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**Duane E. Owen v. State of Florida**

**SC06-2104 | SC07-650**

> > MAY IT PLEASE THE COURT, I'M JAMES DRISCOLL ALONG WITH DAVID HENDRY-- ON BEHALF OF DUANE OWEN , AND I WOULD LIKE TO TALK MOSTLY ABOUT COUNCIL INTO AREAS, JURY SELECTION AND THE FAILURE TO PRESENT EVIDENCE OF MR. OWEN'S SUBSTANCE ABUSE FROM THE TIME HE WAS APPROXIMATELY NINE YEARS OLD, RIGHT UP TO THE TIME OF THE FENCE.

I WOULD ALSO LIKE TO TALK ABOUT JURY SELECTION AS WELL AND IN PARTICULAR THE FAILURE OF COUNCIL TO EXERCISE THE CARE, MAKE A REASONABLE DECISION. I SUBMIT TO THIS COURT ANY CRIMINAL PRACTITIONERS WOULD HAVE MADE CONCERNING -- SO I WOULD LIKE TO, IF IT IS OKAY -- KNOWLES WAS PRETTY ADAMANT THAT SHE COULD PUT THE CRIME INVOLVING HER DAUGHTER A SIDE. ISN'T THAT CORRECT?

> > YOUR HONOR, I WOULD RESPECTFULLY DISAGREE WITH ADAMANT.

SHE DID SAY, AND I THINK IT IS IN MY BRIEF, THAT SHE WOULD NOT ALLOW IT TO AFFECT YOUR VERDICT AND I THINK THAT IS FAIR.

> > THERE WAS NOT ANY EQUIVOCATION WITH MS. NOEL?

> > FROM JUST THE TRANSCRIPT, YOU CAN'T TELL.

YOU WOULD NOT BE ABLE TO TELL WHETHER SHE HESITATED, WHETHER SHE LOOKED TO THE --.

> > OBVIOUSLY THAT WOULD BE A DECISION WITHIN THE DISCRETION OF THE TRIAL JUDGE, BUT INSOFAR AS WHAT SHE SAID, SHE SAID SHE COULD PUT IT OUT OF HER, SHE COULD BE OBJECTIVE.

> > SOMETHING TO THAT EFFECT AND

IT WOULD BE THE PROS OR SHE HAD SAID SOMETHING TO THAT EFFECT, THE CREDIBILITY DETERMINATION WOULD NOT HAVE BEEN MADE BY THE TRIAL COURT BECAUSE THERE IS NO ATTEMPT TO STRIKE EITHER FOR COST OR PREEMPTOR EARLY.

> > WISCHER BERGIN ON'S CONVICTION SHOWING THAT THERE WAS INEFFECTIVE ASSISTANCE?

> > I THINK WOULD BE THE SAME STANDARD, AND THIS IS NOT NECESSARILY RAISING A LINGUAL QUALIFICATION.

WE ARE RAISING THE ISSUE OF COUNCIL BRINGING TO BEAR HER EXPERIENCE, AND THE KNOWLEDGE THAT ANY CRIMINAL PRACTITIONER WOULD HAVE.

> > DON'T YOU HAVE TO SHOW THE PROSPECTIVE JUROR WAS ACTUALLY BIASED, THAT THERE WAS A QUESTION AS YOU WOULD INDIRECT APPEAL BUT THAT SHE WAS ACTUALLY.

> > I THINK IF IT WAS NOT SO MUCH AND INEFFECTIVENESS KLEIN, I WOULD AGREE WITH THAT, HOWEVER, THE ANSWERS FROM A TECHNICAL STANDPOINT, IF YOU TAKE THE ANSWERS, IT IS NOT OUR POSITION THAT MS. KNOWELL WAS LYING, BUT IF YOU LOOK AT WHAT HAS HAPPENED THAT EXPERIENCE, THE COUNCIL ACTING AS THE COUNCIL THAT WE CALL UPON IN THE CAPITAL CASE, SHOULD HAVE STRUCK HER.

> > DID MS. KNOWELL SIT?

> > ON THE JURY?

YES SIR RUNNER PREPARER.

> > SO MS. HAUGHWOUT, WHO IS THE PUBLIC DEFENDER, ANOTHER EXTREMELY EXPERIENCED DEFENSE ATTORNEY, SHE HAD SOME DIFFICULTY RECOLLECTING ABOUT WHY SHE DID NOT STRIKE -- WHO IS SHE ABLE TO OFFER A STRATEGY DECISION AS TO WHY SHE THOUGHT SHE WOULD BE A GOOD DEFENSE JUROR?

> > NOW SHE WASN'T GIVEN THE OPPORTUNITY.

> > DID SHE SAY IF I KNEW THEN WHAT I KNOW NOW I WOULD NOT HAVE

STRUCK HER?

> > I DON'T BELIEVE SHE WENT THAT FAR, HOWEVER SHE DID NOT HAVE SPECIFIC RECOLLECTION OF WHAT KNOWELL SAID, SHE SAID THAT IN A CASE LIKE MR. OWEN, THERE WOULD BE A STRATEGIC REGION FOR KEEPING A JOURNAL ON YOU A BEEN A CRIME VICTIM UNLIKE SAY CASE OF SELF-DEFENSE, THERE MAY BE REASON.

> > COULD YOU GRAY SAYS DIRECT APPEAL?

SHE DID NOT TRY TO STRIKE THIS JUROR, AND THERE'S NO RECORD. COULD THAT BE SOMETHING THAT COULD BE RAISED ON DIRECT APPEAL, THAT IS A JUROR SHOULD HAVE BEEN STRUCK FOR CAUSE BY THE DEFENSE LAWYER WHO WAS SITTING THERE AND PRESUMABLY PARTICIPATING IN THE TRIAL FULLY?

> > ACTUALLY, I THINK IT POSSIBLY COULD HAVE ENDURED HAVE TO MOVE UNDER FUNDAMENTAL ERROR.

> > THAT IS MY POINT ABOUT THIS. IT GOES BACK TO ,, TILLIE.

WE HAVE COME DOWN AND SAID THAT UNLESS -- THERE IS NOT GOING TO BE RELIEF, SO YOUR BURDEN HERE WOULD BE TO SHOW THAT MS. KNOWELL WAS ACTUALLY BY HIS. AND HOW WOULD YOU SHOW THAT?

