THE NEXT CASE IS TERRY MELVIN SIMS VERSUS THE STATE OF FLORIDA. MR. MALL LOAN -- MR. MALONE.

I WILL BE DOING THE ARGUMENT, YOUR HONOR. GOOD MORNING. MAY IT PLEASE THE COURT. OPPOSING COUNSEL. MY NAME IS TIM CHARTL, AND WE ARE HERE, TODAY, BECAUSE, WHEN MR. SIMS INVOKED HIS RIGHT TO REQUEST PUBLIC RECORDS AFTER A DEATH WARRANT WAS SIGNED, WHEN HE INVOKED THAT RIGHT AND EXERCISED IT IN HALF THE TIME ALLOWED UNDER THE RULE, THE AGENCIES AND IN PARTICULAR THE LEAD INVESTIGATIVE AGENCY IN THIS CASE. AGENCY HAD REPRESENTED, LOOK, THIS IS WHAT WE HAVE ON THIS CASE AT THE TIME OF THE INITIAL POST-CONVICTION PROCEEDING, AND FLORIDA LAW WAS TELLING MR. SIMS, LOOK, WHEN YOU REQUEST THESE RECORDS AND WE GIVE YOU RECORDS, AND U.S. SUPREME COURT LAW WAS SAYING THE SAME THING. YOU ARE ENTITLED TO RELY ON OUR REPRESENTATION THAT WE HAVE GIVEN YOU EVERYTHING. WE DON'T WANT YOU COMING BACK HERE, EVERY MONTH, EVERY SIX MONTHS, AND SAYING ARE YOU SURE YOU GAVE ME EVERYTHING? ARE YOU SURE YOU GAVE ME EVERYTHING? THEN, BUT, THEN, FLORIDA LAW CHANGED. AND FLORIDA LAW SAID WE SPECIFICALLY SAY YOU MAY COME BACK AFTER A DEATH WARRANT IS SIGNED. UNTIL THE ELEVENTH CIRCUIT DENIED RELIEF, MR. SIMS WAS IN THE POSITION HE SHOULD HAVE BEEN IN. THEN AT THAT TIME, FLORIDA LAW CHANGED AND SAID WE DON'T WANT YOU MAKING OTHER PUBLIC RECORDS REQUESTS, UNTIL A DEATH WARRANT IS SIGNED. THAT WAS THE CHOICE THE LEGISLATURE MADE. THAT WAS THE CHOICE THIS COURT MADE. SAID DON'T DO IT. WE DON'T WANT YOU TO DO IT. YOU MAY DO IT AFTER A DEATH WARRANT IS SIGNED, AND THAT IS WHAT HE DID.

IT IS CORRECT THAT THERE IS NO 3.851 PENNED WILLING.

THAT'S CORRECT.

-- PENDING.

THAT'S CORRECT. AND SO THERE IS NO UNDERLYING BASIS UPON WHICH THERE COULD BE ANY PRODUCTION THAT WOULD MEET A RELEVANCY REQUIREMENT, UNDER THE RULE, OR UNDER 119, GOING -- OR UNDER 119 .08. ISN'T THAT CORRECT?

THERE IS NO SPECIFIC RELEVANCY REQUIREMENT IN THE RULE. WE WERE ASKED, BY THE TRIAL COURT, TO SAY WHY WE THINK THIS WILL LEAD TO THE DISCOVERY OF RELEVANT EVIDENCE, AND WE TOLD THE TRIAL COURT, PROBABLY, THAT IS THE CASE. AND THE BASIS FOR PROVIDING THE RECORDS IS IN THE RECALL, ITSELF, AND IN THE STATUTE, ITSELF, WHICH SAY IF YOU REQUEST THEM AT THIS TIME, AND THE WAY WE TELL YOU TO, THE AGENCIES MUST GIVE THEM TO YOU. AND THAT IS EXACTLY WHAT WE DID.

HOW ABOUT ADDRESSING THE BROADER CONCERN? MAYBE INVOLVED HERE, TRYING TO DETERMINE OUR POLICY BEHIND STRUCTURING THIS RULE, AND AS THE LEGISLATURE HAS, TOO, AND THAT IS THAT HERE YOU HAVE HAD A COMPLETE STATE COURT PROCEEDING, THAT IS THE ORIGINAL PROCEEDINGS AND THEN THE COLLATERAL PROCEEDINGS, ALL THE WAY THROUGH APPLICATION FOR REVIEW IN THE U.S. SUPREME COURT. IS THAT CORRECT?

YES, WE DID.

AND THOSE PROCEEDINGS, SIMS WAS REPRESENTED BY COUNSEL.

THAT'S CORRECT.

AT ALL TIMES. IS THAT CORRECT?

THAT'S CORRECT. AND.

AND IN A SENSE, THEN, LAYERED ON THOORTION YOU HAVE HAD THE COMPLETE REVIEW -- LAYERED ON THAT, YOU HAVE HAD THE COMPLETE REVIEW IN THE FEDERAL COURT. IS THAT CORRECT? INCLUDING PREVAILING AT THE DISTRICT COURT LEVEL IN THE FEDERAL COURT.

THAT'S CORRECT, JUSTICE AND STELED. -- ANSTEAD.

NOW, THE CONVICTION IN THIS CASE OCCURRED WHEN? AND I AM NOT ASKING THAT AS AN UNFRIENDLY QUESTION. I AM JUST TRYING TO TRIGGER THAT FOR MY FURTHER PROGRESS OF MY QUESTION. WHAT YEAR WAS THE --

THE TRIAL OCCURRED IN 1978.

SO THE CONVICTION WAS THAT YEAR.

THAT'S CORRECT.

