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THE NEXT COURSE ON THE CALENDAR IS OWEN V STATE. THANK YOU, COUNSEL. WE APPRECIATE YOUR ASSISTANCE.

MR. CROOKS, ARE YOU READY TO PROCEED?

MAY IT PLEASE THE COURT. GOOD MORNING, YOUR HONOR.

GOOD MORNINGMENT -- GOOD MORNING.

YOUR HONOR, THE OWENS CASE THAT WE PRESENT TO YOU, TODAY, IS A RATHER UNIQUE CASE, IN THAT DURING THE PROCESS OF A A 3.850 POST CONVICTION MOTION, MR. OWEN WAS PLACED IN A RATHER UNTENABLE POSITION OF HAVING TO WAIVE ATTORNEY-CLIENT PRIVILEGE AS TO A CAPITAL CASE THAT WAS PENDING RETRIAL. AS A RESULT OF THAT, THE TRIAL JUDGE INDICATED THAT, WITHOUT THEM PROCEEDING, HE WAS GOING TO SUMMARILY DENY THE 3.850 MOTION. TRIAL COUNSEL APPEARED AT THAT HEARING. IT WAS AN EVIDENTIARY HEARING SCHEDULED BEFORE JUDGE BURKE, AND ATTEMPTED TO GET THE COURT TO CONTINUE THE EVIDENTIARY HEARING, PENDING THE RETRIAL IN THE SLATTERY CASE, SO THAT THERE WOULD BE NO DISCLOSURE OF ATTORNEY-CLIENT PRIVILEGE AND INFORMATION IN THE CASE THAT WAS COMING IN FOR RETRIAL.

TELL ME WHAT THE STATE OF THE ERROR -- OF THE RECORD IS, AS FAR AS WHAT THE DEFENDANT WAS ATTEMPTING, ACTUALLY, PROFFERED, HERE, IN THIS RECORD, THAT WOULD BE AN ATTEMPT TO PUT ON SOME EVIDENCE THAT WAS NOT ABLE TO BE PUT ON BECAUSE THE SLATTERY CASE WAS STILL PENNED SOMETHING.

IF I UNDERSTAND YOUR QUESTION, JUSTICE WELLS, I THINK YOU ARE ASKING WHAT EVIDENCE WOULD HAVE BEAN PRESENTED IN THE EVIDENTIARY HEAR SOMETHING.

WHAT DOES THE RECORD SHOW THAT WAS THE -- I AM TRYING TO FIGURE OUT, AS I UNDERSTAND WHAT HAPPENED, IS THEY COME TO THE EVIDENTIARY HEARING. AND MR. KIRSHNER IS THERE. MR. KIRSHNER IS CALLED. HE SAID THAT HE DIDN'T PARTICULARLY WORK ON THIS CASE, THAT HE WAS MUCH MORE INVOLVED IN THE SLAATTERY CASE, AND THERE WAS, THEN, SOME QUESTIONS ASKED OF MR. KIRSHNER, AND THEN THE DEFENDANT SAID THAT HE WOULDN'T GO FORWARD WITH ANYMORE EVIDENCE. IS THAT BASICALLY WHAT OCCURRED?

WITH A SLIGHT MODIFICATION, JUSTICE. AS THE HEARING COMMENCED, THE ISSUE OF ATTORNEY-CLIENT PRIVILEGE WAS RAISED PRIOR TO THE COMMENCEMENT OF THE HEARING, AT THE HEARING, BY BOTH TRIAL COUNSEL, MISS HALWHAT, AND, ALSO, BY POST-CONVICTION COUNSEL, WHO DON'TED HER MOTION. -- WHO ADOPTED HER MOTION. IT WAS DIRECTED THAT NO PENDING COUNSEL BE BRIEFED AS TO THE RETRIAL. THE PROBLEM WAS MR. KIRSHNER WAS ONE OF THE ATTORNEYS THAT REPRESENTED MR. OWEN ON BOTH CASES AND PARTICIPATED, TO A SUBSTANTIAL DEGREE, OF THE SUPPRESSION HEARINGS OF THE CONFESSIONS THAT WERE ULTIMATELY USED IN BOTH CASES.

BUT DID THAT GO A STEP FURTHER, IN WHERE COUNSEL SAID, BUT FOR THE FACT THAT THERE IS A SERTION OF -- AN ASSERTION OF ATTORNEY-CLIENT PRIVILEGE, HERE IS WHAT I REPRESENT?

IT NEVER HAPPENED. WHAT HAPPENED, WAS, THAT MR. KIRSHNER SAID TO THE JUDGE THAT, IF HE DIFFICULT VUGED INFORMATION, IT WOULD BE SO DAMAGE -- IF HE DIVULGED INFORMATION, THAT IT WOULD BE SO DAMAGING THAT HE WOULD HAVE AN APPELLATE COURT ORDER HIM OR ADVISE HIM AS TO WHETHER HE SHOULD TESTIFY TO THAT INFORMATION, INFORMATION THAT

HE HAD TO DEFEND HIMSELF AGAINST THE 3.850 MOTION. HE STATED THAT ON THE RECORD, THAT IF HE PROCEEDED WITH IT, IT WAS SO DAMAGING, IN THE UPCOMING RETRIAL, AND I THINK AT THAT POINT, JUDGE BURKE, IT SEEMS TO ME, WOULD HAVE ALLOW THEM TO AT LEAST APPEAL THAT PORTION OF HIS DECISION. WHAT HAPPENED WAS JUDGE BROKO-.

WHAT I AM -- WHAT HAPPENED WAS JUDGE BROKO-.

WHAT I AM CONFUSED ABOUT IS THERE IS A STATEMENT IN THE STATE'S BRIEF IS THAT SAYING THAT KIRSHNER HAD NO RESPONSIBILITY IN THE WARD CASE. IS THAT NOT CORRECT?

