State of Florida vs Darren Jerome Goode

THE NEXT CASE IS STATE VERSUS GOOD -- STATE VERSUS G, WHICH MR MR. POLIN IS, ALSO, ON, AND SO -- STATE VERSUS GOODE, WHICH MR. POLIN IS ALSO ON, AND SO WE WILL JUST PROCEED.

YOU CAN CONTINUE WITH THE ANSWER.

PICKING UP WHERE WE JUST ENDED, I THINK THE ANSWER TO THAT QUESTION IS BASICALLY THAT THOSE OTHER STATUTORY SCHEMES ARE PURE COMMITMENT SCHEMES, WHERE THE CUSTODY IS SOLELY ATTRIBUTABLE TO THE COMMITMENT PROCESS, WHEREAS OUR LEGISLATURE ENVISIONED A NORM, WHEREBY THE COMMITMENT PROCESS WOULD COMMENCE DURING THAT LAST YEAR OF THE PRISON SENTENCE AND, INDEED, SUBSTANTIALLY AT AN EARLY STAGE, AND WE ARE TALKING ABOUT LEGISLATIVE INTENT HERE, NOT A QUESTION OF THE FACTS OF ANY PARTICULAR CASE, HOW IT WORKED OUT, BUT LEGISLATIVE INTENT, AND DURING THAT LAST YEAR OF THE PRISON SENTENCE, TEN MONTHS PRIOR TO THE EXPIRATION OF THE PRISON SENTENCE, EITHER 30 DAYS, 50 DAYS, OR 180 DAYS HAS ANY CONSTITUTIONAL SIGNIFICANCE, SINCE THE PERSON IS NOT GOING ANYWHERE, AND THERE ARE NO CUSTODIAL RESTRAINTS ASSERTED ON THAT PERSON, AS A RESULT OF THE COMMITMENT CASE.

BUT WE KNOW AS A MATTER OF FACT, HAVE WE NOT, THAT THE WAY THIS HAS WORKED OUT ON THE GROUND IS THAT THESE CASES, IN MANY INSTANCES HAVE BEEN BROUGHT EITHER SHORTLY BEFORE THEY ARE RELEASED OR THE DAY THEY ARE RELEASED. OBVIOUSLY THAT IS WHAT HAS GIVEN RISE --

THERE HAVE BEEN SOME, BUT, AGAIN, WE ARE DEALING WITH A STATUTE HERE. WE ARE DEALING WITH STATUTORY CONSTRUCTION, AND THAT IS LEGISLATIVE INTENT, AND THAT IS OBVIOUSLY NOT WHAT THE LEGISLATURE ENVISIONED, WHEN IT CREATED THIS SCHEME, SO YOU CANNOT USE THESE FACTS TO SAY THAT THE LEGISLATURE INTENDED THE STATUTORY PERIOD TO BE MANDATORY, WHEN THE LEGISLATIVE SCHEME, COUPLED WITH THE PURPOSE OF THE LEGISLATION, THE PROTECTION OF THE PUBLIC FROM INDIVIDUALS WHO ARE DANGEROUS, AND THE PROVIDES OF -- AND THE PROVISION OF TREATMENT TO THOSE WHO ARE IN NEED OF IT, ALL OF THAT CONSPIRES TO COMPEL THE CONCLUSION THAT NONE OF THIS WAS INTENDED TO BE JURISDICTIONAL, ESPECIALLY WHETHER THE LEGISLATURE EXPRESSLY FAILED TO PROVIDE ANY REMEDY FOR FAIL YOUR TO COMPLY WITH THE 30-DAY PERIOD AND YOU HAVE TWO POSSIBLE REMEDIES THAT CAN BE UTILIZED TO AMELIORATE THE SITUATION. ONE, YOU HAVE THE USE OF THE ADVERSARIAL PROBABLE CAUSE HEARING, AND REGARDLESS OF WHAT THE STATUTE NOW SAYS, THE FOURTH DISTRICT HAS SAID, THROUGH A COMBINATION OF TWO CASES, VALDEZ AND COVELL --

WHO FILED THIS REQUEST? WHY WOULD THE DEFENDANT FILE A REQUEST FOR AN ADVERSARIAL PROBABLE CAUSE HEARING?

THAT IS HOW THE FOURTH DISTRICT ESSENTIALLY LEFT IT, IN A SERIES OF TWO OPINIONS. ORIGINALLY VALDEZ AND CODIFIED BY A SUBSEQUENT OPINION BY THE NAME OF COBELL. THEY HAD ISSUES REGARDING THE ADVERSARIAL PROBABLE CAUSE HEARINGS, AND THAT IS WHAT THEY SAID, SO AT LEAST UNTIL SOME OTHER APPELLATE COURT ACROSS THE STATE SAYS SOMETHING TO THE CONTRARY, THAT IS THE CURRENT LAW. THE LEGISLATURE DID NOT INTEND IT AS SUCH. THE LEGISLATURE PROVIDED, CURRENTLY IN 394.915, --

IT JUST SEEMS IF YOU CAN'T DISMISS THE PETITION, IF YOU CAN'T RELEASE THE DEFENDANT, THAT THE 30-DAY PERIOD IS REALLY PRETTY ILLUSIONRY, ISN'T IT? I MEAN, WHAT IS THE POINT OF IT?

THE POINT OF IT WAS, REALLY, WHEN, AND AGAIN IT GOES BACK TO THE LEGISLATURE'S EFFORT TO DO THIS IN THE LAST YEAR OF THE PRISON SENTENCE, THE LEGISLATURE WAS TRYING VERY HARD, THROUGH ITS --

YOU HAVE ALREADY SAID THAT THE 30-DAY PERIOD REALLY HAS NO MEANING, WHEN THE GUY IS ALREADY IN PRISON. WHAT DIFFERENCE DOES IT MAKE ON THE OTHER END, WHEN IT BECOMES MORE IMPORTANT, DOESN'T IT?

THE LATER ON YOU GET, IT OBVIOUSLY BECOMES MORE IMPORTANT BUT WHAT THE LEGISLATURE WAS TRYING TO DO AND HOPING TO DO WAS TO PUSH THESE CASES THROUGH QUICKLY ENOUGH, DURING THE LAST YEAR OF THE PRISON SENTENCE, TO AVOID ALL OF THESE TYPES OF PROBLEMS, AND FOR A VARIETY OF REASONS, THE NEWNESS OF THE ACT, ADMINISTRATIVE PROBLEMS, PERSONNEL PROBLEMS, AT LEAST AS OF THIS POINT IT HASN'T REACHED THAT STAGE YET, ALTHOUGH IT IS MY OWN UNDERSTANDING THAT PROGRESS HAS BEEN MADE AND THAT SOME CASES ARE, INDEED, TURNED OVER TO THE STATE ATTORNEYS OFFICE WHILE IN ADVANCE OF THE EXPIRATION OF SENTENCES, BUT SOMETIMES IT IS NOT AT ALL, AND IT IS NOT A MATTER THAT ANYONE CAN TRULY CONTROL, IN SOME UNIQUE CASES. BUT --

WHEN YOU GET A CHANCE, WILL YOU TELL US WHAT THE DIFFERENCE IS IN THE GOODE CASE AND THE KINDER CASE.

