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NEXT CASE ON THE COURT'S CALENDAR IS KESHBRO VERSUS CITY OF MIAMI. JUSTICE QUINCE IS REQUESTED FROM THESE -- IS RECUSED FROM THESE TWO CASES. COUNSEL FOR THE PETITIONER. READY TO PROCEED?

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS -- NAME IS DAVID FORESTIER, AND IT IS MY PRIVILEGE TO REPRESENT HARRIS D WHAT WILLER, WHO IS THE PRESIDENT OF THE KESHBRO CORPORATION AND DOES BUSINESS AS THE STAR DUST MOTEL IN BISCAYNE BOULEVARD IN MIAMI. WE ARE HERE THIS MORNING ON DISCRETIONARY PETITION FILED BY THE PETITIONERS FOR YOUR REVIEW, WITH REGARD TO THE THIRD DISTRICT COURT OF APPEALS, REVERSAL OF A GRANTING OF SUMMARY JUDGMENT I SHOULD BY JUDGE AMY DEAN. THE INVERSE CONDEMNATION PROCEEDING, IN WHICH WE PREDICATED OUR LAWSUIT ON THE CITY OF ST. PETERSBURG VERSUS BOWEN DECISION. I WOULD LIKE TO FOCUS THIS ARGUMENT ON THE POLICY CONSIDERATIONS, LEAVING THE LAW THAT IS CITED IN MY BRIEF, AND WHICH I BELIEVE IS CONTROLLING, TO THE BRIEF, AND TO TALK TO YOU, A LITTLE BIT, ABOUT THE STAR DUST MOTEL, MY CLIENT, THE MEASURES THAT HE TOOK TO ABATE THE NUISANCE ON THE PROPERTY, AND THE POLICY RAMIFICATIONS OF -- RAMIFICATIONS OF WHAT THE KESHBRO DECISION COULD POTENTIALLY MEAN, IF IT WERE ALLOWED TO BECOME THE LAW IN FLORIDA.

LET ME ASK YOU THIS QUESTION.

YES, SIR.

IF THIS PIECE OF PROPERTY WERE BEING OPERATED AS SOME TYPE OF FACTORY AND PROCESSING PLANT, AND THE PROPERTY WAS POLLUTING THE WATER AND POISONING THE LAND, WOULD YOUR ARGUMENT BE THE SAME, THAT THE, TO ABATE THAT NUISANCE, THAT THE GOVERNMENT MUST COME IN AND PAY FOR THAT PROPERTY?

IN YOUR HYPOTHETICAL, THE BUSINESS, ITSELF, IS ENGAGING IN THE ILLEGAL ACTIVITY THAT IS POLLUTING THE LAND AND VIOLATING STATE OR FEDERAL LAW. IN THE SCENARIO OF THE INNOCENT MERCHANT WHO IS OPERATING A LEGITIMATE, DULY-LICENSED AND REGULATED BUSINESS, AND WHAT, UNFORTUNATELY IS AN URBAN CAR DOOR LONG NEGLECTED WITHIN AN INNER CITY, WHO IS NOT DIRECTLY PARTICIPATING IN ANY WAY, IN THE ILLEGAL ACTIVITY OCCURRING, I WOULD ARGUE THAT THERE IS A DEFINITE DIFFERENCE. OKAY. YOU CAN SHUT DOWN A PLANT THAT POLLUTES. THEY ARE IN THE BUSINESS OF POLLUTING, OR WHO IS DISPOSING OF BIPRODUCT IN AN IMPROPER FASHION, BUT WHEN YOU HAVE A MOTEL DULY LICENSED, AND THE ONE MISFORTUNE NATIONAL THEY MIGHT HAVE IS THAT THEY ARE SITUATED IN A RED-LIGHT DISTRICT AND THEY ARE NOT GETTING THE POLICE PROTECTION THAT THEY NEED, HOW DO YOU PUNISH THE PROPERTY OWNER FOR THE ILLEGAL ACTIVITIES OF OTHERS WHO COME ON HIS PROPERTY AND ENGAGE IN EITHER NARCOTICS OR PROSTITUTION?

MAYBE THE ANSWER TO THAT IS THE STATUTE WOULD BE OVERBROAD, AND THAT INSTANCE, YOU ARE CHALLENGING THE STATUTE OR THE ORDINANCE, ARE YOU?

NO, WE ARE NOT.

ARE YOU CHALLENGING THE ENABLING STATUTE OR THE ORDINANCE?

THAT IS A VALID POINT, BUT THE SCOPE OF OUR ATTACK, HERE, IS THAT THIS IS A TAKING, THAT IT IS A COMPENSABLE TAKING, AND MAYBE THAT IS SOMETHING THE COURT CAN CONSIDER, WHETHER OR NOT THIS STATUTE IS CONSTITUTIONAL, WITH REGARD TO THE FACT THAT THERE ARE NO MEASURES IN PLACE, PRECLOSURE, TO COMPLYING WITH THE FLORIDA CONSTITUTION

REQUIREMENTS OF FULL AND FAIR MARKET VALUE. THERE IS A TAKING. THERE IS A DEFINITE CLOSE YEAR, AND TEMPORARY THOUGH IT MAY BE, A TAKING OF PROPERTY.

LET ME ASK YOU, IN THIS CASE, BECAUSE THIS IS A LITTLE DIFFERENT THAN THE ST. PETERSBURG CASE, IN THAT YOU HAD A HISTORY, HERE, WHERE THE BOARD, IN 1992, HAD FIRST CLOSED THE PROPERTY FOR A YEAR, AND THAT IS NOT -- THAT CLOSURE WAS NOT CONTESTED. I MEAN THERE IS NO COMPENSATION BEING SOUGHT?

THAT CLOSER WAS NOT CONTESTED.

