State of Florida vs Kevin Kinder

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE FRIDAY ORAL ARGUMENT CALENDAR AT THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS STATE VERSUS KINDER.

MAY IT PLEASE THE COURT. RICHARD POLIN ON BEHALF OF THE STATE. THIS CASE IS BEFORE THIS COURT ON A SEXUALLY-VIOLENT PREDATOR COMMITMENT PROCEEDING, PURSUANT TO WHICH THE SECOND DISTRICT COURT OF APPEAL CONCLUDED THAT THE FAILURE OF THE STATE TO BRING THE CASE TO TRIAL, IN ACCORDANCE WITH THE 30-DAY STATUTORY PERIOD, REQUIRED THE QUOTE/UNQUOTE IMMEDIATE RELEASE OF MR. KINDER, PENDING FURTHER TRIAL COURT PROCEEDINGS, BUT THE SECOND DISTRICT DID NOT CONCLUDE THAT THE CASE, ITSELF, HAD TO BE DISMISSED, ONLY THAT HE SHOULD BE IMMEDIATELY RELEASED. THE NEXT CASE INVOLVES THE SIMILAR QUESTION, BUT THE REMEDY OF DISMISSAL IS AT ISSUE IN THAT ONE. OTHERWISE THESE TWO CASES ARE ESSENTIALLY THE SAME. WITH RESPECT TO THE REMEDY OF IMMEDIATE RELEASE, IN A COMMITMENT CASE, BASED ON THE FAILURE --

BEFORE YOU GET TO THE ACTUAL REMEDY, COULD YOU EXPLAIN TO US EXACTLY WHAT THAT 30-DAY PERIOD MEANS.

IN THESE COMMITMENT CASES, AFTER EVALUATIONS WHICH ARE DONE DURING THE LAST YEAR OF A PERSON'S PRISON SENTENCE, TO DETERMINE WHETHER HE MAY QUALIFY FOR COMMITMENT, UNDER THIS ACT --

LAST YEAR OR LAST DAY?

THE EVALUATION IS CALLED FOR UNDER THE ACT, ORIGINALLY UNDER THE ORIGINAL VERSION OF THE ACT, THE EVALUATIONS WERE SUPPOSED TO START SIX MONTHS PRIOR TO THE END OF THE PRISON SENTENCE.

BUT HERE THEY DID NOT.

THE EVALUATIONS IN THE FIRST YEAR'S WORTH OF CASES WERE NOT DONE AS EARLY AS THE LEGISLATURE INTENDED, BASED IN LARGE PART, ON THE NEWNESS OF THE STATUTORY SCHEME, ADMINISTRATIVE PROBLEMS, PERSONNEL PROBLEMS, AND OTHER SIMILAR MATTERS. IT IS GRADUALLY REACHING THE POINT IN TIME THAT THE LEGISLATURE HAD ENVISIONED, BUT NOT ON EARLY CASES.

I AM SORRY. I DIDN'T --

SO THE PETITION, THEN, GETS FILED, AND THE JUDGE REVIEWS THE COMMITMENT PETITION, TO MAKE AN EXPARTE DETERMINATION AS TO THE EXISTENCE OF PROBABLE CAUSE, TO BELIEVE THAT THE PARTY IS A SEXUALLY-VIOLENT PREDATOR.

THAT EXPARTE IS A PETITION FILED WITHIN THAT FIRST PERIOD OR THE PETITION FILED ON THE FIRST DAY OR THE DAY HE IS ABOUT TO BE RELEASED? A THE PETITION --

THE PETITION COULD BE FILED ANY TIME DURING THAT LAST PRISON SENTENCE, WHETHER IT IS TWO MONTHS IN ADVANCE, TEN DAYS IN ADVANCE, OR INDEED ON THE LAST DAY EVALUATIONS WERE DONE. SOMETIMES IT IS BEYOND THE CONTROL OF ANYONE, SUCH AS IN A SITUATION

WHERE AN ANTICIPATED RELEASE FROM PRISON MAY, AT ONE POINT IN TIME, BE TWELVE MONTHS IN ADVANCE, BUT THE COURT MAY DECIDE THAT GAIN TIME HAS TO BE RECALCULATED, AND ALL OF A SUDDEN TEN MONTHS HAVE BEEN CUTOFF AND THE PERSON IS DUE TO BE RELEASED THE NEXT DAY, SO THAT IS NOT ENTIRELY WITHIN ANYONE'S CONTROL, BUT THE GOAL IS TO MOVE IT UP, AS FAR AS POSSIBLE, TOWARDS THE BEGINNING OF THAT LAST YEAR OF THE PRISON SENTENCE. THE PETITION THEN GETS FILED, WHETHER TEN MONTHS IN ADVANCE OF THE EXPIRATION OF THE SENTENCE OR ONE WEEK OR ON THE LAST DAY, AND INDEED IN SOME CIRCUMSTANCES MAY EVEN BE A SHORT PERIOD OF TIME AFTER THE EXPIRATION OF THE PRISON SENTENCE, AND WHEN THAT PETITION IS FILED, THE FIRST STEP IS THAT THE TRIAL COURT JUDGE WILL REVIEW THE PETITION AND ITS ATTACHMENTS, WHICH TYPICALLY INCLUDE THE EVALUATION REPORTS OF THE PSYCHOLOGISTS WHO HAVE EXAMINED THE, THEN, PRISONER, AND THE JUDGE WILL DETERMINE WHETHER THE PETITION AND THE ATTACHMENTS ESTABLISHED PROBABLE CAUSE TO BELIEVE THAT THE PERSON IS A SEXUALLY VIOLENT PREDATOR, TO WARRANT FURTHER PROCEEDINGS AND TO WARRANT FURTHER CONFINEMENT PENDING TRIAL. AT THE EXPIRATION OF THE SENTENCE, THE PERSON WILL BE TRANSFERRED FROM THE DEPARTMENT OF CORRECTIONS TO THE DEPARTMENT OF CHILDREN AND FAMILIES, WHICH MAINTAINS FACILITIES.

BUT IF THAT SENTENCE HAS NOT EXPIRED AT THAT POINT, DOES THE 30-DAY PERIOD KICK INSTILL?

