We now go to the case on today's docket, the last case which is Kovaleski versus the state of Florida.
>> May it please the court.
I am the public defender in West Palm Beach on behalf of the appellate, Anthony Kovaleski, who was convicted after a second trial.
>> Could you speak up a little bit?
>> Oh, I'm sorry.
He was convicted after a second trial.
The issue --
Still can't hear?
>> Now we can hear.
>> The issue in the case is whether the state statute section 918.16 absolve the trial court from the obligation to inquire into the circumstances surrounding whether a trial should be close.
>> The first trial, the basis for the reversal of the first trial was that during the testimony, the victim who was then 16, that there was a partial closure of the courtroom?
>> That's right.
>> So I guess what I'm trying to find out is what changed between the first trial that caused this to be reversible error and this trial that the fourth district thought that it was not reversible?
>> The first trial statute that was in effect only provided foreclosure.
>> So the statute change.
>> Right.
>> I was trying to find that out, so it was subsection two was added after the first trial?
>> Yeah.
>> And then that helps me understand.
I just did not see that.
My other question and this sort of goes to the importance of the role of the public trial, and I

know if it's properly objected to and it's an improper closure and structural error but in this case when the state invoked the statute and the judge granted the partial closure, it was, who had been in the courtroom? Was it an assistant state attorney that was asked to leave?
>> It does not really clear who was in the courtroom.
There obviously were a lot of people in the courtroom before the trial close.
>> I read in the brief that they were saying the only people that left were the state attorneys.
>> No.
>> If you look at Alonzo they make a big point of explaining that the defendants had no relatives and they had ministers that had to leave.
It doesn't really matter who leaves for who stays and, there is still partial closure but to me, you are saying the record is not clear?
>> What the trial judge did, when the issue first came up, the issue came up in the trial judge asked the state, are you requesting closure in the state said yes.
There's not any indication that they directly asked for the trial to be closed.
The judge then basically has obviously read the statute.
The statute -- he reads the statute making it mandatory that the trial has to be closed and the trial judge then, the defendant makes his objection.
>> That is the other thing.
His objection is, I object to the record.
What does that mean?
>> Well, it means, judge let me interrupt.
We object and the judge keeps on going.
The judge recognizes that as an objection because later on when

he gets ready to exclude the public from the trial he says under 918.1703 of the transcript over defense objections the statute is quite clear.
The judge had decided it was mandatory and he knew what his duty was that he was going to do it.
>> Do you agree the statute is mandatory?
>> Well, the statute reads -- yes.
Our position is, and I think it is well supported by case law, is that even though the statute says there is mandatory duty the court, before it can exercise that has to conduct an inquiry.
>> So the first question is whether Waller applies partial closure, correct?
That is the first issue we would have to confront?
>> I think the first question --
>> As far as the statute is concerned and there is no issue raised for the constitutionality of the statute, it is a limited closure in terms of many designees that remain in the courtroom for the testimony and so unless the constitutionality is being challenged it seems to me there is not much more of an inquiry.
Am I missing something?
>> The first question is, can a statute obviate the requirement for any inquiry whatsoever?
>> The question is does Waller apply to partial closure?
>> Okay well, it is important to get the order of the questions right it does guess the statute can obviate the requirement for an inquiry, then the statute is valid.
The case law and the Supreme Court has withheld that the statute cannot by itself justify closing the courtroom.
>> Then shouldn't there have been a motion to declare the statute unconstitutional?