THAT IS 1992. THEN WE HAVE THE PROBLEM OF APPARENTLY CONTINUED, AS FAR AS THAT THERE WAS PROOF IN THE RECORD OF SUBSTANTIAL CRIMINAL ACTIVITY ON THE PROPERTY, AND THEN THERE WAS ANOTHER CASE, WHERE THE OWNERS AGREED NOT TO CONTEST ABOARD FINDING THAT THE PREMISE IS CONSTITUTED A PUBLIC NUISANCE AND THERE AFTER THERE WAS A MODIFIED STIPULATION, WHERE ONLY SIX MOTEL ROOMS WERE BEING CLOSED, AND THEN THEREAFTER, SO THERE IS A LENGTHY HISTORY, AND I GUESS MY QUESTION ABOUT THAT IS THAT, IF YOU HAVE GOT OWNERS THAT ARE, AGAIN, NOT CONTESTING THE BREATH OF THE -- THE BREADTH OF THE INJUNCTION OR THE BOARD'S ORDER, BY GOING INTO CIRCUIT COURT AND SAYING THIS INJUNCTION IS OVERLY BROAD. YOU ARE CLOSING ME DOWN. I HAVE GOT TO OPERATE A BUSINESS. AND WAITS UNTIL IT HAPPENS AND THE CLOSURE OCCURS, AND THEN COMES BACK AND SAYS, NOW, WE ARE GOING TO FIND A MORE PROFITABLE WAY TO OPERATE OUR PROPERTY. WE ARE GOING TO SUE THE CITY FOR HAVING CLOSED US. DOESN'T IT SEEM THAT, IF YOU ARE NOT GOING TO CONTEST THE FINDING OF THE PUBLIC NUISANCE, AND IF YOU ARE NOT GOING TO GO TO COURT TO TRY TO NARROW THE SCOPE OF THE INJUNCTION THAT, THE ABILITY TO THEIR AFTER GO INTO -- TO THEREAFTER GO INTO COURT AND CLAIM THAT THE TAKING HAS OCCURRED, UNDER WHOSE EVER DEFINITION THE TAKING IS USED, SHOULD BE CURTAILED. COULD YOU ADDRESS THAT?

PERHAPS IT IS NOT EITHER CLEAR FROM MY BRIEF OR THE RECORD, BUT AT EVERY STAGE OF THESE PROCEEDINGS, IT WAS ACQUIESCED TO, THAT THERE IS A PROBLEM ON BISCAYNE BOULEVARD, AND THAT PROBLEM AFFECTS THE STAR DUST MOTEL. WE -- IE MY CLIENT WISHED TO WORK WITH THE MUNICIPALITY. WE ENTERED INTO A STIPULATION OF SOME 26 POINTS OF REMEDIAL MEASURES THAT HE WAS GOING TO IMPLEMENT, TO CORRECT THE PROBLEM AT THE PROPERTY. WE WERE ALWAYS MINDFUL OF THE PROTECTIONS OF BOWEN, IN NEGOTIATIONS WITH THE CITY, ALWAYS SOUGHT TO PRESERVE OUR RIGHT TO OBJECT OR CONTEST OR LITIGATE THE ISSUE, IF THEY ATTEMPTED TO FULLY CLOSE THE PROPERTY DOWN. THE CONCESSION OF CLOSING SIX ROOMS WAS SOME PUNISHMENT, BUT IT STILL ALLOWED HIM TO OPERATE A LEGITIMATE BUSINESS ON THE PREMISES. SO AT EVERY STEP OF THE PROCEEDINGS, AND EVEN IF YOU LOOK AT THE INJUNCTIVE ORDER ENFORCING THE ABATEMENT BOARD'S CLOSURE, AFTER THE BANKRUPTCY PETITION DISSOLVED THE TEMPORARY STAY, JUDGE LAWRENCE SCHWARTZ SAID THAT IT WAS WITHOUT PREJUDICE TO OUR RIGHTS, WITH REGARD TO THE INVERSE CONDEMNATION COMPLAINT, WHICH WAS, THEN, PENDING. WE HAD VARIOUS OTHER APPEALS PENDING BEFORE THE ELEVENTH CIRCUIT APPELLATE DIVISION, WITH REGARD TO THE ISSUES OF THE APPROPRIATENESS OF THE CERTIFICATION OF THE CLOSURE ORDER, DEALING WITH HOW LONG THE BOARD'S JURISDICTION COULD LAST, BECAUSE IF YOU LOOK AT THE FEBRUARY 7 ORDER, IT TALKS ABOUT THE BOARD WE OBTAINING JURISDICTION OVER THE STAR DUST MOTEL FOR THE PERIOD OF ONE YEAR. THAT ORDER WAS ALLEGEDLY DRAFTED AND SIGNED ON FEBRUARY 7, BUT THE STATUTE IN THE ORDINANCE IN THE CITY OF MIAMI SHOWS THAT IT DOESN'T GO INTO EFFECT UNTIL FIVE DAYS THEREAFTER, THAT IT BE SENT BY CERTIFIED MAIL TO COUNSEL AND DULY RECORDED. KESHBRO NEVER GOT THAT ORDER. THERE WERE OTHER APPEALS THAT WE ENTERED THAT WERE EITHER DISMISSED, LOST ALONG THE WAY BECAUSE OF THE BANKRUPTCY, SO WE HAVE CHALLENGED IT.

YOU HAVE A VERY LIMITED TIME, SO LET ME COME BACK TO THE LAW, BECAUSE THIS IS WHERE

WE ARE, BEFORE LUCAS WAS DECIDED, WE HAVE A TEMPORARY TAKING CASE OUT OF CALIFORNIA. OKAY. NOW, WHAT IS THE CASE THAT YOU FEEL COST CLOSEST TO THIS, OTHER THAN THE CASES IN FLORIDA, OBVIOUSLY, OUT OF ST. PETERSBURG?

I DON'T BELIEVE WE LOOKED TO ANY OTHER CASES OUTSIDE OF FLORIDA, BECAUSE WE ARE DEALING WITH A SPECIFIC STATUTE AND A SPECIFIC SITUATION.

WHICH OF THE U.S. SUPREME COURT CASES DO YOU FEEL CONTROLS THIS SITUATION?

LUCAS.

LUCAS OR THE CONTEMPORARY TAKING CASE OUT OF CALIFORNIA?

