03-1263

MARSHAL: PLEASE RISE .

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: PLEASE BE SEATED.

CHIEF JUSTICE: WE APPRECIATE COUNSEL BEING READY FOR THE LAST CASE ON THE DOCKET THIS MORNING. THE STRAIGHT VERSUS RAYMOND. YOU MAY PROCEED.

GOOD MORNING YOUR HONORS. MAY IT PLEASE THE COURT. DON BARK JOHN BARKER , ASSISTANT ATTORNEY GENERAL ON BEHALF THE STATE OF FLORIDA. THE ISSUE THAT IS PRESENTED TODAY IS WHETHER OR NOT SECTION 907.041-B OF THE FLORIDA STATUTES IS PURELY PROCEDURAL AND THEREFORE A VIOLATION UPON THIS COURT'SPOWER TO ENACT PROCEDURAL RULES. SECTION 4-B O F 90 47B OF 904.041 , IS DETERMININGWHETHER OR NOT AN INDIVIDUAL IS SBITS ED TO PRETRIAL DETENTION OR RELEASE. IN LOOKING AT WHETHER OR NOT THIS IS AN ENCROACHMENT OR IS THIS CONSTITUTIONAL, IT IS IMPORTANT TO REMEMBER THAT THE FUNDAMENTAL RULE OF CONSTITUTIONAL CONSTRUCTION ISTHAT, IF AT ALL POSSIBLE, A STATUTE SHOULD BE CONSTRUED TO BE CONSTITUTIONAL , AND A COURTIS REQUIRED TO RESOLVE ALL DOUBTS AS TO THE VALIDITY OF THE STATUTE IN FAVOR OF ITS CONSTITUTIONALITY .

WE HAVE AN UNUSUAL SITUATION HERE, DO WE NOT. AS I UNDERSTAND , THE COUNTY COURT, A CIRCUIT APPELLATE PANEL AND THEN THE THIRD DISTRICT COURT OF APPEAL HAVE ALL CONSISTENTLY RULED IN THIS WAY OR WAS THERE A DIFFERENT

THE COUNTY COURT , THE FIRST COURT TO HEAR IT FOUND THAT THERE WAS NOT A VIOLATION.

SO THE APPELLATE PANEL OF THE ELEVENTH CIRCUIT , AND THEN THE THIRD DISTRICT ADOPTEDTHEIR OPINION.

IN T TO GET THEY ADOPTED IT IN TOTAL TOE THEY DON'TED IT. IN TOTAL THEY ADOPTED THE OPINION .

THERE ARE RULES OF PROCEDURE AND THEN THERE ARE THING THAT IS SEEM LIKE RIDICULOUS RULES OF PROCEDURETHAT WE PASS SOMETIMES AND THAT THE LEGISLATURE DOES. IS THIS REALLY TRUE THAT , THE JUDGE WOULD HAVE TO ACTUALLY, EVEN IF THEY HAD ALL OF THE INFORMATION FOR THE RELEASE AT THE TIME OF THE FIRST APPEARANCE OF A PERSON ARRESTED FOR DOMESTIC BATTERY, THAT THEY WOULD HAVE T O SET A SECOND HEARING, JUST TO SATISFY THIS PROVISION?

THAT IS THE WAY THE COUNTY COURTS HAVE CHOSEN TO ENFORCE THIS SUBSTANTIVE RIGHT THAT THE LEGISLATURE HAS SAID , BASICALLY, THE PRIMARY CONSIDERATION IN SETTING , DETERMINING THE PRETRIAL RELEASE , IS THE SAFETY THE COMMUNITY.

I UNDERSTAND THAT , BUT WHAT I THINK THE PROBLEM WAS WHYTHE THIRD DISTRICT AND THE ELEVENTH CIRCUIT FOUND IT RIDICULOUS, IS THAT EVEN IF ALL OF THE INFORMATION WASTHERE FOR SOMEBODY WHO WOULD OTHERWISE YOU KNOW , COULD BOND OUT OR

WHATEVER , QUALIFY FOR PTS , LIKE , FOR SOME REASON THE FIRST APPEARANCE , IT COULDN'T BE DONE THEN. YOU HAD TO HAVE A SECOND APPEARANCE. ISN'T THAT WHAT, IF THE STATUTE DOESN'T MEAN THAT, THEN TELL US WHAT , HOW YOU WOULD CONSTRUE IT TO NOT HAVE THAT ABSURD RESULT.

WELL , ONE OF THE THINGS THAT I THINK NEEDS TO BE DONE IS THE , THERE ARE OTHER PROVISION BUS THEN THE RULESTHAT WOULD PERMIT IF THE DEFENDANT I S NOT SATISFIED WITH WHAT TYPE OF RELEASE OR WHAT TYPE OF BAIL THAT THEY HAVE BEEN GRANTED , THEY CAN PETITION THE COURTSUBSEQUENTLY TO

I DON'T FEEL LIKE YOU ARE ANSWERING MY QUESTION. THIS PREVENTS A JUDGE WHO HAS ALL OF THE INFORMATION NECESSARY TO RELEASE AN INDIVIDUAL ARRESTED FOR DOMESTIC BATTERY, WHO CAN'T BOND OUT BECAUSE THEY DON'T HAVE THE $1500 AND SGNT DOESN'T QUALIFY AND DOESN'TQUALIFY FOR ELECTRIC MONITORING, THE JUDGE CAN'T DO IT AT THE FIRST APPEARANCE, WHICH IS THE VERY PURPOSE OF THE FIRST APPEARANCE. IT IS HARD, MAYBE THE LEGISLATURE DIDN'T INTEND IT , BECAUSE IT DOES SEEM SO RIDICULOUS , BUT ISN'T THAT THE INTENT , OR ARE YOU TELLING US THAT WE CAN SAY THAT ISN'T THEINTENT. IT CAN BE DONE AS A FIRST ANDANSWER?