THE INTENTION IS STILL TO HAVE A TRIAL UNDER THE STATUTE, WITHIN 30 DAYS OF THE INITIAL DETERMINATION OF PROBABLE CAUSE. YES, IT WOULD RUN, I BELIEVE THAT THE PURPOSE THAT IT IS SERVING ARE TWOFOLD. ONE, THE LEGISLATURE WANTS TO MINIMIZE ANY POSSIBILITY THAT ANY MENTALLY-ABNORMAL AND DANGEROUS INDIVIDUALS WILL BE RELEASED AT THE END OF THEIR PRISON SENTENCES AND CONDUCTING THE TRIAL DURING SOME TIME IN THAT LAST YEAR OF THE PRISON SENTENCE, OBVIOUSLY AVOIDS ANY SUCH PROBLEM, IF COMMITMENT IS GOING TO ENSUE. SECONDLY, AND THIS COMES OUT MORE CLEARLY FROM THE MAY 1999 AMENDMENTS TO THE STATUTE, WHEN THE SIX-MONTH PERIOD IN ADVANCE WAS MOVED UP TO ONE YEAR FORET VALUATION PERIOD -- FOR THE EVALUATION PERIOD AND EARLIER CASES. THE LEGISLATURE WANTED TO AVOID THE POSSIBILITY THAT THERE WOULD BE ADDITIONAL COSTLY TIME-CONSUMING ADVERSARIAL PROBABLE CAUSE HEARINGS, SHORTLY AFTER THE FILING OF THE PETITIONS, IF THE PERSON IS STILL SERVING A PRISON SENTENCE AND IS NOT TRULY ANY CUSTODY UNDER THE COMMITMENT PROCEEDING, THERE WOULD NOT BE ANY NEED FOR ANY KIND OF ADVERSARIAL PROBABLE CAUSE HEARINGS, WITH FULL EVIDENCE AND WITNESSES PRESENTED ESSENTIALLY MINITRIALS PRIOR TO THE TRIAL. ONCE THE PRISON SENTENCE ENDS, IT IS POSSIBLE THAT SUCH ADVERSARIAL PROBABLE CAUSE HEARINGS MAY BE NECESSARY, BECAUSE YOU HAVE EXTENDED CUSTODY SOLELY ATTRIBUTABLE TO ON THE KMIPTMENT PROCEEDINGS AND NO LONGER BY VIRTUE OF THE PRIOR PRISON SENTENCE, SO THOSE ARE THE THINGS THAT THE LEGISLATURE IS TRYING TO AVOID, BY HAVING EARLY TRIALS DURING THAT LAST YEAR OF THE PRISON SENTENCE.

LET ME ASK HOW LONG DOES THE STATE CONTEND IT CAN HOLD A PERSON, WITHOUT THE TRIAL?

I THINK YOU HAVE TO DISTINGUISH BETWEEN THE LAST YEAR OF THE PRISON SENTENCE AND SUBSEQUENT TO THE PRISON SENTENCE. DURING THAT LAST YEAR --

HERE, HOW LONG, FILED ON THE LAST DAY,.

I BELIEVE, AS A MATTER OF CONSTITUTIONAL LAW, AS A QUESTION OF SUBCONSTANT I DUE -- SUBSTANTIVE DUE PROCESS, WHAT I HAVE SEEP FROM THE UNITED STATES SUPREME COURT IS THAT THAT COURT HAS APPROVED COMMITMENT SCHEMES UNDER WHICH NO EVIDENTIARY HEARINGS WERE REQUIRED FOR PERIODS OF UP TO 45 AND 50 DAYS AFTER CUSTODY HAS COMMENCED. I REFER TO THOSE IN MY BRIEF. ARAFAT VERSUS LOGAN, A THIRD DISTRICT COURT

CASE, A THREE-JUDGE PANEL WHICH WENT DIRECTLY UP TO THE UNITED STATES SUPREME COURT AND WAS AFFIRMED ON THE MERITS AND THE DISTRICT OF COLUMBIA VERSUS JONES, BOTH OF THEM INVOLVING PERIODS OF TIME BETWEEN 45 AND 50 DAYS.

THE EXPIRATION OF THE SENTENCE JURISDICTIONAL?

JURISDICTIONAL, AS FAR AS --

IN OTHER WORDS AFTER THE SENTENCE HAS EXPIRED, WOULD THESE PROCEEDINGS BE INITIATED?

CAN THE COMMITMENT PETITION BE FILED AFTER THE EXPIRATION OF THE SENTENCE?

IT IS NOT DIRECTLY AT ISSUE IN THIS CASE, BUT I WOULD SAY, UNDER THE AE.DED VERSION OF THE ACTOR -- UNDER THE AMENDED VERSION OF THE ACTOR AMENDMENTS THAT WERE INCORPORATED IN MAY OF 1999, AND IT HAS ENTITLEMENT IMMEDIATE RELEASES, 314.3195, WHICH DIRECTLY CONTEMPLATES THAT THERE COULD BE PETITIONS FILED AFTER THE EXPIRATION OF THE PRISON SENTENCE.

AND INDEFINITELY?

THERE IS NOTHING SPECIFIC IN THE STATUTE, BUT I DON'T THINK IT IS -- I DON'T THINK IT IS JURISDICTIONAL, BECAUSE WHAT YOU ARE DEALING WITH IS A CAUSE OF ACTION, WHICH IS PREDICATED ON THE PERSON'S CURRENT MENTAL CONDITION, CURRENT AND FUTURE DANGEROUSNESS, AND THOSE REMAIN A CONSTANT, WHETHER, UNLESS THE CONDITIONS HAVE CHANGED IN WHICH CASE THERE WOULD NO LONGER BE A CAUSE OF ACTION AT ALL BUT ASSUMING THAT THE MENTAL CONDITIONS AND DANGNESS, AS EVALUATED BY THE EXPERTS, REMAIN CONSTANT. I DON'T SEE WHY THERE WOULD BE ANY REASON WHY THE EXPIRATION OF THE PRISON SENTENCE WOULD MAKE ANY GREATER DIFFERENCE THAN IT DOES WITH RESPECT TO THE FILING OF A COMMITMENT PETITION UNDER THE "BAKER" ACT, WHICH IS PREDICATED ON THE PERSON'S CURRENT MENTAL CONDITION.

SO IT IS AN OPEN ENDED HOOK, IN ESSENCE, AS FAR AS THE STATE IS CONCERNED, THAT ONCE SOMEBODY IS CONVICTED OF ONE OF THESE OFFENSES, THAT MAKE THEM QUALIFY THAT ANY TIME AFTER THEY HAVE BEEP RELEASED FROM PRISON -- THEY HAVE BEEN RELEASED FROM PRISON, THAT THEY CAN BE BROUGHT BACK IN UNDER THESE PROCEEDINGS.

I THINK THERE ARE OTHER CONSTRAINTS, IF SUBSTANTIAL GAPS IN TIME DO ARE A RISE. FOR INSTANCE, WHEN THE PERSON HAS BEEN CONFINED DURING THE LAST YEAR OR THREE YEARS OF THAT PERSON'S LIFE OR INSTITUTIONALIZED, THAT PERSON DOESN'T HAVE THE SAME TYPES OF OPPORTUNITIES TO COMMIT VIOLENT OFFENSES AS SOMEONE OUT IN THE PUBLIC. AS A RESULT, WHERE THE PERSON HAS BEEN INSTITUTIONALIZED, YOU DON'T NEED TO PROVE A RECENT OVERT ACT TO JUSTIFY COMMITMENT, AND WHEN SOMEONE IS INSTITUTIONALIZED, THERE IS PROBABLY GOING TO HAVE TO BE A RECENT OVERT ACT TO JUSTIFY COMMITMENT PROCEEDINGS, SO I DON'T BELIEVE THAT IS OPEN-ENDED OPEN-ENDED.

IS THAT A PART OF THE STATUTE?

NO, IT IS NOT. THERE HIS CASE LAW THAT HAS DEVELOPED IN OTHER STATES THAT, AS A MATTER OF CONSTITUTIONAL LAW, THEY HAVE MADE THIS DISTINCTION.

DOES THE STATUTE -- THE STATUTE MENTIONS CERTAIN PROVISIONS AND SAYS IT IS NONJURISDICTIONAL, BUT AS FAR AS THE 30 DAYS, IT DOESN'T SAY THAT THAT IS NONJURISDICTIONAL, SO HOW DO YOU EXPLAIN?