I THINK LUCAS. I, ALSO, THINK, IF YOU LOOK AT SOME OF THE LANGUAGE, I THINK IT IS FROM SCALIA, IN THE BENIS DECISION, WHICH SAYS YOU DON'T CONFISCATE THE ENTIRE SHIP LINER FOR FINDING DRUGS IN ONE CABIN ON THE CRUISER. IN THIS INSTANCE, YOU ARE TAKING AWAY ALL RIGHT TO USE THIS MOTEL, A 57-ROOM-UNIT MOTEL, FROM THE OWNER, BECAUSE OTHER PEOPLE COME ON THE PROPERTY AND ATTEMPT TO ENGAGE IN ILLEGAL ACTIVITY. HOW IS THE OWNER SUPPOSED TO CONTROL THAT? IS HE SUPPOSED TO POST A SIGN UP THAT SAYS WE DON'T RENT TO PIMPS, DRUG DEALERS, PROSTITUTES OR USERS? IS HE SUPPOSED TO SUBJECT HIS GUESS TO SAY A BODY CAVITY SEARCH OR CHECK THEIR BAGGAGE BEFORE THEY CHECK INTO HIS ROOM? ABSOLUTELY NOT. HE COULDN'T DO THAT. IF HE ATTEMPTED TO DO THAT, HE WOULD PROBABLY BE SUED FOR SOME TYPE OF DISCRIMINATION, IF HE REFUSED TO RENT ROOMS TO PEOPLE.

YOU ARE AGREEING, THOUGH, THAT LUCAS IS THE PROPER ANALYSIS?

LUCAS --

ARE YOU FAMILIAR WITH PENN CENTRAL?

YES. BUT LUCAS SAYS THAT IT APPLIES TO COMMON LAW NUISANCES, AND WHAT THEY RESTRICTED HERE WAS NOT PROSTITUTION ACTIVITY. THEY RESTRICTED A MAN FROM OPERATE A BUSINESS, A MOTEL. IF THEY HAD ENJOINED PROSTITUTION ACTIVITY FROM THE PROPERTY, ALBEIT FINE. WELL AND GOOD. IT SHOULDN'T BE HAPING THERE, BUT WE CAN'T CURTAIL IT, AND BECAUSE HE CAN'T CURTAIL IT, YOU SHOULDN'T TAKE AWAY HIS RIGHT TO OPERATE A LEGITIMATE BUSINESS. HE HAS A MORTGAGE. HE LIVES ON THE PROPERTY. THIS ISN'T AN ABSENTEE --

MAYBE I AM BACK TO WHAT I SAID INITIALLY. THAT IS AN ATTACK UPON THE ORDINANCE OR AN ATTACK UPON THE STATUTE, WHICH YOU HAVE NOT MADE. AN IT WAS NOT MADE UNDER BOWEN, AND AGAIN WE TRAVELED UNDER BOWEN. THEY DIDN'T ATTACK THE CONSTITUTIONALITY OF THE STATUTE IN BOWEN. I AM NOT SAYING IT --

YOU ARE NOT HERE ON THAT, ARE YOU?

WE ARE NOT HERE ON THAT, BUT IF YOU POINT ME BACK IN THAT DIRECTION, HE I WOULD SUBMIT THAT THE STATUTE, AS IT EXIST TODAY, IS UNCONSTITUTIONAL. IT IS OVERLY BROAD. IT PUNISHS INNOCENT PROPERTY OWNERS FOR CRIMINAL ACTIVITY THAT THEY HAVE NO WAY OF CONTROLLING.

BUT ISN'T THAT THE PROBLEM? WE ARE NOT HERE ON THAT TODAY, AND WE ARE HERE --.

I DIDN'T BRING THAT UP. I WAS RESPONDING.

IT IS IMPORTANT --

BUT IT IS IMPORTANT.

IT IS IMPORTANT, BECAUSE OTHERWISE WE ARE WITH A STIPULATED PUBLIC NUISANCE. YOU STIPULATED THAT THIS -- I DON'T KNOW IF IT WAS YOU.

I WAS COUNSEL BELOW.

IT IS A STIPULATION THAT THIS WAS A PUBLIC NUISANCE, SO IF YOU ARE NOT GOING TO CHALLENGE THE STATUTE, I THINK MY QUESTION EARLIER IS LET'S ASSUME SOME MEASURE OF COMPENSATION IS APPROPRIATE. WHETHER IT IS UNDER PENN CENTRAL OR LUCAS OR FIRST ENGLISH. CAN PROPERTY OWNERS JUST SIMPLY GO ALONG, AGREE TO THE PROCESS, AGREE TO THE CLOSING, NOT SAY THEY ARE RAISING ANY CHALLENGE TO WHAT IS GOING ON AS BEING AN OVERLY BROAD USE OF THE POLICE POWER, AND THEN THEREAFTER GO IN AND TRY TO SEEK COMPENSATION FROM THE GOVERNMENT THAT THEY HAVE AGREED AND WORKED WITH TO DO EXACTLY WHAT THEY ARE, NOW, SAYING WAS NOT A REASONABLE EXERCISE?

IT WAS NEVER CONTEMPLATED AS PART OF THE STIPULATION THAT THE CITY OF MIAMI WOULD VIOLATE BOWEN AND CLOSE US DOWN WITHOUT PAYING US. OKAY. THAT WAS PART OF OUR UNDERSTANDING IN NEGOTIATIONS WITH ASSISTANT CITY ATTORNEY JOSE FERNANDEZ, WHO HAS SUBSEQUENTLY PASSED, WITH REGARD TO HOW WE WERE GOING TO ENDEAVOUR TO WORK OUT THE PROBLEMS AT THE START. THE PROPERTY OWNER WANTED TO COOPERATE WITH POLICE. HE IS NOT SOMEONE WHO WAS AND-A-HALF AIRSSLY OPERATING A -- WHO WAS NEPHARIOUSLY OPERATING A BROTHEL OR HOUSE OF PROSTITUTION. HE LIVES THERE WITH HIS FAMILY, HIS WIFE AND THEIR THREE-YEAR-OLD SON. HE HAS A MORTGAGE AT THE BANK AND HE WANTED TO BE ABLE TO HOLD ON TO THE PROPERTY.

YOU DIDN'T STIPULATE THAT HE WAS A NUISANCE?

NO. AND IF YOU LOOK AT THE BOARD, AT THE FEBRUARY 7 ORDER, NO ONE IS SPECIFICALLY INFERRING THAT MY CLIENT IS IN ANY WAY INVOLVED WITH THE ILLEGAL ACTIVITIES GOING ON THERE, WHICH IS A STRETCH, WHEN YOU READ THE DECISIONS FROM THE THIRD DCA THAT SAY IN ESSENCE HE IS OPERATING A BROTHEL AND A DRUG HOUSE. THIS IS A LEGITIMATE BUSINESS AND IT OPERATED AS SUCH SINCE 1988, WHEN HE PURCHASED THE PROPERTY. OKAY.