IN GOODE, THE TRIAL COURT ACTUALLY IMPOSED THE REMEDY OF DISMISSAL. THE TRIAL COURT DID, THE STATE, WHEN IT DIDN'T GO TO TRIAL WITHIN 30 DAYS, THE PETITION HAD BEEN FILED OCTOBER 28. THERE HAD BEEN A FIRST HEARING ON NOVEMBER 22, AT WHICH TIME COUNSEL WAS APPOINTED. IT WAS ANOTHER CASE, WHICH THE REASONS ARE NOT CLEAR THAT COUNSEL DID NOT GET APPOINTED EARLY ENOUGH IN THAT 30-DAY PERIOD, AND AT THAT HEARING, WHICH WAS NOT BEFORE THE ASSIGNED JUDGE ON THE CASE BUT A SUBSTITUTE JUDGE SITTING IN, DUE TO THE UNAVAILABILITY OF THE JUDGE, THE DEFENSE, PRIOR TO THE EXPIRATION OF THE 30 DAYS, ESSENTIALLY MOVED FOR DISMISSAL OF THE CASE, SAYING THERE IS NO WAY WE CAN GET READY IN SIX MORE DAYS, AND THEY BASICALLY CONTINUED WITH THAT THEME, WHEN THE CASE WAS, WHEN THE JUDGE SAID I WILL LET -- I WILL LEAVE THIS FOR THE ACTUAL JUDGE ON THE CASE TO DECIDE, AND THE CASE WAS BACK BEFORE THE JUDGE, ABOUT TWO MONTHS LATER, ON THE MOTION TO DISMISS, AND WENT UP ON APPEAL, AND IT WAS BRIEFED IN THE SECOND DISTRICT ON THE DISMISSAL QUESTION, AND THAT COURT IMMEDIATELY CERTIFIED THE QUESTION TO THIS COURT, BRINGING US WHERE, BRINGING US UP WHERE WE ARE NOW, AND SO IT IS REALLY JUST A QUESTION OF THE ACTUAL REMEDY IN THE CASE, AND THAT ONE DOES GO MORE DIRECTLY TO WHETHER IT IS JURISDICTIONAL INNATE THAN THE KINDER ISSUE. THE KINDER ISSUE DOES. AND WHAT I WOULD, AGAIN --

BUT THIS CASE DOES NOT DEAL WITH WHETHER OR NOT, IF IT IS DISMISSED, CAN BE REFILED.

THAT IS NOT AT ISSUE YET, SINCE IT WAS NOT ATTEMPTED IN THIS CASE.

ISN'T THIS 30-DAY PERIOD OR IS THIS 30-DAY PERIOD A RULE OF PROCEDURE THAT HAS BEEN ENACTED BY THE LEGISLATURE?

I CERTAINLY AGREE WITH THAT, AND I BELIEVE, I WOULD SUGGEST TWO THINGS. FIRST, AS THE FIRST DISTRICT DID IN THE REESE CASE, THEY SAID, I THINK IT IS FAIR TO SUMMARIZE THEIR OPINION AS SAYING THAT THEY WOULD HAVE TO VIEW IT AS DIRECTORY, TO AVOID -- IF IT WERE

MANDATORY, IT WOULD, IN EFFECT, BE A RULE OF PROCEDURE, AND THE ONLY WAY TO AVOID IT BEING AN UNCONSTITUTIONAL RULE OF PROCEDURE IS TO TREAT IT AS DIRECTORY, AND YOU HAVE GOT THAT PROBLEM, YES, AS IN THE RJF CASE FROM IS HE NOT ORATE YEARS AGO WITH THE -- FROM SEVEN OR EIGHT YEARS AGO, WITH THE STATUTE, REGARDING THE SPEEDY RULE, AND THIS COURT SAID IT IS THE RULE OF PROCEDURE THAT APPLIES, AND SO YOU HAVE THE 30-DAY PROVISION AND YOU YOU HAVE THE NORMAL CIVIL -- AND YOU HAVE THE NORNLAL CIVIL RULES, 141.140, WHICH BRINGS IT TO THE COURT'S ATTENTION AND SAYS THIS IS AT ISSUE.

BUT DOESN'T THAT IGNORE THE SUBSTANTIVE NATURE OF THIS STATUTORY SCHEME? THAT IS THAT THE SUBSTANTIVE NATURE OF THIS STATUTORY SCHEME IS CONTEMPLATING IMPRISONING SOMEBODY FOR SOMETHING THEY HAVEN'T DONE YET, AND AREN'T, IN A SITUATION LIKE THIS, AREN'T THE PROCEDURAL RULES AND THESE TIME PERIODS CLEARLY TIED TO THE CONCERNS, THE CONSTITUTIONAL CONCERNS OF WHETHER OR NOT A SUBSTANTIVE SCHEME LIKE THIS IS CONSTITUTIONAL?

WELL, AGAIN, SINCE THE LEGISLATIVE SCHEME IS, YOU KNOW, FOCUSED ON THAT LAST YEAR OF PRISON SENTENCE, I DON'T BELIEVE ANY OF THOSE CONSTITUTIONAL CONCERNS ARE A RIZED DURING THE PERIOD OF TIME THAT THE LEGISLATURE WAS TRYING TO DO THIS IN, AND THAT IS THE QUESTION OF STATUTORY CONSTRUCTION, FROM THE POINT OF VIEW OF THE LEGISLATIVE INTENT. THE LEGISLATURE DID NOT REALLY CONTEMPLATE THAT THE CASES WOULD SPILL OVER.

THE LEGISLATURE COULD HAVE SAID, COULD THEY HAVE NOT, IF THE PERSON IS STILL IMPRISONED, THEN WE ARE NOT CONCERNED ABOUT THIS 30-DAY PERIOD, AND THE PERIOD, REALLY, DOESN'T EVEN APPLY, BUT THE LEGISLATURE DIDN'T SAY THAT, DID THEY?

WELL, I THINK IN A SENSE THEY DID, BECAUSE THEY SET UP A SCHEME PURSUANT TO WHICH ONE YEAR PRIOR TO THE END OF THE PRISON SENDS -- SENTENCE, NOTICES GO OUT TO RELEVANT PARTIES. THE EVALUATION IS TO BE DONE WITHIN 45 DAYS AND TURNED OVER TO THE STATE ATTORNEY, WHO PRESUMABLY GETS THE CASE WITH APPROXIMATELY TEN MONTHS LEFT, SO, YES, I THINK THE LEGISLATURE DID EFFECTIVELY SAY THAT WE EXPECT THESE CASES TO BE PROSECUTED WITHIN THAT LAST YEAR AND FAIRLY EARLY ON, AND IF YOU LOOK AT THE LEGISLATIVE HISTORY OF THE MAY 1999 AMENDMENTS, IN THAT LEGISLATIVE HISTORY, YOU WILL FIND MORE ABOUT THIS, BECAUSE THE LEGISLATURE WAS, AT THAT POINT IN TIME, CONCERNED THAT THERE WERE A LOT OF ADVERSARIAL PROBABLE CAUSE HEARINGS WERE BEING HELD, WHEN THESE CASES SPILLED OVER PAST THE PRISON SENTENCE, AND THE LEGISLATURE EXPRESSLY MOVED THE PERIOD OF TIME UP, FROM SIX MONTHS IN ADVANCE TO ONE YEAR IN ADVANCE, TO MINIMIZE THE NEED, THE POSSIBILITY OR LIKELIHOOD THAT ANY SUCH ADVERSARIAL EVIDENTIARY HEARING OR PROBABLE CAUSE HEARING WOULD BE HELD.

IS THE SAME PERIOD WOULD APPLY TO THOSE THAT ARE BEING HELD BEYOND THE EXPIRATION OF THEIR SENTENCE, BUT IT SHOULD NOT APPLY TO THOSE WHO ARE BEING HELD PURSUANT TO THEIR SENTENCE? IT IS FAIRLY STRAIGHTFORWARD.

THE LEGISLATURE IS NOT CONSTRAINED TO SAY SOMETHING IN A PARTICULAR WAY, AND THE LEGISLATURE DID EFFECTIVELY SAY THAT, THROUGH THE ENTIRE SCHEME THAT THEY STRUCKDURED. I THINK THAT IS THE BOUGHT LOCAL LINE, AND WHEN YOU COUPLE THAT WITH -- THE BOTTOM LINE, AND WHEN YOU COUPLE THAT WITH THE PURPOSE OF THE ACT, PROVIDING PROTECTION FOR THE PUBLIC AND PROVIDING TREATMENT FOR THOSE WHO ARE IN NEED OF IT, PEOPLE WITH DANGEROUS MENTAL HEALTH PROBLEMS, I THINK YOU HAVE TO PROVIDE, AND GIVEN THE EXPRESS REMEDY TO CONCLUDE THAT THIS IS JURISDICTIONAL INNATE AND THAT THE LEGISLATURE INTENDED TO INCLUDE ANY INDIVIDUALS TO SLIP THROUGH THE ACT IN THAT MANNER.