> > BIAS, AND YOU WOULD HAVE TO CONSIDER, YOU WOULD HAVE TO CONSIDER HER STATEMENTS, WHAT SHE SAID, AND THEN COUNCIL HEARING WHAT MS. KNOWELL SAID, EXERCISING THE JUDGMENT THAT EXPERIENCE COUNCIL WOULD EXERCISE IT IN A DEATH PENALTY CASE,.

> > WHAT SHE SAID WAS, WHAT HAPPENED TO ME, I WOULD BLOCK THAT OUT COMPLETELY BECAUSE THIS IS A WHOLE DIFFERENT PERSON, A DIFFERENT SITUATION SO NO, I WOULDN'T LET THAT COME INTO MAKING MY DECISION. THAT WAS WHAT SHE SAID.

> > I DON'T DISAGREE WITH THAT US

> > THOUGH UNDER KARRICK TALLY, YOU'VE GOT TO ESTABLISH THAT

THAT JUROR WAS BY AS.  
THE EVIDENCE MUST BE PLAIN ON  
THE RECORD.  
WITH WHAT JUSTICE WELLS JUST  
READ, HOW YOU SHOW THAT EVIDENCE  
OF BIAS WAS ON THE FACE OF THE  
RECORD?

> > I THINK WHAT MS. KNOWELL IS  
EXPERIENCED, IF YOU CONSIDER  
THAT AS OUR POSITION THAT  
COUNCIL EXERCISE ACTING  
EFFECTIVELY, SHOULD HAVE STRUCK  
BUCHER BUT I DON'T DISPUTE IN  
THE RECORD AND AS A MATTER OF  
RAISING IT ON DIRECT APPEAL, I  
BELIEVE THE DEFENSE COUNSEL  
WOULD HAVE HAD TO USE ALL THEIR  
STRIKES, WHERE THERE WAS ONE  
REMAINING STRIKE WHEN THE JURY  
WAS SEEN US BE THAT AS A WHOLE  
WINDOW OF CARATELLI.

WE ARE NOT GOING TO START TO SET  
ASIDE FINAL JUDGMENT FOR THINGS  
THAT WE COULD I GET RELIEF ON  
INTERACTIVE FIELD BECAUSE  
DEFENSE LAWYER AT THE TRIAL, I  
WHO IS OTHERWISE PERFORMING  
COMPETENTLY MAKES THESE  
DECISIONS.

AGAIN, I THINK PROBABLY IN ALL  
THESE VOIR DIRE ISSUES, THAT IS  
THE PROBLEM YOU ARE GOING TO  
HAVE.

UNLESS THERE IS BIAS ON THE FACE  
OF THE RECORD, CARATELLI  
UNANIMOUSLY SAID THERE IS NO  
RELIEF US DEAD THINK THERE IS  
BIAS WHEN YOU CONSIDER THE  
ACCOUNT BUT WHEN YOU TAKE THE  
JURORS ANSWERS AS THEY WERE,  
THEN IT WOULD NOT NECESSARILY  
BEYOND THE FACE BUT IF YOU LOOK  
AT WHAT SHE WENT DURING COUNCIL  
EXERCISING REASONABLE JUDGMENT,  
IS OUR DECISION THAT SHE WAS  
STRICKEN.

> > LET ME ASK A QUESTION.  
THIS WAS ONE.

WENT OVER TWO WEEKS, JURY  
SELECTION?

AND THEY HAD 50 QUESTIONNAIRE  
THAT DEFENSE COUNCIL AND THE  
STATE GOT TOGETHER AND GAVE TO  
ALL THE JURORS, AND THEN DE JURE

PULLED DOWN TO 35 JURORS AND THEY INDIVIDUALLY VOIR DIRE?  
> > SOME PRACTICE ON THAT, I'M NOT SURE THEY BEGAN WITH THE INDIVIDUAL BUT IT WAS A LONG AND DETAILED PROCESS.

> > IN PREPARATION, ATTORNEY, WHAT WAS THE LENGTH OF TIME BETWEEN THE HEARING WE HAD BEFORE US TODAY AND THAT JURY SELECTION PROCESS?

> > THE JURY SELECTION WAS TAKEN PLACE IN 1999, AND IN THIS HEARING WAS 2006 YOUR HONOR.

> > SO, SEVEN YEAR PERIOD. AND THE ATTORNEY'S TESTIMONY AT THIS HEARING, WHAT DID SHE HAVE TO REVIEW BEFORE BEING ASKED THESE QUESTIONS?

WHAT PREPARATION DID YOU DO OF THE WITNESS SO THAT SHE COULD MORE FULLY ANSWER.

> > I CAN'T GIVE THE LIST OF EXACTLY WHAT I SENT TO HER BUT SHE HAD -- THE ACTUAL TESTIMONY BECAUSE EVEN INDICATED THAT SHE HAD REFUSED WHAT THE ACTUAL DIALOGUE WE ARE TALKING ABOUT AND IT STILL DOES NOT REFRESH HER RECOLLECTION.

> > THIS IS WHERE, THIS IS, WE TALK ABOUT TERRIBLE MURDERS, THIS IS ABOUT AS TERRIBLE AS IT GETS.

THE DEFENSE LAWYER PUT ON A PRETTY IMPRESSIVE CASE FOR MITIGATION AND REREADING VICTOR A COURT'S ORDER, IT IS ONE OF THE MOST DETAILED ORDERS AS FAR SHOWING ALL OF THIS MITIGATION, SO DO YOU HAVE IN TERMS OF THIS WHOLE PICTURE, BECAUSE U.S. SPENT ABOUT HALF YOUR TIME, I MEAN WHAT IS YOUR STRONGEST CLAIM ON GIVING MR. OWEN POST CONVICTION RELEASE?

> > WE DID NOT ATTEMPT TO REFUTE WHAT COUNSEL HAD PRESENTED IN BOTH THE INSANITY DEFENSE AND MITIGATION BECAUSE THERE WAS, THERE WAS A GREAT DEAL PRESENTED, HOWEVER AN IMPORTANT ASPECT WAS LEFT OUT OF THE JURY'S CONSIDERATION AND LEFT

OUT OF THE EXPERTS CONSIDERATION AND THAT IS MR. OWEN'S DRUG ABUSE FROM THE TIME HE WAS NINE YEARS OLD.

MR. OWEN TOOK A NUMBER OF SUBSTANCES WHICH IMPACTED HIS MIND, HIS BEHAVIOR, HOW WE INTERACTED WITH THE WORLD AND IN ADDITION TO HIS NUMBER OF MENTAL ILLNESSES AND HIS ORGANIC BRAIN DAMAGE THIS AFFECTED TWO HE BECAME AN HOW ARE YOU ACTED.