THE WAY THE STATUTE IS WRITTEN , IT CLEARLY CANNOT BE DONE AT THE FIRST APPEARANCE .

ISN'T THAT PROCEDURAL?

WELL , IT IS NOT TELLING YOU WHEN , IT IS SAYING AT ONEPOINT THAT IT CAN'T B E DONE.IT IS NOT TELLING THE TRIAL COURT WHEN, SUBSEQUENTLY, I T CAN DO IT .

BUT WHY WOULD WE WANT TO HAVE, ESPECIALLY IN COUNTY COURT , DOMESTIC BATTERY , WHERE WE ARE TRYING TO FIGURE OUT HOW TO DO THESE CASES WHEN THEY ARE MOUNTING U P , TO MAKE JUDGES HAVE A SECOND HEARING AND SET A SECOND HEARING FOR THE THOUSANDS OF CASES AROUND THE STATE THAT COULD BE DONE AT THE FIRST APPEARANCE? IS THAT REALLY , IT DOESN'T EVEN SOUND LIKE THE LEGISLATURE COULD HAVE WANTED THAT, BUT WHAT WOULD BE THE STATE'S INTEREST I N WANT THAT?

YOU HAVE TO KEEP IN MINDTHAT THIS DOESN'T JUST APPLY TO DOMESTIC VIOLENCE CASES. IN THIS CASE IT DOES. IT ALSO APPLIES TO ANY DANGEROUS CRIME , DOMESTIC VIOLENCE BEING ONE OF THOSE , AS DETERMINED B Y THE LEGISLATURE , A DANGEROUS CRIME.

WE ARE NOT TALKING ABOUT , IN OTHER WORDS, THIS IS A VERY LIMITED CLASS OF PEOPLE THAT QUALIFY FOR PTS SERVICES THAT HAVE GOT TO MEET ALL OF THESE STRINGENT CITE EAR CRITERIA. THE ISSUE ISN'T WHETHER SOMEONE SHOULD BE LET OUT ON BAIL. THE QUESTION IS WHEN IT CAN BE DONE. IF YOU HAVE ALL OF THE INFORMATION IN PLACE, WHY CAN'T YOU ALLOW A JUDGE TO DO IT WHEN THEY HAVE ALL OF THE INFORMATION IN PLACE , WHICH IS AT THE FIRST AND ANSWER?

THE LEGISLATURE HAS PROVIDED THAT THE TRIAL COURT RETAINS THAT DISCRETION TO RELEASE ON A RECOGNIZANCE BOND OR ON ELECTRONIC MONITORING.

I T DISCRIMINATES AGAINSTPEOPLE THAT DON'T HAVE $1500.

THERE IS ELECTRONIC MONITORING.

BUT THEY DON'T QUALIFY BECAUSE THEY MAY BE PREGNANT, BUT THAT IS MORE EXPENSIVE . ISN'T ELECTRONIC MONITORING MORE EXPENSIVE THAN PTSSERVICES? WHY ISN'T IT PROCEDURAL?I DON'T UNDERSTAND WHY IT IS NOT , WHAT IS THE SUBSTANCE OF

TO A CERTAIN EXTENT , I THINK THAT YOU CAN SAY THAT THERE IS PROCEDURAL, BUT THAT DOESN'T DESTROY THE CONSTITUTIONALITY . THAT DOESN'T MAKE IT IMPROPER . THE QUESTION, AGAIN , IS A PART OF A LARGER SCHEME UNDER 907.041 , WHICH TELLS THE TRIALCOURT WHEN A PERSON IS ENTITLED TO PRETRIAL DETENTION .

IS IT THE STATE'S POSITION THAT THE LEGISLATURE WE PEELED RULE 3.131? < p> IT REPEALED IT TO THE EXTENT THAT IT CON FLICKS WITH THIS STATUTE AND THESE PROVISIONS. THERE ARE SOME THING INS THE RULE AS IT CURRENTLY READSTHAT , CLEARLY CONFLICT WITH THIS STATUTE, AND ONE O F THEM , CLEARLY , THAT IS SUBSTANTIVE , IS THAT THEY HAVE CHANGED THE PRESUMPTION FOR RELEASE BY NONMONETARY GROUNDS. IF A PERSON IS ACCUSED AFTER DANGEROUS CRIME THAT , PRESUMPTION IS NO LONGER THERE. THAT IS IN THE STATUTE BUT HAS NOT BEEN INCORPORATED INTO THE RULE. THERE HAS BEEN NO

WHAT DOES THE RULE SAY ON THE ISSUE ? DOES THE RULE SPEAK TO THE PRESUMPTION?

IT STILL KEEPS THE PRIOR PRESUMPTION THAT WAS IN THE STATUTE BEFORE THE LEGISLATURE AMENDED IT IN 2000.

I GUESS THE REAL REEL , THEREAL HEART OF THIS I GUESS THE REAL HEART OF THIS QUESTION IS , WHAT ABOUT THIS STATUTE , SUBSECTION B , ACTUALLY FIX OR DECLARES THE PRIMARY RIGHTS OF INDIVIDUALS? I MEAN, THAT IS WHAT WE HAVE SAID IN OTHER CASES , WHAT DISTINGUISHES SUBSTANCE FROM PROCEDURE , SO WHAT RIGHTS OR BEING FIXED IN THIS STATUTE?

WELL , I THINK THE FIRST RIGHT IS A RIGHT OF , THAT THE LEGISLATURE HAS RECOGNIZED OF THE COMMUNITY AND THE PEOPLE AS A WHOLE , TO BE PROTECTED FROM BEING ACCUSED OF MAJOR CRIMES.