WHERE ARE THESE BEING UTILIZED PRIOR TO TRIAL?

THERE ARE TWO FACILITIES BEING USED BY THE DEPARTMENT OF CHILDREN AND FAMILIES. ONE WAS JUST SET UP EFFECTIVE A FEW MONTHS AGO IN ARCADIA, FLORIDA CIVIL COMMITMENT CENTER IS THE NAME THAT IT GOES BY, AND IN THAT FACILITY, THEY HOUSE THOSE WHO HAVE ACTUALLY BEEN COMMITTED, AND THEY, ALSO, HOUSE A SUBSTANTIAL NUMBER OF THOSE WHO ARE AWAITING TRIAL AFTER THEIR PRISON SENTENCES HAVE EXPIRED.

IS THERE ANYTHING -- I MEAN, ARE THEY HAVING ANY KIND OF TREATMENT OR NOT?

YES, THERE IS A MENTAL HEALTH STAFF THAT HAS BEEN IN PLACE IN THAT FACILITY, PSYCHOLOGISTS AND SOCIAL WORKERS OR PSYCHOTHERAPISTS AND OTHER MENTAL HEALTH PROFESSIONALS.

BUT I GUESS THE QUESTION IS ARE THEY ACTUALLY SEEING ALL OF THESE PEOPLE OR ONLY THOSE WHO HAVE ACTUALLY BEEN COMMITTED?

THE DEPARTMENT OF CHILDREN AND FAMILIES HAS MADE THE SAME LEVEL OF TREATMENT AVAILABLE TO THOSE WHO ARE AWAITING TRIAL, IF THEY CHOOSE TO ACCEPT IT. SOME OF THEM DO AND SOME OF THEM DON'T. SOME OF THEM, BASED ON ADVICE OF COUNSEL, HAVE CHOSEN NOT TO, BUT THE DEPARTMENT OF CHILDREN AND FAMILIES MAKES IT AVAILABLE TO ANYONE WHO WANTS IT AT THE SAME LEVEL. THAT HAS BEEN THEIR POLICY.

IS SOMEBODYABLESABLE, NOW THAT THESE -- IS SOMEBODY ABLE, NOW THAT THESE SENTENCES ARE BEING IMPOSED, WHERE THERE IS A SEXUAL OFFENSE AND THE DEFENDANTS KNOW THAT THERE IS A POSSIBILITY OF THEM BEING SUBJECTED TO INCARCERATION AFTER THEIR PRISON TERM, IS TREATMENT BEING AFFORDED, IF THEY WANT TREATMENT THE DAY THEY GET INTO PRISON, SO THAT THEY COULD MAYBE AVOID THE INDEFINITE PERIOD OF COMMITMENT? IS THAT BEING AFFORDED TO THEM?

THAT OBVIOUSLY GOES BEYOND THE FACTUAL DEVELOPMENT OF ANY OF THE CASES BEFORE THE COURT TODAY. WHAT I CAN SAY IS THAT THE FLORIDA STATUTES DO DIRECT THAT THE DEPARTMENT OF CORRECTIONS PROVIDE MENTAL HEALTH, A CONTINUUM OF MENTAL HEALTH SERVICES, A VERY BROAD DEFINITION OF MENTAL ILLNESS, WHICH I BELIEVE WOULD INCLUDE VARIOUS MENTAL ABNORMALITIES CONNECTED TO SEXUALLY VIOLENT CONDUCT, AND THERE IS SOME THAT IS PROVIDED, FROM WHAT I HAVE SEEN, IT IS VARIED IN MOST OF THE CASES. IT PROBABLY AMOUNTS TO GROUP COUNSELING SESSIONS ONCE A WEEK, DURING THE LAST NINE MONTHS OR SO OF THE PRISON SENTENCE. IN SOME CASES IT HAS BEEN A SUBSTANTIAL AMOUNT MORE THAN THAT. I HAVE SEEN SOME CASES WHERE THERE HAS BEEN SOME INDIVIDUALIZED TREATMENT FOR A MATTER OF YEARS, BUT EXACTLY THE PARAMETERS, SINCE THAT REALLY WASN'T ADD ISSUE IN ANY OF THESE CASES, IT IS NOT EASY TO SAY AT THIS POINT IN TIME. IN MY APPENDIX, IN THE NEXT CASE THE WESTERHEIDE KAYE CASE, I HAD -- WESTERHEIDE CASE, I HAD INCLUDED SOME ADMINISTRATIVE DOCUMENTATION THAT HAS SET FORTH THE NATURE OF THE PROGRAM OF MENTAL HEALTH SERVICES, SO THERE IS SOME IN SOME CASES. I THINK IT CAN BE SAID THAT THERE IS A FAIR AMOUNT, BUT I DON'T BELIEVE THAT IT CAN BE SAID THAT IN ALL CASES, AND NOT NECESSARILY FROM THE BEGINNING OF THE SENTENCE. IN THE TIME I HAVE REMAINING, I WOULD LIKE TO TALK A LITTLE BIT MORE ABOUT THE NATURE OF THIS 30-DAY TRIAL AND, PERHAPS, PICK UP ON THE SUGGESTION THAT HAS BEEN MADE IN A FEW APPELLATE COURT OPINIONS, INCLUDING THE SECOND DISTRICT BELOW, THAT PERHAPS SOME OF THESE MATTERS SHOULD BE REFERRED TO AN APPROPRIATE RULES COMMITTEE. I THINK, BASED ON THE GENERAL EXPERIENCES, NOT JUST FROM WHAT YOU HAVE SEEN TODAY BUT FROM OTHER CASES THAT, SOME OF WHICH HAVE BEEN REPORTED AND SOME OF WHICH NOT, BUT THERE CERTAINLY IS A SUBSTANTIAL QUESTION AS TO WHETHER 30 DAYS IS A REASONABLE PERIOD OF TIME FOR THE NATURE OF THESE CASES. OPPOSING COUNSEL HAS INDICATED THAT, YES, THEY CAN BE TRIED WITHIN THAT TIME, AND MANY STATE ATTORNEYS WOULD UNDOUBTEDLY SAY, IF THEY NEED TO AND THE JUDGE SAYS IT IS BEING SET FOR TRIAL, THEY WILL DO IT, BUT THE NATURE OF

THESE CASES IS, REALLY, JURY TRIALS. YOU ARE TALKING ABOUT TRIALS THAT ARE A MINIMUM OF 3-DAY TRIALS, MAYBE 5-DAY TRIALS, SOMETIMES MORE. YOU HAVE GOT GENERALLY TWO EXPERTS PER SIDE AND SOMETIMES ADDITIONAL WITNESSES. THESE ARE SUBSTANTIAL JURY TRIAL CASES.

DOESN'T THE STATUTE PROVIDE THAT EITHER SIDE CAN MOVE FOR A CONTINUANCE.

YES.

SO THAT TAKES CARE OF THAT SITUATION. BUT THE PROBLEM, REALLY, BECOMES WHETHER COUNSEL IS APPOINTED IN A TIMELY WAY, BUT YOU ARE REALLY SUGGESTING THAT THIS IS ALL, THIS PROVISION IS PROCEDURAL, WHICH WOULD MAKE IT EASY ESSENTIALLY, IF WE WERE REQUIRED TO FOLLOW IT, UNCONSTITUTIONAL. IS THAT --

I THINK IT IS JUST AS PROCEDURAL AS THE CRIMINAL SPEEDY TRIAL RULES, WHICH IS WHY THEY ARE IN THE RULES OF PROCEDURE AND NOT IN THE STATUTES.