> > ALTHOUGH, AGAIN HE DID NOT HAVE RECOLLECTION OF IT, IT SEEMS TO ME IN A CASE WHERE YOU HAVE GOT THIS HER IN THIS ISSUE OF CHILD ABUSE, SEXUAL ABUSE THAT HE SUFFERED FROM HIS TIME OF BIRTH UNTIL HE WAS AN ADULT, YOU HAVE GOT ISSUES OF BRAIN DAMAGE AND EVERYTHING ELSE, THAT THE IDEA, AND YOU HAVE A CASE INVESTIGATED BY ONE OF THE MOST EXPERIENCED INVESTIGATORS WHO WENT OUT, WENT TO THE ORPHANAGE, WENT ALL OVER FINDING THINGS, THAT EITHER IT WAS NOT APPARENT BECAUSE MR. OWEN DID NOT MENTION IT, OR THERE HAD TO BE A POSITION MADE THAT THIS WOULD HAVE MAY BE, OKAY NOW HE IS ALSO USING DRUGS, THAT MAYBE THAT IS NOT AS POWERFUL IN TERMS OF THE MITIGATION.

IT IS NOT GOING TO ALTER THE INSANITY DEFENSE BECAUSE THERE'S NO EVIDENCE HE HAD USED DRUGS THE NIGHT OF A CRIME, HE DOES NOT SAY THAT.

SO I THINK I GO, BUT THE QUESTION YOU ON REALLY HOW DID IT UNDERMINE COMPETENCY OUTCOME ASSUMING HE DID NOT GET PAST THE FIRST --.

> > OL SAID THERE WAS MITIGATION PRESENTED.

HOWEVER, THE COMPLETE MITIGATION THAT COULD HAVE BEEN PRESENTED WAS NOT.

> > BUT GOING BACK TO THE FIRST ONE, YOU AGREE THAT THIS WOULD NOT HAVE ADDED TO AN INSANITY DEFENSE BECAUSE THERE IS NO EVIDENCE HE WAS USING DRUGS ON

THE NIGHT OF THE CRIME AND THAT THEY WERE NOT ABLE TO SAY THAT ANYTHING YOUR EXPERTS NOW WOULD MEAN HE COULD NOT DISTINGUISH RIGHT FROM WRONG?

> > NO, MOST OF THE THINGS THAT WE KNOW ABOUT MR. OWEN, OR MUCH OF IT ABOUT HIS SOCIAL BACKGROUND, HOW HE DEVELOPED HIS MENTAL STATE, A LOT OF THAT WAS DEVELOPED DURING THE INSANITY DEFENSE SO RESPECTFULLY I WOULD CONCEDE THAT AS PART OF THE UNDERSTANDING HIS MENTAL STATUS OR HIS MENTAL ILLNESS, THE EFFECTS ON DRUGS OVER THE YEARS COULD NOT BE CONSIDERED.

> > BUT WE HAVE A SITUATION HERE IN WHICH THE TRIAL COURT FAILED BOTH MITIGATOR SPUR GUSTY AS YOUR HONOR.

> > THE 15 NON-STATUTORY MITIGATOR, AND IT IS JUST, A CASE THAT DOES FIT THE DESCRIPTION IS ONE OF THE MOST HEINOUS CRIMES, ESPECIALLY SINCE YOU TAKE INTO CONSIDERATION THE FACT THAT THE ALREADY HAD ANOTHER CAPITAL MURDER, SO ISN'T THAT REALLY THE SITUATION, WHETHER IT UNDERMINES OUR CONFIDENCE?

> > I WOULD SUBMIT TO THE COURT, UNTIL THE COMPLETE, THE COMPLETE PACKAGE, THE COMPLETE UNDERSTANDING OF MR. OWEN IS PUT FORTH, I DON'T BELIEVE SO. I BELIEVE THAT THERE WAS ADDITIONAL INFORMATION IN THIS CASE THAT WHAT, AS DR. DIETZ TESTIFIED TO, IT WOULD NOT HAVE WEAKENED THE BENTZEL MITIGATOR IS, IT WOULD'VE MADE THEM STRONGER AND IN THE CASE WHERE MR. OWEN, IT IS A HORRENDOUS CRIME BUT HOWEVER, MR. OWEN WOULD BE EVEN MORE MITIGATED AND HE BECOMES ACTUALLY ONE OF THE MOST MITIGATED CASES THAT THIS COURT OR THAT WE SEE IN FLORIDA US THE THAT IS WHERE I, LOOKING AT JUDGE KOHN SENTENCING ORDER, HE GAVE MORE CREDIT THAN MOST TRIAL JUDGES I HAVE EVER SEEN

GIVE AND GAVE THE MENTAL  
MITIGATOR IS SUBSTANTIAL WAGE.  
I DON'T KNOW THAT, HE HAD USED  
DRUGS DURING HIS LIFE, HOW THAT  
WOULD TAKE THAT CASE AND TAKE  
AWAY FROM THE INCREDIBLY STRONG  
FABRICATORS IN THIS CASE.  
AGAIN, IF YOU SAID IF THEY  
FAILED TO DISCOVER HE WAS ON AN  
LSD BENGEE OR SOMETHING THAT  
NIGHT AND WAS IN SOME FOG AND  
NOW THAT IS GOING TO LOOK TO THE  
NIGHT OF THE CRIME, BUT JUST  
SIMPLY TALKING ABOUT USING DRUGS  
SINCE HE WAS, OVER A SEVERAL  
YEAR PERIOD, JUST AS MONTOUK.  
> > HE WAS USING, JUDGE COHON  
ACTUALLY I BELIEVE CONSIDERABLE  
WEIGHT AND SOME WHITE FOR THOSE  
MITIGATOR SPEAK I DON'T BELIEVE  
HE WAS GIVEN GREAT WEIGHT.  
HOWEVER THIS ALSO PRESENTS, YOU  
WOULD WANT TO PRESENT JOG AND  
ALL CALL EVIDENCE IN ADDITION TO  
THE AFFECTED HAT ON HIS  
DEVELOPMENT BECAUSE UNLIKE  
GENDER IDENTITY DISORDER AND  
UNLIKE THE WHOLE ESSENCE IN THAT  
TYPE OF THING, DRUGS AND ALCOHOL  
WOULD HAVE BEEN READILY  
UNDERSTOOD BY THE AVERAGE JUROR.  
> > LET ME ASK YOU, WAS THERE ANY  
EVIDENCE OF DRUG AND ALCOHOL USE  
AT THE TIME OF THIS CRIME  
ITSELF?  
> > AT THE HEARING, I DON'T  
BELIEVE THE EXPERTS DISCUSS THAT  
HOWEVER MR. OWEN BETWEEN  
BREAKING IN AT THE ORIGINAL TIME  
AND THEN COMING BACK TO ACTUALLY  
COMMIT THE CRIME I BELIEVE WAS  
THAT THE CAPER LOUNGE AT WE  
FOUND TESTIMONY.  
> > MY POINT IS, AS THE TRIAL  
COURT FOUND, THE DEFENSE COUNSEL  
WAS WED TO THE COMPLETE DEFENSE  
OF INSANITY?  
AND THERE IS NO INDICATION IN  
THIS CASE THAT MR. OWEN NEVER  
TOLD THEM ABOUT THE SUBSTANCE  
ABUSE HISTORY OR PROBLEM,  
CORRECT?  
> > I'M SORRY?  
> > THERE'S NO EVIDENCE MR. OWEN