THAT IS NOT CORRECT. HAD HE A RESPONSIBILITY IN TERMS OF THE CONFESSIONS. MR. OWEN WAS CHARGED WITH TWO CAPITOL MURDERS. THERE WAS -- CAPITAL MURDERS. THERE WAS ONE COMBINED SUPPRESSION HEARING FOR BOTH CASES. MR. KIRSHNER PARTICIPATED, TO A SUBSTANTIAL EXTENT, IN THAT SUPPRESSION HEARING. ULTIMATELY, THE SLATRY CASE WAS INITIALLY, AS THIS COURT IS WELL AWARE, WAS REVERSED, SENT BACK, BASED UPON PORTIONS OF THAT CONFESSION THAT WE ARE NOT -- THAT WERE NOT TO BE USED. IN THE INTERIM PERIOD, THE SUPREME COURT OF THE UNITED STATES ISSUED A RULING. THE STATE, THEN, FILED A WRIT TO SERVE AND CAME BACK TO THIS COURT AND THEN, WAS ABLE TO COME BACK TO THIS COURT AND WAS ABLE TO USE THE CONFESSION IN THE SLATTERY CASE, AND THAT TOOK UP ABOUT A THREE-YEAR PERIOD IN WHICH THEY WERE TRYING TO USE THAT CONFESSION. THE PROBLEM WAS THAT JUDGE BURKE APPEARED, AT THE BEGINNING, AS THOUGH HE WERE GOING TO PROTECT ANY REVELATION OF ATTORNEY-CLIENT PRIVILEGE. THAT IS WHEN, I THINK, POST CONVICTION COUNSEL MADE THE DECISION TO AT LEAST TO PROCEED, RATHER THAN HAVE THE MOTION SUMMARILY DENIED FOR FAILURE TO PROCEED WITH THE HEARING. AS THE HEARING PROGRESSED, JUDGE BURKE, THEN, IF YOU WANT TO SAY WATERED DOWN HIS DECISION, AS TO WHAT WOULD BE PROTECTED UNDER ATTORNEY-CLIENT BRIF PRIVILEGE AND, IN -- PRIVILEGE, AND, IN FACT, ALLOWED THE STATE TO INQUIRE OF MR. KIRSHNER ABOUT A STATE MENTAL HEALTH REPORT THAT HAD ABSOLUTELY NOTHING DO WITH THE WARD CASE, AND IT WAS AT THAT POINT WHERE MR. OWEN INSISTED, THROUGH COUNSEL, THAT THEY NOT PUT ON ANY OTHER WITNESSES, BECAUSE IT WAS OBVIOUS THAT HE WAS CONCERNED THAT THE COURT WAS GOING TO ALLOW DISCLOSURE OF INFORMATION THAT MAY HAVE HAD DETRIMENT TO HIM IN THE PENDING RETRIAL, AND SO THAT WAS THE BASIS. AT THAT POINT IN TIME, JUSTICE BURKE DID NOT CONDUCT ANY KIND OF PHERRATA INQUIRY OR ANY TYPE OF FERRATA INQUIRY TO SEE WHETHER HE UNDERSTOOD WHAT WAS HAPPENING. HE REPLIED THAT I UNDERSTAND WHAT YOU ARE SAYING BUT I DON'T UNDERSTAND THE PROCEDURE, AND I DON'T THINK THAT SHOWS AN UNEQUIVOCAL, CLEAR, VOLUNTARY, INTELLIGENT WAIVER, IF YOU WILL, OF ANY HEARING. I THINK THE COURT HAD AN OBLIGATION, AT THAT POINT, TO AT LEAST CONDUCT SOME INQUIRY AS WAS DONE IN THE CASTRO CASE, AND THE CASTRO CASE IS SOMEWHAT DIFFERENT FACTUALLY, BUT THE COURT DID CONDUCT A WRATH ERECTION FENCE -- A RATHER EXTENSIVE INQUIRY AS TO MR. CASTRO AS TO WHAT HE WAS DOING. THAT IS WHERE THE PROBLEM FALLS DOWN, IN THAT THIS CASE SHOULD BE REMANDED BACK FOR AN EVIDENTIARY HEARING. THERE WERE ISSUES THAT WERE NEVER PRESENT HAD IN THE HEARING, BECAUSE COUNSEL, ASAL RESULT OF MR. OWEN'S INSISTENCE, DID NOT PROCEED, BASED UPON THE FACT THAT IT APPEARED THAT JUDGE BURKE WAS SLOWLY ALLOWING THE STATE TO GET INTO AREAS THAT WERE NOT OR SHOULD NOT BE REVEALED, AND WOULD BREACH THE ATTORNEY-CLIENT PRIVILEGE, AND THAT, BASED UPON THAT, THEY OPTED NOT TO PROCEED ANY FURTHER WITH THE HEARING, AND THE COURT, THEN, CONCLUDED, WELL, YOU OPTED TO START, BUT YOU DIDN'T SAY ANYTHING, SO THEREFORE I AM GOING TO DENY YOUR MOTION, BUT IT BEGS THE QUESTION, BECAUSE THE COURT, IN ITS INSISTENCE UPON PROCEEDING, ADVISED THAT HE WOULD PROTECT THE ATTORNEY-CLIENT PRIVILEGE, BUT AS THEY STARTED, IT WAS OBVIOUS THAT HE WAS CHANGING THAT AS TIME PROGRESSED. SO COUNSEL, THROUGH MR. OWEN, THEN, DECIDED THAT THEY WEREN'T GOING TO TAKE THAT RISK BECAUSE OF THE PENDING RETRIAL IN THE CAPITAL CASE. THIS CASE IS UNIQUE, BECAUSE THE RULES REQUIRE THE POST CONVICTION MOTION TO BE FILED WITHIN CERTAIN TIME FRAMES. HOWEVER THERE, IS NO PROVISION IN HIS THOSE RULES

FOR PROTECTION, OF THE CLIENT, AND WE KNOW THAT ESSENTIALLY, WHEN YOU FILE THAT MOTION, YOU WAIVE ATTORNEY-CLIENT PRIVILEGE, IN ORDER FOR COUNSEL TO BE ABLE TO DEFEND HIMSELF AGAINST INEFFECTIVE CLAIMS. HOWEVER, THE RULE MAKES NO PROVISION FOR PROTECTION, OTHER THAN THAT, AS TO PENDING CASES. ESPECIALLY A CAPITAL CASE, AS WAS THE SITUATION HERE.

WHAT IS THE STATUS OF THE SLATTERY CASE? IF THIS WERE TO BE REVERSED, IS THERE -- ISN'T THE SLATTERY CASE STILL ONGOING, SO THAT THE PRIVILEGE WOULD HAVE TO STILL BE ASSERTED?

THE SLATTERY CASE, YOUR HONOR, A SENTENCING ORDER WAS ISSUED ON MARCH 23 OF THIS YEAR BY THE TRIAL JUDGE, AND THAT CASE IS IN THE PROCESS, AT THIS POINT IN TIME, OF DIRECT APPEAL.

SO YOUR POSITION WOULD BE THAT, EVEN IF IT WERE, THIS WERE TO BE REVERSED FOR AN EVIDENTIARY HEARING, NOW, THAT MR. KIRSHNER, STILL, COULDN'T TESTIFY, WHILE THE SLATTERY CASE IS STILL GOING ON?

WELL, YOUR HONOR, I THINK THAT IT MAY BE, AT LEAST AT THIS POINT, UNLESS, AND I AM NOT FAMILIAR WITH THE SLATTERY CASE, IN TERMS OF WHAT APPELLATE ISSUES THERE ARE RELATING TO THAT RETRIAL, IF THAT RETRIAL WAS TO BE REVERSED, THEN I THINK WE WOULD HAVE THE SAME PROBLEM. ULTIMATELY IF THERE WAS GOING TO BE A NEW TRIAL, AGAIN, WE WOULD HAVE SIMILAR PROBLEM, BUT THE TIME ELEMENT, I DON'T THINK, SHOULD BE THE CONCERN AS TO THE PROTECTION OF THE CONSTITUTIONAL RIGHTS OF MR. OWEN. BECAUSE WHAT WE HAVE DONE IS THE STATE TOOK THE POSITION, WELL, WE WANT TO USE THIS CONFESSION AND THIS RETRIAL, SO A PERIOD OF ALMOST THREE YEARS EXPIRED AS A RESULT OF THAT. NOW, WE ARE IN A POSITION WHERE MR. OWEN IS TRYING TO PROTECT HIS POST CONVICTION RIGHTS IN ONE CASE, AND WE ARE WANTING TO SAY, WELL, BECAUSE IT IS GOING TO TAKE SOME TIME, WE DON'T WANT TO GIVE YOU THOSE RIGHTS IN THIS CASE. IT IS KIND OF A DICHOTOMY, JUDGE, I THINK.

I WAS JUST ASKING WHAT WOULD BE THE EFFECT OF REVERSAL HERE? THE EFFECT WOULD BE IT WOULD JUST BE IN ABEYANCE. WHAT IS YOUR POSITION ON THAT? IT WOULD JUST BE IN ABEYANCE UNTIL WHEN?