WHERE WOULD THIS GET REFERRED? I MEAN, WE HAVE HAD THE JURY INSTRUCTIONS, AND THAT CAME THROUGH THE CRIMINAL PROCEDURE.

CORRECT.

WE WILL BE OBVIOUSLY, IF WE FIND THE ACT TO BE CRIMINAL, THEN IT IS UNCONSTITUTIONAL, SO WE WOULDN'T HAVE TO REACH IT, BUT THIS WOULDN'T REALLY BE SOMETHING THAT -- I MEAN IT IS SORT OF A MIX SITUATION. WE REALLY --

MY OWN SUGGESTION WOULD PROBABLY BE SOMETHING IN THE NATURE OF A SPECIAL AD HOC COMMITTEE DRAWING ON THE PEOPLE WHO HAVE GOT THE EXPERIENCE WITH THESE CASES, FROM THE PROSECUTORS, THE DEFENSE ATTORNEYS, AFTERNOON THE JUDGES. -- AND THE JUDGES. I THINK THAT WOULD BE THE MOST EFFECTIVE WAY TO DEAL WITH THIS, AND OTHER POTENTIAL PROBLEMS WOULD CERTAINLY NEED EXPLORING, BEFORE A FINDING ON A CASE-BY-CASE BASIS, WITH MULTIPLE CASES ACROSS THE STATE HAVING CONFLICT ACROSS THE STATE HAVING TO BE RESOLVED EVERY TIME IN THIS COURT, AND IT WOULD CERTAINLY BE A HELPFUL PURPOSE TO HAVE PEOPLE WITH THE NATURE OF THESE CASES ON THE COMMITTEE.

YOU ARE IN YOUR REBUTTAL.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. ACCORDING TO THE STATE, THE 30 DAYS IS MEANINGLESS. WHICH MEANS THE DEFENDANTS WILL NEVER GO TO TRIAL IN ANY KIND OF DUE PROCESS FASHION. IF IT WERE TRUE THAT THIS 50 DAYS THAT THE STATE, FOR THE FIRST TAME I HAVE HEARD, YOU KNOW, I MEAN -- FOR THE FIRST TIME I HAVE HEARD, YOU KNOW, I MEAN, IS REALLY GOING TO BE THE SET POINT, THEN I SHOULD BE HEARSAYING MR. GOODE SHOULD HAVE BEEN RELEASED, BECAUSE HE WAS IN FOR 85 DAYS AFTER HIS RELEASE DATE, AND BEFORE THEY GOT AROUND TO HAVING A HEARING ON ANYTHING SUBSTANTIVE. HE HAD NO ADVERSARIAL PROBABLE CAUSE HEARING. HE HAD NOTHING EXCEPT AN APPOINTMENT OF COUNSEL SOMEWHERE AROUND DAY 24, RIGHT BEFORE THE THANKSGIVING HOLIDAY. IN FRONT OF A JUDGE WHO DIDN'T EVEN HAVE HIS CASE. THERE WAS NO REQUEST FOR A CONTINUANCE WITHIN THE 30 DAYS, AND WE DON'T HAVE ANY EXPLANATION WHAT HAPPENED IN ALL OF DECEMBER AND MOST OF JANUARY, AS TO WHY IT TOOK THE DEFENDANT -- I MEAN WHY THE STATE DID NOTHING, AND WAS THE DEFENDANT THAT HAS TO GO UP THERE ON A MOTION TO DISMISS. NOW, THE TRIAL JUDGE OBVIOUSLY HAD PROBLEMS WITH THIS, AND HE DID DISMISS THE CASE, AND OUR CONTENTION IS THAT THAT IS GOING TO BE JURISDICTIONAL.

LET ME ASK THIS QUESTION. YOU WOULD AGREE THAT, IN ONE STATUTE THAT DEALS WITH FOLKS ARE GOING TO BE IN MULTIPLE OR DIFFERENT STATUS. YOU HAVE THOSE WHO WILL BE INCARCERATED AND THOSE WHO ARE ENTITLED TO RELEASE, ABSENT THE STATUTE, BUT WE HAVE THE PROCEDURAL MECHANISM THAT APPLIES TO BOTH. SO WHY ARE WE NOT REQUIRED TO APPLY ONE THAT AC ONLY DATES BOTH, TO GIVE FULL MEANING TO THE ENTIRE STATUTE, BECAUSE, REALLY, GOING INTO A JURISDICTIONAL ONE WITH REGARD TO THOSE INCARCERATED IN A YEAR, WHAT IS WRONG WITH ANALYZING IN THAT FASHION, THAT THAT IS HOW IT SHOULD BE ANALYZED, ONE THAT WILL ACCOMMODATE, BOTH, THOSE WHO ARE GOING TO BE CONTINUING IN REGARDS RATED AND THOSE WHO ARE RELEASED? I MEAN --

ONE-SIZE-FITS-ALL?

THAT IS WHAT THEY HAVE DONE WITH THE STATUTE. AND WE ARE DEALING WITH THE CONSTITUTIONAL ISSUE, HERE, ARE WE? IT IS JUST A STATUTORY CONSTRUCTION.

IN CALIFORNIA, MADE A BIG DISTINCTION BETWEEN THE TWO, AND EVERYBODY, YOU KNOW, I KEEP THEY KEEP CITING TO THE CURTIS CASE AS, YOU KNOW, I BELIEVE THE OSBORNE CASE RELIED ON CALIFORNIA, BUT IN CALIFORNIA'S CASE, THE DEFENDANT HAD NOT YET BEEN RELEASED. HE WAS SUPPOSED TO GET HIS TRIAL 30 DAYS BEFORE RELEASE. IT HAPPENED ON DAY 28. THEY SAID HE SUFFERED NO HARM, BECAUSE HE WASN'T GOING TO BE RELEASED. THE OPINION SPECIFICALLY SAYS, HOWEVER, WE WOULD BE IN A DIFFERENT POSTURE, IF THIS WERE BEYOND HIS RELEASE DATE. I DON'T THINK, WHEN YOU ARE DEALING WITH LIBERTY INTERESTS, YOU CAN'T SAY ONE-SIZE-FITS-ALL. THAT THE SAME RULE APPLIES TO SOMEBODY WHO HAS STILL GOT A YEAR LEFT TO GO OR SIX MONTHS LEFT TO GO IN THEIR PRISON SENTENCE, AS OPPOSED TO SOMEONE WHO SHOULD HAVE BEEN RELEASED AND IS NOW BEING HELD, DAY FOR DAY, IN WHAT AMOUNTS TO A CUSTODIAL PRISON-LIKE SITUATION.

BUT HE IS, HE HAS BEEN TRIED.

HE WAS TRIED FOR A CRIME THAT HE WAS NOW FINISHED HIS SENTENCE ON.

BUT HE WILL ULTIMATELY BE TRIED, I GUESS MY QUESTION IS, BEFORE HE IS ULTIMATELY CONFINED CONFINED.

WELL, HE WILL BE, THERE WILL AND TRIAL EVENTUALLY. THE QUESTION IS HOW LONG CAN YOU HOLD THESE PEOPLE, WITHOUT ANY TRIAL OR, YOU KNOW, HOW LONG CAN THIS GO ON. MR. GOODE HAD 85 DAYS. I MEAN THAT IS WAY BEYOND THE 50 DAYS THAT THE STATE IS NOW TALKING B YES, IT WAS IN THEIR BRIEF, BUT THIS IDEA THAT, WELL, THAT WILL BE THE JURISDICTIONAL ASPECT OF THIS OR NOT JURISDICTIONAL, BUT THAT WILL BE SUBJECT TO A MOTION TO DISMISS. IF THERE IS NO 30-DAY LIMIT, IF THERE IS JUST NO LIMITS AT ALL, THERE WILL BE NO LIMITS IN THESE --, AND THESE PEOPLE CAN LANGUISH AROUND, BASED ON WHAT I AM FINDING IS THAT IT APPEARS TO BE BASED ON THE STATE'S INABILITY TO HANDLE THEIR OWN CASE LOAD.