THERE IS A CONCERN OUT THERE THAT, HAVING HAD ALL OF THOSE PROCEEDINGS, THROUGH THE STATE COURTS AND NOW THROUGH THE FEDERAL COURT, AND HOWEVER MANY YEARS LATER WE ARE IN THIS PROCESS, SIMS HAS BEEN REPRESENTED BY COUNSEL ALL ALONG, AND, AS YOU POINT OUT, AGAIN, COUNSEL WAS SUCCESSFUL ON BEHALF OF SIMS IN THE FEDERAL DISTRICT COURT. NOW, AFTER THESE YEARS, AND AFTER THE U.S. SUPREME COURT HAS DENIED REVIEW OF THE ELEVENTH CIRCUIT'S DECISION, REVERSING THE DISTRICT COURT, A DEATH WARRANT HAS BEEN EXECUTED, AND THE CONCERN IS THAT, WELL, WHAT ARE WE DOING? ARE WE STARTING ALL OVER AGAIN? THAT IS THAT, NOW, WITH THE BROAD PUBLIC RECORDS REQUEST, THE IDEA IS, WELL, YOU WANT ALL OF THESE AGENCIES TO PRODUCE THESE RECORDS, SO THAT WE CAN SEE IF THERE IS A BASIS, YOU KNOW, THAT MAKES PERFECTLY GOOD SENSE. YOU KNOW, IN ISOLATION, BECAUSE THAT IS, OF COURSE, WHAT COUNSEL SHOULD BE DOING, IS INVESTIGATING. SEEING IF THERE IS ANYTHING OUT THERE. BUT WE HAVE TO PUT IT IN THE CONTEXT, NOW, OF THIS CHRONOLOGICAL LINE THAT I HAVE JUST DRAWN, IN THE PREFACE TO MY QUESTION. NOW, IS THAT WHAT WE ARE GOING TO HAVE? IS THAT IS EVERYTHING GOING TO START ALL OVER AGAIN, WHEN A DEATH WARRANT IS EXECUTED, AND IT IS NOT UNTIL ALL OF THAT DISCOVERY, PUBLIC RECORDS REQUESTS ARE PLAYED OUT, AND THERE IS ANOTHER INVESTIGATION BY COUNSEL? IN OTHER WORDS UNTIL THAT IS ALL OVER WITH, THAT THE GOVERNOR CAN PROPERLY ISSUE A WARRANT FOR THE EXECUTION? TO TAKE PLACE. DO YOU UNDERSTAND WHAT MY POLICY QUESTION IS, THAT THIS CASE APPEARS TO BE A CLASSIC FOR THAT, YOU KNOW, BECAUSE ALL OF THESE PROCEEDINGS, WITH COUNSEL, HAVE OCCURRED, AND NOW THE APPEARANCE IS WE ARE STARTING ALL OVER AGAIN. YOU KNOW, WITH AN INVESTIGATION, AND CAN'T DO ANYTHING. CAN'T CARRY OUT THIS UNTIL THAT INVESTIGATION IS COMPLETE. HELP ME.

THIS IS A CONTINUING INVESTIGATION. IT IS CONTINUING INTO THE SAME MATTERS THAT HAVE TROUBLED COURTS ABOUT THIS CASE SINCE IT WAS DECIDED, SINCE THE DIRECT APPEAL. THE UNRELIABILITY OF KEY WITNESSES, IN PARTICULAR BEBEHALSELL AND CURTIS BALDRY. THAT CONCERN THAT YOU HAVE RAISED, I THINK, UNDER LIES THE STATUTE AND THE RULE, IS THE CONCERN THAT IS FACED BY THIS COURT EVERY TIME AN EXECUTION WARRANT IS SIGNED. HAVE WE MISSED ANYTHING?

BUT YET, GRANTED WE DON'T HAVE A PERFECT SYSTEM, BUT THERE HAS TO BE A POINT AT WHICH THESE MATTERS ARE PUT TO REST. AND I THINK JUSTICE ANSTEAD IS SAYING, WHILE IT IS

TROUBLING, AS YOU STATED, DO WE JUST KEEP DEALING WITH IT AND DEALING WITH IT AND NEVER BRING IT TO FINALITY?

WELL, THE RULE TOLD US, AND THE LEGISLATURE TOLD US, WE WANT YOU TO DO THIS AGAIN NOW. WE WANT YOU TO ASK FOR THESE RECORDS AND MAKE SURE THAT THERE IS NOTHING MISSING. THAT POLICY DETERMINATION --

IS THAT BECAUSE ARE DOING HERE? ARE YOU SAYING, NOW, IN THE PAST WE HAVE INVESTIGATED AND DONE ALL OF THIS AND WE HAVE ASKED FOR ALL OF THE RECORDS. IN THE PAST. AND YOU PROVIDED US WITH ALL OF THE RECORDS. IN THE PAST. BUT NOW MAYBE SOMETHING HAS BEEN ACCUMULATED IN THE MEANTIME. AND SO WE WANT TO YOU SUPPLEMENT. IS THERE ANYTHING THAT WE ASK YOU TO PRODUCE IN THE PAST, AND YOU PRODUCED IT, OKAY, BUT NOW DO YOU HAVE ANYTHING ELSE SO THAT WE CAN HAVE WHAT MAY BE A LAST CHECK, TO BE SURE THAT THERE WAS SOMETHING THAT WE MISSED. IS THAT WHAT YOUR REQUEST IS?

THAT IS ALL AGENCIES -- MY REQUEST IS FOR WHAT THE AGENCIES HAVE IN RELATION TO THE INVESTIGATION OF THIS CASE, AND THE RULE SAYS YOU ONLY HAVE TO GIVE THEM THINGS YOU HAVEN'T GIVEN THEM BEFORE.

WELL, HAVE YOU ASKED FOR EVERYTHING BEFORE? IN OTHER WORDS --

WE --

CAN YOU NOT ASK AND THEN WAIT FOR A WARRANT TO BE EXECUTED, EVEN THOUGH ALL OF THESE PROCEEDINGS ARE GOING ON, AND THEN SAY, WELL, I DIDN'T ASK FROM THESE AGENCY IT IS BEFORE, AND NOW I AM GOING TO ASK FOR THESE AGENCIES, BECAUSE THEORETICALLY THERE ARE STILL LOTS OF INSTITUTIONS OUT THERE THAT HAVE SOMETHING TO DO WITH THIS CASE OF, YOU KNOW,, AND, SO, AGAIN, IT COMES BACK. ARE YOU JUST SEEKING WHAT YOU DIDN'T GET BEFORE, FROM THE SAME GROUPS THAT YOU HAVE ASKED FOR INFORMATION FROM?

WELL, THE TRIAL COURT RULED THAT THE RULE DOES NOT SAY YOU CAN ONLY ASK FROM THOSE AGENCIES. WE DID ASK FOR AGENCIES --

I AM NOT ASKING WHAT THE TRIAL COURT RULED. I AM ASKING WHAT YOU ARE SEEKING HERE, IN TERMS OF IS IT JUST WHAT YOU DIDN'T RECEIVE BEFORE THAT YOU ASKED FOR?

WE ARE ASKING FOR THINGS THAT WE DID NOT RECEIVE BEFORE. YES. THAT IS WHAT THE RULE REQUIRES BE TURNED OVER, AND THAT IS ALL THAT THE RULE REQUIRES BE TURNED OVER.

BUT YOU ASKED FOR IT BEFORE.