I AM TALKING ABOUT PARTICULARLY SUBSECTION B, THAT THE LOWER COURTS HAVE SAID IS UNCONSTITUTIONAL. WHAT , SPECIFICALLY, RIGHT IS BEING GRANTED IN THAT PARTICULAR

I DON'T KNOW THAT

OR DENIED.

IT IS BEING LIMITED. THE RIGHT TO PRETRIAL, TO NONMONETARY PRETRIAL RELEASEIS BEING LIMITED, IN THAT IT IS NO LONGER AVAILABLE AT FIRST APPEARANCE. THERE IS OTHER MEANS FOR A PERSON TO BE RELEASED AT FIRST APPEARANCE. THIS DOESN'T MEAN THAT THEY CAN'T BE RELEASED. THEY CAN BE RELEASED ON BOND, ON ELECTRONIC MONITORING , ON WHAT IS CALLED PERSONAL RECOGNIZANCE BOND.I AM NOT SURE.I AM TRYING TO FIGURE OUTEXACTLY WHAT THAT MEANS, WHETHER YOU HAVE TO PUT UP MONEY O R JUST SIGN A NOTE THAT SAYS YOU WILL PAY IF YOU DON'TSHOW UP , BUT THERE ARE OTHERMEANS , AND THOSE, IN THE RULE ITSELF, THOSE TWO PROVISIONS FOR RELEASE COME BEFORE A RELEASE TO PRETRIAL SERVICES , AND THE COURT , THE LEGISLATURE HAS RETAINED THE TRIAL COURT'S DISCRETION TO IMPOSE THOSE TWO FORMS OF PRETRIAL RELEASE , NONMONETARY .

YOU CAN STILL , THE JUDGECOULD , IN FACT , JUST SET A HEARING FOR THE NEXT DAY AND RELEASE THE PERSON ON PRETRIAL RELEASE , WITHOUT ANY MONETARY PROVISIONS, CORRECT?

THAT IS HOW THE COURTS HAVE CHOSEN TO ENFORCE WHAT THE LEGISLATURE HAS DONE. I WOULD SAY THAT WHAT WOULD BE A BETTER WAY TO ADDRESS WHAT THE LEGISLATURE HAS DONE , WOULD BE , AND I WOULD ARGUE AND MY SECOND POINT ON THIS CASE IS THAT, IF THIS COURT DOES FIN D UNCONSTITUTIONAL, TO IN FAC T ENACT A RULE WHICH WOULD INCORPORATE THIS INTENT.

WHAT WOULD THAT RULE SAY ?

WELL, IT IS THE CONCERN IS THAT THE PERSON SHOULD BE ENTITLED TO RELEASE PRIOR T O , I AM SORRY . IT COULD EITHER BE JUST WHAT THE LEGISLATURE HAS SAID, ITSELF , TO BE INCORPORATED INTO THE RULE. TO, IF YOUR CONCERN IS THAT THE PERSON SHOULD BE ENTITLED TO RELEASE AS LONG AS PRETRIAL SERVICES HAS COMPLETED ITS INVESTIGATION AND CAN SATISFY THE COURT THAT I T HAS, IN FACT, VERIFIED

THAT IS ALREADY A REQUIREMENT.THERE IS ANOTHER SECTION OF THIS STATUTE WHICH SAYS THAT, BEFORE YOU CAN BE RELEASED ON PRETRIAL SERVICES THAT , THE SERVICE HAS TO CERTIFY CERTAIN THINGS , SO IF YOU HAVE TO ALWAYS DO THAT BEFORE YOU AREENTITLED TO PRETRIAL RELEASE TO SERVICES , ISN'T THAT CORRECT?

YES, BUT FROM ONE OF THE CONCERNS I HAVE HEARD FROM BELOW AND TODAY , IS THAT EVEN IF ALL OF THAT HAS BEEN DONE , STILL THE TRIAL COURT WOULD NOT BE PERMITTED AT FIRST APPEARANCE, TO DO IT AND WOULDHAVE TO SET A SECOND HEARING.

IS THERE, THERE IS N O TIME REQUIREMENT . IS THERE, IN THE STATUTE? I MEAN , ISN'T THE SENSE OF THIS THING THAT THE COURT CANNOT RELEASE THE PERSON ON A NONMONETARY BASIS , AT FIRST APPEARANCE , THAT THERE HAS TO BE A SECOND APPEARANCE , BEFORE THE JUDGE. NOW , I T MEANS THAT THE PERSON COULD LEAVE THE COURTROOM AND COME BACK RIGHT AWAY . I MEAN , ISN'T THAT, WOULDN'T THAT COMPLY?

THE WAY THE LEGISLATURE HAS WRITTEN, IT YES , AGAIN, THE LEGISLATURE HAS ESSENTIALLY LEFT IT OPEN.THEY HAVE SAID THAT YOU NORTH ENTITLE AT FIRST APPEARANCE, TO THIS FORM OF NONMONETARY RELEASE .