LET'S JUST GO BACK TO WHAT JUSTICE LEWIS IS SAYING. WE ARE CALLED ON TO INTERPRET THE MEANING OF THIS SENTENCE AND TO SEE WHETHER IT IS A JURISDICTIONAL MANDATORY, IT IS DISMISSED, IF YOU DON'T TRY IT WITHIN 30 DAYS, UNLESS SOMEBODY REQUESTS A CONTINUANCE OR THE JUDGE FINDS GOOD CAUSE. YOU WOULDAL DEGREE, AGAIN, THAT, SINCE IT IS DESIGNED FOR PEOPLE THAT ARE IN PRISON, AS WELL AS THOSE ABOUT TO BE RELEASED, THAT THAT CONCEPT, SINCE THERE WOULDN'T BE ANY DUE PROCESS CONCERN, IT TO SAY THAT, IN THAT SITUATION, IT IS DISMISSAL WITHOUT PREJUDICE, DOES THAT MAKE ANY SENSE, AS FAR AS THE YOU?

THE STATUTORY SCHEME MAKES FOR SENSE TO ME, BUT THE PROBLEM IS THAT YOU ARE SAYING WE ARE GOING TO APPLY THIS TO 30 DAYS, WHETHER THE PEOPLE ARE IN IN OR OUT.

THAT IS ABSOLUTE, WHAT THE LEGISLATURE INTENDED, DISMISSAL?

THAT GETS TO YOU THE FIRST STEP. THAT IS THE DISMISSAL. NOW, LOOK AT THE STATUTE THAT TALKS ABOUT APPLICABILITY. THE STATUTE SAYS THIS IS NOT -- THIS IS APPLICABLE TO PEOPLE WHO ARE CONFINED. ALL RIGHT. SO THOSE THAT WERE STILL IN CUSTODY, THEY COULD REFILE ON. THOSE WHO ARE NOT IN CUSTODY, THEY ARE NO LONGER GOING TO BE ABLE TO REFILE, AND I AM SAYING FOR THOSE PEOPLE, IT WOULD BE WITH PREJUDICE.

SO YOU SEE THIS, GOING BACK TO ONE OF THE EARLIER QUESTIONS JUSTICE ANSTEAD ASKED, A CONDITION PRECEDENT TO FILING THE PETITION FOR COMMITMENT IS THAT THEY BE IN AN INCARCERATED STATUS, AT THE TIME OF THE FILING.

RIGHT. THERE WERE A COUPLE OF STATUTE SECTIONS THAT WERE POINTED OUT IN ORAL ARGUMENT. WE DIDN'T CHANGE THE BRIEFS THAT CAME STRAIGHT UP HERE, BUT UNDER 394.912-11, THEY DESCRIBE CONFINEMENT AS A PERSON CURRENTLY BEING HELD, AND A DEFENDANT NO LONGER QUALIFIES, UNDER THE APPLICABILITY PORTION, UNDER 395.925, ONCE HE HAS BEEN RELEASED. NOW, THE STATE LIKES TO TALK ABOUT HOW THEY CAN GO AHEAD AND REFILE, AND IT DOESN'T MATTER, AND THAT THE LONGER THEY WAIT AFTER THEIR RELEASE, THEN THERE IS GOING TO AND QUESTION OF AN OVERT ACT. WHAT THEY ARE APPLYING IS THE CASE LAW FROM OTHER STATES, BASED ON STATUTORY LANGUAGE. WE DON'T HAVE THAT LANGUAGE IN OUR STATUTES.

IS THAT AN ARGUMENT FOR ANOTHER DAY? I MEAN, THAT IS NOT THE ARGUMENT WE ARE TALKING ABOUT TODAY. WE ARE BEING ASKED TO CONSTRUE A STATUTE THAT APPLIES TO PEOPLE IN DIFFERENT, IN A DIFFERENT POSITION AT DIFFERENT TIMES.

RIGHT.

AND THERE MAY BE OTHER RAMIFICATIONS FROM THAT. TO GET BACK TO THAT, IT IS A SITUATION, DOES IT MAKE ANY SENSE THAT THIS IS JURISDICTIONAL FOR THOSE WHO ARE INCARCERATED?

LIKE I SAID, WE GO BACK TO THOSE STATUTE SECTIONS FOR THOSE INCARCERATED, THEY WOULD BE ABLE TO REFILE FOR THOSE NOT INCARCERATED, THEY COULD NOT.

I DON'T KNOW WHERE IT LEADS, BUT I MEAN, THAT IS WHAT THEY ARE ASKING FOR HERE, IN THIS SITUATION. WHAT IS WRONG WITH THAT ANALYSIS?

I WOULD BE HAPPY WITH THAT ANALYSIS. DISMISS THE CASE AND IT IS JURISDICTIONAL, DEPENDING ON WHETHER OR NOT THE DEFENDANT IS IN CUSTODY OR NOT.

AGAIN, IT IS NOT JURISDICTIONAL. WHAT IS WRONG WITH THE ANALYSIS THAT IT IS MANDATORY?

IT IS MANDATORY.

IT IS MANDATORY. BUT IT IS NOT JURISDICTIONAL.

WELL, THE JURISDICTIONAL, EITHER WE ARE GOING TO, EITHER WE ARE TALKING ABOUT IT OR WE ARE NOT. IF WE ARE JUST GOING TO SAY IT IS MANDATORY, THAT WAS THE FIRST HALF OF THE KINDER. IN MY CASE, THEY REFUSED TO REACH THE QUESTION OF JURISDICTION, AND WE ARE SORT OF THERE WITH MY CASE, WHERE THE GUY WAS DISMISSED, AND THE QUESTION IS, IS IT DISMISSED WITH PREJUDICE OR WITHOUT?

WELL, YOU WILL KNOW THAT, I GUESS, IF SOMEBODY TRIES TO REFILE.

TRIES TO REFILE.

SO THAT PRESENTS THAT ISSUE, BUT THAT IS NOT HERE TODAY.

NO. WE ARE DEALING ON AN OUT-AND-OUT DISMISSAL, WHICH MR. KINDER WOULD HAVE BEEN ENTITLED TO AS WELL, AND MR. GOODE.

IS MR. GOODE, HE IS DISMISSED AND --

HE WAS RELEASED.

HE WAS RELEASED. NO TRIAL. THERE HAS NOT BEEN A TRIAL.

RIGHT. BECAUSE THAT TRIAL JUDGE RELEASED HIM.

WHAT DID YOU SAY ABOUT THE, WHAT IS THE 85 DAYS? I AM MISSING SOMETHING.

ON 10-28, HE SHOULD HAVE BEEN RELEASED, 1999. HE DID NOT HAVE A HEARING OF ANY SUBSTANTIVE NATURE, UNTIL 1-24-2000.

WHAT HAPPENED ON NOVEMBER 22?

HE WAS BROUGHT BEFORE A JUDGE WHO WAS NOT HIS TRIAL JUDGE. HE WAS GIVEN COUNSEL, SERVED THE PETITION, AND TOLD THAT HIS MOTIONS WOULD HAVE TO BE FOR ANOTHER DAY.

SO WHEN WAS THE MOTION, SO, THEN, THE NEXT HEARING AFTER NOVEMBER 22 WAS WHAT DATE?

1-24. 00.

THERE WAS --

NOTHING.

A PUBLIC DEFENDER WAS APPOINTED NOVEMBER 22?

RIGHT.

AND NOTHING HAPPENED UNTIL JANUARY?

RIGHT.

AND THAT WAS WHEN YOU FILED A MOTION TO DISMISS?