WE MADE PUBLIC RECORDS REQUESTS OF EVERY LAW ENFORCEMENT AGENCY THAT MR. SIMS HAD ANY REASON TO THINK WAS INVOLVED IN THE INVESTIGATION AND PROSECUTION OF THIS CASE. IF WE HAD BEEN GIVEN A HEARING, IF THE STATE AGENCIES HAD OBJECTED, ON THAT GROUNDS, THAT COULD HAVE BEEN DEMONSTRATED AT THE TRIAL COURT, BUT THEY CHOSE NOT TO MAKE TIMELY OBS. THEY CHOSE TO DO SOMETHING -- OBJECTIONS. THEY CHOSE TO DO NOTHING, IN THEIR OWN WORDS, HOPING ALL GOES AS PLANNED ON OCTOBER 26. IF THEY HAD SIMPLY SAID WE DON'T THINK YOU DID, WE COULD HAVE HAD A HEARING. WE COULD HAVE RESOLVED THAT MATTER. WHEN AGENCIES DID RAISE AN OBJECTION TO THAT SORT, IT WAS HEARD. IF THAT AGENCY, THE JACKSONVILLE STATE ATTORNEY'S OFFICE, HAD RAISED THEIR ON OBJECTION IN A -- THEIR OBJECTION IN A TIMELY MATTER, WE WOULD HAVE HAD A RECORD PRIOR TO THE DATE SET FOR THE MATTER ON RULE 3.850.

ARE YOU TELLING US TODAY, THOUGH, THAT IN ANSWER TO THIS QUESTION, THAT IF THE RULE IS

INTERPRETED TO SAY THAT YOU CAN ONLY, IN AN UPDATE, SUPPLEMENTATION, FROM AGENCIES THAT YOU HAVE ALREADY REQUESTED PUBLIC RECORDS FROM, AND THAT IS WHAT THE RULE INTENDED IS TO TAKE AND NOT START IT OVER AGAIN, THAT YOU ARE REPRESENTING THAT ALL OF THE REQUESTS TO ALL OF THESE AGENCY ARE AGENCIES THAT YOU PREVIOUSLY MADE PUBLIC RECORDS REQUESTS TO?

I CAN'T REPRESENT TO YOU THAT EVERY AGENCY WAS. BECAUSE I DON'T HAVE ALL OF THE RECORDS, AND SOMEBODY ELSE HANDLED THE CASE AT THAT TIME. AND HE WOULD NEED -- WE WOULD NEED TO TALK TO HIM, THE INITIAL INVESTIGATING ATTORNEY IN THE 3.850. I CAN TELL YOU WHICH ONES WE DID.

IS YOUR POSITION THAT THE RULE IS BROAD, TO SAY, AS JUSTICE ANSTEAD ASKED, THAT IF THERE HAD BEEN NO PUBLIC RECORDS REQUESTS UP UNTIL THE TIME THAT THE WARRANT WAS SIGNED, THAT YOU COULD JUST START AND REQUEST FROM EVERY AGENCY THAT YOU DESIRE TO REQUEST FROM?

THE RULE, BY ITS TERMS, DOES NOT SAY YOU MAY ONLY MAKE REQUESTS OF AGENCIES.

BUT DO YOU THINK, IN TERMS OF THE POLICY OF WHAT IS GOING TO BE GOING ON AFTER A WARRANT IS SIGNED, THAT A REASONABLE INTERPRETATION OF THAT RULE?

NO. THE REASONABLE INTERPRETATION IS AGENCIES FROM WHICH YOU REQUESTED RECORDS FROM BEFORE OR AGENCIES FROM WHICH YOU NOW, BECAUSE OF NEW INFORMATION, KNOW THAT YOU SHOULD MAKE REQUESTS OF, AND THAT HAS BEEN THE WAY THE COURT HAS HANDLED THIS, IN, BEFORE THE RULE EXISTED. IF YOU RECEIVE INFORMATION THAT SAYS THAT YOU DIDN'T HAVE BEFORE, THAT YOU DIDN'T HAVE ACCESS BEFORE, THAT SAYS YOU SHOULD BE LOOK HERE, BECAUSE ALTHOUGH, PERHAPS, YOU WERE MISLED, BY A WITNESS, ABOUT WHETHER THIS LAW ENFORCEMENT AGENCY WAS INVOLVED, IF YOU DIDN'T KNOW, BECAUSE OF THAT, TO ASK FOR RECORDS OF THAT AGENCY, AND YOU ONLY LEARNED THAT, AT A TIME LIKE THIS, YOU SHOULD BE ABLE TO MAKE A REQUEST TO THAT AGENCY.

DON'T YOU THINK THAT THE BURDEN SHOULD BE ON THE DEFENDANT IN THIS SITUATION, TO ACTUALLY SPELL OUT, BY WAY OF MOTION, THIS IS WHAT WAS REQUESTED, WHEN, THIS IS WHAT WE RECEIVED, AND NOW WE ARE SEEKING SUPPLEMENTATION?

WOULDN'T THAT BE THE BETTER, RATHER THAN MAKING ALL OF THESE 60 AGENCIES COME IN AND WE WOULD BE HAVING AN EVIDENTIARY HEARING JUST ON THAT ISSUE?

WELL, IF THAT IS THE BETTER COURSE, AND I, QUITE FRANKLY DON'T KNOW, THE LEGISLATURE, IN THIS COURT, COULD HAVE DONE THAT, BECAUSE THERE IS A SIMILAR REQUIREMENT UNDER RULE 3.850-I, THAT SAYS WHEN YOU MAKE A REQUEST UNDER THAT SITUATION, THAT YOU MUST SAY THAT YOU DID THIS, THAT AND THE OTHER THING, AND YOU KNOW THAT THESE RECORDS ARE NOT THERE. THIS RULE DOES NOT CONTAIN SUCH A REQUIREMENT. WE COMPLIED WITH THE RULE. WE DID WHAT THE RULE TOLD US TO DO. WITH THAT I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU. MR. NUNNELLEY.