IN FINDING THAT THERE WAS A NEWS AND, YOU HAVE CHALLENGED THE FINDING.

I AM SORRY?

YOU CHALLENGED THE FINDING THAT THE HOTEL WAS A NUISANCE.

NO. BECAUSE WE STIPULATED THAT THERE WERE PROBLEMS AT THE PROPERTY, AS THERE ARE PROBLEMS WITH MANY BUSINESSES ON THAT BOULEVARD. AND WE WANTED TO WORK WITH THE POLICE, NOT BE SHUT DOWN. AND WE AGREED, OKAY, YOU WILL PUNISH US. WE ARE GOING TO CLOSE SIX ROOMS. WE ARE GOING TO ENTER INTO A AGREEMENT TO REHAB THE PROPERTY. WE ARE PUTTING UP CLOSED CIRCUIT TV. IF YOU READ THE STIPULATION WHICH IS IN THE RECORD, THERE IS 26 POINTS. A PHOTOGRAPHIC BOOK OF POLAROID SHOTS OF KNOWN PROSTITUTES ON BISCAYNE BOULEVARD WAS PUT TOGETHER FROM POLICE PHOTOS FOR HIM TO KEEP AT HIS COUNTER. IT THIS IS A BUSINESS THAT OPERATES BEHIND BULLETPROOF GLASS ON BISCAYNE BOULEVARD.

BUT ONCE YOU AGREE WITH THAT, THAT THE NUISANCE, DIDN'T YOU KNOW THAT UNDER THE ORDINANCE YOU COULD BE CLOSED DOWN?

THERE WAS AN UNDERSTANDING IMPLICIT BETWEEN MYSELF AND ASSISTANT CITY ATTORNEY, THAT WE WERE TRAVELING UNDER FERNANDEZ, THAT WE WERE TRAVELING UNDER BOWEN AND WE WERE NOT WAIVING ANY RIGHTS.

THIS UNDERSTANDING, WAS IT PUT IN WRITING ANY PLACE?

IT WAS IN THE STIPULATION.

SOMETHING CONCRETE THAT WE CAN LOOK AT SAY, YES, THERE WAS IN UNDERSTAND SOMETHING.

THERE WAS NEVER AN AGREEMENT TO A TOTAL CLOSURE. IF IT IS IN THE RECORD, IT IS IN THE TRANSCRIPTS FOR THE PROCEEDINGS FOR FEBRUARY 7, WHERE I CAN'T GIVE YOU LINE AND PAGE AT THIS POINT IN TIME, BUT IT IS IN MY BRIEF, WHERE WE MAINTAINED OUR RIGHTS TO TRAVEL UNDER BOWEN. WE WERE NEVER CONCEDED AN ABILITY TO BE CLOSED DOWN COMPLETELY.

IF YOU WISH TO SAVE SOME TIME, YOU MAY.

I WILL JUST GO AHEAD AND TRY TO WRAP THIS UP. I WOULD LIKE TO GET BACK TO MY ORIGINAL ARGUMENT AND THE FOCUS OF THE POLICY CONSIDERATIONS. IF YOU ALLOW KESHBRO TO STAND AS IS, I WOULD SUBMIT TO YOU THAT ALMOST ANY PROPERTY ANYWHERE IN THIS STATE IS SUSCEPTIBLE OF CLOSURE. YOU CAN LOOK AT SCHOOLS WHERE NARCOTICS AND DRUGS ARE BROUGHT IN. 8193 CAN BE IN ANY COMPLAINT. DOESN'T HAVE TO BE A POLICE OFFICER, SO ANY TWO COMPLAINTS, WHETHER A NARCOTICS SALE OR A TRANSACTION OCCURRED COULD INSTITUTE A PUBLIC ACTION BEING INSTITUTED. I WOULD SUBMIT TO YOU THAT JOE ROBBIE AND THE ORANGE BOWL COULD BE PUBLIC NUISANCES, NOT THE FIRST TIME THEY WERE CITED BUT A RESIDENT OBSESSED WITH THE ACTIVITY COULD FIND A PUBLIC SEARCH AN ARRESTS AND DOCUMENT SALES OF PROSTITUTION OR ILLEGAL ACTIVITY AND HAVE IT DECLARED A PUBLIC NUISANCE. THERE WOULD NOT BE CLOSURE WITHOUT COMPENSATION IN THOSE INSTANCES. THERE WAS A MENTION IN THE A BRIEF IN THE ATTORNEY GENERAL AS OFFICE THAT THERE WAS AN EFFORT UNDER WAY TO CORRECT DRUG-FREE WORK PLACES AND DRUG DRUG-FREE PLACES. IF A DRUG UNIT CAN'T KEEP THEM OUT OF PRISONS, HOW CAN HE KEEP THEM OUT OF THE STAR DUST MOTEL? HE DOESN'T HAVE THE OPPORTUNITY TO POLICE ON BISCAYNE BOULEVARD, THE SAME BOULEVARD WHERE EUGENE ROBIN -- ROBINSON, COMES IN BISCAYNE BOULEVARD AND PROSTITUTION OCCURRED, AND THE SAME --

YOU MUST BRING YOUR COMMENTS TO A CONCLUSION, SIR.

THERE HAS BEEN A TAKING IN THIS CASE THAT IS IN DISTINGUISHABLE FROM BOWEN THIS. IS A INNOCENT PROPERTY OWNER WHO NEARLY LOST HIS BUSINESS WHO, ATTEMPTED TO WORK WITH THE MUNICIPALITY. HE DESERVES TO BE COMPENSATED FOR THE TAKING. THANK YOU.

THANK YOU.

I THANK YOU FOR YOUR TIME.

MR. FELDMAN.

MAY IT PLEASE THE COURT. PAUL FELTMAN FOR THE CITY OF MIAMI AND THE CITY OF MIAMI NUISANCE BOARD. I WANT TO ADDRESS A COUPLE OF COMMENTS THAT I HEARD, TODAY, ADDRESSED BY THE COURT OR ASKED BY THE COURT. I THINK, FIRST OF ALL, THE FIRST HYPOTHETICAL GIVEN BY JUSTICE LEWIS WAS IF YOU, LET'S SAY, A HYPOTHETICAL, YOU HAVE A BE PLANT THAT YOU RENT TO A CORPORATION ON THE EDGE OF THE EVERGLADES. THAT CORPORATION IS POLLUTING THE EVERGLADES. YOU LIVE THERE WITH YOUR FAMILY AND YOU CAN SEE THE POLLUTION OCCURRING. THE STATE COMES OUT ANSCHUTZ THAT PLANT DOWN. IS

THE STATE OBLIGATED TO PAY HIM THE LOST MONIES THAT HE WOULD HAVE EARNED BY RENT WILLING THE PLANT OUT? NO -- BY RENTING THE PLANT OUT? NO. THERE IS NO INNOCENT OWNER EXCEPTION FOR SOMEONE THAT CREATES A NUISANCE.