MOTION TO DISMISS WAS FILED ON 1-6. HEARD ON 1-24. SO HERE WE HAVE 85 DAYS, WHERE THIS MAN JUST SITS AROUND, OR AT LEAST 85. IT COULD BE 86, 87.

IT IS DISMISSED IN JANUARY OF 2000.

JANUARY 24.

AND IT DOESN'T GET UP TO US, THEN THERE IS ANOTHER YEAR?

IT WENT TO THE SECOND DISTRICT.

BUT THEY DIDN'T WRITE AN OPINION. THEY JUST CERTIFIED IT UP HERE.

RIGHT. THE CERTIFIED QUESTION CAME -- I MEAN, IT WASN'T REALLY A CERTIFIED QUESTION. IT IS JUST A QUESTION. AND THAT WAS DATED JANUARY 5, 2001.

AND YOU ARE REPRESENTING THAT THE STATE HAS NOT, IN THIS CASE, ATTEMPTED TO REFILE AT THIS TIME.

NO. NO. THEY HAVEN'T. THERE WAS, THE QUESTION WAS RAISED AT THE TRIAL LEVEL, BUT THEY DIDN'T DO IT.

SO HAVE YOU RAISED, AND IN YOUR CASE, SINCE THERE WAS FAR MORE THAN 30 DAYS, THERE WAS WHATEVER YOU SAY, 80 DAYS, IF WE DON'T FIND THIS TO BE A STATUTORY MANDATORY DISMISSAL, ARE YOU MAKING AN ALTERNATIVE GROUND THAT THERE IS A SUBSTANTIVE DUE PROCESS VIOLATION?

I HAVE ALWAYS CLAIMED IT WAS DUE PROCESS, BECAUSE I DON'T HAVE A SPEEDY TRIAL RIGHT TO FALL BACK ON, BUT BASED ON THE ATTORNEY GENERAL'S ARGUMENTS MADE TODAY, HE IS WAY PAST THOSE 50 DAYS THAT THEY ARE TALKING ABOUT. BUT THAT WASN'T EVEN CLOSED IN THE BRIEF, ABOUT MY DISCUSSING THE 85 DAYS AS SOME KIND OF EXTERIOR LIMIT. WE FOCUSED ON THE 30 BEING --

WOULDN'T THAT BE VERY TO BE RAISED --

ON THE TRIAL LEVEL, IF IT WAS REFILED.

IF IT WAS REFILED. YOU HAVE ESSENTIALLY GOT SOMETHING HERE THAT IS, REALLY, MOOT ON THOSE ISSUES: THE ISSUE IS, I GUESS, IF THERE IS ALIVE ISSUE IN THIS CASE, IS THE CERTIFIED QUESTION ISSUE.

I WOULD RATHER NOT SEE MY CLIENT BROUGHT BACK TO SPEND ANOTHER YEAR OR MORE IN MARTIN COUNTY, JUST BASED ON THAT ISSUE IF WE CAN AVOID IT. I MEAN, IF THE DISMISSAL IS PROPER, THEN I SUPPOSE, YOU KNOW IF THEY ARE GOING TO TRY TO REFILE, THEY WILL HAUL HIM BACK IN. TO MARTIN CORRECTIONAL OR ARCADIA. SO PERSONALLY I WOULD RATHER NOT SEE HIM SPEND ANOTHER YEAR OR TWO, WAITING AROUND FOR THAT.

I CAN APPRECIATE THAT, BUT IT IS HARD TO --

ANTICIPATE.

-- GET HYPOTHETICAL SITUATIONS.

SO IF THERE IS NO 30 DAYS, THEN THERE IS GOING TO BE NOTHING WE CAN HOLD THE STATE TO OTHER THAN, YOU KNOW, NOTHING IN THE CIVIL RULES APPLY.

SOMETHING ABOUT YOU KEEP ON SAYING, THERE IS NO 30 DAYS, THERE IS NOTHING, BUT THERE IS, EVEN THE STATE IS CONCEDING, SUBSTANTIVE DUE PROCESS PROTECTION.

BUT WE DON'T KNOW WHAT DATE ON THAT. IT COULD BE FOUR YEARS. I MEAN, REALLY, THERE IS NOTHING THAT IS GOING TO SAY THIS IS THE MAGICAL CUTOFF, SO I HAVE NO REASON TO BELIEVE THAT 50 DAYS IS GOING TO BE THAT CUTOFF. WE WILL PROBABLY HAVE TO ARGUE THAT FOR ANOTHER DAY, BUT YOU KNOW, CONSTITUTIONAL SPEEDY TRIAL IN THE U.S. SUPREME COURT HAS BEEN, LIKE, FOUR YEARS. IT HAS BEEN HELD TO BE THAT LONG. FOR SOMEONE WHO HAS SERVED THEIR SENTENCE AND WHO HAS NO PRESUMPTION OF GUILT, THESE PEOPLE HAVE NOT BEEN CONVICTED OF WHAT OR FOUND GUILTY OF OR WHATEVER, YOU KNOW, OF THEIR

COMMITMENT PROCEEDINGS. THEY ARE JUST SITTING THERE, WAITING FOR THAT. THEY HAVE NOT BEEN FOUND TO BE DANGEROUS. THEY HAVE NOT BEEN FOUND TO HAVE HAD 4 THIS RISK ASSESSMENT, SO THEY ARE JUST SITTING AROUND, AND IF THEY DO TAKE THE TESTING, THE MEDICAL TREATMENT, ANYTHING THAT THEY SAY TO THOSE DOCTORS HIM BE USED -- WILL BE USED AGAINST THEM, WHICH IS WHY THEY ARE NOT ALL COOPERATING ON THAT LEVEL, WHY THEY HAVE BEEN ADVISED.

WHAT WAS THE CRIME THAT YOUR CLIENT WAS CONVICTED OF. HE RECEIVED A 42-MONTH SENTENCE.

I DON'T KNOW. DO YOU KNOW? LEWD AND LASCIVIOUS CONDUCT. THEY ARE TRIAL ATTORNEYS.

WHAT?

THEY ARE THE TRIAL ATTORNEYS, SO IT WAS LEWD AND LASCIVIOUS, THEY BELIEVE. WE NEVER REALLY GOT TO THE UNDERLYING SITUATION. THE REESE AND THE OSBORNE CASES THAT THE STATE CITES, I WANT TO MAKE SURE THAT YOU UNDERSTAND THAT REESE IS NOT REALLY IN CONFLICT WITH KINDER. REESE DEALT WITH THEIR INTERPRETATION OF WHEN THE ADVERSARIAL PROCESS HEARING STARTS, WHEN THIS 30 DAYS STARTS TO RUN, AND THEY CONSIDERED THAT BECAUSE THAT STARTED THE PROBABLE CAUSE HEARING, THAT STARTS THE 30 DAYS ALL OVER AGAIN, AND SINCE THIS WAS FILED ON DAY 20, THEY DECIDED THAT IT HAD NOT PASSED THAT 30 DAYS, AND THEY PUT IN A LITTLE THING ABOUT THERE MAY BE A PROBLEM WITH PROCEDURE, BUT WE ARE NOT KIND OF REACHING THAT AT THIS POINT. THERE IS A LOT OF DICTA THAT GOES ON BOTH SIDES, BUT REESE DOESN'T REALLY ADDRESS.

WHO REQUESTED, IN REESE, THE PROBABLE CAUSE HEARING? ANOTHER ADVERSARIAL PROBABLE CAUSE? WELL.

THE DEFENDANTS IN THESE CASES ASK FOR THESE KINDS OF HEARINGS?

WELL, USUALLY IF THE DEFENDANTS DON'T ASK, THEY DON'T GET --

RESPONDS.