MAY IT PLEASE THE COURT. I AM KEN NONE LIMIT I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING -- I AM KEN NUNNELLEY. I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING. CONTRARY TO THE DEFENDANT'S ARGUMENT, THIS CASE IS VERY, VERY SIMPLE. IT IS GOVERNED BY THE RULE AND BY CHAPTER 119 OF THE FLORIDA STATUTES. I WANT TO GO DIRECTLY TO THE RULES AND THE INTERPRETATION OF THE RULES, BUT I DO WANT TO, AT THIS TIME, PRESERVE THE STATE'S OBJECTION TO THE LACK OF SUBJECT MATTER JURISDICTION FOR THIS APPEAL. THIS IS AN INTERLOCKER TO APPEAL. THERE IS NO PROVISION IN THE FLORIDA RULES OF APPELLATE

PROCEDURE, FOR THIS KIND OF AN APPEAL. WITH THAT SAID, HOWEVER, AND WHILE I DO ASK THE COURT TO RULE IN THE STATE'S FAVOR ON THE JURISDICTIONAL BASIS, I DO WANT TO ADDRESS THE RULES. JUSTICE PARIENTE, YOU ASKED A QUESTION ABOUT WHETHER OR NOT THE BURDEN SHOULD BE ON THE DEFENDANT, ABBE HIM GOING TO HAVE TO -- AND I AM GOING HAVE TO PARAPHRASE, BUT THE GIST OF YOUR QUESTION WAS SHOULDN'T IT BE THE DEFENDANT'S JOB TO SAY IF HE HAS MADE A PRIOR REQUEST OF PUBLIC RECORDS? ANY OTHER INTERPRETATION OF THE RULE THAT DOES NOT REQUIRE THE DEFENDANT TO IDENTIFY THOSE AGENCIES FROM WHOM HE HAS PREVIOUSLY REQUESTED PUBLIC RECORDS, TURNS THE RULE ON ITS HEAD. IT GETS US IN TO THE SITUATION THAT WE ARE IN NOW, WHICH IS, UNTIL YESTERDAY, THE STATE HAD NO IDEA WHAT AGENCIES THIS DEFENDANT CLAIMED HE HAD SERVED PRIOR PUBLIC RECORDS DEMANDS ON! IT IS NOT INCUMBENT ON THE STATE TO DO THE DEFENDANT'S JOB FOR HIM. IF HE HAS MADE PUBLIC RECORDS DEMANDS AND WANTS TO COME IN, UNDER RULE 3.8523-H-3, WHICH IS LIMITED -- 3.852-H-3, WHICH IS LIMITED TO RECORDS THAT HAVE PREVIOUSLY BEEN REQUESTED, IT IS HIS JOB TO IDENTIFY THOSE AGENCIES.

BUT WOULDN'T EACH AGENCY KNOW WHETHER OR NOT THERE HAD BEEN A PREVIOUS REQUEST, AND SHOULDN'T IT BE UP TO EACH AGENCY TO FILE SOMETHING, SAYING EITHER YOU NEVER MADE A REQUEST BEFORE, AND THEREFORE UNDER THE RULE YOU ARE NOT ENTITLED TO IT NOW, OR I HAVE NOTHING MORE TO GIVE YOU?

JUSTICE QUINCE, I AM NOT TRYING TO DODGE YOUR QUESTION, BUT LET ME SKN ANSWER IT THIS WAY. A -- BUT LET ME ANSWER IT THIS WAY. AN EXHIBIT AND ENDED TO MR. SIMS' INITIAL BRIEF IS WHAT PURPORTS TO AND 1990 PUBLIC RECORDS DEMAND THAT WAS SERVED, PURPORTEDLY, ON THE SEMINOLE COUNTY SHERIFF'S OFFICE. WE HAVE A RESPONSE FROM THE SEMINOLE COUNTY SHERIFF'S OFFICE THAT SAYS HE HAS NEVER MADE A PUBLIC RECORDS DEMAND. NOW, I AM NOT IMPLYING ANYTHING BY THAT, OTHER THAN TO POINT OUT THAT IF MR. SIPS KNOWS HE HAS MADE PUBLIC RECORDS DEMANDS, EXPEDIENCY AND GOOD FAITH SHOULD REQUIRE HIM TO MAKE THAT KNOWN. I MEAN, WHY SHOULD -- WHY SHOULD THE RULE LET THE DEFENDANT PLAY HIDE THE BALL? WHY SHOULD HE BE ABLE TO MAKE A DEMAND ON THE KEY WEST POLICE DEPARTMENT, FOR EXAMPLE. AND MAKE THEM SAY WHETHER OR NOT HE HAS MADE A PRIOR DEMAND ON THEM? IF HE HAS MADE A PRIOR DEMAND ON THAT AGENCY, HE KNOWS IT. HE IS INVOKING THE RULE AND WHY SHOULDN'T HE TELL THEM? GOOD FAITH AND COMMON SENSE REQUIRE HIM TO TAKE THAT BURDEN HIMSELF.

LET ME READ YOU A SENTENCE FROM THE RULE AS IT EXISTED BEFORE OUR LAST OPINION IN THE STATUTE, I BELIEVE, TOO, AND SEE IF YOU CAN HELP ME WITH THIS. IT SAYS IF, ON OCTOBER 1, 1998, THE DEFENDANT HAS HAD A RULE 3.850 OR RULE 3.851 MOTION DENIED, AND NO RULE 3.850 OR RULE 3.851 MOTION IS PENDING, NO ADDITIONAL PUBLIC RECORDS REQUESTS UNDER THIS RULE IS PERMITTED BY COLLATERAL COUNSEL, UNTIL A DEATH WARRANT HAS BEEN SIGNED BY THE GOVERNOR AND AN EXECUTION HAS BEEN SCHEDULED. IT, THEN, GOES ON WITH THE "WITHIN TEN DAYS" PROVISION SECTION. WHAT IS YOUR INTERPRETATION OF WHAT WAS MEANT BY THAT?

WHAT WAS MEANT BY THAT, YOUR HONOR, WAS THAT A DEFENDANT IN MR. SIMS' POSITION SHOULD FALL BACK UNDER 3.852-H-2. WHICH PROVIDED HIM WITH THE OPPORTUNITY, BEGINNING OCTOBER 1, 1998, TO MAKE WHATEVER PUBLIC RECORDS DEMANDS HE WANTED TO MAKE. AND HE DID NOT AVAIL HIMSELF OF THAT.

NOW, WHEN WOULD HE MAKE THOSE REQUESTS?

HE HAD UNTIL, WELL, 3.852-H-2, AND I AM RELYING ON THE NEW, NEW VERSE, I GUESS, FOR A -- VERSION, I GUESS, FOR LACK OF A BETTER WAY TO REFER TO IT, IF, ON OCTOBER 1, 1998, DEFENDANT WAS REPRESENTED BY COLLATERAL COUNSEL, HE WAS, AND HAS INITIATED THE PUBLIC RECORDS PROCESS, HE HAD, COLLATERAL COUNSEL SHALL, WITHIN 90 DAYS AFTER

OCTOBER 1, 1998, AND THIS IS THE NEW LANGUAGE, OR WITHIN 90 DAYS AFTER THE PRODUCTION OF RECORDS WHICH WERE REQUESTED PRIOR TO OCTOBER 1, 1998, WHICHEVER IS LATER, FILE WITH THE TRIAL COURT AND SERVE A DEMAND FOR ANY ADDITIONAL PUBLIC RECORDS, ET CETERA, ET CETERA, ET CETERA. HE DIDN'T DO THAT! THAT WAS WHAT HIS OBLIGATION WAS TO DO! HE CANNOT DISREGARD THE RULES, NOT AVAIL HIMSELF OF THE OPPORTUNITY TO DO THAT WHICH THE RULES EXPRESSLY GAVE HIM, AND THEN COME UP HERE AND COMPLAIN ABOUT IT!