THAT KIND OF DEPENDS UPON HOW YOU PROCEED AGAINST THE OWNER, THOUGH, DON'T YOU? YOU JUST CAN'T COME OUT AND SHUT HIM DOWN FOREVER AND --

NO. IN THIS CASEY WANT TO GO BACK AND TAKE A LOOK AT THE HISTORY OF THIS PROPERTY, BECAUSE IT IS --

LET ME ASK YOU THIS. THE TRIAL JUDGE BELOW RELIED ON BOWEN. CORRECT?

CORRECT.

AND WOULD YOU -- DO YOU AGREE THAT THE LUCAS APPLIES?

WELL, LET ME GIVE YOU MY OPINION ON. THAT FIRST OF ALL, I HAD A FOOTNOTE IN THE OPINION THAT JUDGE FLETCHER TOOK ISSUE WITH THE FACT THAT WE SAID THAT HIM USING 7 AND-A-HALF% OF THE PROPERTY FOR HIS FAMILY WAS -- 7 AND-A-HALF PERCENT OF THE PROPERTY FOR HIS FAMILY COULD NOT SAY THAT ALL ECONOMIC USE OF THE PROPERTY HAD BEEN DENIED, SO I WOULD SUBMIT THAT I CAN ARGUE THE LUCAS CASE AND GO DIRECTLY UNDER THAT EXCEPTION, AND WHEN THIS CASE, BASED UPON WHETHER OR NOT THE STATUTE, 893.138, SIMPLY PRESCRIBES USES THAT COULD HAVE BEEN PRESCRIBED TO COMMON LAW, OR IF WE WENT UNDER THE PENN CENTRAL THREE-PART TEST, LIKEWISE, I BELIEVE THAT THE CITY WOULD NOT BE HELD LIABLE, BUT I WOULD SAY LUCAS --

LET ME ASK YOU THIS. DO YOU AGREE THAT THERE -- THAT THIS COURT HAS RECOGNIZED THAT THERE IS A BASIS FOR COMPENSATION FOR A TEMPORARY TAKING?

IN FIRST ENGLISH, FOLLOWING THE SUPREME COURT'S CASE THERE, YES, THERE IS A -- THERE IS AN ACTION FOR A COMPREHENSIBLE TAKING, IF A TAKING OCCURS.

SO IF THERE IS A BASIS FOR A TAKING, SIMPLY BECAUSE HE -- IT WAS ONLY CLOSED DOWN FOR SIX MONTHS, RATHER THAN PERMANENT NENTLY, WOULD NOT AND DISTINCTION -- PERMANENTLY, WOULD NOT AND DISTINCTION THAT YOU THINK WOULD BE A VIABLE DISTINCTION.

FOLLOWING LUCAS. NO. BUT I WOULD LIKE TO MAKE A POINT ABOUT FIRST INNING ENGLISH. IF YOU LOOK AT FIRST ENGLISH, THAT WAS A REMEDY ISSUES. THE COURT OF CALIFORNIA SAID GET A MANDAMUS. THE SUPREME COURT SAID, NO, ONLY HELD AT LOOKING AT LIBERTIES. IF YOU HAVE A TEMPORARY CLOSURE, YOU HAVE A RIGHT FORAL TEMPORARY TAKING ACTION.

I WAS PARTICULARLY FOCUSING UPON THE -- THIS COURT'S AUTHORITY, CITED BY THE BOWEN COURT.

RIGHT. I GUESS WHAT I WANTED TO SARTION YOUR HONOR, IS IF YOU LOOK AT THAT CASE WHEN IT WENT BACK DOWN TO THE CALIFORNIA APPELLATE COURT, THE COURT SAID, SPECIFICALLY, A FOLLOWING OF FIRST ENGLISH, OKAY, ONE, DID THEY LOSE ALL BENEFIT OF THE PROPERTY, ECONOMICALLY, OKAY, AND IF NOT, WAS THE PROPERTY SO INTERFERED WITH THAT THERE WAS A TAKING? IN THAT CASE, THEY SAID THAT THEY DID NOT LOSE ALL ECONOMIC BENEFIT, AND THEN THEY WENT TO THE THREE-PART ANALYSIS AND SAID, NO, THIS IS A SAFETY ISSUE. PEOPLE COULD BE INJURED IF THERE WAS, I THINK, A FLOOD AREA, SO THE STATE HAD THE RIGHT TO REGULATE THAT PROPERTY. BUT THEY INTIMATED, LOOKING AT WHETHER IT WAS A FULL TAKE ISSUE, LIKE UNDER LUCAS, THAT THERE WOULD BE DEFENSES TO PROTECTING THE WELFARE AND THE SAFETY OF THEIR CITIZENS, AND THEY INTIMATED THAT, EVEN UNDER THAT FULL TAKE

TEST, THERE WOULD NOT HAVE BEEN A TAKING.

LET ME, RECOGNIZING YOUR TIME IS LIMITED, LET ME VOICE ONE OTHER QUESTION, THEN, AND THAT IS, DIDN'T THE GOVERNMENT HAVE OTHER MEANS AVAILABLE TO IT TO ATTACK THE DRUG PROBLEM AND THE PROSTITUTION PROBLEM, OTHER THAN SHUTTING DOWN THE WHOLE MOTEL, BY, FOIBS, GOING IN -- FOR INSTANCE, GOING IN AND GETTING AN INJUNCTION AGAINST THOSE PUBLIC NUISANCE ACTIVITIES, FINES, PUT A LIEN ON THE PROPERTY?