EXCUSE ME. YOUR HONOR, I THINK THAT THE ELEMENTS OF THE EVIDENTIARY HEARING COULD PROCEED, IN TERMS OF PREPARATION, IN TERMS OF, PERHAPS, DEPOSITIONS TO DETERMINE IF, IN FACT, ANYTHING THAT WOULD RELATE, POSSIBLY, TO THE SLATRY CASE, IN THE EVENT THAT THERE WAS A REVERSAL IN THAT CASE UPON APPEAL, I THINK IT COULD BE YOU COULD PROCEED WITH THAT WITH CAUTION, AND OBVIOUSLY COME TO SOME RESOLUTION.

BUT WHEN YOU COME UP WITH THE SAME IMPASSE THAT YOU CAME UP WITH THIS TIME, ONCE YOU GET INTO THE 3.850, THE LAWYER WOULD GET UP AND SAY IF YOU ARE GOING -- FACTS THAT ARE GOING TO AFFECT THE -- EFFECT THE -- AFFECT THE SLATTERY CASE AND AFFECT THE REVERSAL THERE. YOU WOULD HAVE THAT SAME IMPASSE, WOULDN'T YOU?

IT IS CONCEIVABLE. I NOT STAND HERE AND TELL YOU IT IS NOT A PROBABILITY, BECAUSE IT COULD BE, BUT, AGAIN --

BACK TO JUSTICE PARIENTE'S QUESTION, HOW LONG CAN YOU PUT OFF THAT 3.850? IT MIGHT TAKE TEN YEARS TO ACTUALLY FULLY LITIGATE THE SLATTERY CASE. DO YOU HAVE TO WAIT ALL THAT TIME BEFORE YOU CAN HAVE A 3.850 HEARING?

WELL, IF I MAY APPROACH IT FROM THIS ANGLE, PERHAPS, JUSTICE SHAW, OBVIOUSLY IF THE -- IF THIS COURT UPHOLDS THE CONVICTION, AND SENTENCE OF DEATH, AT THAT POINT, THE

SLATTERY CASE WOULD, THEN, BE IN A POST CONVICTION POSTURE, AND I WOULD ASSUME THAT, OBVIOUSLY, AT THAT POINT, IT WOULDN'T MATTER. AS TO PROCEED ON THIS CASE. BECAUSE THEY WOULD BE -- THE ISSUES WOULD BE, OBVIOUSLY, SIMILAR. SO I DON'T THINK THERE WOULD BE ANY NEED, AT THAT POINT, FOR PROTECTION OF ATTORNEY-CLIENT PRIVILEGE IN THE SLATRY CASE. I CAN'T ANSWER. I DON'T KNOW WHAT THE ULTIMATE OUTCOME IS GOING TO BE FROM THAT APPEAL.

LET ME GET BACK TO SOMETHING HERE. YOU SAY THAT, IN FOLLOWING UP WITH JUSTICE WELLS' QUESTION, AS FAR AS YOU HAVE A SITUATION WHERE YOU HAVE GOT, THEY ARE NOT RELATED SENTENCES HERE. THERE ARE TWO DISTINCT MURDERS. MR. KIRSHNER WAS SAYING, WELL, I NEED TO TESTIFY TO CERTAIN THINGS THAT, TO DEFEND MYSELF IN THE 3., FROM THE ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL. AT SOME POINT DOESN'T THERE COME TO BE SOME TYPE OF BURDEN ON THE DEFENDANT TO SHOW WHAT KIND OF EVIDENCE WOULD HAVE BEEN ESTABLISHED THROUGH THE ATTORNEY THAT WAS ALLEGEDLY NOT AVAILABLE OR AT LEAST, FOR EXAMPLE, I MEAN, NOTHING WOULD HAVE STOPPED THE POST CONVICTION COUNSEL FROM HAVING PUT ON ANOTHER EXPERT TO SAY I HAVE REVIEWED WHAT HAPPENED IN THIS CASE, AND IN MY OPINION, COUNSEL WAS INEFFECTIVE FOR FAILURE TO PUT ON PENALTY MITIGATION EVIDENCE. AT THAT POINT, THEN, IT WOULD BE THE STATE, REALLY, THAT WOULD BE SUFFERING FROM MR. KIRSHNER SAYING, NO, I DIDN'T DO THAT, BECAUSE MR. OWEN TOLD ME HE WAS GUILTY OR WHATEVER IT MIGHT BE. HOW IS -- SO I GUESS THE QUESTION IS, WITH THAT, YOU ARE ESTABLISHING SOME OTHER EVIDENTIARY BASIS FOR YOUR CLAIM, THROUGH SOMEONE OTHER THAN MR. KIRSHNER, OR SOME PROFFER. HOW ARE WE SORT OF SPECULATING -- AREN'T WE SPECULATING AS TO WHAT IS GOING ON, AND AREN'T THERE OTHER WAYS OF EFFECTIVENESS, OTHER THAN THROUGH THE ACTUAL ATTORNEY TESTIFYING?

WELL, YOUR HONOR, THE ATTORNEY WOULD, OBVIOUSLY, HAVE AN OPPORTUNITY TO DEFEND HIMSELF, AND THAT IS BECAUSE MR. KIRSHNER WAS CONCERNED ABOUT, AND TO DO THAT, HE WOULD HAVE TO REVEAL INFORMATION THAT WAS EXTREMELY DAMAGING TO MR. OWEN IN THE UPCOMING RETRIAL OF THE SLATTERY CASE. THE ATTORNEY-CLIENT PRIVILEGE, IF I UNDERSTAND YOUR CONCERNS, WOULD BE DIFFICULT TO PROTECT BY ALLOWING THE ATTORNEY OR ANYONE ELSE TO TESTIFY OR GAIN ACCESS TO THAT INFORMATION, BECAUSE ONCE THAT PRIVILEGE IS BREACHED, AT THAT POINT, THERE IS NO PROTECTION OF IT. AND SO WHAT YOU ARE, IF I UNDERSTAND WHAT YOU WERE SAYING IS OR SUGGESTING --

WHAT I AM SAYING IS WHY CAN'T THERE BE SOME EVIDENTIARY BASIS IN THE RECORD, TO ESTABLISH THAT YOU HAVE GOT A BASIS FOR A CLAIM OF RELIEF THROUGH OTHER TESTIMONY? THAT IS WHAT I AM ASKING.

I BELIEVE THAT IT WOULD HAVE BEEN APPROPRIATE FOR JUDGE BURKE TO REQUIRE OR LET THEM TAKE AN APPEAL ON THAT ISSUE AND REVIEW, PERHAPS, IN AN APPELLATE COURT, AS TO WHETHER THAT INFORMATION WOULD HAVE BEEN DETRIMENTAL TO MR. OWEN.

IF YOU WISH TO RESERVE SOME OF YOUR TIME FOR REBUTTAL, YOU MAY.

THANK YOU. YES, SIR.

GOOD AFTERNOON. MAY IT PLEASE THE COURT. MY NAME IS CELIA. TERENCE, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF THE PEOPLE OF FLORIDA. THE COMMENT BY MR. KIRSHNER WAS STATED BEFORE THE EVIDENTIARY HEARING STARTED, AND IT WAS A GENERAL STATEMENT, AND IT IS TRUE MR. KIRSHNER DOES HAVE SEVERELY DAMAGING EVIDENCE THAT, IF IT WERE PRESENTED AT A 3.850 ON THE SLATTERY, THAT IT WOULD HURT MR. OWEN. THAT IS NOT WHAT HAPPENED IN THIS CASE. YOU HAVE TO REMEMBER THE DEFENDANT WAS GRANTED AN EVIDENTIARY HEARING ON MAY NOT CLAIMS, FIVE THAT HAD BEEN CONCEDED BY THE STATE

AND FOUR THAT THE TRIAL COURT LEFT OPEN. NOW, OF THE FIVE CONCEDED BY THE STATE, FOUR OF THEM DEALT STRICTLY AND SOLELY WITH INEFFECTIVE ASSISTANCE AT COUNSEL OF THE TWO TRIAL ATTORNEYS IN THE WARDEN CASE, WHICH ARE DONALD COLE AND CRAIG BUDROW. THEY HAD ABSOLUTELY NOTHING TO DO WITH BARRY KIRSHNER.