NOW, WHAT IF HE SAYS, WELL, I HAD NO REASON TO DO ANYTHING LIKE THAT THEN, BECAUSE I HAD WON AT THE FEDERAL DISTRICT COURT LEVEL, AND, OF COURSE, WAS HOPING THAT THE ELEVENTH CIRCUIT WOULD AFFIRM WHAT THE FEDERAL DISTRICT COURT JUDGE SHOULD DO. I HAD ALREADY BEEN THROUGH ALL MY STATE COURT PROCEEDINGS UNSUCCESSFULLY, BUT I HAD WON WITH THE FEDERAL DISTRICT LEVEL, AND ON THAT DATE THAT WE ARE TALKING ABOUT, I WAS SITTING ON A WIN. WHY SHOULD I, YOU KNOW, GET INVOLVED WITH THIS AT ALL, AT THAT TIME?

BECAUSE THE RULE EXPRESSLY SAYS IF YOU WANT TO DO IT, HERE IS YOUR CHANCE. THE FACT THAT HE HAD HAD A WIN IN THE DISTRICT COURT DOESN'T ABSOLVE HIM FROM THE DUTY TO COMPLY WITH 3.852-H-2. THERE IS NO PROVISION IN H-2 THAT SAYS A DEFENDANT WHO HAS HAD A PARTIAL GRANT OF HABEAS RELIEF DOESN'T HAVE TO COMPLY WITH THIS, UNLESS AND UNTIL HIS DEATH SENTENCE IS REINSTATED. IT DOESN'T DO THAT, AND BESIDES, THIS INMATE IS CLAIMING, THROUGH COUNSEL, THAT HE IS INNOCENT. HIS GUILT PHASE WAS NEVER SET ASIDE, AND SOMEBODY, I DON'T REMEMBER WHO, ASKED A QUESTION ABOUT WHY WOULDN'T YOU CONTINUE TO INVESTIGATE THE GUILT PHASE? THAT IS A GOOD QUESTION. I DON'T KNOW WHY HE WOULDN'T CONTINUE TO INVESTIGATE IT. HE SHOULD HAVE. THE RULE GAVE HIM THE OPPORTUNITY TO DO THAT. AND HE DID NOT TAKE IT. AND, YOU KNOW, AGAIN, THIS CASE IS NOT COMPLICATED. THIS CASE IS DRIVEN AND GOVERNED BY THIS COURT'S RULE 3.852-H-2 AND 3, AND BY CHAPTER 119 OF THE FLORIDA STATUTES.

DO I -- CORRECT ME IF I AM WRONG. SOME OF THE AGENCIES THAT THESE REQUESTS WERE SENT TO NEVER RESPONDED AT ALL. IS THAT CORRECT?

YOUR HONOR, MY BELIEF IS, AND I AM NOT INVITING THE COURT TO GO TO THE MERITS, AND I AM NOT TRYING TO MAKE A FACTUAL ARGUMENT AS TO WHAT THE EVIDENCE WOULD BE, BUT I DO BELIEVE THAT, IF I WERE FORCED TO PROVE IT UP, I COULD PROVE UP COMPLETE COMPLIANCE. SO YOU ARE SAYING THAT ALL OF THESE AGENCIES RESPONDED, IN SOME FASHION, TO THIS PUBLIC RECORDS REQUEST.

THAT IS MY BEST BELIEF, YOUR HONOR. I DO NOT KNOW SPECIFICALLY, BECAUSE I, QUITE HONESTLY, DO NOT KNOW EXACTLY HOW MANY REQUESTS ARE FLOATING AROUND OUT THERE. I KNOW HOW MANY I HAVE SEEN. I DO NOT KNOW IF THERE ARE OTHERS. I DO KNOW THAT, IN MR. SIMS' BRIEF, HE ASSERTS THAT SOME AGENCIES HAVE, QUOTE, PARTIALLY, CLOSE QUOTE, COMPLIED. I DO NOT KNOW WHAT PARTIAL COMPLIANCE MEANS. I DO NOT KNOW WHAT HE MEANS BY THAT.

IS THERE A RECORD? I MEAN, DO WE HAVE A RECORD, INSOFAR AS WHAT WAS ESTABLISHED IN THE TRIAL COURT OF WHAT DEMANDS WERE MADE AND WHAT COMPLIANCE THERE WAS?

THE RECORD SHOWS THE DEMANDS. THE RECORD, I DO NOT, THE RECORD DOES NOT SHOW COMPLIANCE AS TO ALL OF THOSE AGENCIES. I CAN STATE THAT WITH A GREAT DEAL OF CERTAINTY. THE -- BUT THE FACT IS THAT THE RULE GOVERNS WHAT MR. SIMS CAN DO. RULE 3.852-H-3, WHICH IS THE WARRANT PROVISION RULE, IS HOW I HAVE REFERRED TO IT IN MY BRIEF, AND I CAN'T THINK OF A BETTER TERM FOR IT, THAT PROVISION OF THE RULE DOES NOT ALLOW HIM TO COME BACK IN, AFTER A DEATH WARRANT IS SIGNED, AND BLANKET THE STATE OF FLORIDA WITH PUBLIC RECORDS DEMANDS. IT JUST DOES NOT ALLOW THAT. YOU -- I HAVE -- I

DETAILED FAIRLY SPECIFICALLY IN MY BRIEF, WHY THAT IS. I DON'T WANT TO GO BACK THROUGH ALL OF THAT. I DO WANT TO SAY THAT, IF YOU READ 119.19, ALONG WITH THIS COURT'S RULE, IMPLEMENTING THAT STATUTORY PROVISION, IT IS CRYSTAL CLEAR THAT A DEFENDANT DOES NOT GET TO COME BACK, AFTER A DEATH WARRANT IS ISSUED, AND REINVEST GAIT THE WHOLE CASON MORE TIME, MAKING PUBLIC RECORDS DEMANDS FROM AGENCIES THAT HE HAS NEVER GONE TO BEFORE.