THE RULE OF STATUTORY CONSTRUCTION THAT YOU ARE REFERRING TO, I DON'T BELIEVE THAT IT IS APPLICABLE TO THIS SITUATION. I REFERED, IN MY BRIEF, TO A UNITED STATES SUPREME COURT OPINION, WHICH IS CAREFULLY ANALYZED, THAT RULE, AND THE STATUTORY CONSTRUCTION HAS BASICALLY SAID IT IS ONE OF THE MOST DANGEROUS RULES TO EVER APPLY, BECAUSE THERE ARE SO MANY EXCEPTIONS AND SO MANY DIFFICULTIES WHICH ARE INHERENT IN IT. IF ALL OF THE MATTERS THAT YOU ARE REFERRING TO WERE ENUMERATED IN A LIST IN ONE PARTICULAR SECTION OF A STATUTE, IT DOES MAKE SENSE TO APPLY THAT TYPE OF RULE, BUT YOU ARE TALKING ABOUT DIFFERENT SECTIONS DEALING WITH DIFFERENT TYPES OF THINGS. THE JURISDICTIONAL LANGUAGE THAT YOU REFER TO IN ONE OF THE PROCEEDINGS SECTIONS WAS REFERRING TO MATTERS WHICH A MULTIDISCIPLINARY TEAM HAS TO DO IN ORDER TO START THE EVALUATE I HAVE PROCESS AND SEND THE CASE TO A STATE ATTORNEY.

BUT WHERE YOU ARE DEALING WITH A SECTION THAT IS CRITICAL TO DUE PROCESS, THEN YOU INDULGE THAT?

FIRST, AS FAR AS WHAT THE LEGISLATURE ENVISIONED, THE LEGISLATURE ENVISIONED THAT THE CASES CASES WOULD BE STARTED SUBSTANTIALLY EARLIER THAN THE LAST YEAR, AND THE LEGISLATIVE INTENT WAS NOT CONTEMPLATING A DUE PROCESS SITUATION, SINCE THERE ARE NO RESTRAINTS ATTRIBUTABLE TO THE COMMITMENT CASE, SO LONG AS THE PERSON IS STILL INCARCERATED FOR A PRIOR PRISON SENTENCE.

THE STATE SEES NO DUE PROCESS PROBLEMS WITH PICKING A PERSON UP HOW MANY DAYS OR WEEKS, I GUESS, AND BRINGING HIM BACK IN?

WELL, I WAS SAYING JUST THEN, DURING THAT LAST YEAR OF THE PRISON SENTENCE, THERE CERTAINLY ARE NO PROBLEMS, BECAUSE THE PERSON IS IN CUSTODY ON THE PRISON SENTENCE, REGARDLESS. SO AT THAT POINT IN TIME, IT CERTAINLY DOESN'T MAKE A DIFFERENCE. GOING BACK TO THE QUESTION OF COMPARING THE JURISDICTIONAL AND NONJURISDICTIONAL LANGUAGE IN THE RESPECTIVE STATUTES THAT CAN BE AN AWFUL LOT OF REASONS WHY THE LEGISLATURE MAY HAVE CHOSEN NOT TO INCLUDE ANY KIND OF JURISDICTIONAL DISCLAIMER, WITH RESPECT TO THE 30-DAY PERIOD. THOSE REASONS MAY BE THAT THE LEGISLATURE DIDN'T EVEN REMOTELY THINK THAT ANY SUCH THING WOULD BE CONSTRUED AS A CONDITION PRECEDENT TO A CAUSE OF ACTION, AS MIGHT BE THE CASE IN THE OTHER MATTERS THAT YOU ARE REFERRING TO. ANOTHER EXPLANATION FOR IT MIGHT BE THAT THE LEGISLATURE, PERHAPS REALIZED THAT SOMETHING SUCH AS A 30-DAY TRIAL PERIOD IS, REALLY A MATTER OF JUDICIAL PROCEDURE AND SHOULD, REALLY, BE LEFT FOR THE SUPREME COURT'S RULE-MAKING CAPACITY AND THEREFORE THAT THE LEGISLATURE ONLY INTENDED TO BE DIRECTORY AND NOT MANDATORY, AND THE REAL RULE OF STATUTORY CONSTRUCTION THAT IS INHERENT IN THERE IS THE RULE WHICH I HAVE QUOTED AND CITED SUBSTANTIAL AUTHORITY ON, FOR THE PROPOSITION THAT, WHEN THE LEGISLATURE SETS FORTH A TIME PERIOD, SPECIFICALLY A TIME PERIOD IN A PIECE OF LEGISLATION AND THE LEGISLATURE DOES NOT EXPRESSLY PROVIDE ANY REMEDY, THEN THE RULE OF STATUTORY CONSTRUCTION, WHICH IS MORE DIRECTLY APPLICABLE THAN THE ONE TO WHICH YOUR HONOR REFERRED, THAT RULE OF STATUTORY CONSTRUCTION SAYS THAT IT SHALL BE DEEMED DIRECTORY RATHER THAN MANDATORY. WE HAVE REACHED THE STAGE WHERE AT LEAST FOUR APPELLATE COURTS ACROSS THE STATE, TO ONE EXTENT TENT OR ANOTHER, HAVE -- EXTENT OR ANOTHER, HAVE VIEWED THIS STATUTE AS BEING THE STATUTORY PERIOD, AS BEING NONJURISDICTIONAL.

GO AHEAD.

I JUST WANT TO GO BACK TO WHAT JUSTICE HARDING ASKED YOU. IF THIS, IF NOTHING WAS WRITTEN ABOUT WHEN A TRIAL SHOULD COMMENCE, IN THE STATUTE, ARE YOU SAYING THAT, BASED ON A MATTER OF CONSTITUTIONAL PRINCIPLE, THAT THERE WOULD HAVE -- THAT A TRIAL WOULD HAVE TO COMMENCE WITHIN A TIME CERTAIN, NO LESS THAN, WHAT DID YOU SAY, 45

DAYS?

WHAT I WOULD SAY, FROM MY READING OF THE CASE, IS THAT, ONCE CUSTODY STARTS UNDER THE COMMITMENT CASE, ITSELF, WHEN THE PRISON SENTENCE ENDS AND WE ARE TOTALLY UNDER THE COMMITMENT CASE, AND CUSTODY IS SOLELY ATTRIBUTABLE TO THE COMMITMENT CASE, THERE SEEMS TO BE THE OUTER LIMITS OF WHAT HAS BEEN UPHELD FOR THE PERIOD OF TIME IN WHICH AN EVIDENTIARY HEARING MUST BE ACCORDED, ABSENT APPROPRIATE WAIVERS, WOULD BE APPROXIMATELY 50 DAYS.

SO WHAT YOU ARE SAYING, AGAIN IF THIS HAD COMMENCED WHILE THE DEFENDANT WAS STILL IN PRISON, THE IDEA THAT YOU WOULD DISMISS THE CASE, YOU OBVIOUSLY COULDN'T RELEASE HIM, GOING BACK TO, STARTING WITH THE REMEDY, YOU WOULDN'T RELEASE HIM FROM PRISON.

RIGHT.

WHAT COULD YOU DO, IF HE WERE STILL IN PRISON? YOUR POSITION BEING THAT, IF IT WAS A DISMISSAL, THAT YOU COULD REINSTATE THE PROCEEDINGS?