No, because the Florida cases make it clear, the second and third DCA both help with that procedure is not correct.
The statute is constitutional on its face but if you apply it without conducting the inquiry, that is where the problem arises.
That would make it unconstitutional and that is the correct analysis.
On its face, that statute is fine but you have to still make a constitutional and its application you have to conduct the inquiry.
As to the partial closure whether it is partial or impartial, first of all.
>> Wait a minute, before you move beyond that point, the point when the trial judge says that under this statute I am going to exclude certain people from the courtroom during this witness's testimony.
The defense had no obligation further to say anything?
>> I think at that point the judge had already made up his mind so I don't think there was anything further he could've said.
Because of the nature of the way this case came up the court had the fourth DCA decision where the District Court discussed the requirement of conducting an inquiry so I mean it wasn't like this was a completely blank slate that we were riding writing on and I think also the way that this all went down, the court, you know the defense attorney is interrupting the judge when he does make his objection.
The court says alright now, as far as far as 918.6 do you have that in the prosecutor says yes.
Mr. Stone the defense attorney for the record.
We object Your Honor.
What you want to do with the

shackles and then they go to 73
in the courts is just one
second.
He is returning to 918.16.
Over defense objections a
statute is clear I am obligated
as requested which has been done
been done on behalf of the
victim to clear the courtroom
and now he announces to
everybody, these are the people
that are allowed to stay.
Everybody else, you have to
leave.
And so in other words what I'm
saying is the court recognized
that an objection was being
made.
The court decided whatever
happens the statute controls and
I'm going to go at that.
>> So what more really are you
contending that the trial judge
should have done?
>> I think you have to conduct
an inquiry.
We think he had to conduct a
Waller and create which was
where the first question is, is
there an overriding state
interest because we are
saying --
>> Let me just ask you about
that one.
That is not provided by the
statute.
>> No, the statute does not say
that.
>> I'm saying if you interpret
the statute, the statute seems
to be trying to protect the
victims of these sexual assault,
correct?
>> That's right.
>> That does not satisfy.
You are saying that is not
satisfied the first prong of the
Waller case?
>> No, we still think it does
and the reason we don't think
Clements which is the DCA case
where the DCA says the statute
on its face is sufficient and we
don't have to do anything more
and it inquiry is required.

The first thing they said was the legislature has made findings that sexual battery victims, whatever happened to them was so dramatic that in every single case as a matter of law they do not have to testify in public in the Supreme Court specifically said the legislature cannot paint with such a broad brush because there are situations where the victims might not be troubled by having to testify at all.
Their names have already been published or their accounts have been told on multiple occasions.
>> They would probably be the ones who would not request that the trial judge close it.
>> The way that the statute is seems to me is being handled by the prosecution pretty much on its own in every case requests closure of the trial.
In this case like I said before, we don't have any indication on the record that the victim himself ever actually requested the trial be closed.
>> But wouldn't that be then, if there is that objection and the statute is not properly invoked on the victim who questioned it, that is the biggest objection that he would have made at the time, not after-the-fact.
>> The reason, the answer to that is no because the Supreme Court says it's the obligation of the state before they get closure to establish that there is an overriding state interest to be protected.
>> I'm talking whether the statute applies.
The statute applies only when the victim requests it.
I thought you were saying it's not even clear if the victim requested it.
>> It's not clear and okay that is another objection that could have been made that was not made.

>> The problem I have then again I'm not sure where this comes out because we have Alonzo and we have some pretty good arguments in terms of it.
If the overriding issue of interest is not protecting the victim of a sexual crime and it has to be a 23-year-old victim, 23 now versus a 10-year-old, and they are all treated the same, then it means that the judge makes a finding in a given case because even the victim requested, the victim is now older or older, 30 years old are 40 years old, they would be disregarding the statute if they conducted an inquiry and find that they are not going to close the courtroom.
Since you say I don't see how the statute can be construed constitutionally with the Waller requirement I guess is what I'm saying.
I'm not seeing how that is compatible.
One is mandatory and the other says you have got to go through four factors and if you don't do those four factors which include other alternatives, we can't close the courtroom.
>> Right.
>> So how do you reconcile with the statute of Waller?
>> The way the courts are reconciled as they have held statute is not unconstitutional as long as it is applied while the trial court is conducting --
And part of the reason of that is the right to a public trial is the right of the public to be able to view the trial and it's not just the victims right either.
It's a broader right and it covers various parties are various observers to the trial.
So just the state saying that as a matter of course we will have the victim testify in private is insufficient to satisfy the

