The New York Times, "revolutionized magic, demystifying and modernizing the form, while merging it with comedy." That combination, Jason wrote, created "one of the great success stories of modern show business."

The two magicians are ardent skeptics. They explored questionable and fraudulent practices over eight seasons of their Showtime series "Penn & Teller: BS!" One episode was devoted to the misuse of hypnosis.

That got the attention of a lawyer for Flores and of the Supreme Court clinic at the University of Texas, which approached the magicians and ended up filing their friend-of-the-court brief.

'Investigative Hypnosis'

The brief noted that there was no physical evidence against Flores. The witness who identified him at trial, Jill Barganier, had initially described someone who looked nothing like him. That changed after she underwent hypnosis.

Barganier at first told police that she had seen two white men with long hair who resembled one another pull up in a Volkswagen bug in the driveway of her neighbor, Elizabeth Black, shortly before Black was murdered.

Barganier identified one of them, Richard Childs, from a photo array. He was a white man with long hair and a lanky frame. He pleaded guilty to the murder, served about 18 years and was paroled in 2016.

The police were also interested in Flores. But he was a large Hispanic man with short hair.

A few days after the murder, Barganier met with a police officer, telling him again that the men she had seen both had long hair.

The officer, who had never hypnotized anyone before, told Barganier that he would help her summon a memory by pressing a play button on a mental "recorder" that would allow her to see "a film of the events that occurred on that day."

This is a thoroughly discredited understanding of how memory works, and it drives Penn crazy. "There's no recording device" in your brain, he said.

In their brief, Penn & Teller put it this way: "The myth that memory is a video recording playing in a private theater in your brain is one of the biggest lies about hypnosis."

During the hypnosis session, the officer asked suggestive questions.

"Is his hair short? Is it shaved? Is it neatly cut?" he asked of the driver. "Does he have it neatly cut or is it trimmed?" he asked of the passenger. Presented with a photo array of six Hispanic men, Barganier did not identify Flores.

But at the trial 13 months later, she said Flores was one of the men she had seen on the morning of the killing. She was, she said, "over 100 percent" sure.

The trial judge was not convinced, noting that Barganier by now knew Flores's name. "Honestly, you don't have to be a rocket scientist to pick out who is the Hispanic individual in the courtroom," the judge said.

But the judge allowed Barganier's testimony. Flores was convicted and sentenced to die.

An Uphill Fight

My colleagues on the opinion side of The Times have put together a video that includes excerpts from the hypnosis session and an interview with Flores. It notes that most states, including Texas as of 2023, bar testimony tainted by investigative hypnosis.

But that Texas law is not retroactive. In the Supreme Court, Flores is relying on a different Texas law, enacted in 2013, which allows criminal cases to be reopened when discredited scientific

techniques played a role in the conviction. No death row inmate has ever succeeded in using the law to obtain a new trial.

The Supreme Court, which will decide whether to hear Flores's appeal in the coming months, is notably unsympathetic to claims from condemned inmates. Flores's legal argument requires the justices to rule that the state law creates rights under the federal Constitution's due process clause. I've heard more promising arguments.

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As for Penn, he is certain that something went very wrong in the Flores case.

"The way they got the evidence was about the level of seriousness of a Las Vegas goofball magician," Penn said. "I do that every night in my show, and I've done it for 50 years."

Other Legal News

Mailbag

The Limits of the Supreme Court's Power

How can the Supreme Court enforce its rulings? — Michael Drafke

The reason the court cares so much about its legitimacy is that its rulings must command respect if they are to be followed. Were a president to disobey one of its decisions, the court would have little recourse.

The enforcement of the court's decisions generally requires the cooperation of the executive branch. One example: President Dwight Eisenhower backed the court's ruling in Brown v. Board of Education, the 1954 decision that banned segregation in public schools, by sending members of the 101st Airborne Division to Little Rock, Ark., to escort Black students through an angry white mob.

Not all presidents gave the court's rulings the same respect. In 1832, President Andrew Jackson had his doubts about a Supreme Court decision arising from a clash between Georgia and the Cherokee Nation. A probably apocryphal but nonetheless potent comment is often attributed to Jackson about Chief Justice John Marshall: "John Marshall has made his decision; now let him enforce it."

Vice President JD Vance echoed that attitude in a 2021 interview. "When the courts stop you," he said, "stand before the country like Andrew Jackson did and say, 'The chief justice has made his ruling. Now let him enforce it.'"

For his part, President Trump has railed against the Supreme Court, particularly after it rejected his tariffs program in February. But he has obeyed its rulings.

When my colleague Ross Douthat interviewed Justice Amy Coney Barrett in October, she gave a telling response to his question on the subject.

"If a president defied the Supreme Court, what would you do?" Ross asked.

Justice Barrett did not sound optimistic. **"**The court lacks the power of the purse," she said. "We lack the power of the sword. And so, we interpret the Constitution, we draw on precedents, we have these questions of structure, and we make the most with the tools that we have."