AND FORMER TRIAL COUNSEL ABOUT A SIGNIFICANT ABUSE IS YOUR PROBLEM?

AND THERE'S NO EVIDENCE OF SUBSTANTIAL DRUG OR ALCOHOL USE ADDER ABOUT THE TIME THIS CRIME OCCURRED?

> > IT WAS NOT PUT ON.

> > WOULD NOT HAVE EXACERBATED A MENTAL INFIRMITY RELATED TO THE INSANITY?

> > YES, I RESPECTFULLY JUSTICE, IT WOULD BECAUSE AS MR. OWEN, IF YOU CAN CONSIDER THAT HAPPEN, HIS DEVELOPMENT OF HIS BRAIN.

> > MY QUESTION HERE IS IT THE DEFENSE WAS INSANITIES SOMETIMES YOU CAN HAVE A MENTAL ILLNESS THAT, IF YOU TAKE A MIND ALTERING SUBSTANCE, CAN COMBINE TO MAKE ONE IN ST. THE TIME OF THE OFFENSE.

THAT IS NOT WHAT WE HAVE HERE, CORRECT?

> > I BELIEVE THE WAS OVER THE COURSE OF HIS LIFE.

WE CANNOT PRESENT THE MR. OWEN WAS UNDER THE INFLUENCE AT THE TIME OF THE OFFENSE.

> > I WOULD LIKE TO HAVE ONE QUESTION ABOUT YOUR MENTAL HEALTH, YOUR INSANITY DEFENSE. YOU HAVE AN ISSUE HERE THAT INVOLVES THE NOTES FROM A FLANDER BURKHOLDER I BELIEVE IT IS, THAT YOU SAY SHOULD HAVE BEEN DISCLOSED BY THE STATE AND WOULD HAVE BEEN PURTENANCE TO YOUR INSANITY DEFENSE?

HOW WOULD IT PLAYED INTO INSANITY DEFENSE?

> > HONOR, IN SHOWING TO THE JURY THAT THIS WAS NOT ON THE SELF REPORT.

> > THIS WAS A CLAIM THAT WAS SUMMARILY DENIED.

ARE YOU ALLEGING, AND DID YOU ALLEGE THAT THE STATE ACTUALLY TOOK THE NOTES FROM MR. VOTE HOLDER, HAD THE NOSE AND NEVER DISCLOSE THEM TO YOU, SPEAK TO COUNSEL.

> > TO COUNSEL, AND YOU HAVE THOSE NOTES NOW?

> > NO I DON'T, I'VE NEVER SEEN THE NOTES.

> > HOW YOU KNOW THEY EXIST?

> > BECAUSE MR. OWEN, PART OF THE CLAIM WAS BASED ON WHAT MR. OWEN INFORMED US AND LAWN FORSMAN INFORMED MR. OWEN THAT THEY HAD GONE TO MICHIGAN I BELIEVE IT WAS TO RETAIN THE NOTES AND I THINK -- INFORMED MR. OWEN THAT SHE HAD CONTACTED MS. BURKHOLDER AND IN FACT THERE WERE NOTES.

> > THERE WAS AN EVIDENTIAL HEARING, YOU ESTABLISHED THAT WAS TRYING TO SEEK?

THAT YOU HAD NEVER, THE COUNCIL HAD NEVER SEEN?

> > THAT WOULD BE CORRECT.

> > MR. OWEN KNEW ABOUT THIS PRIOR TO TRIAL?

> > MR. OWEN, I DON'T KNOW THAT HE KNEW THE EXTENT OF THE NOTES OR THAT THEY WERE NUTS.

MR. OWEN KNEW, I WOULD IMAGINE THAT HE HAD SEEN A THERAPIST AS A PART OF IT, AS PART OF HIS SENTENCE.

> > THERE IS NO ATTEMPT ON THE COUNSEL'S PART TO GET THE NOTES. IT WAS HIS PSYCHOLOGIST?

> > HE WAS SAYING IS THERE WAS, DON'T BELIEVE THERE WAS.

I DON'T KNOW FOR SURE BUT THEY DID DISCOVER LATER TO THE BEST OF MY RECOLLECTION.

I SEE I ONLY HAVE 45 SECONDS LEFT SO I WOULD JUST ASK THE COURT TO REVERSE AND CONSIDER OUR ARGUMENTS IN FAVOR OF HAVING A FULL AND FAIR EVIDENTIARY HEARING AND I WOULD ASK THE COURT TO CONSIDER THAT IT WAS ESSENTIAL FOR COUNCIL TO USE THE EXPERTISE THAT THE STATE HAS PUT FORTH TO INSURE THAT MR. OWEN WAS TRIED BY A FAIR JURY AND A FAIR JURY THAT HEARD OF THE MITIGATION THAT COULD HAVE BEEN PRESENTED ON HIS BEHALF.

OTHER THAN THAT, I BELIEVE I WILL RELY ON MY BRIEF. THANK YOU.

> > GOOD MORNING AGAIN, LESLIE CAMPBELL WITH THE ATTORNEY

GENERAL'S OFFICE ON BEHALF OF  
THE STATE.

MAP PLEASE THE COURT, JUST TO  
ANSWER THE LAST ISSUE, THE BRADY  
CLAN, THIS COURT HAS ALREADY  
REVIEWED THE EXACT SAME BLEEDING  
IN THE AWARING CASE.

> > WAS THE BLEEDING IN THE WAR  
IN CASE, IT SEEMS TO ME THAT  
WHAT WAS SAID, AND I DON'T HAVE  
IT IN FRONT OF ME, THAT IT WAS,  
THAT THE CLAIM WAS  
INSUFFICIENTLY FLED.