WEREN'T THEY ALL IN THE SAME FIRM?

YES. BUT IF YOU LOOK AT THE TESTIMONY THAT MR. KIRSHNER DID GIVE, HE MADE IT ABSOLUTELY CLEAR THAT HE HAD NOTHING TO DO WITH THE WARDEN CASE. THERE WAS NO STRATEGY MEETINGS BETWEEN THE COUNSELS IN THE FIRM THAT HANDLED ALL OF OWEN'S CASES. HE HAD NO KNOWLEDGE OF THE CASE, OTHER THAN THAT HE KNEW THAT MR. OWEN WAS CHARGED WITH THE MURDER. HE HAD NO IDEA WHAT THEIR STRATEGY, WHAT DEFENSES THAT THEY WERE GOING TO USE. HIS WORD WAS THE CASES WERE DECOMPARTMENTALIZED, AND HE HAD NO KNOWLEDGE HE COULD OFFER, NO INFORMATION ON THE WARDEN CASE. AT THE EVIDENTIARY HEARING, BUT EVEN BEFORE YOU EVEN GET TO HIS TESTIMONY, YOU HAVE TO LOOK AT THE ISSUES THAT WERE GOING TO BE RAISED AT THE EVIDENTIARY HEARING. NOW, BESIDES THE FOUR THAT DEALT WITH INEFFECTIVE ASSISTANCE AT COUNSEL OF THE WARDEN TWO ATTORNEYS, THE ONLY ONE THAT HAD ANYTHING AT ALL TO DO WITH BARRY KRISHER WAS AN ALLEGED CONFLICT OF INTEREST THAT HE HAD, AND THAT WAS THAT MR. KRISHER WAS AN ANCESANT -- AN ASSISTANT STATE ATTORNEY TWO YEARS PRIOR TO THIS CRIME.

LET ME GET SOMETHING STRAIGHT. ARE YOU SAYING THAT THERE WAS NO OVERLAP BETWEEN THE TWO CASES RELATIVE TO EITHER PRETRIAL INVESTIGATION AND MOTIONS OR THE CASES. IS THAT YOUR REPRESENTATION?

NO, SIR. WHAT I AM SAYING WAS, IS, MR. KRISHER WAS HEAVILY INVOLVED IN THE MOTION TO SUPPRESS, AND IT WAS A MOTION TO SUPPRESS BOTH CONFESSIONS. THAT WAS HIS INVOLVEMENT IN THE WARDEN CASE. THE MOTION TO SUPPRESS ISSUE WAS NOT GERMANE TO THE EVIDENTIARY HEARING. IT HAD NOTHING -- HE WAS NOT GRANTED A HEARING ON THAT CLAIM. THEREFORE THERE WOULD NOT HAVE BEEN ANYTHING TO ASK MR. KRISHER ABOUT THE MOTION TO SUPPRESS OR THE CONFESSION ISSUE.

SO, LET ME -- SO MR. COLE, WAS HE, WOULD -- DO WE KNOW, FROM THIS RECORD, THAT IF MR. COLE AND WHO WAS THE OTHER PERSON?

CRAIG BUDROW.

AND CRAIG BUDROW WERE CALLED, WOULD THEY HAVE, ALSO, INVOKED THE ATTORNEY-CLIENT BRIF PRIVILEGE BECAUSE OF THE ---PRIVILEGE BECAUSE OF THE FACT THAT THEY WERE IN THE SAME FIRM WITH MR. KRISHER AT THE SAME TIME? DO WE KNOW THAT ON THE RECORD?

I KNOW THAT ANSWER, BUT I CAN'T ANSWER IT FROM THE RECORD BEFORE US, AND THE REASON WHY I CAN'T ANSWER THAT IS BECAUSE THEY WERE NEVER CALLED. ISN'T IT THE DEFENDANT'S DUTY TOY TRY TO GO FORWARD WITH THIS HEARING? THIS JUDGE BENT OVER BACKWARDS TO PROVIDE THE ASSURANCES TO MR. OWEN THAT HE WAS GOING TO HAVE A FAIR HEARING. HE GRANTED ONE OF THEIR REQUESTED RELIEVES. THE RELIEF ASKED WAS EITHER STAY THESE PROCEEDINGS UNTIL THE CONCLUSION OF SLATTERY, AND I WOULD LIKE TO GET IN, LATER, AS TO THE INACCURACIES OF THAT REMEDY, OR GRANT A LIMITED PRIVILEGE AS TO ANYTHING DEALING WITH SLATTERY, AND THAT IS WHAT HE GOT. THE JUDGE SAID WE WILL GO FORWARD. I WILL PROTECT THE PRIVILEGE, THE ATTORNEY-CLIENT PRIVILEGE, AS IT RESULTS TO SLATTERY. THERE WILL NOTHING BE DIVULGED, IN TERMS OF THE SLATTERY CASE. HE SAID IF THERE ARE ANY CLOTHES QUESTIONS, I WILL ADDRESS THEM -- IF THERE ARE ANY CLOTHES QUESTIONS, I WILL ADDRESS THEM EM CAMERA.

CAN'T -- I WILL ADDRESS THEM EN CAMERA.

CAN'T YOU PRESERVE THAT BY THE SAME INFORMATION, WHEN THE SAME GROUP OF LAWYERS WORKING ON THE SAME, BOTH CASES, BASED ON OUR OTHER CASES ABOUT CONFLICTS OF INTEREST, THAT THERE WOULD BE NO SHARING OF INFORMATION, SO THAT MR. COLE WOULD HAVE HAD TO INVOKE THE ATTORNEY-CLIENT PRIVILEGE FOR THE SAME REASON THAT MR. KRISHER DID?

WELL, AGAIN, I DON'T THINK IT IS FAIR TO MAKE THAT PRESUMPTION, WHEN YOU HAVE FACTS TO THE CONTRARY BY MR. KRISHER, HIMSELF, AT THIS HEARING. HE SAID I HAD NOTHING TO DO WITH WAR REASONABLE DOUBT EN. -- WITH WARDEN. HE COULDN'T ANSWER ANY QUESTIONS ONWARD EN. WHEN HE WAS SHOWN A CONFIDENTIAL REPORT THAT WAS NOT INTRODUCED INTO EVIDENCE AT THAT TIME, HE SAID I REMEMBER THE NAME, DR. BLACK MAN, I DON'T KNOW ANYTHING ABOUT HIM. I HAVE NO KNOWLEDGE.

WHY WAS KRISHER AT THIS HEAR SOMETHING.

THAT IS A GOOD QUESTION. APPARENTLY I GUESS YOU WOULD HAVE TO ASK DEFENSE COUNSEL. THAT HOWEVER, CCR COUNSEL TOLD THE JUDGE, AFTER HE GRANTED THEIR REQUESTED RELIEF, HE SAID LET'S GO FORWARD. THIS IS EXACTLY WHAT ISSES. "I AM ONLY GOING FORWARD TO SHOW THIS COURT THAT THERE IS A PRIVILEGE IN THE SLATTERY CASE." THE FIRST ATTORNEY SHE CALLED WAS KRISHER. AND I SUGGEST -- I DON'T SUGGEST. I AM TELLING THIS COURT THAT IT IS CLEAR THAT THEY HAD NO INTENTIONS OF GOING FORWARD. YOU LOOK AT THE SEVEN ATTORNEYS THAT ARE IN THIS LAW FIRM. THERE ARE TWO TWO THAT WERE TRIAL ATTORNEYS INWARD EN. THE FIVE ISSUES THAT HE WAS GRANTED A HEARING ON WENT DIRECTLY TO THEIR PERFORMANCE AND THEIR PERFORMANCE ONLY. SO WHO DOES HE CALL AT THE HEARING? THE PERSON WITH THE LEAST AND LIMITED KNOWLEDGE OF THE WARDEN CASE, WHICH WAS THE SUBJECT OF THE HEARING. THAT, ALONE, SHOWS HOW THE DEFENDANT HAD NO INTENTIONS OF GOING FORWARD, AND SHE SAYS IT ON THE RECORD.