JUSTICE WELLS TALKED ABOUT FOR NONMONETARY CONDITIONS. SO IF THEY HAVE THE 1500 BUCKS, WE ARE TALKING, THEY CAN GETOUT , REGARDLESS OF WHETHERTHIS IS THE SAME EXACT CRIME, BUT IF THEY HAVE $1500 , THEY CAN GET OUT ON FIRST APPEARANCE, AND YOU SAID THERE IS SOMETHING, A PERSONAL RECOGNIZANCE BOND , WHICH YOU ARE NOT SURE WHAT THAT EVEN MEANS BUT YOU THINK THAT MEANS THEY CAN SIGN WITHOUT MONEYAND NOT REALLY PAY BUT JUST SHOW UP. SO WHAT YOU ARE SAY ING HAPPENED, IF A JUDGE, SAY THEY HAVE GOT 100 PEOPLE ARRESTED ON THURSDAY NIGHT, AND FRIDAY MORNING THEY ARE DOING FIRST APPEARANCES FOR THE 100 PEOPLE , AND THERE A RE 20 OF THEM THAT QUALIFIED FOR THIS BUT , BECAUSE, IF THE FIRST APPEARANCE, THEY CAN'T DO IT, SO THEN THEY HAVE TO GO , OKAY , IT IS NOW TWELVE O'CLOCK. NOW I AM GOING TO HAVE THE SECOND APPEARANCE FOR THE 2 0 PEOPLE THAT I CAN'T RELEASE AT THE FIRST APPEARANCE? IS THE STATE SAYING THAT THAT IS NOT A , THE ESSENCE O F PROCEDURE THAT , AND AGAIN AN ABSURD PROCEDURE , A S I T IS? COULD YOU PLEASE JUST HELP ME OUT ON THAT.

OKAY.I WILL TRY. BASED ON THE WAY TO EXPLAINTHE SITUATION IS EXACTLY, I THINK, THE SITUATION THAT THE LEGISLATURE WAS ADDRESSING. YOU HAVE GOT THE CATTLE CALLS SO TO SPEAK , THE WAY , YOU KNOW,OF ALL OF THESE PEOPLE WHO NEED TO HAVE THEIR FIRST APPEARANCE HEARINGS AND THEY GO QUICKLY. BOOM. THEY GO AND THEY GO AND THEY GO , AND I THINK THE LEGISLATURE IS JUST SAYING , AND YOU CAN INTERPRET IT THIS WAY , IF YOU LIKE, SAYING SLOW IT DOWN AND TAKE THESE PEOPLE ACCUSED OF DANGEROUS CRIMES , DON'T JUST PTS AT FIRST APPEARANCE. GIVE I T MORE CONSIDERATION.

WHY WOULDN'T YOU WANT THEM TO BE OUT ON A MONETARY BOND? THAT IS WHAT I AM NOT GETTING , AND I ALWAYS THOUGHT, AND I DIDN'T PRACTICE CRIMINAL LAW, THAT THE VERY ESSENCE AFTERFIRST APPEARANCE, WHY WE ARECALLING IT A FIRST APPEARANCE,IS THAT THAT IS WHEN A DECISION IS MADE ON WHETHER T O RELEASE SOMEBODY ON BAIL OR NOT . NOW , WHAT IF , COULD THE JUDGESAY YOU KNOW WHAT? I AM NOT GOING TO CALL THIS A FIRST APPEARANCE. I AM GOING TO CALL THIS A SECOND APPEARANCE AND NOW I WILL DO IT. COULD

THEY DO THAT?

AS IT STANDS , AGAIN , I THINK THE ANSWER OR ONE OF THE ANSWERS TO THESE QUESTIONS, IS THAT THIS COURT COULD ENACT A RULE THAT WOULD GIVE GUIDANCE TO THE LOWER COURTS AS TO HOWEXACTLY , THEY CAN ENFORCE THIS SUBSTANTIVE RESTRICTION , I GUESS, IT IS ACTUALLY A RESTRICTION MORE THAN GRANTING THE LIMITING OF THE SUBSTANTIVE RIGHT TO PRETRIAL RELEASE ON NONMONETARY CONDITIONS.

HOW WOULD THAT BE? WHAT WOULD WE SAY?

EITHER YOU COULD SET IT THAT THE YOU KNOW , AFTER FIRST APPEARANCE , BE

THAT IS WHAT THEY ARE DOING .

"X" NUMBER OF HOURS. YOU COULD HAVE A SECOND APPEARANCE.

YOU WOULD THINK WE SHOULD DO A RULE THAT SAYS THAT IMMEDIATELY , THE JUDGE IMMEDIATELY, AFTER DOING THE FIRST APPEARANCE , CAN NOW SET A SECOND APPEARANCE, THAT WE WOULD WANT TO TELL JUDGES AROUND THE STATE THAT , EVEN THOUGH THEY COULD DO IT AT THE FIRST APPEARANCE , THE JUDGES ARE ALREADY OVERLOAD AS IT IS, THAT THEY SHOULD HAVE TO HAVE A HEARING THAT THEY DON'T HAVE THE TIME TO HAVE, WHEN THEYCOULD DO IT AT THE FIRST APPEARANCE. DO YOU THINK THAT W E , IS THATWHAT YOU ARE TELLING US THAT WE SHOULD DO?

WELL , I THINK THE LEGISLATURE IS THE ONES WHO ARE SAYING HOW IT A SHOULD BE, THAT

AREN'T WE, THOUGH , A PART OF ALL OF THIS , IS THAT , AND I AM A LITTLE DISTRESS ED THAT YOU USE A PHRASE LIKE A CATTLE CALL. OKAY. WE ARE TALKING ABOUT

I APOLOGIZE.