USUALLY IF THEY DON'T ASK, THEY DON'T GET IT, SO THE STATE ATTORNEY PETITIONED FOR COMMITMENT. AN ORDER. THE COURT SCHEDULED AN ADVERSARIAL PROBABLE CAUSE HEARING, ON OCTOBER 3. THEY DON'T SAY, IN THE OPINION, WHO ASKED FOR IT. THEY JUST SAY IT WAS SCHEDULED, BUT IT HAS BEEN MY EXPERIENCE THAT THE ONLY PEOPLE THAT REALLY ASK FOR IT, OF COURSE, THEY, ALSO, HAD THE VALDEZ CASE OUT, SO MAYBE THEY FELT IT WAS NECESSARY, WITHIN THE FIVE DAYS, TO GIVE IT, BUT THEY DON'T SAY WHO ASKED FOR IT. SO I DON'T FIND REESE TO BE HELPFUL IN THIS PARTICULAR CASE AT ALL, AND OSBORNE'S RELIANCE ON A CALIFORNIA CASE WHICH DID MAKE THE DISTINCTION LEERL CLEARLY, IN ITS -- CLEARLY, IN ITS INTERPRETATION OF BEING RELEASED OR NOT BEING RELEASED, IS NOT GOING TO HELP THIS COURT EITHER. OF COURSE THE BROWN CASE IN KANSAS, WHERE THEY HAVE A LITTLE BIT MORE TIME PERIOD OF 60 DIS, THEY HAVE FOUND TO BE -- 60 DAYS THEY HAVE FOUND TO BE JURISDICTIONAL. THE IDEA OF PUTTING THE DEFENDANT, APPOINTING HIM, THAT IS THE OTHER POINT THAT SHOULD BE MADE, IS THAT WHY IS IT TAKING SO LONG TO GET COUNSEL APPOINTED? YOU KNOW, 24 DAYS, 44 DAYS. THE STATE HAS EVERYTHING IT NEEDS TO GO TO TRIAL, THE DAY IT FILES ITS PETITION FOR COMMITMENT. THEY HAVE THEIR DOCTORS. THEY HAVE THEIR EXPERTS. AND THEY HAVE THEIR PRIOR CONVICTIONS. IT IS DEFENSE COUNSEL THAT HAS NOTHING, THAT MAY NOT KNOW ANYTHING AT ALL ABOUT THIS PERSON, WHO HAS TO DO THE DISCOVERY, WHO HAS TO CONTACT EXPERT WITNESSES, WHO HAS TO HAVE THIS PERSON EVALUATED, IN ORDER TO PREPARE.

THERE IS NOTHING RIGHT NOW, AGAIN, ABOUT WHEN COUNSEL NEEDS TO BE APPOINTED IN THE

ACT.

NOTHING.

NOTHING.

THIS ACT HAS BEEN IN EFFECT FOR OVER TWO YEARS, AND THERE HAVE BEEN SUGGESTIONS, NOW, FROM THE VARIOUS APPELLATE COURTS, ABOUT GETTING SOME RULES PAST. THE CRIMINAL JURY INSTRUCTION COMMITTEE TOOK IT UPON THEMSELVES TO, SUA SPONTE, COME UP WITH JURY INSTRUCTIONS. WHAT IS YOUR RECOMMENDATION, IF WE SEE THAT THERE ARE SOME SIGNIFICANT PROCEDURAL GAPS IN THIS RULE THAT NEED TO BE ADDRESSED FOR WHAT, WHO, WHAT COMMITTEE SHOULD BE BEST ABLE TO DO THAT?

WELL, I WOULD TEND TO AGREE, BUT DON'T REPEAT THAT, THAT WAS THE ASSISTANT ATTORNEY GENERAL, THAT I DON'T SEE THIS BEING SENT TO EITHER THE CIVIL COMMITTEE OR THE CRIMINAL COMMITTEE. IT HAS TO BE MADE UP OF SOMEONE WHO KNOWS BOTH CIVIL RULES AND CRIMINAL RULES, BECAUSE THE CIVIL PEOPLE WON'T KNOW WHAT TO DO WITH SOMEONE WHO IS FACING LIBERTY INTERESTS.

BUT HAS ANY RULES, NOBODY IS WORKING ON IT OUT THERE?

NO. NO. NO NOTHING. AS FAR AS I KNOW, WHO WOULD DO IT? I AM SURE THE APPELLATE RULES COMMITTEE, BUT I KNOW OF NOTHING THAT IS GOING ON. SO, AND THE COURT KEEPS SAYING PLEASE GIVE US RULES, BUT I KNOW A LOT OF THOSE CASES WEREN'T ACCEPTED FOR JURISDICTION BY THIS COURT, SO UNLESS THIS COURT HAS BEEN APPOINTING A COMMITTEE, I KNOW OF NOTHING THAT IS GOING ON. SO THE DEFENSE COUNSELS ARE FACED WITH A CHOICE CAN THEY GET READY OVER SIX DAYS, OVER THANKSGIVING VACATION, TO PREPARE FOR THESE THINGS, AND I SAY THAT THERE ARE SUBSTANTIVE DUE PROCESS RIGHTS, VERSUS THEIR RIGHT TO COMPETENT COUNSEL IS NOW IN JEOPARDY, AND THAT SHOULDN'T BE THE KIND OF CHOICE THE STATE SHOULD BE ALLOWED TO FORCE THEM INTO. I DO NOTE THAT, EVERY TIME THE STATE IS ASKED ABOUT CIVIL RULES OF PROCEDURE, THEY NEVER ATTACK IT AS BEING UNCON -- THEIR 30 DAYS AS BEING UNCONSTITUTIONAL. THEY NEVER SAY THOSE WORDS, BECAUSE THEY WOULD BE PUT INTO A VERY INTERESTING POSITION, TO ATTACK THE "JIMMY RYCE" ACT AS BEING UNCONSTITUTIONAL, BUT THE KINDER OPINION POINTED THAT OUT. NOWHERE DO THEY SAY THE 30 DAYS IS UNCONSTITUTIONAL, AND THAT THE CIVIL RULES, THEY SAY THE CIVIL RULES SHOULD APPLY, BUT JUST ABOUT EVERY DISTRICT COURT WHO HAS DEALT WITH THAT HAS SAID THE CIVIL RULES DON'T APPLY, THAT THE CIVIL RULES CAN'T AND PLI. WE HAVE DEALT WITH IT ON DISCOVERY. THEY HAVE REJECTED IT IN THIS PARTICULAR INSTANCE, THAT IT IS SUPPOSED TO BE 20 DAYS AFTER THE LAST PLEADING AND THEN 30 DAYS AFTER THAT. CIVIL RULES JUST AREN'T GEARED TOWARDS THIS KIND OF THING. I MEAN, IF THERE WAS GOING TO BE A 20-DAY, AFTER THE LAST PLEADING, THE QUESTION IS WHAT LAST PLEADING? I AM NOT SUPPOSED TO BE REQUIRED TO FILE AN ANSWER IN THESE "JIMMY RYCE" ACT CASES, BUT DOES THAT MEAN THAT I HIM SUBJECT TO A DEFAULT? THE CIVIL RULES JUST AREN'T WORKING HERE. OR IF THEY ARE WORKING, THEY ARE ONLY WORKING ON THE STATE'S BEHALF AND NOT ON MY CLIENT'S BEHALF. I DO NOTE THAT, BEFORE THE SECOND DISTRICT SENT THIS QUESTION STRAIGHT UP, IT DEALT WITH KINDER. IT REVISED ON REHEARING, ITS DECISION TO ADD THE CERTIFIED QUESTION. IT DEALT WITH MR. TANGLEY, WHICH THIS COURT HAS THE QUESTION, AND FINALLY IT COULDN'T DEAL WITH IT ANYMORE AND SENT IT STRAIGHT UP. AND MY TIME IS UP. THANK YOU.

MR. POLIN.