YES, YOUR HONOR THE LET ME TALK TO THAT -- YES, YOUR HONOR. LET ME TALK TO THAT POINT, BECAUSE I THINK, AS SET FORTH TO NEW THE AFFIDAVIT EVER BROOKS, THE BOARD, AND IT IS KNOWN, IN THE OPERATION OF THIS MOTEL, THE PROSTITUTION ACTIVITY WAS INTERTWINED WITH THE ACTIVITY OF THE BUSINESS. THERE WAS NO SEPARATING THEM, BUT THE BOARD DID EVERYTHING POSSIBLE TO TRY TO SEPARATE JUST GOING AFTER THE NEWS AND ACTIVITY. THIS -- THE NUISANCE ACTIVITY. THIS BOARD WANTS TO CLEANUP THE PROPERTY AND NOT SHUT THEM DOWN, BUT THEY HAVE BEEN VERY SUCCESSFUL --

YOU KEEP TALKING ABOUT THE BOARD, OKAY, AS IF THE BOARD CAN BE DISTINGUISHED FROM GOVERNMENT. BECAUSE WE ARE TALKING ABOUT REMEDIES HERE. WE ARE TALKING ABOUT THIS IS THE CITY OF MIAMI. CORRECT?

THAT'S CORRECT. AND LET ME MAKE THE POINT I WANTED TO MAKE. THIS PROPERTY, AS SET FORTH IN THE AFFIDAVIT OF THE CHIEF BROOKS, HAS A TEN-YEAR PERIOD OF HISTORY OF BEING THE WORST PROPERTY ON BISCAYNE BOULEVARD. THEY WERE BEFORE THE BOARD AND ALLOWED TO SHUT DOWN AND REOPEN EARLY. THERE ARE 25 SEPARATE INSTANCES THAT ARE TESTIFIED TO BY OFFICER GENTRY, AT THE JANUARY 29 HEARING. WE SELECTED EIGHT OF THOSE, FOR PURPOSES OF BRINGING THEM BEFORE THE BOARD, SO WHEN THE BOARD SAID, OKAY, WE ARE NOT GOING TO SHUT THEM DOWN COMPLETELY. THEY HAD SIX ROOMS THAT WERE ALREADY BEING REFURBISHED. WE WILL INCLUDE THAT IN OORDER AND YOU DO THE OTHER 22 POINTS. YOU STIP THAT IN A NUISANCE AND WE WILL WORK WITH YOU. A COUPLE OF WEEKS LATER, AN OFFICER GOES IN AND MAKES A BUY OF CRACK COCAINE IN TWO ROOMS AND THEN GETS SOLICITED BY A PROSTITUTE FOR ONE OF THOSE ROCKS OF COCAINE. OKAY. THEY COME BACK BEFORE THE BOARD AGAIN. THE BOARD SAYS, OKAY, WE ARE GOING TO ORDER SEVEN MORE ROOMS CLOSED. THEY SAY, NO, YOU DON'T HAVE JURISDICTION. WE ARE NOT GOING TO CLOSE THEM. THEY ABANDON THAT ARGUMENT ON APPEAL BEFORE THE APPELLATE DIVISION OF THE CIRCUIT COURT.

ARE YOU TAKING THE POSITION THAT THE OWNERS, HERE, WERE INTIMATELY INVOLVED IN, WITH THE CRIMINAL ACTIVITY THAT CONSTITUTE THE -- THAT CONSTITUTED THE NUISANCE?

THE POSITION I AM TAKING IS THAT THIS STATUTE MAKES OWNERS RESPONSIBLE FOR THE PROBLEMS --

CAN YOU DO THAT? IN OTHER WORDS CAN YOU SAY THAT OUR SOLUTION TO THE CRIME PROBLEM ON BISCAYNE BOULEVARD ON, NORTH BISCAYNE BOULEVARD, IS THAT WE ARE GOING TO CLOSE DOWN ALL OF THE MOTELS OR OTHER PLACES LIKE THAT, BECAUSE WE KNOW THAT THAT IS, YOU KNOW, WHERE THE DRUG DEALING AND THE PROSTITUTION IS TAKING PLACE, AND THEREFORE IT IS PRETTY SIMPLE FOR US THAT WE WILL JUST CLOSE THOSE DOWN, YOU KNOW, REGARDLESS OF THE INVOLVEMENT OF THE OWNERSHIP.

NOTAL ALL. NOT -- NOT AT ALL. THAT IS THE POINT I AM TRYING TO MAKE. THIS IS AN INCREMENTAL CLOSURE AND REMEDIES AND STEPS THAT WE TOOK ALONG THE WAY.

IF THE OWNER SAID, LOOK, I AGREE WITH YOU. 24 HOURS A DAY WE WILL AGREE THAT YOU CAN HAVE A UNIFORMED OFFICER IN OUR OFFICE. OKAY. THAN OFFICER CAN SCREEN EVERYBODY TAKE COMES IN THERE, TO SEEK A ROOM, YOU KNOW, WHATEVER, AND WE WILL AGREE TO THAT.

THAT IS THAT WE WANT THAT, AS A MATTER OF FACT.

CAN I MAKE A POINT?

YES.

SR. JUDGE SMITH, THE FIRST DISTRICT, WHO SAT ON THE PANEL BELOW, SAID, DURING ORAL ARGUMENT, ISN'T IT POSSIBLE THAT THE POLICE DEPARTMENT COULD PUT AN INDIVIDUAL OFFICER IN FRONT OF EVERY SINGLE ROOM? I MEAN, WHEN DOES THE BURDEN BECOME THAT OF THE PROPERTY OWNER'S AND NOT OF THE CITY'S?

NOT IN FRONT OF EVERY ROOM BUT IN THE OFFICE THERE.

THEY CAN HIRE A WACKENHUT OFFICER TO COME IN, AND YET WHEN THE ROOMS ARE CLOSED, YOU HAD 11 SEPARATE INSTANCES THAT OCCURRED. THERE IS A POINT WHERE THE OPERATION OF THE MOTEL CANNOT BE SEPARATED FROM THE DRUG DEALING AND PROSTITUTION THAT IS GOING ON.