WELL, WHAT DO YOU SEE AS THE PURPOSE OF THAT RULE? BECAUSE NO MATTER WHAT ELSE HAPPENS, IT DOES MEAN THAT THERE IS GOING TO BE ADDITIONAL OR NEW ACTIVITY AFTER THE DEATH WARRANT IS SIGNED, AFTER ALL OF THE OTHER PROCEEDINGS HAVE BEEN COMPLETED AND DISPOSED OF, PRESUMABLY, THAT IS WHEN THE WARRANT GETS SIGNED. WHERE DO YOU SEE THE RULE AS BEING USEFUL AND BEING ABLE TO BE IMPLEMENTED, WITHOUT CREATING A WHOLE NEW BASIS FOR, YOU KNOW, HAVING TO COME UP HERE FOR RELIEF OR REVIEW OF ORDERS?

THE RULE, JUSTICE PARIENTE, I BELIEVE, IS DESIGNED TO KEEP US FROM BEING WHERE WE ARE RIGHT NOW. THE RULE IS DESIGNED TO ALLOW A DEFENDANT TO GO TO AGENCIES THAT HE REQUESTED PUBLIC RECORDS FROM IN THE COURSE OF HIS INITIAL RULE 3.850 PROCEEDING, AND TO PARAPHRASE THE RULE, GO BACK AND SAY DO YOU HAVE ANYTHING ELSE THAT YOU HAVE GOT SINCE THE PRIOR DEMAND?

BUT IF WE HAVE GOT A SHORT WARRANT PERIOD, YOU HAVE GOT TEN DAYS TO DO THAT, SAY YOU HAVE 60 AGENCIES, ALL THE AGENCIES DON'T DO WHAT THEY ARE SUPPOSED TO DO THE. AREN'T WE INEVITABLY, IN CREATING MULTIPLE HEARINGS, ANYWAY, EVEN IF IT IS JUST LIMITED THAT WAY?

WELL, YOUR HONOR, IF IT IS LIMITED THAT WAY, AND IF THE DEFENDANT DOESN'T PLAY HIDE THE BALL, AND GOES TO THE ESCAMBIA -- LET'S USE THE AGENCIES THAT WE HAVE GOT IN THIS CASE. HE GOES TO THE ESCAMBIA COUNTY SHERIFF'S OFFICE AND THE LONGWOOD POLICE DEPARTMENT, TWO AGENCIES, AND SAYS I MADE A PUBLIC RECORDS DEMAND ON YOU ON SUCH-AND-SUCH A DATE. THIS IS A REQUEST, UNDER RULE 3.852-H-3, FOR RECORDS OBTAINED SUBSEQUENTLY, NOT PROVIDED PREVIOUSLY, OR OTHERWISE NOT PRODUCED. THAT REQUEST TELLS THAT AGENCY, WITH A GREAT DEAL OF SPECIFICITY, WHAT THEY HAVE GOT TO GO LOOK FOR. THIS RULE IS DESIGNED TO FUNCTION UNDER A WASHINGTON. IT IS DESIGNED TO BE THE SORT OF REQUEST FOR PRODUCTION THAT CAN BE HANDLED UNDER THE TIME CONSTRAINTS THAT EXIST UNDER A WARRANT CIRCUMSTANCE.

NOW, YOU HAVE TAKEN THE POSITION, THE STATE TAKES THE POSITION, THAT THIS IS AIM PROPER INTERLOCK TORIE APPEAL.

YES.

WHAT WOULD BE AN AVENUE OF APPEAL? PROPER AVENUE OF APPEAL IN THE STATE'S -- FROM THE STATE'S VIEWPOINT, IN A WARRANT SETTING?

EXACTLY WHAT WAS DONE IN THE DAVIS CASE, YOUR HONOR. THIS SHOULD COME TO YOU IN THE CONNECTION WITH THE APPEAL FROM DENIAL OF RULE 3.850 RELIEF. THIS SHOULD NOT COME UP ON AN EXTRAORDINARY WRIT. IT SHOULD NOT COME UP. IT IS NOT AN APPEAL THAT PROPERLY LIES, AS IT IS FRAMED. I AM UNAWARE OF ANY OTHER -- I AM SUN UNAWARE OF ANY EXTRAORDINARY -- I AM UNAWARE OF ANY EXTRAORDINARY WRIT THAT WOULD LIE UNDER THIS PARTICULAR CIRCUMSTANCE.

BUT THEY HAVE REPRESENTED IN THIS CASE THAT, IF THEY DON'T GET THESE RECORDS, THEY CAN'T FILE ANYTHING ELSE, SO ESSENTIALLY THIS IS DISPOSING OF EVERYTHING, BECAUSE IF WE AFFIRM WHAT THE TRIAL COURT DID, THEY ARE SAYING THERE IS NOTHING ELSE THEY CAN FILE,

SO ISN'T THAT SORT OF A NAR ---I AGREE WITH YOU, YOUR CONCEPT THAT, WE JUST CAN'T HEAR EVERY INTERLOCUTORY ORDER, BUT HERE WHERE THERE IS NO PENDING 3.851 AND THEY SAY THEY CAN'T FILE IT BECAUSE THEY NEED THE RECORDS, THEN DOESN'T THAT PUT THIS IN THE NATURE AFTER FINAL ORDER?

I CAN'T REALLY ANSWER THAT QUESTION. YOUR HONOR, AND THE REASON I SAY THAT, IS THIS. THERE ARE ALLEGATIONS SPRICK HE WOULD THROUGH THE INITIAL BRIEF -- SPRINKLED THROUGH THE INITIAL BRIEF, THAT DO, IN FACT, SUGGEST THAT THERE ARE OTHER AVENUES OF INVESTIGATION THAT ARE OUTSIDE THE PUBLIC RECORDS ARENA THAT ARE, IN FACT, BEING PURSUED. I DO NOT KNOW WHAT THEY ARE. I WOULD SUGGEST, THOUGH, THAT THIS COURT IS NOT DISPOSING OF A 3.850 MOTION. THERE IS NO 3.850 MOTION TO DISPOSE OF. AND I SIMPLY DON'T KNOW WHAT THE DEFENDANT MAY HAVE IN STORE. SHALL WE SAY.

YOU WILL SAY THAT THE POLICY WOULD BE THAT POST, AFTER A CASE HAS BEEN CONFIRMED ON DIRECT APPEAL OR IT IS IN COLLATERAL LITIGATION, WE SHOULD NOT BE RULING ON PUBLIC RECORDS REQUESTS OR MAKING THOSE KINDS OF INTERLOCKER TO DECISIONS, OBJECTS SOME -- ABS SOME EXTRAORDINARY -- ABSENT EXTRAORDINARY CIRCUMSTANCES, OR YOU WOULD SAY EVEN IF THERE WERE EXTRAORDINARY CIRCUMSTANCES.