WELL, CERTAINLY IF THERE IS A DISMISSAL OF ANY ONE OF THESE CASES, IT WOULD HAVE TO BE A DISMISSAL WITHOUT PREJUDICE. THIS IS A CIVIL CASE THAT IS GOVERNED BY THE RULES OF CIVIL PROCEDURE, AND THE ONLY ANALOGOUS SITUATIONS THAT I CAN THINK OF WHERE YOU HAVE DISMISSALS WHICH ARE NOT ON THE MERITS AND THEREFORE ARE TIME PERIODS IN CIVIL CASES, ARE FAILURE TO PROSECUTE WITHIN 100 DAYS, WHICH IS WITHOUT PREJUDICE TO REFILE.

SO LET'S GO TO THE HYPOTHETICAL OF, IF THE DEFENDANT HAS ALREADY BEEN RELEASED, IF THIS COURT FINDS THIS IS JURISDICTIONAL, AND THERE WAS A DISMISSAL, ARE YOU SAYING THERE COULD JUST BE MULTIPLE TAKING THE PERSON IN, THEN WAITING THE 30 DAYS, NOT HAVING A TRIAL, AND --

I BELIEVE THAT THAT IS WHAT WOULD ENSUE, WHICH ALSO SHOWS WHY ANY SUCH ERROR WOULD ULTIMATELY HAVE TO BE DEEMED HARMLESS AND WOULD PROBABLY BUILD FURTHER DELAYS INTO THE PROCESS, BY VIRTUE OF CAUSING A REPEAT OF ALL OF THE PAPERWORK AND NEW TIME PERIODS RUNNING. I THINK WHAT THE ANSWERS SHOULD BE ARE THAT YOU HAVE GOT TWO POSSIBLE REMEDIES. FIRST, IMMEDIATE RELEASE IS NOT AN APPROPRIATE REMEDY AT ANY TIME. THE LEGISLATURE RULED IT OUT. THE LEGISLATURE, IN THE ACT, SAYS THAT, WHEN YOU HAVE A DETERMINATION OF PROBABLE CAUSE, THE STATUTE SAYS, EXPLICITLY, THAT THEREAFTER, THE PERSON SHALL BE TAKEN INTO CUSTODY AND HELD IN AN APPROPRIATE SECURE FACILITY. THE LEGISLATURE EXPRESSLY REPUDIATED ANY NOTION OF IMMEDIATE RELEASE, PENDING TRIAL WHETHER THE PERSON IS STILL IN PRISON OR WHETHER THE PRISON SENTENCE HAS EXPIRED. THAT IS NOT PERMISSIBLE, UNDER THE STATUTE. THE OTHER REMEDIES WOULD BE, AFTER THE PRISON SENTENCE HAS EXPIRED, THERE IS CERTAINLY AN ENTITLEMENT TO AN ADVERSARIAL PROBABLE CAUSE HEARING, WHICH IS BASICALLY A MINITRIAL, AT WHICH POINT IN TIME YOU WOULD MORE OR LESS HAVE FULL-BLOWN EVIDENCE, WITH A MUCH MORE SUBSTANTIAL FINDING OF PROBABLE CAUSE BEFORE THE TRIAL, WHICH, IN TURN --

SO YOU ARE SAYING, THEN, BASICALLY, THAT THE STATE HAS UNLIMITED OPPORTUNITY TO BRING THIS PERSON INTO ONE OF THESE COMMITMENT HEARINGS.

I DON'T THINK IT IS UNLIMITED UNLIMITED. I THINK, YOU KNOW, YOU ARE GOING TO HAVE TO HAVE AN ADVERSARIAL PROBABLE CAUSE HEARING AT SOME POINT IN TIME, IF THE TRIAL IS GOING TO BE DELAYED AND YOU HAVE EXCEEDED THE, AND YOU HAVE EXCEED THE PRISON SENTENCE, BUT ONCE YOU --

CAN YOU FOCUS ON THIS 50 DAYS. WHY DO YOU SAY THAT? BECAUSE THERE IS A CASE OUT THERE THAT SAYS THAT?

THERE ARE TWO CASES FROM THE UNITED STATES SUPREME COURT.

THOSE WERE THE FACTS IN THAT CASE WAS 50 DAYS. BUT IF YOU PURSUE YOUR THEORY, IT IS NOTHING MAGICAL ABOUT THE 50 DAYS, IS IT? OTHER THAN THAT JUST YOU HAPPEN TO HAVE THIS ONE CASE THAT SAID IT IS OKAY. 50 DAYS.

TWO CASES THAT I SEE, AND THAT SEEMS TO BE THE ONES THAT HAVE SET OUTER LITS FOR PERIOD OF --

IF IT WAS 60 DAYS, WOULD YOU BE ARGUING THAT THAT WAS OKAY?

WELL, THERE IS NO EXPLICIT CASE THAT IS HELD, THAT I HAVE SEEN THAT HAS UPHELD ANYTHING FOR 60 DAYS, BUT SOONER OR LATER YOU ARE GOING TO REACH THE POINT IN TIME WHERE YOU ARE SUBSTANTIALLY BEYOND THE 50 DAYS DAYS. WHAT THE BRIGHT-LINE WOULD BE AND WHERE THAT IS GOING TO GO.

THAT IS MY POINT. THERE IS NO GUIDELINE, OTHER THAN THERE HAPPENS TO BE A CASE THAT SAYS IT IS OKAY AT FIFTH.

BUT THE CASES OUT THERE SO FAR HAVE, CERTAINLY, GONE BEYOND THE 30 DAYS PROVIDED BY OUR STATUTE, AND ON TOP OF WHICH OUR STATUTE, REALLY, CONTEMPLATES THINGS HAPPENING DURING THAT LAST YEAR OF THE PRISON SENTENCE AT WHICH POINT IN TIME IT REALLY DOESN'T MATTER, SINCE THERE IS NO PREJUDICE TO ANYONE, IF THE 30 DAYS EXPIRES FOR THE FIRST MONTH, THE SECOND MONTH, INDEED, FOR SOME SEVEN, EIGHT, OR NINE MONTHS, UNTIL YOU GET TO THE END OF THAT PRISON SENTENCE.

WHAT HAPPENS AFTER 50 DAYS?

AFTER THE 50 DAYS, AT THE POINT IN TIME THAT YOU REACH 50 DAYS, I THINK THERE HAS GOT TO BE SOME KIND OF AN EVIDENTIARY HEARING, AS WITHIN THE CONSTITUTIONAL LIMITS, AS SET FORTH BY THE UNITED STATES SUPREME COURT.

WHAT HAPPENS IF THERE IS NO HEARING AFTER 50 DAYS?

I THINK THERE WOULD BE A DISMISSAL, AND IT IS GOING TO BE A DISMISSAL WITHOUT PREJUDICE, SINCE THERE IS NO ADD -- NO ADJUDICATION ON THE MERITS, JUST LIKE DISMISSAL FOR LACK OF PROSECUTION. NOW, THE STATE MAY BE ABLE TO REFILE, AND THE STATE MAY BE ABLE TO STILL PROFITS CASE, BUT AS YOU GO FURTHER AND FURTHER AND AS THERE ARE MORE AND MORE PERIODS OF TIME OF A LACK OF CONFINEMENT, THE STATE'S CASE IS GOING TO BECOME MUCH MORE DIFFICULT, AS THE PERSON, PERHAPS, ESTABLISHES THAT HE HAS NOT COMMITTED ANY FURTHER SEXUAL SEXUALLY-VIOLENT OFFENSES, DURING THE PAST ONE, THREE, SIX, TWELVE, OR HOWEVER MANY MONTHS ARE AT ISSUE.