constitutional requirement.
The globe newspapers, the U.S. Supreme Court case, they had a statute where it was minor victims who were not required to testify in public in the court said we recognize that could very well be a compelling interest but as is as compelling as that interest is it does not justify mandatory closure rule and it's clear that the circumstances of the public case manifest interest.
>> But isn't there a significant difference between a total closure and a partial closure?
>> You know what, don't think there is honestly because the courts apparently have been saying if any person that is not a party to the case is allowed to stay in the courtroom, including the victim's mother, the victim's advocate, that makes it only a partial closure? I mean, I don't understand how having a relative of the victim present --
>> That is not what we are talking about under the statute.
>> Sure it is, yes it is.
The statute decides whether this is a public trial or not.
There is additional factor of the press being allowed, a newspaper reporter being allowed.
Again, the press I don't think it's an adequate party or substitute for allowing the public to come in and one of the reasons for that is the press does not cover every single trial.
The vast majority of trials are not graced by any presence of the press.
The third DCA case, there was no press.
We have no indication that the press was there but we don't know who is present.
>> Now also Waller requires, in Waller I believe they closed the

court for seven days.
Was it for the entire trial?
Here was just for the victim and it seems to me the statute is narrowly tailored not to make a broad sweep in terms of closure.
>> The key person in a trial like this is obviously going to be the victim and therefore having nobody see the victim's testimony --
>> Nobody?
Not total?
>> Other than these limited personnel but not the public. It's the public's right to see the trial.
The press, that ends up being -- if Nancy Grace comes to the trial, she is a broadcaster, she comes to the trial and reports what she saw, is that an adequate substitute for the public?
I don't think so because just because you have some person from the press there doesn't mean that she is going to convey, he or she is going to convey the witness, what was actually said.
>> Did as a newspaper reporter or broadcaster?
It's not just for Nancy.
>> But if the press doesn't come than nobody is allowed to be there.
How does that protect the public's right?
If the defendants neighbor wants to come --
>> Is not a waiting process, whether or not the interest of the unnamed victim testifying in the second case?
I mean are you saying that there is never an instance where this can --
>> No, I am exactly saying what you are saying which it is a weighing process and the trial court asked away before it can make its ultimate decision and that is what the case says.
Just because it's partial

closure doesn't mean the court is absolved from having to do any inquiry whatsoever.
To the contrary, I mean Wainwright says what happens in those cases where they held partial closure does make a difference as they hold the standard of that first inquiry is different.
Instead of an overriding interest in the position of the fine -- court finds a substantial interest.
>> You are now down to less than a minute and a half of your total time.
>> Thank you.
But I do have to say that, I'm sorry.
That there has to be weighing down and this is a different standard and the additional factor of whether that remedy is sufficiently tailored, whether there are alternate means that has to be done by the trial court whether partial closure or total closure and in the Maryland case --
>> Your interpretation nullifies the statute.
>> No, don't think it does.
It says there is an indication that, if the victim makes that request in the courthouse and conducts that inquiry, and that is what the cases do say, thank you very much.
>> Good morning, Katherine McIntire on behalf of the state of Florida.
May it please the court.
They did not violate the right to public trial.
A closure under 918.16 does not run if all of the factor where in the Waller factor Inc. and accounted for and creating a narrowly tailored partial closure.
Before it began I wanted to address some questions that were raised as far as clarifying the first trial.