LET ME ANSWER IN TO PARTS. I DO NOT KNOW WHAT AN EXTRAORDINARY WRIT WOULD LIE. IN THIS CIRCUMSTANCE, WHICH IS THE ONLY ONE I AM CONCERNED WITH HERE TODAY, THIS COURT SHOULD NOT BE HEARING INTERLOCKTORY NONFINALORDERS IN THIS CONTEXT. AGAIN --.

WE DON'T HAVE AN ANALOGY TO THE COMMON LAW PETITION FOR WRIT OF CERT THAT GOVERNS THE WAY DISCOVERY ORDERS IT REVIEWED IN THE APPELLANT COURTS?

NO. YOUR HONOR, AGAIN, I DON'T KNOW, THIS -- THIS COURT SHOULD NOT BE PUT IN THE POSITION OF ISSUING WHAT, IN THIS CASE, IS INEFFECTIVE ADVISORY OPINION. THE COURT'S RULE SAYS WHAT IT SAYS. THE RULE IS NOT OPEN TO DEBATE. THE RULE IS NOT OPEN TO DISCUSSION. IT IS CRYSTAL CLEAR. THAT IS THE WAY THIS COURT WROTE IT. IT CLEARLY -- IS BASED UPON THE CLEARLY EXPRESSED INTENT OF THE LEGISLATURE. THAT IS IN 119.19, I BELIEVE, SUBPART "E QUESTION ". ABOUT -- SUBPART E, ABOUT HOW 119-E IS GOING TO BE HANDLED UNDER A DEATH WARBLT.

THIS COURT HAS, IN THE PAST, HAS IT NOT, ENTERTAINED INTERLOCKTORY ORDERS, OR NONFINAL ORDERS, IN THE DISCOVERY CONTEXT? THERE HIS CASE LAW OUT THERE TO THAT EFFECT. IS THERE NOT?

I AM NOT FAMILIAR WITH IT OFF THE TOP OF MY HEAD, ONE WAY OR THE OTHER, YOUR HONOR. I AM NOT FAMILIAR WITH IT, AND, YOU KNOW, WITH ALL RESPECT, I AM NOT ARGUING THOSE CASES. THERE IS NO VEHICLE, UNDER THE RULES OF APPELLATE PROCEDURE, THAT SHOULD GET US WHERE WE ARE HERE.

UNDER YOUR THEORY, THEN, IF, AFTER COMPLETION OF THIS WHOLE PROCESS AND THE WARRANT IS SIGNED, IT COMES TO THE ATTENTION OF DEFENSE COUNSEL ABOUT SOME AGENCY THAT THEY NEVER HAD ANY REASON TO BELIEVE WAS EVER INVOLVED IN THE INVESTIGATION, BUT THEY, NOW, HAVE REASON TO BELIEVE IT, HOW DO YOU GET PUBLIC RECORDS FROM THAT AGENCY, SINCE THIS WOULD NOT BE AN AGENCY THAT THEY WOULD HAVE PREVIOUSLY FILED A REQUEST FROM?

YOUR HONOR, I THINK, TO SOME DEGREE, IN ANSWER TO THAT QUESTION, WE HAVE TO RELY ON THE COMMENSENSE OF THE TRIAL COURTS. I DON'T KNOW -- I AM THINKING IN THE ABSTRACT. I AM HAVING TO, YOU KNOW, KIND OF THINK IN THE AND EXTRACT HERE, AND I -- IN THE ABSTRACT HERE, AND I CERTAINLY DON'T WANT TO SAY ANYTHING THAT SUGGESTS OR IMPLIES THAT SUCH IS THE CASE HERE. IN THE ABSTRACT, IF A DOCUMENT THAT FELL UNDER 3.852-H-3-A

WAS PRODUCED BY THE SHERIFF'S DEPARTMENT FROM COUNTY X, AND THAT DOCUMENT REFERRED TO THE SHERIFF'S DEPARTMENT IN COUNTY Y, AS HAVING DONE SOMETHING SUBSEQUENT TO THE FIRST PUBLIC RECORDS DEMAND, THEN I THINK THAT WOULD PROBABLY FALL UNDER THE CATCH ALL SUBDIVISION C. THAT READS, THAT WAS, FOR ANY REASON, NOT PRODUCED PREVIOUSLY. I THINK. I DON'T KNOW. I WOULD -- I CAN'T -- IT IS DIFFICULT TO TAKE THE POSITION, WITHOUT KNOWING THE PARTICULAR FACTS, BUT I THINK WE HAVE TO -- I THINK WE HAVE TO ASSUME THAT, IF THERE WAS SOME EVIDENCE OF THAT, THAT THERE WOULD BE AWAY TO ADDRESS IT. BUT THAT IS NOT WHAT WE HAVE GOT HERE. WHAT WE HAVE HERE IS A SERIES OF 119 DEMANDS, WHICH, A COUPLE OF WHICH, ARE ALLEGED TO HAVE BEEN MADE PREVIOUSLY, ONLY ONE THAT I KNOW WAS MADE PREVIOUSLY FOR CERTAIN, AND A BUNCH OF 119 DEMANDS THAT APPEAR TO BE INITIAL REQUESTS MADE UNDER A WARRANT. THAT IS NOT WHAT THE RULE PROVIDES. THAT IS IMPROPER. THIS COURT SHOULD AFFIRM THE TRIAL COURT AND DENY A STAY OF STAY OF EXECUTION.

THANK YOU, MR. NUNNELLEY. MR. SCHARDL.

THIS RULE CAN WORK. IT CAN WORK UNDER WARRANT, IF THE AGENCIES COMPLY. IF THEY COOPERATE IN THE WAY THAT THIS COURT SAID YOU WANTED THEM TO, IN ITS OPINION ADOPTING THE RULE.

CAN I ASK YOU, I JUST WANT TO MAKE SURE I UNDERSTAND YOUR POSITION MUCH THE REASON THAT YOU DIDN'T TAKE ADVANTAGE OF THE PROVISION OF THE RULE THAT ALLOWED YOU TO MAKE YOUR PUBLIC RECORDS REQUESTS AFTER OCTOBER 1, 1998, WAS WHAT REASON?

THE RULE DIDN'T ALLOW US TO DO THAT. THE H SUBDIVISION DIVIDES CASES INTO THREE CATEGORIES, APPLYING THE RULE OF CONSTRUCTION THAT SAYS YOU APPLY THE MOST SPECIFIC PROVISION GOVERNING THIS CASE. THE PROVISION GOVERNING THIS CASE WAS H-3.