YOU ARE WELL INTO YOUR REBUTTAL TIME.

I SEE. IF THERE ARE NO FURTHER QUESTIONS, I WILL SAVE THE LAST MINUTE OR SO FOR REBUTTAL. THANK YOU.

THANK YOU.

MISS COHEN.

GOOD MORNING. MAY IT PLEASE THE COURT. COUNSEL. I AM JEANINE COHEN. I AM CO-COUNSEL JOHN SKYE. WE REPRESENT KEVIN KINDER. AS THE COURT IS AWARE, WE ARE HERE BECAUSE OF A CERTIFIED QUESTION FROM THE SECOND DISTRICT COURT OF APPEALS, CONCERNING WHETHER

OR NOT THE FAILURE TO BRING KEVIN KINDER TO TRIAL WITHIN THE 30-DAYTIME PERIOD AUTHORIZES THE RELEASE OF THE DETAINED INDIVIDUAL. IT IS OUR POSITION THAT NOT ONLY DOES IT AUTHORIZE THE RELEASE BUT THE DISMISSAL, BECAUSE THE RELEASE, ALONE, WAS AN INADEQUATE AND ILLUSORY REMEDY THAT KEVIN KINDER NEVER OBTAINED. IT WAS -- NOT ONLY WAS IT NOT OBTAINED, BUT AS WE STATED TO IN THE FACTS IN OUR BRIEF, HE WAS, THEN, FORCED TO TRIAL UNPREPARED UNPREPARED.

WERE WILL YOU GIVE US JUST A SHORT HISTORY OF -- WILL YOU GIVE US JUST A SHORT HISTORY OF WHEN THE PETITION WAS FILED AND WHEN COUNSEL WAS APPOINTED AND WHEN HE WAS BROUGHT TO TRIAL?

ABSOLUTELY. HIS RELEASE DATE WAS SEPTEMBER 3 1999. THE PETITION WAS FILED AND THE ORDER DETERMINING PROBABLE CAUSE EXPARTE WAS, ALSO, DONE ON SEPTEMBER 3, 1999. HE WAS NOT BROUGHT TO COURT AND HAD COUNSEL APPOINTED, UNTIL OCTOBER 18, 1999.

BUT THERE WAS, HE WAS SCHEDULED TO BE IN COURT ONE DAY AND I THINK A HURRICANE CAME ALONG.

THE ONE-DAY HURRICANE WAS WHEN HE WAS, I BELIEVE THAT HE WAS ACTUALLY PHYSICAL BROUGHT UP. THE COURT WAS CLOSED BUT COUNSEL WAS NEVER APPOINTED. AND THEN YOU HAVE UNTIL OCTOBER 18, 44 DAYS LATER, WHICH IS WHEN HE HAS COUNSEL APPOINTED TO HIM. WE, THEN, OBVIOUSLY, MOTION TO DISMISS WAS FILED, ARGUING THAT THE 30 DAYS WAS JURISDICTIONAL AND MANDATORY, AND THE CASE HAD TO BE DISMISSED, THAT MOTION WAS DENIED. A WRIT OF PROHIBITION WAS THEN TAKEN TO THE SECOND DCA, WITH A RESPONSE AND REPLIES FILED, AND WHEN THE SECOND DCA ISSUED ITS OPINION ON JULY 7 OF 2000, THE STATE IMMEDIATELY DEMANDED A JURY TRIAL. AT THAT TIME, THEY FILED A STAY OF HIS RELEASE, IN THE APPELLATE COURT, AND TRIED TO PROCEED TO TRIAL. WE ASKED TO FILE A STAY OF ALL PROCEEDINGS, WHILE THE WRIT OF PROHIBITION WAS BEING REHEARD, BUT BECAUSE OUR MOTION TO STAY ALL PROCEEDINGS WAS DENIED, WE WERE, WHEN WE GOT NOTICE OF THAT IT WAS AUGUST 8. ON AUGUST 11, WE FILED A MOTION TO CONTINUE, WHICH WAS DENIED, AND THE TRIAL DATE HAD BEEN SET FOR AUGUST 14. AND THAT IS WHEN WE WENT TO TRIAL.

THANK YOU.

GOING TO TRIAL IN THIS MANNER WITH THE COUNSEL OBVIOUSLY SPENDING ALL OF MY TIME AT THE APPELLANT LEVEL, IT WAS INADEQUATE, AS FAR AS THE TRIAL IS CONCERNED, AND I KNOW THAT IS PENDING IN HIS APPEAL, PROBABLY IN THE SECOND DCA HOWEVER, IT IS BECAUSE OF THIS, WHAT EXACTLY HAPPENED WITH MR. KINDER, THAT, TO SAY THAT THEY CAN BE RELEASED IF THEY ARE NOT BROUGHT TO TRIAL WITHIN 30 DAYS, IS AN INADEQUATE REMEDY. IT IS ILLUSIONRY. IT IS NOT GOING TO BE ACHIEVED. THE FACT THAT HE WASN'T BROUGHT TO TRIAL WITHIN 30 DAYS, WHEN THE ACT CLEARLY PROVIDES THAT THEY SHALL BE BROUGHT TO TRIAL, AND SHALL IS CLEAR HERE.

BUT HOW MANY DISTRICT COURTS HAVE SAID "SHALL" MEANS "MAY"?

I BELIEVE THERE IS TWO, OSBORNE AND REESE WERE THE TWO CASES, AND THE DISTINCTION THAT I WOULD MAKE IN THOSE CASES IS THEY ARE RELYING ON CASES OUT OF CALIFORNIA, AND AS WE BRIEF IN OUR BRIEF TO THIS COURT, I DON'T BELIEVE CALIFORNIA CAN BE LOOKED AT, IN COMPARING THESE ACTS, BECAUSE THE FLORIDA ACT IS LIKE CANDACE'S ACT AND NOT LIKE THE OTHER STATE'S ACT. HOWEVER, THE OTHER DISTINCTIONS ARE THAT THE PERSON IN THOSE CASES WAS BROUGHT TO COURT AND WAS GIVEN COUNSEL, PRIOR TO 30 DAYS. THERE IS A HUGE DIFFERENCE WITH THAT AND WITH KEVIN KINDER BEING LOCKED UP IN A MAXIMUM SECURITY FACILITY FOR 44 DAYS, WITHOUT BEING GIVEN COUNSEL OR ACCESS TO THE COURT.

WHAT IS THE REAL SIGNIFICANCE OF BEING GIVEN COUNSEL DURING THAT TIME PERIOD, IF YOUR

ARGUMENT, REALLY, IS THAT YOU HAVE TO BE BROUGHT TO TRIAL WITHIN THAT TIME PERIOD? DOES GETTING COUNSEL MAKE A DIFFERENCE?

WELL, COUNSEL BEING PREPARED FOR THE TRIAL.

I KNOW THAT YOU NEED TO HAVE COUNSEL TO GO TO TRIAL, BUT IF YOU ARE GIVEN COUNSEL, SAY, ON THE 15th DAY, AND YOU ARE STILL NOT BROUGHT TO TRIAL ON THE 30th DAY, ARE YOU SAYING IT IS OKAY TO GO BEYOND THE 30th DAY, BECAUSE YOU HAVE BEEN GIVEN COUNSEL?