WE HAVE HEARD A LOT ABOUT A 85-DAY PERIOD IN THIS PARTICULAR CASE, AND JUST TO PUT THAT IN BRIEF CONTEXT, FROM THE FIRST APPEARANCE, DEFENSE COUNSEL WAS EFFECTIVELY SAYING, WE DON'T HAVE ENOUGH TIME TO GO TO TRIAL WITHIN THE REMAINING PERIOD, AND THEY REALLY WERE NOT GOING TO BE BOXED INTO THE POSITION OF AGREEING TO GO TO TRIAL.

AND THE NEXT THING THAT THEY DID WAS FILE A MOTION TO DISMISS, SO THROUGHOUT FROM DAY 24 ON, THEY ARE SAYING DISMISS, DISMISS, DISMISS, IN SUCH A POSTURE THAT THEY ARE REALLY NOT PREPARED TO GO TO TRIAL.

WASN'T THE DEFENSE ATTORNEY, REALLY, BACK AT THE HEARING, BEFORE THE JUDGE WHO WAS NOT ASSIGNED TO THIS, SAYING THIS CASE NEEDS TO BE DISMISSED, AND I AM NOT SURE YOU COULD TAKE THAT AS --

HE IS SAYING IT NEEDS TO BE DISMISSED, EVEN BEFORE THE 30 DAYS HAS RUN. THAT WAS THEIR POSITION, FROM --

ON THE BASIS THAT IT COULD NOT BE HEARD WITHIN THE 30 DAYS.

TRUE. TRUE. BUT YOU KNOW, THROUGHOUT THEY ARE SAYING WE REALLY CAN'T GO TO TRIAL, AND THE CASE SHOULD BE DISMISSED, UNDER SUCH A POSTURING THAT THE FACT THAT IT WAS 85 DAYS REALLY DIDN'T MATTER MATTER. SINCE IT WASN'T GOING TO TRIAL WITHIN 30 DAYS, THEY WEREN'T GOING TO GO TO TRIAL WITHIN 85 DAYS.

DIDN'T THE STATE ASK THAT A TRIAL BE SET IN THAT 85-DAY PERIOD?

THERE IS NO RECORD OF -- THERE WAS KIND OF SOME SUGGESTION, DURING THE COLLOQUY WITH THE JUDGE AT THE FIRST HEARING, WHETHER THE JUDGE WOULD SET IT FOR THE MIDDLE OF DECEMBER, BUT THE SUBSTITUTE JUDGE KIND OF BACKED OFF ANY REAL DECISIONS, AND DEFERRED EVERYTHING FORWARD.

YOU ARE SAYING THE STATE DID NOT REQUEST THIS CASE GET TO TRIAL.

DID NOT EXPRESSLY REQUEST.

WHY ISN'T THIS A SITUATION WHERE THERE IS A SUBSTANTIVE DUE PROCESS VIOLATION, IF THERE IS NOT A, AS AN ALTERNATIVE BASIS, IF IT IS NOT A STATUTORY DISMISSAL.

A FEW REASONS. FIRST, I THINK THERE IS AN EFFECTIVE WAIVER AND CONTINUANCE SINCE THE OTHER SIDE IS SAYING THAT WE ARE REALLY NOT GOING TO GO TO TRIAL WITHIN THIS PERIOD OR ANY SHORT PERIOD THEREAFTER. THAT IS WHAT THEY ARE EFFECTIVELY SAYING.

ARE YOU SUGGESTING THAT WE TAKE THAT MOTION TO DISMISS IN CONJUNCTION WITH THE MOTION TO CONTINUE?

YES, THE TWO OF THEM, SEVERAL WEEKS LATER, COMBINED, IT IS JUST AN EFFECTIVE WAIVER THROUGHOUT, AND BEYOND THAT, I WOULD SUGGEST THAT, IF ANY PARTY REALLY WANTS A QUICK TRIAL AND A CASE THAT SLIPS THROUGH THE CRACKS, THEY CAN DO A COUPLE OF THINGS. THEY CAN SAY, YOUR HONOR, THE 30 DAYS HAVE EXPIRED. MY CLIENT IS NO LONGER IN CUSTODY. GIVE ME A 5-DAY ADVERSARIAL PROBABLE CAUSE HEARING. THE FOURTH DISTRICT SAID DO IT. JUDGES HAVE BEEN DOING IT.

BUT THE STATE DOESN'T HAVE TO DO ANYTHING?

I DON'T THINK THE STATE AFFIRMATIVELY HAS TO, SINCE I THINK THERE ARE ENOUGH REMEDIES THAT ARE AVAILABLE TO ANY DEFENDANT WHO TRULY WANTS A QUICK TRIAL ON THIS, AND THE FIRST IS SEEK, PURSUANT TO THE FOURTH DISTRICT'S COBELL OPINION SEEK AN ADVERSARIAL PROBABLE CAUSE HEARING WITHIN FIVE DAYS. IT IS NOT A TRIAL. A SUBSTANTIAL CASE WILL EITHER BE SHOWN TO EXIST GLENNS DEFENDANT OR NOT. THAT IS -- EXIST AGAINST DEFENDANT OR NOT. THAT IS NUMBER ONE. NUMBER TWO, ANY PARTY WHO IS READY TO GO TO TRIAL CAN SEEK A TRIAL DATE AND IMPRESS UPON THE JUDGE THAT IT IS A CASE OF HIGH PRIORITY WITH

RESTRAINTS ON THE ISSUE AND GIVE ME A TRIAL WITHIN 15 DAYS, IF YOU TRULY WANT IT, AND IT IS A CASE THAT SLIPPED THROUGH THE CRACKS.

BUT YOU ARE SAYING THAT THERE IS NO SUBSTANTIVE DUE PROCESS CLAIM IN THIS CASE, BECAUSE THIS DEFENDANT, THROUGH THIS ATTORNEY NEVER AFFIRMATIVELY REQUESTED TO GO TO TRIAL. IS THAT THE STATE'S POSITION?

THEY HAD REMEDIES TO BOW TO TRIAL, IF THEY REALLY WANTED IT.

WHAT IF THE STATE HAD REALLY WANTED IT? THE STATE, AS I TAKE IT, HAS NO OBLIGATION.

I THINK THE STATE SHOULD, AS A MATTER OF COURSE, TRY TO GET THESE CASES MOVING QUICKLY AND SEE TO IT THAT ATTORNEYS ARE APPOINTED WITHIN THE FIRST FEW DAYS OF THE CASE, AND HAVE THE JUDGES, AT THE INITIAL HEARING WITHIN THOSE FEW DAYS, EITHER SET THE CASE DOWN FOR A TRIAL WITHIN THE 30-DAY PERIOD OR OBTAIN WAIVERS AND CONTINUEANCES AT THAT TIME. YES, IT SHOULD BE DONE.

DID THE STATE DO THAT IN THIS CASE?

NO. IT WASN'T DONE IN THIS CASE, AND THERE WERE PROBLEMS WITH THE FIRST YEAR'S WORTH OF CASES THAT ARE OBVIOUSLY BEING IRONED OUT NOW.

SO THE STATE DIDN'T DO WHAT YOU SAY THE STATE SHOULD DO.

NO, IT WASN'T DONE IN THIS CASE.

BUT THERE IS NO CONSEQUENCE COME -- NO CONSEQUENCE TO THE STATE.

WE ARE TALKING ABOUT DUE PROCESS CONCEPTS, AND WE ARE TALKING ABOUT THE OTHER SIDE HAD AVAILABLE REMEDIES WHICH THEY CHOSE NOT TO PURSUE, AND IF YOU LOOK AT WHAT HAS BEEN GOING ON ACROSS THE STATE ON THESE CASES, VERY FEW PARTIES WANT VERY QUICK TRIALS ON THESE CASES. BOTH PARTIES WANT SUBSTANTIAL CONTINUEANCES, MORE PARTICULARLY THE DEFENSE, WANT CONTINUEANCES TO PREPARE FOR WEEK LONG TRIALS. THAT IS THE REALITY OF IT. THANK YOU.

THANK, COUNSEL FOR YOUR ASSISTANCE.