During the first trial there was
a right to public trial issue
however the way that it came
about was that the victim was
16.
The statue protected witnesses
under the age of 16.
When the trial court conducted a
closure under 918.16 there was
no objection however to the
victim's testimony at that point
it became evident that the
victim was no longer 16.
Hence he was no longer protected
under 918.16.
The defense counsel, everybody
had a bench conference, realized
he was no longer 16 so 92.16 was
no longer applicable and the
court will continue to be closed
over objection.
That is what happened.
>> When you say the courtroom
was closed in the first trial,
meaning there was nobody in
their other than the defendant
and the victim, nobody from the
press?
>> No, Your Honor.
What I mean is the courtroom was
partially closed under 918.16.
>> But once they found out so
the statute did not apply?
>> Who had been excluded?
>> During the first trial, I
have not looked specifically in
1998 however I do know it was
excluded and who was here at
this trial.
Who was there?
The record is clear that the
discussion about the 918.16
closure to place prior to the
closure during the jury
instruction in the discussion
about jury instruction.
At that point the trial court
explains and 918.16 closure to
clearly a gallery of people and
indicated when the victim takes
the stand unless you on this
list you are going to --
Ask to leave.
At that point a bench conference
is conducted and the trial court

asked the state attorney to ask one other state attorney to leave.
Then at that point they specifically identify there is a news reporter from the journal in the gallery.
So in as much as there is an indication that it's not clear whether the press was there the press was there.
Notwithstanding, even further during the victim's testimony there was a break.
Coming back from the break the trial court, the trial judge, I apologize, trial counsel brought her to the courts attention.
That trial counsel for Kovaleski brought it to the attention there was one person he wanted in the courtroom and that is a gentleman identified as a friend of Cactus Jack.
The trial court says, you want him come you got him and let him in.
As much as he is indicating Oh, now he is indicating on appeal my right to public trial was violated, where?
We follow the statute specifically as worded and when you brought something to our attention, we let him in.
There was no violation of the right to the a public trial.
>> I want to make sure your point of view.
What's the difference between a partial closure and total closure?
>> Total closure which is only essential personnel are allowed to stay.
>> It doesn't mean the whole trial is at any point, whether bar deer or a witness's testimony, only essential personnel are allowed to stay.
>> Yes.
If spectators are provided for it is now a partial closure.
>> That is why this is a partial closure because there are

designated people so that is why it is partial.
>> Your Honor it's a partial closure because in addition the press and partial people allow for victims advocates and immediate family members of the defendants and of the big dumb. Newspaper reporters and broadcasters, an exhaustive list of people are allowed to stay and in the closure can only be limited towards the people's testimony.
>> As I said, any sexual battery trial, oftentimes the victim's testimony -- here we have more than testimony from the ex-wife as well.
>> As far as the state's position as to whether Waller and the progeny applies to partial closure, or if there wasn't a statute here and the judge did the exact same thing without making any inquiry, would there be a problem?
>> Your Honor, it is our position that unless the closure is specifically 918.16, Waller applies.
The only difference is if it's a partial closure we may need substantial interest versus the compelling interest.
>> So that is helpful.
If it's another case, murder case and you have a victim of somebody wants to protect the judge would have to go through the Waller inquiry?
So why is it that if Waller is constitutionally mandated, how can the legislature trump the Constitution?
In other words, and less the statute follows the rule for a partial closure, how do we avoid that inquiry not being made before the statute is applied?
>> IF YOU PUT IT HAND IN HAND WITH WALLER, PUT IT RIGHT NEXT TO EACH OTHER, IT DOESN'T OVERRULE OR IT DOESN'T TRY TO IN ANY WAY, SHAPE OR FORM.