WAS THERE AN ARTICULATED CLAIM THAT THEY COULDN'T PROCEED TO PROVE THEIR CLAIMS THAT WERE BEING TRIED WITHOUT KRISHER'S TESTIMONY?

WERE THERE CLAIMS THAT COULD HAVE -- THEY COULD HAVE PROCEEDED WITH?

IN OTHER WORDS, WAS A. WAS THERE A CLAIM ON THE -- IN OTHER WORDS, WAS THERE A CLAIM ON THE RECORD, HERE, THAT, JUDGE, WE CAN'T PROVE THE CLAIMS THAT YOU HAVE GRANT ADD EVIDENTIARY HEARING ON, WITHOUT THE TESTIMONY OF MR. KRISHER?

OKAY. THEY MADE THAT ASSERTION. HOWEVER, IF YOU DO LOOK AT THE FIVE CLAIMS THAT HE WAS GRANTED A HEARING ON, THE ONLY ONE THAT THEY NEEDED KRISHER FOR CAUSE THE -- WAS THE CONFLICT OF INTEREST CLAIM, AND THAT WAS THAT HE WAS A STATE ATTORNEY TWO YEARS PRIOR TO THIS MURDER, AND IRONICALLY HE HAD KNOLL PROCESSED A BURGLARY -- HE HAD NOL PROCESSED A BURGLARY CLAIM AGAINST MR. OWEN.

THAT WAS THE ONLY CLAIM THAT THEY ASSERTED, IN HAVING MR. KRISHER TESTIFY?

YES, AND ACTUALLY AT THE HEARING, HE WAS ASKED THAT ON CROSS-EXAMINATION, AND HE SAID DID YOU TELL MR. OWEN, WAS MR. OWEN AWARE OF THE FACT THAT YOU WERE AN ASSISTANT STATE ATTORNEY? AND AT FIRST HE REFUSED TO ANSWER, UNTIL THE PROSECUTOR POINTED OUT THAT, ACTUALLY, THAT INFORMATION WAS ALREADY IN THE RECORD, BECAUSE THE DEFENDANT, PRETRIAL, HAD DONE A MOTION, A SIMILAR MOTION, BECAUSE MR. KRISHER HAD BEEN AN ASSISTANT STATE ATTORNEY, SO THAT WAS RECORD EVIDENCE, SO MR. KRISHER WAS NOT DIVULGING ANY PRIVILEGE INFORMATION. THE NEXT QUESTION, THOUGH, CONCERNED MR. KRISHER, AND THAT WAS DID MR. OWEN, WAS HE AWARE OF THE FACT THAT YOU HAD NOL PROCESSED A BURGLARY CASE TWO YEARS BEFORE THIS MURDER, AND HE AT FIRST DID NOT WANT

TO ANSWER THE QUESTION, AND THEN JUDGE BURKE REQUIRED HIM TO ANSWER THE QUESTION, AND SAID I DON'T KNOW HOW ANSWERING THIS ONE QUESTION, HOW IN ANY WAY, THAT IS GOING TO PREJUDICE THE DEFENSE IN THE SLATTERY RETRIAL, AND AFTER SAYING THAT, HIS ANSWER WAS YES, MR. OWEN KNEW THAT I HAD NOL PROSSED THAT CASE, AND, AGAIN, THE NOL PROSS, ITSELF, OBVIOUSLY A MATTER OF PUBLIC RECORD. THAT IS THE EXTENT AND SUM AND SUBSTANCE OF THE PRIVILEGED INFORMATION THAT MR. KRISHER WAS ASKED TO GIVE AND NOT ONLY GAVE BUT EVEN WAS THE SUBJECT OF THIS HEARING. THAT IS IT. NOTHING ELSE. AND IT IS THE STATE'S POSITION THAT THE DEFENSE WAS REQUIRED TO GO FORWARD ON HIS MOTION AT THE VERY LEAST, FOR THOSE ISSUES THAT HAD NOTHING DO WITH MR. KRISHER.

NOW, WERE THOSE THE ISSUES THAT THE STATE HAD CONCEDED THAT THERE COULD AND EVIDENTIARY HEARING OR WOULD BE AN EVIDENTIARY HEARING? THE ONES INVOLVING BUDROW AND COLE?

YES, SIR.

CONSTITUTIONALLY DEFICIENT EVIDENCE? BUDROW RENDERED DEFICIENT PERFORMANCE AT THE GUILT PLAYS, FOR FAILING TO INVESTIGATE A VIABLE DEFENSE. AND THERE IS THE CONFLICT OF ISSUE -- INTEREST CHARGE. BUDROW FAILED TO INVESTIGATE AND PRESENT STATUTORY, NONSTATUTORY MITIGATING EVIDENCE, AND TRIAL COUNSEL COLE FAILED TO RAISE. THOSE ARE THE ONLY ISSUES THAT WERE TO BE PRESENTED AT THIS EVIDENTIARY HEAR SOMETHING.

THOSE WERE THE FIVE ISSUES THAT THE STATE HAD CONCEDED. THE TRIAL JUDGE, THOUGH, AT THE HUFF HEARING, LEFT OPEN FOR LITIGATION, FOUR OTHER CLAIMS, AND THOSE WERE NEWLY-DISCOVERED EVIDENCE, BRADY, JURY MISCONDUCT, AND A PUBLIC RECORDS REQUEST. OR ISSUE.

WHAT DO WE HAVE IN THE RECORD THAT TELLS US ANYTHING ABOUT COLE AND WHAT IS THE OTHER ATTORNEY?

BUDROW.

BUDROW'S POSSIBLE INVOLVEMENT IN THE SLATTERY CASE?

ABSOLUTELY NOTHING.

AND WHO SAYS THAT? WHERE DO WE GET THAT IN THE RECORD?

ACTUALLY THERE IS NOTHING IN THE RECORD, BUT, AGAIN, THE REASON FOR THAT IS THIS IS THE DEFENDANT'S MOTION. AT THAT HEARING, THE ONLY PERSON HE PUT ON WAS MR. BARR I KRISHER. NOW, THEY HAD SUBPOENAED ALL OF THE OTHER DEFENSE ATTORNEYS AND, ACTUALLY, IF YOU READ THE RECORD, YOU CAN TELL, AS A MATTER OF FACT, JUDGE BURKE EVEN SAYS HELLO TO THE REST OF THEM. THEY WERE ALL SITTING IN THE COURTROOM. AT THIS HEARING. BUT THE DEFENDANT, THE TOTAL AMOUNT OF THE, OR THE EXTENT OF THE QUESTIONING OF DEFENSE COUNSEL TAKES UP FIVE PAGES. THAT IS IT. FIVE PAGES OF QUESTIONS ASKED OF MR. KRISHER. THAT IS THE SUM AND SUBSTANCE, AFTER -- AFTER THE STATE ASKED THE QUESTIONS ON CROSS EXAM, ON THE CONFLICT, THEN HE SAYS I AM NOT GOING FORWARD.