NO. I AM NOT TALKING ABOUT AFTER THE WARRANT WAS SIGNED.

RIGHT. EXACTLY. FROM OCTOBER 1, 1998, AND THIS RULE WENT INTO EFFECT, H-3 READ, IF YOUR CASE FALLS UNDER THIS CATEGORY, THAT IS YOU HAVE MADE, YOU HAD A 3.850 THAT WAS DENIED, THEN YOU ARE GORND BY THIS PROVISION -- THEN YOU ARE GOVERNED BY THIS PROVISION.

SO YOU ARE SAYING THAT YOU WOULD HAVE BEEN READY, OCTOBER OF 1998, TO MAKE ALL OF THESE REQUESTS OF THESE AGENCIES, BUT FELT YOU WERE PRECLUDED FROM DOING SO, BASED ON THE EXPRESS TERM OF THE RULE?

THAT AND ONE OTHER REASON, WHICH IS THAT THE PERSON ON THE CASE AT THAT TIME, MR. MALONE, WAS WORKING FOR THE PUBLIC DEFENDER'S OFFICE, AND THERE IS A STATUTE THAT SAYS YOU MAY NOT DO THIS TYPE OF LITIGATION. SO HE WAS NOT COLLATERAL COUNSEL WITHIN THE MEANING OF THE RULE, AND HE WAS NOT IN A POSITION AT THAT POINT, TO INVOKE IT. IT WASN'T UNTIL THE WARRANT WAS SIGNED AND CCR HANDED THIS CASE ON OFF, TO US, THAT HE HAD COLLATERAL COUNSEL WITHIN THE MEANING OF THE RULE, WHO COULD HAVE TAKEN ADVANTAGE OF THIS. BUT BEYOND THAT, THE RULE SAID DON'T DO IT. THAT WAS THE SPECIFIC PROVISION GOVERNING THIS TYPE OF CASE. THE STATE, THIS COULD HAVE WORKED AS IT HAS IN THE BRIAN CASE. WHERE THE STATE ATTORNEY'S OFFICE AND THE HE, HAVE BEEN -- AND THE H. E. HAVE BEEN TELLING THESE AGENCIES LET'S GO. LET'S GET THE TRORDZ THE DEFENDANT SO THAT HE CAN FILE, SO THAT HE CAN AEM, SO THAT WE CAN -- SO THAT HE CAN AMEND, SO THAT WE CAN HAVE A HEARING. IF HE HAD DONE THAT, WE WOULD HAVE ADOPTED THE RULE AND WE WOULDN'T HAVE TO BE HERE. SAYING, NOW, THAT THE RULE SHOULD REQUIRE THIS, THAT ANYONE READING IT SAYS THEY SHOULD HAVE TOLD US THIS, IS ONE THING, BUT THE RULE DIDN'T SAY THAT. IF THAT IS WHAT YOU WANT THE RULE TO BE, IF THE RULE HAD SAID TELL US IF YOU MADE A PRIOR REQUEST OF THIS AGENCY, AS THE "I" SUBDIVISION OF THE RULE

SAYS, WE WOULD NOT HAVE DONE THAT. WE WOULD HAVE DONE EVERYTHING TO COMPLY THIS RILE. -- THIS RULE. EVERYTHING THE RULE TOLD US TO DO, WE DID. IF THE RULE SHOULD BE AMENDED, IT SHOULD BE AMENDED, BUT IT DIDN'T TELL US TO DO. THAT THERE IS A PROVISION IN THIS RULE FOR RESOLVING THESE KINDS OF DISPUTES THAT THE TRIAL COURT ELECTED TO IGNORE, THAN IS THE PROVISION L-IT, WHICH IS IN OUR MOTION TO -- L-2, WHICH IS IN OUR MOTION TO COMPEL, WHICH TELLS THE COURT TO CONDUCT A HEARING ON A MOTION TO COMPEL ON AN EXPEDITED BASIS, AND THIS COURT, ALSO, ORDERED DO EVERYTHING IN THIS CASE ON AN EXPEDITED BASIS. THE TRIAL COURT HAD SCHEDULED A HEARING FOR OCTOBER 15 AND 16. IT COULD HAVE HELD ONE. WE COULD HAVE RESOLVED ALL OF THIS. WE COULD HAVE OBTAINED THE RECORDS. BUT THE TRIAL COURT SAID NO. THE AGENCIES SAID NO. WE DON'T WANT TO HAVE ANYTHING TO DO WITH THAT.

YOU HAD, IN YOUR BRIEF, AND AS MR. NUNNELLEY MENTIONED, SOME INDICATION THAT YOU HAVE GOT SOME OTHER INVESTIGATION THAT WOULD SHOW OR ATTACK OR QUESTION THE GUILTY OF THIS DEFENDANT. YET NOW WE ARE HERE, AND WE ARE VERY CLOSE TO THE ACTUAL WARRANT BEING DATE, AND THERE IS NO PLEADING IN THIS FILE THAT EXPLAINS, BY WAY OF THE 3.8 A 1, A SUCCESSIVE -- BY WAY OF THE 3.851, A SUCCESSIVE MOTION, WHAT THAT IS. THAT IS TROUBLING, TO ME, AT LEAST, AND WHAT CAN YOU -- WHAT IS YOUR RESPONSE TO THAT?

TWO THINGS. ONE, WE OFFERED TO TELL THE TRIAL COURT THE NATURE OF OUR ONGOING INVESTIGATION. WE SAID WE ARE PURSUING OTHER THINGS BESIDES PUBLIC RECORDS. AND ALTHOUGH WE CAN'T DISCLOSE THIS TO THE STATE, WE WILL TELL YOU, EX PARTE, IF YOU DOUBT OUR GOOD FAITH, WHAT WE ARE DOING, IF YOU DOUBT OUR GOOD FAITH IN PREPARING A PRETRIAL MOTION. THE TRIAL COURT SUMMARILY REJECTED THAT, AND I CAN TELL YOU THAT WHAT WE ARE DOING IS TALKING TO WITNESSES. WE ARE OBTAINING AFFIDAVITS. WE ARE DOING EVERYTHING WE CAN TO INVESTIGATE THIS CASE AND TO FILE, AS WE TOLD THE TRIAL COURT, WE WANT TO FILE A 3.850. WE WANT TO DO IT AFTER THE INVESTIGATION IS BEING COMPLETED, AND WE ARE GIVEN ACCESS TO THE RECORDS. WE CONSIDER CRUCIAL TO RESOLVING THAT INVESTIGATION. THANK YOU.

THANK YOU, MR. SCHARDL. MR. NUNNELLEY. WE WILL BE IN RECESS. BAILIFF: PLEASE RISE.