IT IS UNCLEAR, WHEN OWEN  
OBTAINED THE INFORMATION HE  
CLAIMED, SO IF WE LOOK OF THAT  
MOTION, IS IT THE SAME MOTION?

> > AS AN OFFICER OF THE COURT,  
MATT ASK A THE QUESTION, ARE  
THEIR NOTES THAT THE STATE HAS?

> > I HAVE SEE NANO KNOWS YOUR  
HONOR.

> > NOT THAT THIS ONE, WHEN I  
THINK ABOUT IT, WE HAVE A LONG  
EVIDENTIARY HEARING.

IT WOULD BE NICE TO CLARIFY THE  
RECORD ON THIS SO THAT WE WOULD  
NOT BE GUESSING ON WHAT HAPPENED  
BECAUSE I CAN RECEIVE A SCENARIO  
, LAW ENFORCEMENT  
BOOKNOTES AND MS. BURKHOLDER DID  
NOT HAVE THESE NOTES TO BE ABLE  
TO TESTIFY AND IT SOUNDS LIKE A  
WHOLE THING THAT COULD BE  
AVOIDED BY THE STATE IS SIMPLY  
SAYING, WE DON'T EVEN HAVE TO  
WORRY ABOUT TALKING ABOUT WHO  
WAS IN POSITION WHEN.

> > THIS STATEMENT IN RESPONSE I  
BELIEVE YOUR HONOR THAT IT WAS  
LEAD INSUFFICIENTLY AND THERE  
WAS A HEARING ON THAT, AND  
THERE'S AN OPPORTUNITY FOR THE  
DEFENSE TO COME FORWARD WITH  
ADDITIONAL EVIDENCE AND THAT DID  
NOT HAPPEN.

> > WHAT WAS SO SUFFICIENT?  
IT SEEMS TO ME THAT THEY FLED  
THAT THIS THERAPIST HAD NOTES,  
LAW ENFORCEMENT WENT IN AND TOOK  
THE NOTES AND NEVER DISCLOSED  
THE FACT THAT THEY HAD TAKEN THE  
NOTES AND THEY HAD THE NOSE AND  
THEY WERE RELEVANT TO THE

DEFENDANT'S MENTAL STATE BECAUSE SHE WAS HIS COUNSELOR, SO WHAT ELSE WERE THEY SUPPOSED TO --.

> > ANDREW BRADY CLAMOUR REQUIRES THE DEFENSE NOT HAVE THIS, NOT ABLE TO GET IT WITH DUE DILIGENCE.

SEEK DUE DILIGENCE IS NOT EQUALLY AVAILABLE WOULD BE TRUE, BUT IF WE TAKE, IF WE TAKE THE PLATING THAT SAYS THE NOTES WERE TAKEN BY LAWN FORSMAN, THEN THEY WOULD NOT HAVE HAD THEM, AND I THINK THAT MY CONCERN IS THAT ON THE RECORD WHERE WE ARE JUST TRYING TO MAKE SURE THAT EVERYTHING IS DONE FAIR AND SQUARE, THIS CLAIM CONCERNS ME JUST BECAUSE IT IS OUT THERE.

WAS BURKHOLDER, WAS SHE EVER DEPOSED AS A WITNESS?

DO WE KNOW ANYTHING ABOUT MS. BURKHOLDER?

> > I DON'T BELIEVE SO YOUR HONOR MAYBE MR. DRISCOL COULD ANSWER.

> > BECAUSE WHAT THE DELEGATION AS, IT IS SAYING SHE COULD DOCUMENT OWEN'S DELUSIONAL THINKING AND INFIRMITIES AND WHAT I'M GETTING FROM THAT IS RATHER THAN SOMEBODY WHO IS DIAGNOSING HIM AFTER THE FACT, HAVING A WITNESS WITH NOTES, THIS WHOLE THING IS KIND OF STRANGE, THAT WOULD BE ABLE TO SHOW, A DOCUMENTED BENTZEL ILLNESS YEARS BEFORE THIS, WOULD BE VERY HOPEFUL TO THE DEFENSE BECAUSE THE YOUR HONOR, AS YOU POINTED OUT, JUDGE CULLEN GAVE WAY TO ALL OF THIS EVIDENCE.

HE DID FIND THE MENTAL MITIGATOR IS SO KEY IS GOING TO PROVE THERE IS EXTREME MENTAL EMOTIONAL DISTURBANCE AT THE TIME OF THE CRIME US.

> > SO WHAT HE WOULD THEN ARGUE IS ON ITS FACE, DOES NOT MEET THE MATERIALITY STANDARD OF BRADY WHICH FRANKLY FROM MY POINT OF VIEW WOULD BE A BETTER WAY TO DENY IT THAN JUST SAYING THAT THE ALLEGATIONS ARE NOT SPECIFIC ENOUGH BECAUSE IT SEEMS

PACIFIC TO ME.

> > IT IS A MULTIPLE ARGUMENT.  
MORE REZULIN TO HIS INSANITY  
DEFENSE AS OPPOSED TO THE OTHER.  
> > EVEN SO YOUR HONOR, IF YOU  
LOOK AT EVERYTHING THAT TOOK  
PLACE DURING THE CRIME, AND WHAT  
THE EXPERTS SAID WITH REGARD TO  
THE CRIME, THERE WAS DELIVERED  
ACTION ON A 01'S PART, WHILE HE  
WAS INSANE AS FAR AS HIS DEFENSE  
EXPERTS WERE CONCERNED, THE  
STATE'S EXPERTS REFUTED MUCH OF  
THAT AND HE WAS A SOCIAL PACT,  
GAD AND INTENT TO INFLICT THIS  
EXTRA PAIN AND FEAR INTO THE  
VICTIMS, SO WHILE THERE MAY HAVE  
BEEN SOME SORT OF INSANITY EARLY  
ON, THERE DEFINITELY WAS  
TESTIMONY FROM THE DEFENSE  
EXPERTS AT LEAST, THERE IS  
INSANITY AT THE TIME OF THE  
CRIME.

THE ADDITIONAL EVIDENCE THAT IT  
HAPPENED EARLIER CERTAINLY IS  
NOT GOING TO UNDERMINE ANY  
CONFIDENCE.

> > I ASSUME THERE WAS NO  
EVIDENCE PRESENTED TO WHY LAW  
ENFORCEMENT SEIZED THE  
COUNSELORS THUGS?