ONE OF MY QUESTIONS WITH THIS IS WE HAVE ANOTHER CASE THAT IS CONSOLIDATED WHERE, IF MY RECOLLECTION IS CORRECT, THERE WERE TWO COCAINE SALES IN OR ABOUT THE PROPERTY AND THEN THE PROPERTY WAS CLOSED DOWN FOR ABOUT A YEAR. IT IS NOT YOUR CITY. IT IS THE CITY OF ST. PETERSBURG. WHAT IS THE RULE OF LAW THAT WE ARE TO ENUNCIATE ABOUT AS IT RELATES TO TAKINGS, IF, IN ONE SITUATION, YOU HAVE A CITY, THROUGH ITS NUISANCE ABATEMENT BOARD, THAT IS ACTING IN YOUR CONTENTION, IT IS ACTING EXTREMELY REASONABLY IN SAYING THE FIRST STEP IS WE ARE GOING TO DO THIS. WE ARE GOING TO TRY THAT. THAT DOESN'T WORK. WE ARE GOING TO CONTINUE IN THE LEAST RESTRICTIVE WAY, TO ABATE THIS NUISANCE, WITHOUT INTERFERING WITH YOUR BUSINESS. AND THEN, BUT, THERE IS GOING TO COME A TIME WHERE, IF THAT DOESN'T WORK, EVENTUALLY WE WILL HAVE, QUOTE, THE RIGHT TO CLOSE IT DOWN AS A PUBLIC NUISANCE. NOW, WHOSE, IN THIS CASE, OR IN ANY OF THE JURISPRUDENCE, THERE IS NO -- WHERE IS THAT DONE? IN OTHER WORDS WHAT DO WE TELL THE TRIAL JUDGES TO DO NEXT TIME? OR IS THE CHALLENGE TO BE MADE, AND THAT IS WHY I ASKED, AT THE TIME THAT THESE ORDERS ARE ENTERED, IF THEY ARE TOO BROAD, HAVE THE COURT ADDRESS IT THEN, AND IF IT IS TOO BROAD, THEY CAN REMEDY THE SITUATION? HOW WOULD YOU DEAL WITH THIS?

I BELIEVE THAT THEY COULD APPEAL IT, PURSUANT TO OUR CODE, DIRECTLY TO THE APPELLATE DIVISION OF OUR CIRCUIT.

BUT ARE YOU IMPLYING THAT, IF THEY DIDN'T ACT INCREMENT INCREMENTALLY, AND IF THE VERY FIRST TIME THAT THERE WAS PROSTITUTION OR DRUG ACTIVITY, THEY CLOSED THE PROPERTY DOWN FOR A YEAR, AND IN THAT SITUATION, BECAUSE THE GOVERNMENT DIDN'T ACT REASONABLY, THAT THERE WOULD BE A COMPENSABLE TAKING?

THERE MAY BE. BUT I BELIEVE, YOUR HONOR, THAT THE POINT, WITH REGARD TO THAT, IS THAT IS NOT WHAT OCCURRED IN OUR CASE.

BUT, YOU KNOW, LIKE I SAY, WE HAVE GOT TO LOOK FOR ALL OF THE CASES.

I UNDERSTAND. I GUESS THE POINT I, ALSO, WANT TO MAKE, IS THIS. IF THE USE THAT IS PRESCRIBED WAS NOT A USE THAT COULD BE WITHIN THE TITLE, AT THE TIME THAT IT WAS TAKEN, THEN YOU TAKE NOTHING. IT WAS NEVER A PART OF THE BUNDLE OF RIGHTS OF THE PROPERTY OWNER TO RUN A COMMERCIAL ENTERPRISE THAT HAS RAMPANT DRUG DEALING AND PROSTITUTION ON IT. YOU JUST DON'T HAVE THAT RIGHT, WITHIN YOUR BUNDLE, SO IF YOU PRESCRIBE THAT USE, AND YOU IN THIS CASE, THEY TRY TO REMEDIAL MEASURES, TO GET TO THAT POINT, IF YOU HAVE DETERMINED THAT THERE IS THE DRUG AND PROSTITUTION ACTIVITY



IS INEXTRICABLY INTERTWINED WITH THE RUNNING OF THE BUSINESS, THEN, YES, THERE IS A POINT WHERE IT COMES THAT YOU HAVE TO SHUT DOWN THE PROPERTY, AND IT IS SET FORTH IN THE AFFIDAVIT OF CHIEF BROOKS OF THE CITY OF MIAMI. IT TAKES ABOUT SIX MONTHS FOR ONE OF THESE PROPERTIES TO LOSE THEIR REPUTATION. THAT WAS, ALSO, TESTIFIED BY SAL PETROZANO, WHO IS THE MANAGER OF A COUPLE OF CLEAN PROPERTIES ON THE BOULEVARD. A NUMBER OF PROPERTIES ON THE BOULEVARD ARE FINE, BECAUSE THEY ARE CONTROLLED BY THE PROPERTY OWNERS IN A WAY THAT THEY DON'T CAUSE HARM. ALSO, BECAUSE I AM NOT GOING TO GO INTO IT NOW, BUT IF YOU READ THE JANUARY 29 TRANSCRIPT AND YOU SEE WHAT THE CITIZENS HAVE TO GO THROUGH WHO LIVE NEAR THIS PROPERTY BECAUSE IT IS NOT CONTROLLED BY THE OWNER, IT IS APPROPRIATE THAT THE OWNER OF THE PROPERTY BEARS BEARS BEARS THE BURDEN AND NOT THE CITY OF MIAMI FOR BEING ABLE TO CONTROL IT.

THIS PROCEDURE THAT THE CITY OF MIAMI IS GOING UNDER IS AN EXTRA JUDICIAL PROCEDURE?

A QUASI JUDICIAL BOARD. IS THERE ANY REASON WHY IT ISN'T PURSUED UNDER FLORIDA STATUTE CHAPTER 60? THE ABATEMENT OF NUZANCES?

WHAT ENDED UP HAPPENING IN THIS CASE, IS ONCE THE SET OF OCCURRENCES HAPPENED AFTER THE SECOND HEARING AND THEY DISREGARDED THE CLOSURE OF THE SEVEN ROOMS, WE ENTERED THE ORDER 1 JANUARY -- EFFECTIVE JANUARY 30 TO CLOSE. THEY ENTERED BANKRUPTCY AND BEFORE IT EVER GOT TO COURT, THE COURT IS THE ONE THAT ENTERED AN ORDER ON SEPTEMBER 3, ALMOST A MONTH OF THAT AFTER THE ORDER, SAYING, NEW YORK CITY YOU ARE DONE. YOU HAVE GOT TO CLOSE. WE, ALSO, GOT A POLICE POWERS EXCEPTION TO THE CODE, SO THE POINT IS, YES, YOU EVENTUALLYLY IF YOU DISREGARD THE RECORDER --ED ORDERS OF -- THE ORDERS OF THE BOARD, IF THAT IS WHAT IS OCCUR, THEN, YES, YOU HAVE TO GET IT ENFORCED PURSUANT TO THE STATUTE. THAT IS WHERE WE WERE GOING, AND AS FAR AS I WANT TO MAKE ANOTHER POINT, BECAUSE THERE IS NOTHING IN THE RECORD WITH REGARD, THERE WAS NO TESTIMONY GIVEN BY THE PROPERTY OWN ARE BEFORE THE BOARD AND THE -- OWNER BEFORE THE BOARD AND THE AFFIDAVIT SETS NOTHING FORT ABOUT WHAT THEY DID TO RECOMMEND DI. WE HEARD ABOUT PHOTOS.