OKAY. SO IT IS YOUR POSITION THAT, AT THE VERY LEAST, THE DEFENDANT SHOULD HAVE PUT THE OTHER DEFENSE COUNSEL, MR. COLE, AND MR. BUDROW, ON THE STAND, TO SEE, AND IF THEY FELT THAT THEY HAD TO ASSERT A CONFLICT, AN ATTORNEY CLIENT PRIVILEGE, BASED ON SOMETHING IN SLATTERY CASE, WE WOULD HAVE THAT ON THE RECORD.

AT LEAST.

I MEAN, BECAUSE THERE MAY BE A VALID BASIS FOR THEM RAISE AGO ATTORNEY-CLIENT

PRIVILEGE, BEING THEY WERE ALL IN THE SAME FIRM, BUT, ONCE AGAIN, WE CAN'T -- WE DON'T KNOW THAT FROM THIS RECORD.

WELL --

OR DO WE?

YOU DO KNOW, FROM WHAT MR. KRISHER SAID, WE DID NOT DISCUSS, AMONGST THE LAW FIRM, THE SEPARATE CASES. I HAVE NO KNOWLEDGE. WE NEVER ALL SAT DOWN TOGETHER. THE CASES WERE SEPARATE. THOSE ARE HIS OWN WORDS.

WAS MR. KRISHER, WAS HIS OFFICE PROSECUTING THE SLATTERY RETRIAL CASE?

NO. HILLSBOROUGH COUNTY IS. SO ON THIS --

JUSTICE QUINCE HAD A QUESTION.

I AM SORRY.

WELL, I GUESS IT IS SOMEWHAT TROUBLING OF THE FACT THAT WE HAVE MR. KRISHER'S TESTIMONY, BUT HE CAN ONLY TALK ABOUT WHAT HE, HIMSELF, WAS INVOLVED IN.

CORRECT.

AND SO WE DON'T KNOW, FROM THIS RECORD, WHETHER MR. COLE AND THE OTHER ATTORNEY INVOLVED IN THIS CASE HAD ANY DEALINGS WITH THE OTHER -- THERE WAS ANOTHER ATTORNEY INVOLVED IN THE SLATTERY CASE, CORRECT?

YES. MICHAEL SOUNDNIK, RIGHT.

SO WE DON'T KNOW WHAT KIND OF CONTACT THERE MAY HAVE BEEN, WITH THE OTHER ATTORNEY.

YOU ARE RIGHT. I MEAN, OTHER THAN WHAT MR. KRISHER HAS SAID, HOWEVER, GIVEN THE WAY THE ISSUES ARE FRAMED, OKAY, THAT HE WAS GRANTED A HEARING ON, ISN'T IT POSSIBLE TO BE ABLE TO ASK QUESTIONS OF THESE ATTORNEYS, AS TO THEIR STRATEGY FOR GUILT OR PENALTY PHASE TO A SEPARATE MURDER? AND IF THE QUESTION GOT CLOSE TO SLATTERY, AS THE JUDGE SAID, YOU KNOW, IF WE GET AN UNCOMFORTABLE QUESTION, WE WILL DEAL WITH IT, BUT THE JUDGE NEVER GOT THAT OPPORTUNITY, BECAUSE THEY SAID, NO, WE ARE NOT GOING FORWARD, AND, YES, THE DEFENSE HAS A BURDEN TO GO FORWARD. HE CLAIMS THAT THIS IS A SIMMONS PROBLEM, BUT EVEN IN SIMMONS, THE DEFENDANT PUT ON EVIDENCE THAT A MOTION TO SUPPRESS THAT WAS DAMAGING TO HIM, SAID, YES, THIS IS MY SUITCASE, THE STATE, AT THE TRIAL, THEN, WANTED TO USE OR ACTUALLY DID USE THAT INFORMATION AGAINST HIM, AND THE UNITED STATES SUPREME COURT REVERSED. EVEN IN THAT CASE, THE CASE HE RELIES ON, AT LEAST THE INFORMATION WAS OUT THERE. IT WAS USED, AND IT WAS SHOWN TO HAVE, THEN, BEEN PREJUDICIAL, SO WHAT I AM SAYING IS THAT HE SHOULD HAVE BEEN REQUIRED TO PUT ON THESE DEFENSE COUNSEL, AND IF SOMETHING CAME UP, AND SAY THE JUDGE HAD SAID, NO, I AM GOING TO MAKE YOU ANSWER IT, AND THEN THE STATE WOULD, THEN, TAKE THAT INFORMATION AND USE IT AT THE SLATTERY RETRIAL, THEN YOU HAVE, MAYBE, A SIMMONS PROBLEM. HERE YOU HAVE NOTHING. THIS RECORD SAYS NOTHING.

WHAT WAS THE TRIGGERING QUESTION THAT CAUSED TERMINATION OF THE HEARING?

WELL, THE FIRST ONE WAS ON THE CONFLICT, BUT TOWARDS THE END OF THE CROSS-EXAMINATION, THE STATE ATTORNEY DID SHOW MR. KRISHER A CONFIDENTIAL REPORT, BY A

PSYCHOLOGIST, THAT DR. BLACKMAN, WHO WAS APPOINTED IN THIS CASE, CONTRARY TO WHAT DEFENSE COUNSEL IS SAYING, DR. BLACKMAN AND DR. PETERSON WERE CONFIDENTIAL EXPERTS IN THE WORDEN CASE. THE STATE HAD A COPY OF DR. BLACKMAN'S REPORT, AND IF THE HEARING HAD GONE FORWARD, IT WOULD HAVE BEEN INTRODUCED INTO EVIDENCE, IF MR. BUDROW HAD TESTIFIED, BUT, OKAY, AT THIS POINT IT WAS OFFERED AS AN EXHIBIT FOR IDENTIFICATION, TO MR. KRISHER, TO SEE IF HE REMEMBERED THIS DOCTOR, AND HE SAID --

AND THIS DOCTOR WAS APPOINTED IN THIS CASE OR IN BOTH CASES?

HE HAD BEEN APPOINTED IN, I KNOW FOR SURE, IN THE WORDEN CASE. I DON'T KNOW IF HE HAD BEEN APPOINTED IN SLATTERY, BUT I DO KNOW, FOR SURE, IN WORDEN. AS A MATTER OF FACT THEY ADMIT THAT IN THEIR 3.850 THAT WAS ADMITTED IN WORDEN. HE DIDN'T TESTIFY AT THE OTHER TRIAL. THE -- HE DIDN'T TESTIFY AT THE TRIAL. THE OTHER DOCTOR D IT DOES GET IN THE WAY, BUT WHEN YOU STRIP AWAY EVERYTHING, THERE IS ABSOLUTELY NOTHING HERE.

YOU WERE GOING TO TELL WHAT PERSON ANSWERED THAT REMEMBERED THE DOCTOR.

HE SAID I REMEMBER THE NAME. I DON'T REMEMBER DR. BLACKMAN. I DON'T REMEMBER TALKING TOM, AND I DON'T REMEMBER ANYTHING ABOUT THIS REPORT. THE REPORT WAS NEVER INTRODUCED INTO EVIDENCE. AND I SUBMIT THAT, AT THE SLATTERY RETRIAL, THAT REPORT COULD HAVE NEVER BEEN INTRODUCED INTO EVIDENCE.

BUT ISN'T IT REASONABLE, FOR THE POINT TO GO UP AT THIS POINT REAL FAST, IF YOU ARE QUESTIONING THE TOMP B RELATIVE TO WHY HE DIDN'T -- QUESTIONING THE ATTORNEY RELATIVE TO WHY HE DIDN'T GO FURTHER INTO THE MENTAL STATE OF THE DEFENDANT OR WHY HE DIDN'T DO CERTAIN THINGS RELATIVE TO DEVELOPING?