> > I'M NOT SURE LIEVEN NO WHICH  
LAWN FORSMAN SEAS THEM?

> > I DON'T BELIEVE THAT WAS --.

> > THAT IS MY PROBLEM.

THERE'S NO EVIDENTIARY HEARING  
SO THERE WAS NOT A CHANCE.

> > WAS DENIED BASED ON LACK OF  
EVIDENCE AFTER AN EVIDENTIARY  
HEARING BUT AT SOME POINT,  
PLEADING IS TO SAY, HERE IS THE  
NATURE OF THE CLAIM, AND AS I  
SAID YOU CAN ENVISION THAT IF  
THEY WOULD STILL HAVE TO  
ESTABLISH WHAT THEY HAVE LEAD,  
WHICH IS THAT LAW-ENFORCEMENT  
TOOK HER NOTES, SHE DID NOT HAVE  
OTHER NOTES, THESE FOUR  
MATERIALS THAT SHE WOULD HAVE  
BEEN ABLE TO TESTIFY.

NOW MAYBE THEY CAN'T GET THAT  
FAR, BUT IT STILL SEEMS LIKE IT  
IS A STRANGE CLAIM THAT SOMEONE  
TAKING LAWN FORSMAN TAKING

NOTES, IT SEEMS LIKE IT IS JUST OUT THERE.

> > I THINK IT IS TO FOLD YOUR HONOR.

THE TRE ACCORD KNEW OF THIS COURT'S RULING IN THE WORDEN CASE AND THIS COURT FOUND TO BE LEGALLY INSUFFICIENT SO THEY GIVE THE DRUG WARS WART -- THE OPPORTUNITY TO MAKE ADDITIONAL FACTUAL ALLEGATIONS, AND THAT WAS NOT TAKEN UP.

> > WHAT ADDITIONAL FACTS OR ALLEGATIONS CAN BE MADE?

> > ANYTHING THAT JUSTICE PARIENTE IS NOW ARGUING.

> > THE ISSUE IS WHETHER THE COUNSELOR KEPT COPIES OF NOTES IS NOT SOMETHING THAT HE WOULD ALLEGE.

IT IS REALLY EVER BOTTLE TO HIS CLAIM THAT IT IT WAS ONLY AVAILABLE FOR THIS STATE BECAUSE IT THE COUNSELOR KEPT THE NOTES, THE NOTES REMAIN EQUALLY AVAILABLE TO HIM.

THAT IS NOT SOMETHING YOU WOULD INCLUDE IN THE ALLEGATION.

> > THERE COULD BE ANY NUMBER OF OTHER THINGS THAT THE COUNSELOR, THAT THIS PARTICULAR OFFICER, THIS PARTICULAR STATE AGENCY TOOK THESE NOTES.

I DO RECALL WHAT I HAD MY NOTES, AND THIS IS WHAT THOSE NOTES WOULD HAVE SAID, WHICH WOULD GIVE ADDITIONAL CONFIDENCE.

> > THIS IS WHAT CONCERNS ME AND I UNDERSTAND MAYBE IT WAS BECAUSE IT WAS DENIED IN THE OTHER CASE, IT SEEMS LIKE IT SHOULD BE DENIED BUT HERE YOU ARE HAVING AN EVIDENTIARY HEARING ON ISSUES INCLUDING VOIR DIRE.

THIS ONE, THIS WOULD IT TAKE ANOTHER FEW MINUTES TO HAVE GOTTEN THEIR RECORD TO SEE WHETHER THEY HAD SOMETHING.

> > FOR THE FUTURE?

> > IT WOULD HELP.

> > WE DON'T KNOW WHERE THE RECORDS ARE FROM, CORRECT? WAS THERE EVER PRESENTED, THE

NOTES OR OBVIOUSLY NOT PRESENTED FROM THE COUNCIL AND THERE WAS NO ALLEGATION OF WHICH LAW ENFORCEMENT AGENCY, WHAT TIME FRAME THE LAW ENFORCEMENT AGENCY TOOK THEM AND WAS THERE ALLEGATIONS OF HOW THEY BECAME AWARE OF THE NOTES WERE TAKEN?

> > ALL OF THOSE THINGS ARE THE ARGUMENTS OF COUNSEL NOW, AND I DON'T BELIEVE THAT ANY OF THAT WAS PUT IN A PLEADING SUFFICIENTLY IN ORDER TO --.

> > IF YOU WERE ASKED TO SAY, DOES THE STATE HAVE THESE NOTES? THAT IS NOT EQUALLY AVAILABLE BECAUSE THE DEFENSE SAYS THEY DON'T HAVE A.

YOU KNOW ENOUGH TO SAY WHETHER YOU HAVE THEM OR DO NOT HAVE THEM.

> > I'VE NOT SEEN ANY OF THOSE NOW IT'S YOUR HONOR.

OUR RESPONSE WAS, HERE THEY ARE IN PUBLIC RECORDS, TURNING THEM OVER IN PUBLIC RECORDS.

> > IT IS NOT LIKE THE SITUATION WHERE THEY FIND SOMETHING AND THEY SAY, WOW, THIS IS SOMETHING THAT MAY HAVE COME BECAUSE MR. OWEN TOLD SOMETHING TO SOMEONE.

> > SENORS SING THE TRIAL COURT ALLOWED THE OPPORTUNITY TO AMEND THE CLAIM TO MORE SUFFICIENTLY PLEA THIS DELEGATION?

> > THERE WAS AN OPPORTUNITY TO AMEND AFTER THE CASE MANAGEMENT HEARING, YES.

> > AND THERE WAS NO APPARENT AFFIDAVIT FROM THE COUNSELOR.

> > I DON'T BELIEVE SO.

> > WITH REGARD TO THE INSANITY DEFENSE AND, WHICH MAY OR MAY NOT HAVE BEEN HEIGHTENED BY VOLUNTARY INTOXICATION THERE'S ABSOLUTELY NO EVIDENCE IN THIS RECORD THERE WAS ANY INTOXICATION OR DRUG USE BY MR. OWEN ON THE NIGHT OF THE CRIME. IN FACT MR. OWEN I COUNTED 22

OUR CONFESSION PART OF WHICH DEALT WITH THE SLAUGHTER IN HOMICIDE, WAS VERY, VERY DETAILED.

HIS MEMORY WAS CRYSTAL CLEAR,  
AND HIS ACTIONS WERE CRYSTAL  
CLEAR ON THAT NIGHT, WHICH  
CLEARLY UNDERCUTS ANY ALLEGATION  
OF INTOXICATION ON THE NIGHT OF  
THE CRIME.