IT INCORPORATES, IT EMBRACES
WALLER.
>> DOES IT MAKE A DIFFERENCE IF
YOU HAVE A 10-YEAR-OLD VICTIM,
YOU KNOW, WHOSE GUARDIAN OR
PARENT HAS REQUESTED DISCLOSURE
ON THE VICTIM'S BEHALF OR A
40-YEAR-OLD THAT WANTS THE WORLD
TO KNOW WHAT HAPPENED, YOU KNOW,
WHAT HAPPENED TO HIM OR HER?
I MEAN, DOES THAT, DOES THE
JUDGE'S DISCRETION GET CHANGED
DEPENDING ON THE AGE OF THE
VICTIM?
>> NO, YOUR HONOR.
IN THE SECOND SITUATION WHERE
THE OLDER VICTIM WANTS THE WORLD
TO KNOW, IF THE VICTIM WANTED
THE WORLD TO KNOW, HE WILL NOT
REQUIRE --
>> SO IS THERE ANY INFORMATION
HERE THAT THE VICTIM REQUESTED
THIS CLOSURE?
>> NO, YOUR HONOR.
THERE IS NO -- I CLEARLY RECALL
A CONVERSATION DURING THE TRIAL
WHEREIN THE STATE WAS --
I REVIEWED THE TRIAL TRANSCRIPTS
REAL QUICK, I ONLY HAVE THE
SUBSTANTIVE TRIAL IF I MAY BE
ABLE TO SUPPLEMENT WITH THAT, IF
I FIND IT.
HOWEVER, IF IT'S NOT IN THE
TRIAL TRANSCRIPT, CONVERSATIONS
BETWEEN THE VICTIM AND THE
PROSECUTORS DON'T ALWAYS HAPPEN
ON THE RECORD.
ESPECIALLY WHEN YOU'RE PREPARING
YOUR WITNESS.
SO THE VICTIM MAY NECESSARILY
HAVE ASKED THE PROSECUTOR THAT
THEY WOULD LIKE THEIR PRIVACY
INTERESTS PROTECTED, AND I WOULD
SUBMIT TO THIS COURT THAT THIS
VICTIM WAS ESPECIALLY HESITANT.
>> WELL, WE DO KNOW NOW.
I AGREE AS TO THE SPECIFIC ISSUE
OF THE VICTIM, BUT WHEN THE
JUDGE SAYS I UNDERSTAND YOUR
OBJECTION AND SUBJECT TO YOUR
OBJECTION I'M OVERRULING IT --
>> UH-HUH.
>> -- THERE'S NO QUESTION THAT
THEY'RE TALKING ABOUT WHETHER
THE STATUTE SHOULD BE INVOKED OR

NOT.
I MEAN, SO THE JUDGE WAS
DETERMINED TO APPLY THE STATUTE.
DID THE -- AT THAT TIME DIDN'T
ALONZO AND THE CASE, YOU HAD
CLEMENS, YOU ALREADY HAD A
CONFLICT BETWEEN THE DISTRICTS.
>> UH-HUH.
>> HAD THE FOURTH DISTRICT
WEIGHED IN ON THE ISSUE AT THE
TIME OF THIS SECOND TRIAL?
>> NO, YOUR HONOR.
AT THIS POINT THE ONLY TIME THAT
HAD THOUGHT ABOUT THE ISSUE WAS
IN THE CONTEXT OF WHEN 91816 WAS
NO LONGER APPLICABLE DURING THE
FIRST TRIAL.
>> SO THE JUDGEMENT HAD EITHER
CLEMENS TO FOLLOW OR ALONZO.
>> YOUR HONOR -- YES.
JUDGE HAS EITHER CLEMENS TO
FOLLOW OR ALONZO.
IN OUR POSITION CLEMENS WAS THE
APPROPRIATE ONE.
HOWEVER, YOUR HONOR, I'D ALSO
LIKE TO DISCUSS ALONZO FOR A
SECOND, HOW IT WAS COMPLETELY
INDISTINGUISHIBLE FROM WHAT WE
HAVE HERE.
IN ALONZO THE COUNSEL HAD THE
DISCUSSION WITH THE TRIAL COURT
ABOUT 91816.
HE OBJECTED AND SPECIFICALLY
INDICATED IT WOULD VIOLATE HIS
RIGHT TO PUBLIC TRIAL.
LATER ON WHEN THE STATUTE WAS
ACTUALLY INVOKED PRIOR TO THE
VICTIM'S TESTIMONY, HE OBJECTED
AGAIN INDICATING HIS UNCLE WAS
BEING ASKED TO LEAVE.
SO HERE WHAT WE HAVE WHEN THE
DISCUSSION WAS BEING HAD DURING
JURY INSTRUCTIONS, AND I BELIEVE
20-40 PAGES LATER, 20 PAGES
LATER, WHEN THE CLOSURE ACTUALLY
TOOK PLACE, THE TRIAL COUNSEL
STOOD SILENT.
I WOULD SUBMIT TO THIS COURT
THAT AT THE VERY LEAST ONCE YOU
INVOKE THE CASE AND YOU'RE ABOUT
TO BE HARMED, THAT'S WHEN IT'S
INCUMBENT UPON YOU TO JUMP UP
AND SAY MY UNCLE'S BEING ASKED
TO LEAVE, I ASKED FOR HIM TO
BE -- I ASK IF YOU COULD,