NO, I AM NOT. I AM SAYING AT THAT POINT, SOMEBODY STILL NEEDS TO FILE A MOTION FOR CONTINUANCE, OR THE COURT NEEDS TO FIND THAT THERE HAS BEEN GROUNDS FOR A CONTINUANCE, BUT I BELIEVE --

LET ME GO BACK TO IF, THE 30 DAYS, IS IT YOUR POSITION IT IS JURISDICTIONAL, NOT ONLY THAT IT IS MANDATORY THAT A PERSON SHALL BE BROUGHT TO TRIAL, BUT IT IS JURISDICTIONAL, SO THAT NO MATTER, UNDER WHAT CIRCUMSTANCES UNLESS THERE IS A GOOD CAUSE, THAT THERE HAS GOT TO BE DISMISSAL, AND THE DISMISSAL IS WITH PREJUDICE?

YES. THAT IS OUR POSITION.

BUT LET'S JUST TAKE A SCENARIO, WHERE THE PERSON IS STILL INCARCERATED, AND THE PETITION IS FILED DURING THE LAST YEAR OF HIS PRISON TERM. DO YOU REALLY THINK, IN TERMS OF LOOKING AT THIS WHOLE LEGISLATIVE SCHEME, THAT THE LEGISLATURE INTENDED THAT, IF THE PERSON DID NOT COME TO TRIAL WITHIN 30 DAYS, THAT THERE WOULD BE A DISMISSAL, AND THE STATE COULD, THEREAFTER, NEVER FILE SOMETHING? I MEAN, I SEE YOUR SITUATION, YOU HAVE GOT A RELEASE PERSON, AND THERE IS CLEARLY SOME OTHER RIGHTS THAT MAY ATTACH, IN TERMS OF DUE PROCESS PART, BUT AS FAR AS ACTUALLY THE -- WE ARE HERE ON STATUTORY CONSTRUCTION, HOW WOULD THAT BE A REASONABLE CONSTRUCTION OF THE STATUTE, TO SAY IT IS JURISDICTIONAL, NO MATTER, YOU KNOW, THAT IF 31 DAYS AND THEY ARE IN PRISON, THAT IT HAS GOT TO BE DISMISSED WITH PREJUDICE?

I DO BELIEVE IT IS A FAIR QUESTION, AND IT CERTAINLY IS A HARD ONE TO ANSWER, GIVEN THAT IF THEY ARE ACTUALLY IN PRISON, THE ISSUE WOULD BE WHAT BRIDGE DISDO THEY SUFFER, IF THEY ARE NOT BROUGHT TO TRIAL ON THE 31th DAY, AND AS THIS WAS APPOINTED OUT, THIS ACT DOES PROVIDE THAT THESE CASES ARE SUPPOSED TO BE HAPPENING WHILE THEY ARE SERVING THEIR PRISON SENTENCE. THE PROBLEM IS THAT THE TIME LIMITS THAT THESE CASES ARE SUPPOSED TO BE HAPPENING, WHEN THEY ARE IN PRISON, UNDER SECTION 394.913, WHICH PROVIDES ALL THESE TIME PERIODS, IT SPECIFICALLY SAYS IT IS NOT JURISDICTIONAL. THEY DON'T HAVE TO COMPLY WITH THESE TIME PROVISIONS, AND AS OF RIGHT NOW, THEY ARE NOT! THEY ARE STILL NOT. THESE PEOPLE ARE NOT BEING FILED ON WHEN THEY STILL HAVE PRISON TIME LEFT, AND SPECIFICALLY HERE IN KEVIN KINDER'S CASE, THAT IS NOT EVEN CLOSE TO WHAT HAPPENED.

BUT NOW WHAT WOULD HAPPEN, UNDER THE VALDEZ CASE, THERE WOULD BE, WITHIN FIVE DAYS, THERE WOULD BE AN ADVERSARIAL PROBABLE CAUSE HEARING, RIGHT? IS THAT BEING FOLLOWED?

FIVE-DAY ADVERSARIAL PROBABLE CAUSE HEARING, WHEN REQUESTED. OBVIOUSLY I WOULD GO BACK TO SAYING YOU HAVE TO HAVE COUNSEL APPOINTED, AND YOU HAVE TO REQUEST IT.

WELL, ARE YOU MAKING A SEPARATE CLAIM, GOING BACK TO WHAT YOU WERE RESPONDING TO JUSTICE QUINCE, IN THIS CASE THE STATUTE, ALSO, SAYS THERE SHALL BE APPOINTED COUNSEL. ARE YOU, THEN, IS THERE A CLAIM INTERTWINED WITH THE DENIAL OF COUNSEL, SO THAT THERE WAS, BOTH NOT COUNSEL OR A TRIAL WITHIN 30 DAYS?

I BELIEVE IT GOES TO OUR ARGUMENT AS TO WHY THIS IS MANDATORY AND JURISDICTIONAL, BECAUSE WHILE COUNSEL IS TO BE PROVIDED AND ACCESS TO THE COURT IS TO BE PROVIDED, IT IS NOT SPECIFICALLY STATED WHEN, IN THE FACTS AT ALL, OTHER THAN THE FACT THAT THEY HAVE THIS RIGHT TO TRIAL THAT SHALL OCCUR WITHIN 30 DAYS. IT IS THAT AND THAT ALONE, THAT GUARANTEES THEM THE RIGHT TO GET COUNSEL APPOINTED, AS SOON AS POSSIBLE, AND THE RIGHT TO HAVE ACCESS TO THE COURT.

WHERE, IN OUR LAW, IS THERE A CONCEPT THAT, IF, THAT THE LEGISLATURE SET SOME TYPE OF JURISDICTIONAL BASIS, IF A COURT DOESN'T GET TO TRIAL WITHIN A SET PERIOD OF TIME? I MEAN, JURISDICTION IS GENERALLY ON THE BASIS OF A, IF IT IS A STATUTE OF LIMITATIONS TYPE OF ARGUMENT. IT IS A STATE OF -- IT IS A DATE OF FILING, NOT A DATING WHEN YOU HAVE GOT TO DO SOMETHING AFTER SOMETHING IS FILED.

WE COMPARE THIS TO THE CRIMINAL RULES CONCERNING SPEEDY TRIAL.

BUT THIS, BUT THE SPEEDY TRIAL RULE IS A RULE OF PROCEDURE. IT IS NOT A STATUTE. CORRECT?

YES. CORRECT. I WOULD POINT, I GUESS, TO THE CONSTITUTIONAL PROVISIONS CONCERNING SPEEDY. I BELIEVE THAT IS THE BEST WAY I CAN ANSWER THAT QUESTION. I AM TRYING TO THINK ABOUT THIS IN THE SENSE --

CONCEPTUALLY, BECAUSE THE WHOLE CONCEPT, HERE, IS THAT THIS IS A CIVIL, CORRECT?

THAT IS WHAT THE COURTS HAVE STATED.

RIGHT. AND SO IF IT IS CIVIL, THEN WE HAVE GOT TO DEAL WITH IT, WITHIN THE CONCEPTS OF OUR LAW, IN DEALING WITH CIVIL CASES.

CORRECT. BUT BECAUSE IS THERE A DEPRIVATION OF LIBERTY, I MEAN, THERE IS CERTAINLY DUE PROCESS CONSIDERATIONS, AND THAT IS HOW, I GUESS, WE INTERTWINE THEY WILL IN OUR BRIEF.