[INAUDIBLE]

> > LET'S LOOK AT THE EVIDENCE  
THAT IS SUPPORTING THIS  
INTOXICATION.

THE EVIDENCE IS THAT YES COMING  
STARTED MAYBE AT AGE NINE AND HE  
CONTINUED THROUGHOUT ADULTHOOD,  
BUT DURING HIS TIME IN COLLEGE,  
HE EASILY STOPPED TAKING THE  
DRUGS.

AND WAS NOT CONTROLLING HIM.  
HE COULD GO WITHOUT DRUGS DURING  
THE WEEK AND JUST USE THEM ON  
THE WEEKENDS.

MR. OWEN'S OWN REPORTS TO  
COUNCIL ARE THAT DURING THE  
MILITARY TIME, HE WAS ABLE TO  
STOP COMPLETELY SO AGAIN WE  
DON'T HAVE A DRUG ABUSE,  
SUBSTANCE ABUSE OR OF GOLL ABUSE  
THAT IS SO PERVASIVE.

ALSO, I BELIEVE IT WAS DR. DEAN  
WHO IS TESTIFYING THAT THIS  
INTOXICATION COULD GO TO HIS  
IMPULSIVITY, TO ENHANCE THAT AND  
ALSO TO MEMORY LOSS BUT WE HAVE  
A 22 HOUR CONFESSION THAT AGAIN  
IS VERY DETAILED, SO ALCOHOL AND  
DRUG ABUSE CERTAINLY DID NOT  
UNDERMINE MR. OWENS ABILITY TO  
RECALL WHAT HE DID THAT NIGHT  
AND WHY HE DID IT, INCLUDING  
TURNING BACK THE CLOCK AT HIS  
BROTHERS, AND WAKING UP HIS  
BROTHER IN ORDER TO SET UP AN  
ALIBI.,.,.,

SUBSTANTIVE INVESTIGATION  
THAT THE ISSUE OF DRUGS,  
JUST WAS NOT EVEN -- DIDN'T  
COME OUT IN ANY WAY, SO THAT  
THERE WOULD BE A STRATEGIC  
ZIGS MADE TO NOT PUT IT ON,  
OR PUT IT ON?

IS THERE ANYTHING IN THE  
RECORD THAT EXPLAINS WHETHER  
IT JUST SIMPLY WAS UNDER THE  
RADAR SCREEN?  
OR THAT THERE WAS -- THAT IT

WAS SHOWN IN THE RECORD BUT THAT THEREFORE EVEN THOUGH SHE CAN'T REMEMBER WHEN\$Y THEY DIDN'T PUT IT ON THERE MAY HAVE BEEN A STRATEGIC REASON DOWNED WHAT I'M SAKE.

> > YES YOUR HONOR.

> > ALL RIGHT OF A I'M JUST GOING TO POINT TO PORTIONS OF THE RECORD BECAUSE DO I NOT WANT TO -- ASCRIBE ANY MOTIVATION TO THE WITNESS. THE RECORD SHOWS THAT THERE WAS EVIDENCE OF ALCOHOL AND DRUG ABUSE, DISCUSSED, IN I BELIEVE IT WAS PRESENTENCE AND ALSO ONE OF THE -- MENTAL HEALTH EXPERTS INTO PSI THAT WAS AVAILABLE AT THE TIME OF TRIAL.

> > WAS AVAILABLE FOR THE TIME OF TRIAL.

> > THEIR MENTAL HEALTH EXPERT --

> > I WANT TO ZRAI PETERSON -- SAY DR. PETERSON THERE WAS DISCUSSION, OF THIS USAGE.

ALSO, MISS -- SAID THAT MR. OWEN WAS VERY OPEN WITH HAVE HER SHE HAD A GOOD RELATIONSHIP WITH HIM SHE TALKED TO HIM ABOUT EVERYTHING, AND THAT SHE PICKED THE TRUE DEFENSE, THE TRUE DEFENSE BEING INSANITY DEFENSE, SHE ALSO SAID THAT SHE HAD A VERY EXPERIENCED INVESTIGATOR WHO WENT ALL OVER THE PLACE, AND HAD YOU KNOW, HAD A GOOD RELATIONSHIP\$\$

RELATIONSHIP, TALKED TO MR. OWEN, AND SHE DOESN'T RECALL YOU KNOW --

> > NOT THAT SHE DOESN'T RECALL THE EVIDENCE COMING FORWARD, BUT THAT THERE WASN'T -- ONE COULD ASSUME THERE WAS NO EVIDENCE COMING FORWARD BECAUSE THEY DID AN INVESTIGATION\$\$

INVESTIGATION, AND THEY DID -- HAVE GOOD WORKING

RELATIONSHIPS\$\$

RELATIONSHIPS.

> > WELL, DO YOU HAVE IS  
THERE A THEORY UNDER WHICH  
YOU KNOW, AND WHEN YOU ARE  
TALKING ABOUT A -- A LIFE  
FORM\$\$

FORM LIFELONG HISTORY  
PHYSICALLY SEXUALLY ABUSED,  
YOU NOW HAVE HAVE, YOU KNOW,  
THIS CONTINUING IN THIS  
OR FANNAGE AT THE BMF, IN  
MICHIGAN, AND IS THERE --  
CAN YOU UNDERSTAND -- IS  
THERE A A DOWNSIDE TO  
EVERYTHING PUT ON EVIDENCE  
OF THIS CONTINUING CREWING  
USE\$\$

-- DRUG USE CONTRIBUTING TO  
THE WHOLE PICTURE OF  
MR. OWEN IN OTHER WORDS, IT  
WOULD BE A MIXED BAG OR IS  
IT ONLY AN UPSIDE.

> > I THINK IT WOULD BE A MIX\$\$  
MIXED BAG, MISS HOWITZ ALSO  
SAID THAT SHE UNDERSTANDS,  
SHE KNOWS OF THE TWO  
DEFENSES INSANITY VERSUS  
INTOXICATION\$\$

INTOXICATION, SHE HAD IN THE  
PAST, NOT FAVORED AND IT IS  
AN INTOXICATION DEFENSE  
BECAUSE REALLY DON'T WORK,  
AND -- IN ANY CASE, SHE WAS  
GOING FOR INSANITY WHICH IS  
A COMPLETE WINNER, U YOUR  
CLIENT WALKS FREE VERSUS AN  
INTOXICATION DEFENSES --

> > IN OTHER WORDS --

> > REQUIRED, ABANDONMENT OF  
THE -- IF YOU RAISED --  
VOLUNTARY INTOXICATION IT  
WOULD HAVE NEGATED INSANITY  
OR THOSE BOTH -- COULD YOU  
RAISE.