THAT WASN'T THE QUESTION ASKED OF MR. KRISHER THOUGH. THE QUESTION ASKED OF MR. KRISHER, AND THE PROSECUTOR WAS TRYING TO EXPLAIN TO THE JUDGE THE ONLY REASON WHY I AM ASKING THIS QUESTION, AND HE SAYS I AM NOT ASKING MR. KRISHER TO REVEAL CONFIDENTIAL INFORMATION. I SIMPLY TRYING TO SEE IF MEMBERS OF THE LAW FIRM DEPEND, IN FACT -- DID, IN FACT, EXCHANGE INFORMATION, AND HE WAS ASKING HIM, DID YOU EVER SEE THIS REPORT? HAVE YOU EVER SEEN THIS REPORT? DID YOU EVER EXCHANGE INFORMATION BETWEEN THE TWO SETS OF ATTORNEYS? THAT WAS THE QUESTION. HE NEVER ASKED HIM TO DIVULGE ANYTHING ABOUT HIS STRATEGY OR HIS COMMUNICATIONS WITH OWEN ON THE PENALTY PHASE OF THE SLATTERY TRIAL. IT WAS SIMPLY TO SEE IF THERE HAD BEEN AN EXCHANGE OF INFORMATION, AND, AGAIN, CONSISTENT WITH -- OF INFORMATION, AND, AGAIN, CONSISTENT WITH WHAT MR. KRISHER HAD PREVIOUSLY SAID, NO, I DON'T REMEMBER THIS GUY.

WHEN WAS THE SLATTERY TRIAL, THE FIRST TRIAL, IN REFERENCE TO THIS CASE?

SEVERAL MONTHS BEFORE THIS CASE.

SO I DON'T WANT TO -- CAN WE REALLY BELIEVE THAT LAWYERS IN THE SAME FIRM PREPARING FOR TWO DEATH CASES, AT LEAST AS TO THE PENALTY PHASE, WOULDN'T HAVE BEEN DISCUSSING THE STRATEGY TO BE USED AS TO HOW TO DEFEND THE PENALTY PHASE OF THESE CASES?

YOU HAVE AN OFFICER OF THE COURT, SWORN TESTIMONY, WHO SAYS THAT THEY DIDN'T, BUT EVEN BEYOND THAT, JUSTICE PARIENTE --.

HE WASN'T -- YOU SAID KRISHER WAS INVOLVED IN THE MOTION TO SUPPRESS. HE WASN'T DOING THE PENALTY PHASE. I AM TALKING ABOUT THE PENALTY PHASE OF THESE CASES, THAT THERE WOULDN'T HAVE BEEN EXCHANGE OF INFORMATION, STRATEGY WISE.

HE SAID THAT THERE WASN'T. HOWEVER, EVEN IF YOU ARE NOT COMFORTABLE WITH HIS ANSWER THAT THERE WASN'T, THE POINT IS HE IS REQUIRED TO GO FORWARD ON WORDEN. IF ANYTHING CAME UP THAT THE COURT WAS TROUBLED WITH, THAT HE FELT THAT YOU HAD TO GET IN TO CONFIDENTIAL INFORMATION WITH SLATTERY, HE WOULD HAVE DEALT WITH IT AT THE TIME. HE DID GRAB THEIR MOTION. YOU HAVE TO -- HE DID GRANT THEIR MOTION. YOU HAVE TO GIVE SOME CREDIT TO THE JUDGE OR GIVE THE JUDGE THE OPPORTUNITY, THEN, TO FOLIO HIS OWN ORDER AND GO FORWARD WITH -- TO FOLLOW HIS OWN ORDER AND GO FORWARD WITH THE HEARING.

WAS THERE ANY ASSERTION BY THE COURT OR BY THE STATE, FOR THAT MATTER, THAT THEY WOULD REQUIRE KRISHER TO TESTIFY IN THIS HEARING?

NO. ABSOLUTELY NOT. THIS WAS THE DEFENDANT'S MOTION, AND PROCEED HOW, AND I THINK IT IS VERY TELLING THAT THE ONLY PERSON THEY PUT ON IS THE PERSON WHO HAS THE LEAST KNOWLEDGE OR COULD HAVE BEEN THE LEAST HELP TO LITIGATING THE CLAIMS FOR WHICH HE WAS GRANTED A HEARING.

OKAY. SO YOU WOULD AGREE, IF THIS RECORD ESTABLISHED THAT COLE WAS CALLED AND COLE SAYS, LISTEN, YOU KNOW, THIS IS NOT -- WE ARE IN 1999. THIS WAS 1984. YOU KNOW, IT WOULD HAVE BEEN INCONCEIVABLE NOT TO HAVE EXCHANGED INFORMATION, AND I JUST CAN'T TESTIFY, BECAUSE THE SLATTERY CASE IS STILL GOING ON, WOULD THAT HAVE BEEN SUFFICIENT?

YOU STILL HAVE, AGAIN, OBVIOUSLY, SINCE IT WASN'T ON THE RECORD, I CAN'T REALLY -- I COULD ANSWER YOUR QUESTION BUT I CAN'T ANSWER YOUR QUESTION, BUT I DO WANT TO SAY, JUSTICE PARIENTE, YOUR FIRST QUESTION TO DEFENSE COUNSEL, REALLY, NAILS THIS WHOLE THING ON THE HEAD. HOW LONG ARE YOU GOING TO WAIT? AND I MEAN THE JUDGE WAS GETTING FRUSTRATED, AND AT THE END OF MR. KRISHER'S TESTIMONY, HE ASKS COUNSEL. HE SAYS, OKAY, COLLATERAL COUNSEL, IF WE WERE TO DELAY THESE PROCEEDINGS, HOW LONG WOULD IT BE? SO MS. ISAKA SAYS YOU ARE TALKING ABOUT THE SLATRY CASE? AND HE SAYS YES, AND SHE SAYS I THINK ONCE SLATTERY IS DISPOSED OF, MR. OWEN WOULDN'T IS THAT -- HAVE THAT CONFLICT. AND THE COURT SAID WHAT DO YOU MEAN DISPOSED OF? WHEN HE GOES TO THE ELECTRIC CHAIR? AND SHE ANSWERS, NO, WHEN THE CONVICTION IS FINAL, AND REFERRING TO THE SLATTERY TRIAL, WHEN HIS PETITION IS FINAL AND WHEN HE IS DENIED AND HE NO LONGER HAS ANY RELATIONSHIP WITH HIS TRIAL ATTORNEYS.

LAST PHRASE MEANS ABSOLUTELY NOTHING. THERE IS NO LEGAL SIGNIFICANCE TO THAT LAST PHRASE, WHEN HIS RELATIONSHIP WITH HIS ATTORNEYS IS OVER. WHAT DOES THAT MEAN? AT THE VERY LEAST, WE ARE TALKING SEVEN TO TEN YEARS, WHEN THE SLATTERY CASE, PROVIDED THE STATE IS SUCCESSFUL IN THAT APPEAL, BUT EVEN THEN, UNTIL AND UNLESS MR. OWEN DECIDES TO FILE A 3.850 IN THE SLATTERY CASE, AT BEING -- ATTACKING MR. KRISHER, THAT PRIVILEGE MAY NEVER BE WAIVED, SO ACTUALLY HE IS ASKING THE TRIAL COURT AND THIS COURT TO STAY THESE PROCEEDINGS FOR AN EVENT THAT MAY NEVER EVEN HAPPEN. AND BASED ON THAT REMEDY, AND THE STANDARD OF REVIEW IN THIS CASE, WE ASK THIS COURT TO AFFIRM THE RULINGS OF JUDGE BURKE. THANK YOU.