INDIVIDUAL HUMAN BEINGS , AND WE ARE TALKING ABOUTJUDGES THAT ARE KILLING THEMSELVES DOWN THERE , TO TRY TO HANDLE THESE MATTERS , AND THEY TAKE THESE THINGS VERY , VERY SERIOUSLY . SO I AM A LITTLE DISTRESS ED THAT THE STATE WOULD USE LANGUAGE LIKE THAT TO CATEGORIZE THIS, BUT THE CONCERN THAT I HAVE IS THAT ITSEEMS TO ME THAT WHAT WE ARE DOING AND TRYING TO FORCE THIS THING , I S ALMOST INVITING SHAM PROCEEDINGS. THAT IS THAT NOW YOU HAVE ALL THE PEOPLE IN HERE AND THE JUDGE SAYS THIS IS YOUR FIRST APPEARANCE, AND THEN THE JUDGE SAYS THE FIRST APPEARANCE IS OVER , AND WE ARE GOING TO TAKE A FIVE-MINUTE BREAK, AND NOW WE ARE GOING TO HAVE THE SECOND APPEARANCE. AND I N ORDER TO COMPLY WITH THIS RESTRICTION , THAT EVEN THOUGH ALL OF THE INFORMATION IS AVAILABLE , EVERYTHING THAT ORDINARILY WOULD HAVE TO BE DONE HAS BEEN DONE, AND THEREFORE YOU CAN ACT AT FIRST APPEARANCE, THAT IT IS NOT GOING TO BE ALLOWED TO BE DONE , AND I A M HAVING DIFFICULTY UNDERSTANDING WHY , IF EVERYTHING IS READY TO BE DONE , AND SO THAT ALL OF THE PROTECTIONS ARE IN PLACE AND EVERYTHING , THAT THE JUDGEWOULD HAVE TO GO THROUGH SOME KIND OF A SHAM? THAT IS THE LAST THING THAT WE WOULD WANT TO DO. SO HELP ME HERE , IN TERMS OF WHAT IS IT, REALLY , THAT CAN BE ACCOMPLISHED , YOU KNOW , IN A POSITIVE CONSTRUCTIVE WAY , THROUGH THIS PROCEDURE ?

I APOLOGIZE, YOUR HONOR, FOR MY CHOICE OF WORDS. AGAIN AS QUICKLY AS I COULD HAVE , I DON'T WANT THAT TO BE THE STATE'S YOU KNOW, REPRESENTATION.

I KNOW YOU DIDN'T INTEND. EYE APOLOGIZE AGAIN . AGAIN, I THINK WHAT I WOULD SAY IS I WOULD GO TO MY SECOND POSITION IS THAT, I F YOU ARE INCLINED TO FIND THAT THIS IS PURELY A PROCEDURAL ROLE THAT, THE COURT LOOKED AT WHAT TH E LEGISLATURE HAS

INTENDED IN DOING, THIS AND THAT I S ESSENTIALLY , IS TO PUT A PIECE INTO THE PRETRIAL SERVICES , TO CREATE A GREATER UNDERSTANDINGFOR THE TRIAL COURT THAT THEY CONSIDER THE DANGNESS AND THE RISK TO THE COMMUNITY AND DETERMINING WHETHER TO RELEASE INDIVIDUALS ON PRETRIAL SERVICES, TO MAKE SURE THAT THE BACKGROUND CHECK HAS BEEN DONE BEFORE THEY ARE , IN FACT, RELEASED , AND I F THAT IS ALL DONE, THEN THAT WOULD, AT THAT POINT , THE PERSON COULD BE RELEASED, WHETHER IT IS AT FIRST APPEARANCE THAT IS ALLDONE. I THINK THE LEGISLATURE WAS UNDER THE IMPRESSION THAT THAT COULD NOT BE COMPLETED IN TIME FOR FIRST APPEARANCE AND THAT IS WHY THEY SAID I T WOULDN'T BE PERMISSIBLE AT FIRST APPEARANCE AND I THINK THAT IS THE STATE'S POSITION AS TO WHAT SHOULD BE DONE. THANK YOU.

THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM JOHN EDDY MORRISON , ON BEHALF OF MS. RAPED OBJECTED.

THE OF MS. RAYMOND .

EXPLAIN , IF YOU WILL , I THINK THE LEGISLATURE SAID THAT THIS COULDN'T B E ACCOMPLISHED UNDER FIRST APPEARANCE. EXPLAIN , IF IT WAS A NONDANGEROUS CRIME AND THEREWAS N O PROHIBITION ON PTSBEING DONE AT THE FIRST APPEARANCE?

THAT'S CORRECT AND AT LEASTIN THE MIAMI-DADE COUNTY, WHICH I CAN ONLY SPEAK FROM MY EXPERIENCE. PRETRIAL WORKS 24/7, 365. THEY HAVE PEOPLE IN JAILS AT MIDNIGHT, AT 3:00 A.M. , AT FIVE A.M. , BEGINNING THEIR INVESTIGATIONS, SO THAT WHEN THESE CASES COME UP FOR FIRST APPEARANCE HEARINGS, USUALLY 12 , 15 HOURS AFTER THE PERSON IS BOOKED INTO THE JAIL, THE INVESTIGATION IS COMPLETE. IF IT IS NOT COMPLETE, PTS TELLS IT TO THE JUDGE AND THE JUDGE

SO AROUND THE STATE THAT CANNOT BE DONE BY THE FIRST APPEARANCE, THEN YOU WOULD AGREE THAT, WHETHER IT IS A DANGEROUS CRIME OR A NONDANGEROUS CRIME, THEY CAN'T BE RELEASED AT THE FIRST APPEARANCE FOR PT

I WOULD AGREE WITH THE FOLLOWING CAVEAT , UNLESS THE JUDGE THINKS THAT HE OR SHE ALREADY HAS ENOUGH INFORMATION.YOUR CASE IN HARTLEY, I BELIEVE , TALKED ABOUT THEPRESENTENCE INVESTIGATION. IF YOU WILL RECALL , THIS IS, IAM SORRY, NONE OF YOU WERE ON THE COURT BACK THEN. THIS WAS '76. BUT THAT CASE, THE LEGISLATURE HAD MANDATED THAT THERE BE A PRETRIAL SENTENCE, I AM SORRY , A PRESENTENCE INVESTIGATION REPORT COMPLETED BEFORE SENTENCING, AND THIS COURT SAID THAT IS UNCONSTITUTIONAL. IF THE JUDGE THINKS HE OR SHE HAS THE , ENOUGH INFORMATION, THE JUDGE

THAT IS NOT AN ISSUE I N THIS CASE THOUGH.