PLEASE, CONSIDER HIM TO STAY,
THINGS OF THAT SORT.
HERE WE DON'T HAVE WHAT HAPPENED
IN ALONZO, WE DON'T HAVE A
SPECIFIC --
>> BUT WE KNOW, THOUGH, BUT FOR
THE STATUTE THAT WOULDN'T BE
REQUIRED.
IN OTHER WORDS, IF YOU OBJECT
AND SAY I OBJECT TO THIS
CLOSURE --
>> UH-HUH.
>> -- THEY'RE NOT REQUIRED TO
SHOW HOW IT HARMED THEM AS A
STRUCTURAL ERA.
>> I DISAGREE WITH THAT, YOUR
HONOR, INASMUCH AS HE COULD HAVE
OBJECTED TO THE CLOSURE.
HE MAY NOT HAVE NECESSARILY
OBJECTED TO THE
CONSTITUTIONALITY OF THE CLOSURE
AS MUCH AS HE OBJECTED TO -- I
DIDN'T SEE A CONVERSATION
BETWEEN THE VICTIM AND THE
PROSECUTOR.
I DON'T THINK THAT THE VICTIM
ASKED FOR THIS.
OR YOU ARE, OR AS WHAT HAPPENED
IN ALL THE SECOND DCA CASES,
THEY WILL NOW SIGN THE STATUTE
AND EXCLUDED EVERYBODY, OR
EXCLUDED PEOPLE THAT WERE
SPECIFICALLY INCLUDED IN THE
STATUTE.
AT THAT POINT YOU HAVE AN ACTUAL
BASIS.
BUT AS FAR AS TO GO AHEAD AND
SPECULATE, WELL, OBVIOUSLY BY
OBJECTING TO THE RIGHTS OF THE
FACT THAT THERE ARE NO, THERE IS
NO HEARING, THAT THE FACTORS
HAVEN'T BEEN CONSIDERED AND THIS
IS A VIOLATION OF MY RIGHT TO
PUBLIC TRIAL, THERE WAS NO KIND
OF OBJECTION TO THE FORM,
THERE'S NO, THERE WAS NO
CONSTITUTIONALITY CHALLENGE,
THERE WAS NOTHING THAT WAS SAID
OTHER THAN I OBJECT FOR THE
RECORD.
AND I WOULD THINK THAT WE DON'T
WANT TO TAKE THAT HUGE LEAP INTO
THINKING THAT THAT'S WHAT THEY
WERE TRYING TO DO.
>> WHAT WERE THEY TRYING -- WHAT