I'd love to hear your questions on the law, the courts or whatever is on your mind. Send them my way at the-docket@nytimes.com.

What I'm Reading

- "Revenge for the Sixties: Sam Alito and the Triumph of the Conservative Legal Movement," Peter Canellos's sober, penetrating and perhaps exquisitely timed look at the background and agenda of one of the Supreme Court's most conservative members as he mulls retirement.
- "Epistemic Discovery, Psychedelic Drugs and the First Amendment," in which Jeremy Kessler and David Pozen argue that there is a constitutional right to access psychedelic drugs.
- Perry v. Marteney, in which a divided panel of the Fourth Circuit differed over whether parents with religious objections can avoid West Virginia's compulsory vaccination law for schoolchildren. The majority and dissent disagreed over whether last year's decision letting parents withdraw their children from classes involving L.G.B.T.Q. themes applied to vaccines. Zalman Rothschild wrote about the decision in The Washington Post.

Closing Argument

Off the Bench and on the Road, Justices Speak Out

Image

Justice Ketanji Brown Jackson in Washington last month. She issued a sustained critique of the Supreme Court's so-called shadow docket on Wednesday.Credit...Jason Andrew for The New York Times

Ann E. Marimow, who covers the Supreme Court for The Times, has been following the justices' public appearances this week. I asked her to get us up to speed:

In the lead-up to the final oral arguments of the term starting next week, the justices have been on the road for appearances across the country — and some of those events have been a little spicy.

The newsiest came when Justice Sonia Sotomayor criticized Justice Brett M. Kavanaugh last week in surprisingly personal terms over their disagreement in an immigration-related case.

Justice Sotomayor issued a rare public mea culpa on Wednesday night and said she had apologized to her colleague.

But Justice Ketanji Brown Jackson also attracted attention for her remarks during a lecture at Yale Law School, where she issued a sustained critique of the so-called shadow docket. She hasn't been shy about criticizing her conservative colleagues over their handling of a slew of emergency orders that have allowed many of the Trump administration's policies to take effect on a temporary basis, but she went even further on Wednesday in New Haven, Conn.

Justice Jackson said she hoped her remarks would be a "catalyst for change."

When the court issues quick-turn, temporary orders with little or no reasoning but major real-world impacts, she said, the justices "seem oblivious" and their orders "ring hollow."

She said the court can't expect the public to have faith in the judicial system "if without clear explanation, we consistently green-light harmful acts that do real damage."

She called the orders "scratch paper musings," and said they stymied deliberations in the lower courts. And she said her colleagues should err on the side of allowing lower court judges to carry out their duties without Supreme Court interference. Essentially, she said, the court should wait its turn.

The current practices, she added, are having an "enormously disruptive and potentially corrosive effect on the functioning of the federal judiciary's usual decision-making process."

Meanwhile, Justice Clarence Thomas was at the University of Texas at Austin on Wednesday night, where he delivered a lecture to mark the 250th anniversary of the signing of the Declaration of Independence.

The justice spoke for nearly an hour about the founding fathers and their courage and devotion to principles, which he said were missing in today's society. Without naming names, he criticized Washington insiders for setting aside their convictions and failing to act courageously for fear of pushback.

Justice Thomas, the court's most conservative member, encouraged the students in the audience to find the courage to speak up in class even when their ideas may be unpopular.

"It will mean waking up every day with the resolve to withstand unfair criticism and attacks," he said. "It will not be easy. It never is."

The justice received a standing ovation and a Texas Longhorns football jersey with his name on the back.

Before his speech, Justice Thomas acknowledged his former law clerks and fellow judges in the crowd. He also gave a shout-out to two longtime friends in the audience, Kathy and Harlan Crow. Harlan Crow is the Texas billionaire and benefactor behind real estate deals, tuition arrangements and lavish trips for Justice Thomas that became the focus of intense media scrutiny after the justice did not initially disclose them in annual financial reports.

Closer to Washington, Chief Justice John G. Roberts Jr. on Tuesday received University of Virginia's highest honor, the Thomas Jefferson Foundation Medal, for his contributions in law. While on campus, the chief justice surprised law students by appearing as a guest speaker in two classes — one on evidence and the other on federal courts. Chief Justice Roberts fielded students' questions, according to the law school, on collegiality on the court, oral advocacy and his judicial philosophy.

— Ann E. Marimow

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A version of this article appears in print on April 18, 2026, Section A, Page 13 of the New York edition with the headline: Warning the Justices About Hypnosis: Two Magicians.

See, also: https://en.wikipedia.org/wiki/Trial_and_conviction_of_Charles_Flores

> "No physical or DNA evidence has tied Flores to the murder, and he has maintained his innocence since his arrest. He currently awaits execution at the Polunsky Unit in Livingston, Texas. Numerous experts and advocacy groups, including the Innocence Project, American Psychological Association and Penn & Teller, are advocating on his behalf."