IN ANSWER TO JUSTICE PARIENTE'S QUESTIONS, THERE ARE A VAST ARRAY, THEN, ONCE YOU PROCEED UNDER CHAPTER 60 OF REMEDIES, THAT CAN BE CRAFTED BY THE CIRCUIT COURT.

YES, YOUR HONOR.

IN AN ABATEMENT PROCEEDING, RATHER THAN JUST FLAT SHUTTING THE PLACE DOWN.

BUT WE DIDN'T FLAT SHUT THE PLACE DOWN. WE TRIED OTHER REMEDIES, BUT THEY WEREN'T RESPONDING TO THE BOARD, AND THE POINT IS THAT THE BOARD FOUND THAT THE PROPERTY COULD NOT BE RUN WITHOUT THE NUISANCE ACTIVITY OCCURRING.

SO IT WAS THE ATTEMPT OF THE CIRCUIT COURT?

NO. THEY DID CLOSE AFTER THE CIRCUIT COURT ORDERED IT, BUT THE POINT IS WHAT IS THE BOARD SUPPOSED TO DO, WHEN THEY HAVE A PROPERTY OWNER THAT IS NOT RECOMMEND DYING THE SITUATION THAT IS OCCURING ON THEIR PROPERTY, AND, AGAIN, I WANT TO MAKE THE POINT. THE RUNNING OF THIS BUSINESS WAS INTERTWINED WITH THIS ILLEGAL ACTIVITY THAT WAS OCCURRING ON IT, AND THE BOARD FOUND THAT THERE WAS NO WAY TO PREVENT THAT ACTIVITY FROM OCCURRING, EXCEPT TO CLOSE DOWN THE BUSINESS. BUT THAT WAS AFTER A HISTORY THAT WENT BACK TO THE BEGINNING OF THIS DECADE, OVER YEARS, AND POLICE OFFICERS ARE PUTTING THEIR LIVES ON THE LINE, AS PUT FORTH IN OFFICER GENTRY'S TESTIMONY AND IN THE RECORD OF NOVEMBER 1996 INCIDENT, WHERE ONE OF THE OFFICERS

HAD TO ARREST AN INDIVIDUAL WHO HAD A 380 AUTOMATIC ON HIM AND CRACK COCAINE, AND THIS IS WHAT IS GOING ON PROPERTY.

THIS IS TWO SIDES TO THAT, BECAUSE AREN'T YOU, TO SOME POINT, SHIFTING THE GOVERNMENT'S RESPONSIBILITY TO DEAL WITH THE CRIME PROBLEM THERE, TO THE PRIVATE PROPERTY OWNER, IN THAT WAY? IN OTHER WORDS YOU SAID EACH PROPERTY OWNER. NOW, WE ARE GOING TO SHUT YOU DOWN OR TAKE YOUR PROPERTY, UNLESS YOU SOLVE THE CRIME PROBLEM ON YOUR PROPERTY AND EVENTUALLY, YOU KNOW, EITHER THE CITY IS GOING TO OWN ALL THE PROPERTY IN THAT AREA.

THAT IS NOT WHAT OCCURRED HERE THOUGH. THIS WAS INCREMENTAL. THERE WAS 25 SEPARATE INSTANCES. THE POLICE ARE GOING DOWN THERE.

HOW CAN YOU COMPLAIN ABOUT THIS INDIVIDUAL BUSINESSMAN OUT THERE, WHATEVER THE THING IS, IF THE CITY OF MIAMI CAN'T SOLVE THE CRIME PROBLEM THERE?

HE COULD HIRE A GUARD.

YOU THINK A GUARD COULD DO BETTER THAN THE CITY OF MIAMI POLICE FORCE?

WELL, I AM SAYING HE HAS AN ABILITY TO CONTROL HIS PROPERTY, AND HE IS NOT CONTROLLING IT, AND I WANT TO MAKE THE POINT, AGAIN, BY PRESCRIBING THE NUISANCE ACTIVITY, WE TOOK NOTHING. THAT WAS A USE THAT YOU NEVER HAVE A RIGHT TO IN A COMMERCIAL ENTERPRISE, AND YOU CAN SEE HEALTH CLUBS OF JACKSONVILLE AND FIVE SKY. IF YOU ARE ALLOWING CRIMINAL ACTIVITY TO OCCUR ON YOUR PROPERTY, DOES THE STATE HAVE TO SIT BACK AND ALLOW IT TO OCCUR, WHEN THEY TRY REALM EATIAL MEASURES TO CLOSE, INCREMENTALLY?

THAT IS WHY I ASKED YOU EARLY ON IF YOU WERE ALLEGING IN THIS CASE THAT THE OWNER OF THE PROPERTY WAS AN INTEGRAL PART OF THE CRIMINAL ACTIVITY. HE IS PART OF THE PROBLEM?

HE IS PART OF THE PROBLEM WHEN HE DOES NOT GET CONTROL OF HIS PROPERTY AND PREVENT THESE PEOPLE COMING ON AND USING DRUGS AND COMMITTING AND SOLICITING PROSTITUTION ON THE PROPERTY. THIS IS, AS I SAID, IF YOU LOOK AT THE RECORD, THIS SON OF THE WORST PROPERTIES ON BISCAYNE BOULEVARD, AND THERE BECOMES A POINT IN TIME WHERE, WHY SHOULD THE CITIZENS OF MIAMI OR THE STATE OF FLORIDA HAVE TO PAY INDIVIDUALS BECAUSE THEY CAN'T CONTROL WHAT OCCURS ON THEIR PROPERTY?

THANK YOU. PE APPRECIATE YOUR ASSISTANCE IN HELPING US RESOLVE THIS.

THANK YOU VERY MUCH.

THE NEXT CASE IS CITY OF