WE HAVE AN ANALOGOUS SITUATION WITH THE "BAKER" ACT?

CORRECT AND THE "BAKER" ACT SPECIFICALLY REQUIRES THAT THE PERSON IS TO BE BROUGHT TO COURT WITHIN FIVE.

AND IF IT DOES NOT HAPPEN?

THAT HAS NOT, AS FAR AS IN MY RESEARCH OF THE "BAKER" ACT, AS TO WHAT OCCURS.

FOR THE PURPOSE OF CLARIFICATION HERE, THE ONLY ISSUE DEALT WITH BY THE DISTRICT COURT WAS THE RELEASE AND NOT WHETHER THE PETITION IS DISMISSED.

CORRECT.

BUT YOU, IN YOUR OPENING STATEMENT, INDICATED YOU WANTED US TO DETERMINE THAT THE PETITION SHOULD BE DISMISSED WITH PREJUDICE.

YES, SIR. THE SECOND DCA OPINION SPECIFICALLY STATED THAT THEY DIDN'T FIND MERIT IN KINDER'S ARGUMENT, CONCERNING THE LOSS OF JURISDICTION, AND STATED IN A FOOTNOTE, I BELIEVE, THAT JURISDICTION WASN'T PROPERLY BEFORE THEM, AND IT HAS BEEN OUR POSITION IN GOING BACK TO LOOK AT OUR MOTION TO DISMISS OUR WRIT OF PROHIBITION, OUR REPLY TO THE WRIT, THAT WE DID EVERYTHING WE COULD TO PUT JURISDICTION BEFORE THEM AND IT

WAS JURISDICTION. THE OTHER POINTS THAT I WOULD MAKE OUT TO THIS COURT CONCERNING THE "BAKER" ACT IS THAT, THE "BAKER" ACT, THERE IS A FINDING OF IMMEDIATE DANGER TO YOURSELF OR OTHERS, AND THAT IS COMPLETELY DIFFERENT TO THE INVOLUNTARY COMMITMENT AS TO SEXUALLY-VIOLENT PREDATORS. THE ISSUE IN THE SEXUALLY-VIOLENT PREDATORS ACT, IS THAT THERE IS A GAINING OF AN ACT OF SEXUAL VIOLENCE SOMETIME IN THE FUTURE. IT IS THE REST OF THE PERSON'S LIFE, COMPLETELY DIFFERENT FROM THE "BAKER" ACT, WHERE YOU HAVE AN IMMEDIATE TYPE SITUATION, EVIDENCE EVERYDAY BY, I BELIEVE, A RECENT OVERT -- EVIDENCED BY, I BELIEVE, A RECENT OVERT SEXUAL ACT, WITHIN THE LAST SIX MONTHS.

LET ME ASK YOU IS THERE ANYTHING SHORT OF DISMISSAL OF THE PETITION THAT WOULD, IN YOUR ESTIMATION, SATISFY DUE PROCESS?

I BELIEVE, IF THE ACT WAS REWRITTEN, BUT OBVIOUSLY THIS COURT CAN'T DO THAT. MY ANSWER IS NO, NOT UNDER THESE FACTS OF THIS CASE.

YOU KNOW, EVEN UNDER THE SPEEDY TRIAL RULE, THERE IS SORT OF THIS WINDOW OF RECANT YOUR KIND OF -- OF RECANT YOUR KIND OF PROVISION -- OF RECAPTURE TYPE OF SITUATION, SO WOULD THAT KIND OF SITUATION BE APPLICABLE UNDER THIS STATUTE?

I DON'T THINK THE STATE WOULD BE ENTITLED TO A RECAPTURE WINDOW, IF THEY HELD SOMEBODY IN JAIL AND UNTIL SPEEDY TRIAL RAN, WITHOUT GIVING THEM COUNSEL OR WITHOUT GIVING THEM ACCESS TO THE COURT?

I AM NOT SPEAKING OF COUNSEL RIGHT NOW, JUST 30-DAY PERIOD BEING BROUGHT TO TRIAL.

YES. THEY WOULD BE ENTITLED TO A RECAPTURE WINDOW, UNDER THE SPEEDY TRIAL LAW.

BUT YOUR ARGUMENT HERE, BECAUSE WE ARE THROWING AROUND DUE PROCESS, AS A, CERTAINLY THERE IS, WE WILL BE TALKING ABOUT THAT, I GUESS, IN TERMS OF THE SUBCONSTANT -- SUBSTANTIVE ATTACK ON THE ENTIRE ACT, BUT AS FAR AS THIS CASE IS CONCERNED, I AM UNDERSTANDING IT THAT YOUR ARGUMENT IS A STATUTORY CONSTRUCTION ARGUMENT THAT THIS IS SOMEHOW A JURISDICTIONAL REQUIREMENT, NOT THAT MR. KINDER'S CONSTITUTIONAL RIGHTS WERE VIOLATED IN THIS CASE.

I BELIEVE THAT, IN THE APPROACH THAT WE TOOK WITH THIS COURT, WE WERE NOT ARGUING THAT CONSTITUTIONAL RIGHTS NECESSARILY WERE VIOLATED, ALTHOUGH I BELIEVE THAT THAT ARGUMENT WILL BE RAISED ON APPEAL. I BELIEVE --

RIGHT NOW WE ARE JUST LIMITED TO THE STATUTORY CONSTRUCTION ARGUMENT, AS TO WHETHER THIS 30-DAY PERIOD IS JURISDICTIONAL, AND I THINK WHAT JUSTICE WELLS IS SAYING, I THINK -- DO YOU THINK YOU HAVE A HARD TIME GETTING AROUND THAT, HOW --

I DO.

-- TAKING A CASE TO TRIAL CAN BE JURISDICTIONAL?

WELL, I DO BELIEVE THAT THAT IS A HARD, THAT IT WOULD BE A HARD WAY TO GET AROUND IT, HONESTLY, GIVEN THE WAY THIS ACT IS WORTHED -- WORDED, AND WHAT WE ARE LIMITED TO, THAT IS OBVIOUSLY OUR POSITION. THE OTHER THINGS THAT I WOULD POINT OUT TO THE COURT CONCERNING THIS IS, AGAIN, IN LOOKING AT ALL THE OTHER, THE CASES, FROM THE OTHER STATES THAT ARE RELIED ON BY THIS STATE AND THAT WE WENT THROUGH IN OUR BRIEF, THAT THERE ARE NO OTHER STATES THAT DO NOT PROVIDE FOR A PERSON TO BE BROUGHT TO COURT WITHIN AN ADEQUATE PERIOD OF TIME, OTHER THAN FLORIDA, AND THE ONLY ONE IN FLORIDA IS THAT THEY SHALL BE BROUGHT TO TRIAL WITHIN 30 DAYS. CLEARLY THIS RIGHT TO TRIAL

WITHIN 30 DAYS, WHEN APPOINTED, CAN BE DONE. IT HAS BEEN DONE. THESE CASES HAVE BEEN TRIED WITHIN 30 DAYS. SO THAT IS NOT THE ISSUE, AS FAR AS THAT THEY ARE JUST GOING TO BE DELAYED OR THAT IT IS REALLY JUST TO GET THEM INTO COURT. IT IS A MATTER OF HE SHOULD HAVE HAD A RIGHT OR HE HAS RIGHTS TO KNOW YEAH HE WAS BEING HELD -- TO KNOW WHY HE WAS BEING HELD, TO BE SERVED WITH A PETITION AND ACCESS TO THE COURT, AND PRIMARILY IN ARGUING THAT THIS IS MANDATORY AND JURISDICTIONAL, IT IS BECAUSE HE WAS LOCKED UP FOR 44 DAYS.