WERE THE OBJECTIONS OTHER THAN
SAYING THAT THE STATUTE DID NOT
APPLY?
I MEAN, WHAT OTHER, WHAT OTHER
BASIS FOR THE OBJECTION COULD
THERE BE?
I MEAN, I AGREE WITH YOU THAT
THERE'S NO ISSUE ABOUT THE
VICTIM'S NOT INVOKING IT.
BUT, AND I'M CONCERNED THAT IF
WE DECIDE THIS CASE ON THE BASIS
THIS WAS NOT A PROPER OBJECTION,
BUT ALONZO WAS, WE'RE JUST GOING
TO GET INTO POSTCONVICTION
STATUS BECAUSE IT'S A PROPER
OBJECTION SHOULD HAVE THEN
REQUIRED THE INQUIRY.
THEN WE'RE BACK TO, YOU KNOW,
AREN'T WE BACK TO WHERE WE
STARTED?
I GUESS WHAT I WAS ASKING YOU,
THOUGH, WAS ONCE AN OBJECTION IS
MADE, ASSUME IT'S A PROPER
OBJECTION, THAT YOU DON'T HAVE
TO SHOW ON APPEAL THAT THE ERROR
WAS HARMFUL OR IT'S A STRUCTURAL
ERROR --
>> WE FIND IN VIOLATION OF THE
RIGHT TO PUBLIC TRIAL.
THAT'S ASSUMING WE HAVE A RIGHT
TO PUBLIC TRIAL.
AND, YOUR HONOR, JUST TO GO
AHEAD AND ANSWER YOUR QUESTION
AS FAR AS SHOULD THIS COME BACK
AS A 3850 OR WHAT HAPPENS IF IT
COMES BACK IN 3850, HE STILL HAS
TO CHOOSE, EXCUSE ME, HE STILL
HAS TO SHOW PREJUDICE.
HE CANNOT SHOW PREJUDICE.
THE ONE PERSON HE WANTED THERE
STAYED, HE DIDN'T OBJECT TO
ANYBODY ELSE BEING ASKED TO
LEAVE.
YOUR HONOR, WE DO NOT WANT TO GO
TOO FAR AWAY FROM WHAT THE RIGHT
TO PUBLIC TRIAL WAS CREATED FOR,
WHAT IT HONORS, AND THAT IS THE
PROTECTION OF THE DEFENDANT OR,
BASICALLY, ANYBODY ACCUSED OF A
CRIME FOR THE INNOCENT, THAT
THEY NOT BE UNJUSTLY PROSECUTED
AND FOR THE GUILTY THAT THEY MAY
BE AWARDED, AFFORDED A FAIR
TRIAL.
NOTHING THAT THE TRIAL COURT DID

VIOLATED THIS RIGHT.
SO WE ASK YOU TO, UNLESS THERE'S ANY OTHER QUESTIONS FROM THIS COURT, WE WOULD ASK THAT YOU AFFIRM THE FOURTH DCA'S OPINION BELOW AND AFFIRM MR. KOVALESKI'S CONVICTION.
THANK YOU.
>> VERY BRIEF.
>> I WILL GIVE YOU ONE ADDITIONAL MINUTE.
>> OKAY.
THE RIGHT TO PUBLIC TRIAL IS NOT JUST THE DEFENDANT'S.
ENTERPRISE THE UNITED STATES SUPREME COURT ADDRESSED A SITUATION WHERE THE DEFENDANT REQUESTED AND THE STATE REQUESTED A TRIAL BE CLOSED BECAUSE OF DANGER OF UNFAIR PUBLICITY, AND THE SUPREME COURT SAID THAT WAS NOT ABOUT -- THAT WAS PURSUANT TO A STATUTE.
THE SUPREME COURT SAYS YOU CAN'T DO THAT BECAUSE THE PUBLIC HAS A RIGHT TO BE PRESENT, AND CAN IT'S NOT JUST PERSONAL TO THE DEFENDANT.
SO EVERYTHING THAT WAS JUST SAID, I THINK, IS REALLY NOT WELL FOUNDED.
AND THE SECOND THING I WANT TO SAY IN THE FOURTH DCA OPINION REVERSING THE FIRST CONVICTION, THE COURT NOTED IN A FOOTNOTE THAT I THINK IT WAS A SECOND DCA CASE HAD ALREADY BEEN DECIDED THAT A WALLER INQUIRY WAS REQUIRED EVEN IN CASES OF PARTIAL CLOSURE.
SO THIS ISSUE WAS OUT THERE AT THE TIME THAT THE SECOND TRIAL TOOK PLACE.
THANK YOU VERY MUCH, AND THANK YOU FOR YOUR INDULGENCE.
>> WE THANK YOU BOTH FOR YOUR ARGUMENTS, AND THAT'S THE LAST CASE TODAY, SO THE COURT WILL NOW STAND ADJOURNED.
>> ALL RISE.