IT IS NOT QUITE AN ISSUE IN THIS CASE , BUT I THINK IT SORT OF - -

ISN'T IT PRACTICALLY , THOUGH, AN ISSUE , LET'S SAYYOU HAVE A DOMESTIC VIOLENCE EVENT OR AN AGGRAVATED BATTERY THAT OCCURS AT 11:30 OR TWELVE O'CLOCK AT NIGHT. THEY ARE ARRESTED AND DO THE FIRST APPEARANCE AT SEVEN O'CLOCK ORATE O'CLOCK THE NEXT MORNING. PRETRIAL RELEASE HAS THE OBLIGATION TO CONTACT THE VICTIM AND THE VICTIM IS NOT AVAILABLE AND THEY CAN'T GET ALL THE INFORMATION. THE PERSON IS ENTITLED TO A FIRST APPEARANCE WITHIN 2 4 HOURS AS A MATTER OF LAW , ENTITLED TO A BOND TO BE SET AT THAT TIME , BASICALLY.

YES, ON THE SECOND PART OFTHAT. AND THE ANSWER IS

SO THE JUDGE CAN EITHER SETA HIGH MONETARY BOND UNTIL HE GETS THE INFORMATION OR WITH THE CONSENT OF THE DEFENDANT, CONTINUE THE FIRST APPEARANCE TO GET MORE INFORMATION.

YOUR HONOR, M Y EXPERIENCE IN MIAMI-DADE COUNTY IS 99 PERCENT OF THE TIME, PRETRIAL INVESTIGATION IS COMPLETED AT FIRST APPEARANCE.THAT IS M Y HONEST EXPERIENCE. RARELY , IN YOUR SCENARIO , BY THE WAY , IF SOMEONE COMMITTED A CRIME THAT LATE , THEY PROBABLY WOULD ACTUALLY NOT BE BROUGHT TO FIRST APPEARANCE UNTIL LATE IN THE AFTERNOON OF THE NEXT DAY , BY WHICH TIME THERE WOULD HAVE BEEN SUFFICIENT I CAN SORT OF EXPLAIN ALL OF THE DETAILS , BUT THAT IS PROBABLY WAY TOO MUCH INFORMATION. ANOTHER QUESTION HERE IS WHAT IS THE POWER OF THE LEGISLATURE.

YES, YOUR HONOR.

NOW , THE LEGISLATURE HAS POWER TO ENACT CONDITIONS OF PRETRIAL RELEASE. CORRECT?

YES. WITHIN THE CONTEXT OF THE CONSTITUTIONAL RIGHT TO RETRIAL RELEASE , YES.

OKAY. THE LEGISLATURE , CAN THE LEGISLATURE SET A THAT THERE HAS T O BE A FIRST APPEARANCE WITHIN 24 HOURS?

THIS COURT'S HOLDING IN GOLDEN IS , AT THE TIME A PERSON STAYS WITHIN JAIL IS SUBSTANTIVE.

I S SUBSTANTIVE.

YES. THAT IS THIS COURT'S HOLDING IN GOLDEN.

NOW, CAN THE LEGISLATURE, THEN, WHAT I AM HAVING A STRUGGLE WITH, IS THAT, IF THE LEGISLATURE HAS THE POWER TO SET THE CONDITIONS O F PRETRIAL RELEASE, AND IF THE LEGISLATURE HAS THE POWER T O SET THE TIME PERIOD FOR APPEARANCES , THEN WHY DOESN'T THE LEGISLATURE HAVE THE POWER TO SAY THAT ONE OF THE CONDITIONS OF PRETRIAL RELEASE FOR A CATEGORY OF DANGEROUS CRIMES , IS THAT THE PERSON HASTO APPEAR BEFORE AN IMAGE STRAIGHT TWO TIMES.

I THINK THE HUB, THE ANSWER TO THAT IS BECAUSE THAT IS PROCEDURAL. THE LEGISLATURE

WHAT IS PROCEDURAL ABOUT THAT?

BECAUSE IT REQUIRES, IT TELLS THE JUDGE A T WHICHHEARING THE JUDGE MAY HEAR WHAT ISSUES . AND THAT HAS GOT TO B E A DECISION FOR THE JUDGE.

THE JUDGE DOESN'T HAVE TO, THE QUESTION IS WHETHER THE LEGISLATURE CAN REQUIRE THERE TO BE A SECOND TIME FOR THE PERSON TO APPEAR BEFORE THE PERSON IS ENTITLED TO PRETRIAL RELEASE , UNDER WHATEVER CONDITION THE LEGISLATURE SAYS.

YOUR HONOR , RESPECTFULLY , ACCORDING TO THE STANDARD DEFINITION OF WHAT PROCEDURAL IS , JUSTICE ADKINS 'S CLASSIC OPINION, THE ORDER PROCESSES AND STEPS , AND YOUR HONOR IS CORRECT. THE LEGISLATURE HAS LOTS OF POWER OVER WHAT, OVER PRETRIAL RELEASE CONDITIONS GENERALLY . BUT HOW THE COURTS GO ABOUT IMPLEMENTING THAT , WHETHER IT IS ONE HEARING, TWO HEARINGS , 16 HEARINGS , THAT IS SIMPLY FOR THE COURTS TO DECIDE FOR THEMSELVES.