> > NO I THINK --

> > YOU CAN RAISE BOTH DEFS  
AT THE SAME TIME I'M NOT  
SURE THAT IT WOULD BE  
STRATEGICALLY BENEFICIAL  
HOWEVER WE ALSO WERE FACED  
THEN WITH WHAT THE DOCTORS  
ARE SAYING THE DOCTORS ARE  
SAYING THAT THIS IS NOT AN

IMPULSIVE CRIME, THAT MR. OWEN WAS DELIBERATE IN HIS ACTIONS, CCP WAS FOUND IN THIS CASE.

> > THAT IS WHY IT --

> > THAT IS WHY THE INSANITY DEFENSE ISN'T A VERY GOOD DEFENSE.

> > WELL, IT WAS IT WAS THAT OR -- AND MISS HOWARD ALREADY NEW I WASN'T THERE I DIDN'T DO IT, DIDN'T WORK THE FIRST ROUND.

SO THIS WAS THE BEST OPTION THAT SHE HAD.

GO WITH AN INSANITY DEFENSE, AND AS YOUR HONOR POINT OUT BEFORE, JUDGE, COHEN GIVE A GREAT WEIGHT TO THIS EVIDENCE, ALSO, WITH REGARD TO THE INTOXICATION, IT APPEALS IN\$\$

PALES IN COMPARISON TO EVIDENCE OF SA INSANITY WHETHER IT BE AT THE TIME OF THE CRIME OR WHETHER IT BE YOU KNOW ADDITIONAL ALCOHOL ABUSE, DURING CHILDHOOD, MISS HOWARD A NOTED THAT MOST VICTIMS OF CRIME END UP ON ALCOHOL ANY HOW DID YOU ALCOHOL OR A SUBSTANCE ABUSE, SO AGAIN, YOU ARE REALLY NOT GAINING ANYTHING, YOU ARE NOT FURTHERING THE INSANITY DEFENSE, AND IT IS SUCH A MINOR POINT THAT -- IT REALLY SHOULDN'T UNDERMINE CONFIDENCE IN THIS VERDICT AT ALL.

> > INTO THIS COUNCIL HAS --

> > SHE HAD -- YES.

> > [INAUDIBLE]

TO SEE, THIS WAS I DON'T KNOW THE RIGHT WORD FOR IT BUT VERY UNPLEASANT CASE.

> > IT WAS HORRIBLE CASE.

> > WHAT WAS INVOLVED -- APPEARED THERE WAS ONE OF THE JURY ORZ\$\$ORS HAD EXPERIENCE, WHERE -- UNFAIR STATEMENT THERE WAS --

> > IT WAS -- YES.

> > AND ARE WE TO THAT THIS

FAMILY IS THE VICTIM IF  
THERE HAD BEEN --  
[INAUDIBLE]  
THIS JUROR IS NO I'M -- --  
THAT IS SUFFICIENT AND ON  
QUESTION, THE -- COUNSEL  
BELIEVES --  
> > IF IT IS A LEGAL  
QUESTION, AS FAR AS WHETHER  
OR NOT SHE IS COMPETENT TO  
SIT ON THE JURY YES, THERE  
HAS BEEN NO SHOWING THAT SHE  
IS -- SHE COULD BE STRICKEN  
FOR CAUSE.  
BUT LET'S LOOK AT THE FACT  
OF THIS PARTICULAR CASE.  
YOU ASSUMING NOW THAT WE ARE  
JUST GOING ON A A STRICT,  
STRICTLAND ANALYSIS WHETHER  
THIS JUROR SHOULD HAVE BEEN  
STRICKEN WHETHER THIS JUROR  
COULD HAVE BEEN STRICKEN NOT  
EVEN WHETHER OR NOT YOU HAVE  
TO PROVE ADDITIONAL BRIDGES\$\$  
PREJUDICE DISTHIS JUROR WAS  
BIASED SHE WAS I'M SURE BILL  
QUESTIONED ON THIS, THAT SHE  
IS A IDEAL JUROR WAS IDEAL  
JUROR FOR THIS CASE, SHE WAS  
WILLING TO ACCEPT THE  
INSANITY DEFENSE SHE BOUGHT  
INTO A COMPLETELY, SHE WAS  
ALSO VERY MIDDLE OF THE ROAD  
WITH DEATH PENALTY SHE WAS  
NOT GOING TO IMPOSE IT  
AUTOMATICALLY SHE WASN'T IN  
FAVOR OF IT.  
I THINK THAT IS A QUESTION  
FOR THE PERSON WHO IS  
ACTUALLY WITNESSING THE  
JUROR, CLEARLY, NO ONE HAD  
ANY QUESTION ABOUT THAT,  
WHETHER IT BE THE JUDGE, OR  
DEFENSE COUNSEL, AGAIN A  
VERY EXPERIENCED TRIAL  
ATTORNEY, SHE IS NOW SITTING  
PUBLIC DEFENDER, AND SHE  
MADE A CHOICE GIVEN THE  
DEFENSE TO KEEP THIS JUROR  
AND YOU CAN LOOK AND ASSUME  
THAT HER ACTIONS ARE CORRECT  
UNDER STRICKLAND SO IF THAT\$\$  
THAT --  
> > THANK YOU YOUR HONOR, I

ASK YOU TO AFFIRM.

> > -- TEN SECONDS --

> > JUST I JUST WOULD LIKE TO SAY MR. OWEN THE TESTIMONY WAS NOT THAT HE WAS SOBER WHEN HE WAS IN COLLEGE, HE DID METHAMPHETAMINE, COCAINE ON THE WEEKENDS, AND I WOULD JUST AGREE THAT THE CLAIMS THAT WERE DENIED WITHOUT A HEARING IT WOULD HAVE BEEN VERY LITTLE BURDEN ON THE COURT TO ACTUALLY HAVE IT, AND WE WOULD AT LEAST HAVE OUR ATTEMPT TO PROGRESSIVE\$SVE OUR CLAIMS IN A CAPITAL CASE TO LEFT TRY ON BEHALF OF MR. OWEN THANK YOU.

> > THE COURT WILL TAKE THE CASE UNDER ADVISEMENT THE COURT WILL TAKE ITS MORNING RECESS\$\$ RECESS.

> > ALL RISE.\$\$, INTO\$\$

.  
> > COURT STANDS IN RECESS.