WHAT IS HAPPENING NOW, AS A PRACTICAL MATTER? IS COUNSEL BEING APPOINTED IMMEDIATELY, UPON THE PETITION BEING FILED?

NO.

SO WHAT --

I CAN ONLY SPEAK FOR HILLSBOROUGH COUNTY, BECAUSE I AM THE TRIAL ATTORNEY WHO HANDLES THESE CASES IN HILLSBOROUGH COUNTY. WE ARE BEING APPOINTED ON THE FIFTH DAY AFTER THE PETITION IS FILED, BECAUSE THAT IS AS SOON AS, APPARENTLY, AS DOC, DCF, AND THE STATE ATTORNEY, CAN BRING THE PERSON TO COURT, TO GO THROUGH THE IN DINS I DETERMINATION -- THE INDINGENCY DETERMINATION, TO HAVE COUNSEL APPOINTED FOR TRIAL. TWO WEEKS AGO, TWO ACTUALLY ENDED THEIR PRISON SENTENCE THE WEEK I WAS APPOINTED, AND THE THIRED THIRD MAN THAT I -- AND THE THIRD MAN THAT I TRIED, HIS PRISON SENTENCE ENDED WHILE WE WERE IN TRIAL, AND I WAS GIVEN 18 DAYS TO TRY THOSE THREE CASES SO THEY CAN BE TRIED IN 30 DAYS BUT, NO, THEY ARE CLEARLY NOT BEING FILED ON WHILE THEY HAVE PRISON SENTENCES LEFT. THERE WAS A FOURTH TRIAL. HE PICKED UP AN ADDITIONAL 14-MONTH SENTENCE, BUT HE PICKED UP THE SENTENCE AND THEY DIDN'T REALIZE IT, SO THEY FILED ON HIM NOW. THEY ARE NOT FILING ON THESE CASES, WHEN THESE MEN STILL HAVE MONTHS AND MONTHS LEFT. THAT IS BY FAR THE EXCEPTION TO THE RULE IN HILLSBOROUGH COUNTY, AND THE PART OF THE ACT THAT SAYS YOU HAVE A YEAR TO LOOK AT THE CASE. YOU HAVE A CERTAIN PERIOD OF TIME TO NOTIFY THEM, IT SPECIFICALLY SAYS IT IS NOT JURISDICTIONAL, AND FAILURE TO COMPLY WITH IT IN NO WAY STOPS THE STATE FROM PROCEEDING, SO THEY DON'T HAVE TO FILE THESE CASES EARLY. IF THERE IS NO OTHER QUESTIONS, I THANK YOU VERY MUCH FOR YOUR TIME.

WHAT IS YOUR TAKE ON THE "BAKER" ACT?

IT IS MY RECOLLECTION THAT THIS COURT HAD A COMMISSION, ABOUT A YEAR AND-A-HALF AGO, WHICH STUDIED THE APPLICATION OF THE "BAKER" ACT TO THE ELDERLY, AND A SUBSTANTIAL REPORT WAS PUBLISHED, WHICH IS AVAILABLE ON YOUR WEB SITE, AND ONE OF THE ISSUES THAT WAS TAKEN UP THERE WAS THE FACT THAT THE CASES WERE NOT GOING TO TRIAL AS QUICKLY AS THE LEGISLATURE INTENDED. NOW, VERY FEW, RELATIVELY FEW "BAKER" ACT CASES REACHED THE APPELLATE STAGE WITH RECORDED OPINIONS, SO IT IS REALLY NOT A MATTER OF RECORD AS TO WHAT HAS BEEN HAPPENING IN THE AFTERMATH OF THOSE FAILURES, BUT MY OWN UNDERSTANDING IS THAT THEY ARE NOT GETTING DISMISSED. I WOULD SUGGEST THAT --

ARE THEY BEING RELEASED?

I DON'T KNOW ENOUGH ABOUT THE MECHANICS OF THOSE INDIVIDUAL CASES TO SAY. THE OTHER, JUST BRIEFLY, THE OTHER POINT THAT I WOULD HAVE, THAT I WOULD SAY IN THE SAME VEIN, AND PERHAPS I WILL TOUCH ON IT MORE IN THE NEXT ARGUMENT, AND GIVEN THE END OF THE TIME, I GUESS I WILL SAVE IT FOR THE NEXT ARGUMENT.

COULD I ASK ONE, WITH THE CHIEF'S INDULGENCE?

ALL RIGHT.

THE, I AM INTERESTED IN THE CONNECTION BETWEEN YOUR RESEARCH AND THE CONSTITUTIONAL OUTSIDE TIME LITS, IN WHICH SOME SORT OF EVIDENTIARY HEARING MUST BE HELD -- TIME LIMITS, IN WHICH SOME SORT OF EVIDENTIARY HEARING MUST BE HELD AND THE 30-DAY PERIOD PROVIDED FOR BY THE LEGISLATURE. WHY WOULDN'T IT BE A REASONABLE CONSTRUCTION OF THIS SCHEME THAT THE LEGISLATURE, HAVING DONE THE SAME RESEARCH, AND THERE OBVIOUSLY BEING MANY, MANY CONSTITUTIONAL CONCERNS ABOUT A STATUTORY SCHEME LIKE THIS, SAID, WELL, WE SEE THAT CONSTITUTIONALLY, WE ARE ON DANGEROUS GROUNDS, ONCE WE GET UP TO 40 OR 50 DAYS, CERTAINLY AT THE OUTSIDE, WITHOUT HAVING AN EVIDENTIARY HEARING, AND THAT IS WHEN THE CONSTITUTION WOULD INTERSEED AND PREVENT US -- INTERCEDE AND PREVENT US FROM CONTINUING, AND SO WE ARE GOING TO HA SURE THAT WE ARE WELL WITHIN -- TO MAKE SURE THAT WE ARE WELL WITHIN THAT, BY PROVIDING FOR 30 DAYS, JUST AS, IN A SENSE, AS THIS COURT HAS DONE WITH THE SPEEDY TRIAL RULE, 90 DAYS IN MISDEMEANOR CASES, 180 IN FELONY CASES AND SO ON. WHY WOULDN'T THAT BE A REASONABLE INTERPRETATION OF WHAT THE LEGISLATURE WAS INTENDING TO DO, WHICH WAS TO BE SURE THAT THEY GOT UNDER THAT CONSTITUTIONAL CAP?

I THINK THE ANSWER TO THAT QUESTION ARE A RISES FROM THE FACT THAT THOSE OTHER COMMITMENT SCHEMES WERE PURE COMMITMENT SCHEMES, WHERE THE CUSTODY WAS ATTRIBUTABLE SOLELY TO THE COMMITMENT PROCESS.

LET ME SAY IF YOU WANT TO -- CAN FURTHERANCE THAT QUESTION, LET'S MOVE TO THE SECOND CASE. AND THEN WE WILL -- YOU FOLLOW-UP WITH JUSTICE ANSTEAD ON THAT QUESTION.

CERTAINLY.