WHY ISN'T THIS , AS THE APPELLANT HAS ARGUED HERE , THIS IS A PART OF A WHOLE SCHEME ABOUT PRETRIAL RELEASE AND PRETRIAL DETENTION , ANDTHAT THIS IS REALLY JUST , I THINK

HIS ARGUMENT IS THAT THIS IS REALLY JUST A MINOR INCIDENTAL PORTION OF A WHOLE SUBSTANTIVE SCHEME ABOUT THIS, SO WHY ISN'T THAT ARGUMENT VALID?

BECAUSE IT DOESN'T MATCH WITH THE STATUTE. IT IS A NICE THEORETICAL ARGUMENT AND I SORT OF UNDERSTAND THE THEORY , BUT WHAT ESSENTIALLY THE STATE HAS ARGUED IS, SAY UNDER SUBSECTION 3-B , NOT THE SUBSECTION IN QUESTION HERE , THERE HAS TO BE THIS INVESTIGATION. AND THEN UNDER 4-B , THERE IS THIS CAN'T AND FIRST APPEARANCE HEARING , AND THEY TRY TO READ THOSE TOGETHER, BUT AS THE CIRCUIT COURTPOINTED OUT BELOW AND THETHIRD DISTRICT AGREED , THEY ARE TOGETHER , BECAUSE 3-B ONLY DEALS WITH ALL CRIMES. 4-B ONLY DEALS WITH DANGEROUS PERSONS. IT DOESN'T

YEAH, BUT ISN'T THERE REALLY MORE? I THINK THAT THERE IS MORE THAT THEY ARE ARGUING ABOUT THIS STATUTE. AS WE START OUT WITH THE STATUTE SAYING THAT , FOR MOST CRIMES, YOU KNOW , THE PRESUMPTION IS THAT YOU CAN BE RELEASED ON NONMONETARY TERMS , BUT FOR THESE DANGEROUS CRIMES,THERE IS NO SUCH PRESUMPTION , AND SO THE PRESUMPTION SEEMS TO BE , IF THERE IS NO PRESUMPTION FOR NONMONETARY RELEASE, THAT WE WANT, WITH THESE MORE DANGEROUS PEOPLE , TO SORT OF I GUESS , HAVE STRICTER TERMS UPON WHICH THEY ARE GOING TO BE RELEASED INTO THE COMMUNITY. AND SO ISN'T THIS JUST A PART OF TRYING TO IMPLEMENT THAT LEGISLATIVE INTENT?

I CAN'T SEE HOW . CHANGING A PRESUMPTION, I CANNOT SEE HOW THAT HAS ANYTHING TO DO WITH THE NUMBER OF HEARINGS REQUIRED. I MEAN, I HONESTLY , I READ THAT IN THE STATE'S BRIEF. I HAVE YET TO HEAR ARTICULATEDIN AWAY THAT MAKES A WIT OF SENSE T O M E .

CAN I ASK YOU A QUESTION. ASSUMING FOR THE MOMENT THAT WE STRIKE DOWN THE STATUTE AS UNCONSTITUTIONAL, WHAT HAPPENSTO RULE 3.131 , WHERE THE ACT ENACTING THE STATUTE, SAYS THAT 3.131 I S REPEALED TO THE EXTENT OF CONFLICT WITH THE STATUTE , IF THERE IS NO LONG AREA STATUTE , IS THERE THEN NO LONG AREA CONFLICT , AND IS THE RULE THEN AUTOMATICALLY REENACT HAD?

YOUR HONOR , THE RULE WAS NEVER UNEVEN ACTED . THIS WAS NEVER UNENACTED . TO THE EXTENT THAT THIS IS CONSISTENT, THIS IS AN AT BY ATTEMPT BY THE LEGISLATURE TO AMEND THE COMMON LAW.

IS THE PRESUMPTION STATED IN THE RULE? A YES .

YES.

THAT HAS TO BE CHANGED , CORRECT?

BUT I THINK THAT THAT IS A NONISSUE HERE .

IN OTHER WORDS IN ANSWER TO JUSTICE CANTERO 'S QUESTION , THE RULE , THAT PART SHOULD HAVE BEEN AMENDED.

YES. I HAD ASSUMED THAT, IN THE NORMAL COURSE OF THE UPDATING OF THE RULES, THAT THAT WOULD BE TAKEN CARE OF .

CAN YOU ASSUME WHAT THE LEGISLATURE , AND AGAIN GOING BACK TO WHAT THE WHOLE SCHEME WAS, IS THAT TO MAKE IT HARDER FOR PEOPLE THAT ARE ARRESTED FOR DANGEROUS CRIMES TO GET OUT ON PRETRIAL SERVICES RELEASE , AND THAT THE AS ULINGS ASSUMPTION WAS THAT IT COULDN'T BE DONE IN THIS 24 HOURS , IN TIME FOR THE FIRST APPEARANCE. THE CONCERN THAT I HAVE IS THERE IS A PART WHERE THEY TALK ABOUT THE EFFECT OF THE PROPOSED CHANGES IN LEGISLATIVE HISTORY. ARE YOU FAMILIAR WITH THAT LEGISLATIVE HISTORY?

WAS BUT HAV E NOT LOOKED AT SINCE THE LAST ORAL ARGUMENT A YEAR AGO.

IT SAYS TO REQUIRE A HEARING T O DETERMINE NONELIGIBILITY ELIGIBILITY OF NONMONETARY RELEASE WITHIN THE FIRST7 2 HOURS O F APPEARANCE. THAT NEVER GOT INTO THESTATUTE. IN OTHER WORDS, THE IDEA APPARENTLY WAS THAT THEY CERTAINLY DIDN'T WANT PEOPLE BEING HELD MORE THAN 72 HOURS , BUT THAT SOMEHOW THAT PART NEVER GOT INTO THE STATUTE. IS THERE, I MEAN THERE , ISN'TA 72-HOUR OUTSIDE WINDOW.