THANK YOU. COUNSEL.

MAY IT PLEASE THE COURT. I BELIEVE THAT THE STATE HAS SAID IT MOST ADEQUATELY BY SAYING THAT MRS. AKAOWITZ CALLED THE LEAST OF THE ATTORNEYS TO SHOW THAT, IN FACT, THERE WAS ATTORNEY-CLIENT PRIVILEGE. MR. KRISHER, BY HIS OWN STATEMENTS, ON ORDER OF THE COURT, SAID I HAVE INFORMATION THAT IS SO DAMAGING THAT I WOULD PREFER TO GO TO THE APPELLATE COURT. IF HE IS THE LEAST OF THE ATTORNEYS, AND HE IS MAKING STATEMENTS THAT ARE ALREADY INDICATING THAT THERE COULD BE --

WHAT WAS IN REFERENCE TO? I THOUGHT THAT WAS IN REFERENCE TO THE MOTION TO SUPPRESS. WHICH WAS NOT AN ISSUE IN THIS 3.850.

IN READING THE CONTEXT OF THE RECORD, JUSTICE QUINCE, IT RELATES TO THE IMPENDING SLATTERY RETRIAL.

SO IF COLE AND BUDROW, LET'S ASSUME, THAT THEY GOT ON THE STAND, AND THEY SAID WHAT KRISHER SAID, WHICH IS THAT WE KEPT A WALL BETWEEN, YOU KNOW, COUNSEL, AND WE KNOW NOTHING ABOUT THE SLATTERY CASE, AND WOULD YOU BE ABLE TO GO FORWARD WITH COLE AND BUDROW, WHO WERE THE TRIAL COUNSEL IN THE -- IN THIS CASE? OR ARE YOU SAYING, BECAUSE THEY ARE ALL IN ONE FIRM, BECAUSE THEY GOT APPOINTED BY, IN TWO RELATED CASES, THAT THIS CASE COULD NEVER GO FORWARD, EVEN AS TO ANYTHING THAT COLE OR BUDROW WOULD HAVE TO SAY?

THAT ISSUE WAS RAISED BY MS. HALWAD IN HER MOTION, AND WAS PRESENTED TO THE TRIAL COURT. THEY WENT THROUGH THAT ASPECT OF IT IN DEPARTMENT, AND I BELIEVE THE -- IN DEPTH, AND I BELIEVE THE TRIAL JUDGE, IN THE RECORD, STATED, IN FACT, THAT OBVIOUSLY THE ATTORNEYS WERE FROM THE SAME FIRM AND MAY WELL HAVE THE SAME PROBLEM, AND WHAT THE STATE IS SUGGESTING IS, WELL, PUT EVERYBODY ON AND LET'S SEE WHERE THEY ARE AT. OBVIOUSLY ONCE YOU PUT ON ONE FROM THAT FIRM, WHO CLAIMS THAT HE IS GOING TO HAVE A PROBLEM IN REVEALING THE ATTORNEY-CLIENT INFORMATION, I THINK --

BECAUSE HE KNEW ABOUT SLATTERY. BUT A -- BUT WHAT ABOUT THE ATTORNEYS THAT KNEW NOTHING ABOUT SLATTERY BECAUSE THEY WERE THE TRIAL COUNSEL IN THIS CASE? DON'T WE AT LEAST NEED TO HAVE A RECORD TO SHOW THAT THEY, ALSO, OR OWEN IS INVOKING HIS ATTORNEY-CLIENT PRIVILEGE AS TO SLATTERY AS TO THOSE ATTORNEYS?

YOUR HONOR, MR. KRISHER, FROM THAT SAME FIRM, WAS THE ONE INVOLVED EXTENSIVELY IN THE MOTION TO SUPPRESS. THESE TWO ATTORNEYS WERE THE TRIAL ATTORNEYS. THAT WOULD HAVE BEEN A VERY CRITICAL ISSUE.

WHAT ABOUT THE. EVELYN: HE CAN'T I HAVE ASSISTANCE OF TRIAL COUNSEL, AND WE ARE TALKING ABOUT IF YOU CAN ESTABLISH THE EFFECT HE CAN'T I HAVE ASSISTANCE OF TRIAL -- INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, THIS DEFENDANT GETS A NEW TRIAL. AUFTH GOOD FAITH PERIOD OF TIME. IF YOU HAVE GOT A BASIS TO ESTABLISH THAT THE COUNSEL THAT WERE CHOSEN DID NOT DO AN EFFECTIVE JOB OF REPRESENTING HIM IN THAT CASE, SHOULDN'T THIS COURT HAVE SOME BASIS FOR KNOWING THAT NOW?

WELL, YOUR HONOR, IT DOES, BUT THE PROBLEM BECOMES, AGAIN, AND THAT WAS THE BASIS FOR THE ISSUES THAT WERE DRAFTED AND THE MANNER OF CREATING THE CONSTITUTIONAL CONDITION. WE ARE SAYING LET'S PUT MR. OWEN IN THIS POSITION OF MAKING A HOBSON'S CHOICE. HE CAN GIVE UP THE RIGHTS ON ONE CASE TO PRESERVE THE RIGHTS ON ANOTHER. WHAT I AM SAYING THAT IS NOT WHERE HIS RIGHTS SHOULD BE. HIS RIGHTS SHOULD BE PROTECTED IN BOTH CASES.

SO THERE CAN NEVER AND CASE, THEN, AND WHAT WE SHOULD BE TELLING JUDGES FROM NOW ON, THAT WHEN THERE ARE RELATED CASES, WHAT ARE THEY TO DO? HE HAVE TEN THERE ARE ATTORNEYS FROM DIFFERENT FIRMS, THEY -- EVEN IF THERE ARE ATTORNEYS FROM DIFFERENT FIRMS, THAT THEY MAY NOT DISCUSS STRATEGIES. THEY CAN ONLY GO CONVICTION OF THE FINAL STAGES. IS THAT WHAT WOULD FLOW FROM THIS?

JUSTICE PARIENTE, I DON'T KNOW THAT WE COULD MAKE THAT BLANKET A STATEMENT. IT IS CONCEIVABLE, POSSIBLY, BUT THE PROBLEM IS YOU HAVE GOT ATTORNEYS FROM THE SAME FIRM REPRESENTING MR. OWEN ON TWO CAPITAL CASES FOR WHICH HE HAS RECEIVED THE

DEATH PENALTY THERE. IS AN INTERACTION IN THAT FIRM WITH THOSE MEMBERS OF THAT FIRM THAT HAS TO BE RELATING TO THAT CONFESSION ISSUE. IF SHE PUTS ON THE LEAST OF THE ATTORNEYS WHO SAYS, WOE, I HAVE GOT A PROBLEM -- WHOA, I HAVE GOT A PROBLEM, OBVIOUSLY THE ATTORNEYS WHO COME BEHIND MANY ARE GOING TO HAVE THE SAME PROBLEM, BECAUSE THEY WOULD HAVE CERTAINLY DISCUSSED THAT CONFESSION ISSUE, BECAUSE THAT WAS A MAJOR FACTOR IN THE RETRIAL OF THE SLATTERY CASE. OTHERWISE THE STATE WOULDN'T HAVE TAKEN THREE YEARS TO GET PERMISSION TO USE IT. THANK YOU VERY MUCH.

THANK YOU VERY MUCH. WE APPRECIATE THE ASSISTANCE OF BOTH COUNSEL. WE WILL BE IN RECESS. BAILIFF: PLEASE RISE.