NO.NO. NO. NO. AS FAR AS I KNOW. ALTHOUGH, YOUR HONOR , FRANKLY , I AM NOT AS PREPARED AS YOURHONOR IS.I A M JUST NOT FAMILIAR WITH THAT.

NOW , ARE YOU SAYING IN DADE COUNTY , THE STATUTE HAS BEEN DECLARED UNCONSTITUTIONAL BUT WHAT IS GOING ON IN DADE COUNTY? ARE THEY HAVING SECOND APPEARANCES?

NO. THE MOMENT THIS WAS DECLARED UNCONSTITUTIONAL, THEY WENT BACK TO THE WAY IT WAS BEFORE , WITH SHOUTS OF JOY AND THANKSGIVING.

LET ME GO WACO-BACK TO JUSTICE WELLS LET ME GO BACK TO JUSTICE WELLS'S QUESTION, WHICH I S I F THEY STR IKE THE ARGUMENT AS PROCEDURAL , DOES THAT MEAN YOU ARE ENTITLED TO NONMONETARY RELEASE , PROVIDING IT IS A NONVIOLENT CRIME. ISN'T THAT SUBSTANTIVE?

ABSOLUTELY.

SO WHAT IT WOULD RESULT IS IF A DEFENDANT I S CHARGED WHAT DANGEROUS CRIME , THE DEFENDANT PRESUMPTIVELY WOULD NOT BE ENTITLED TO PRETRIAL RELEASE.

ABSOLUTELY.

AND THAT THERE WOULD HAVE TO BE ALL OF THOSE CONDITIONSMET , WHERE IN MANY PLACES , DADE COUNTY HAS A DOMESTIC VIOLENCE COURT AND HAS SOME AVAILABILITIES THAT ARE NOT AVAILABLE IN THE REST OF THE STATE. IT MAY VERY WELL BE THAT IN THE REST OF THE STATE, THEY CANNOT COMPLETE PTS , WHAT IS NECESSARY BEFORE THE FIRSTAPPEARANCE, AND I WAS ASKING YOU EARLIER, YOU WOULD AGREETHAT , IF THOSE CONDITIONS CANNOT BE INVESTIGATED , THEN THEY HAVE GOT TO HAVE A SECOND APPEARANCE.

SUBJECT TO A DIFFERENT ARGUMENT UNDER HARTLEY , YES , BUT I THINK THE ANSWER T O YOUR HONEST QUESTION IS I AM NOT ASKING THIS COURT TO STRIKE DOWN 3-A AND 3-B AS PROCEDURAL RULES.THEY ARE NOT. I AM ONLY ASKING THIS COURT TO STRIKE DOWN 4-B.

LET ME ASK YOU WHAT IS YOUR INTERPRETATION OF THE STATUTORY LANGUAGE , BEGINNING WITH HOWEVER THE COURT SHALL RETAIN DISCRETION AND SPECIFICALLY THE RECOGNIZANCE BOND? DOES THAT MEAN THE JUDGE CAN RELEASE SOMEONE ON HIS OWN RECOGNIZANCE?

WE DON'T KNOW , YOUR HONOR. I AM SORRY . THEY DON'T EXIST. I DON'T KNOW WHAT THAT IS .

I DID IT AS A CIRCUIT JUDGE .

RELEASE ON YOUR OWN RECOGNIZANCE OR WHAT IS CALLED A ROR, IS QUITE COMMON, BUT A RECOGNIZANCE BOND , YOU HAVE GOT ME , JUDGE. I HAVE NEVER SEEN THE CREATURE IN CAPTIVITY .

IT HAS IN THE FEDERAL SYSTEM.

YOUR HONOR , I HAVE NEVERHAD THE PRIVILEGE TO PRACTICE IN THE FEDERAL SYSTEM.

BUT THE CLUE IS SHALL NOT BE GRANTED NONMONETARY PRETRIAL RELEASE AT A FIRST APPEARANCE. THAT WOULD INCLUDE YOU CANNOT ROR , ISN'T THAT RIGHT?

UNLESS THE EXCEPTIONAPPLIES , YOUR HONOR , AND FRANKLY WE DON'T KNOW WHAT THAT IS , BUT IT REALLY SORT OF ALMOST DOESN'T MATTER. THE SUBSTANTIVE PROCEDURAL ISSUE IS WHY ARE WE DOING THESE SECOND APPEARANCES ? ANYWAY.

YOU ARE SAYING THAT, IF EVERYTHING IS IN PLACE AT A PARTICULAR TIME , THEN THERE CANNOT BE SAYING THAT IT HAS TO GO OVER TO ANOTHER TIME. FOR INSTANCE, IF A DEFT BRING S A HABEAS IF A DEFENDANT BRINGS A HABEAS CORPUS AND SAYS HE HAS DONE EVERYTHING TO SBIMTHS TO RELEASE , THAT YOU CAN'T JUST - - TO ENTITLE HIM TO RELEASE, THAT YOU CAN'T JUST SOUGHT AUTHCALLY SAY NO YOU CAN'T JUST AUTOMATICALLY SAY NO , WE ARE GOING TO HAVE A SECOND , YOU CAN'T ENTITLE

I HIM SAYING THAT THE LEGISLATURE CAN'T DICTATE TO THE COURTS HOW MANY HEARINGS IT NEEDS TO DECIDE A RELEASE ISSUE.

IN A NONMONETARY TYPE OF SITUATION , IT WOULDN'T MAKE A WHOLE LOT OF SENSE THAT THE LEGISLATURE WOULD WANT SOMEBODY TO SIGN A PIECE OF PAPER SAYING I WILL BE ABLE TO SHOW UP AND WOULDN'T DO THAT AT FIRST APPEARANCE , BUT IASSUME THAT PT ISN'T RELEASE PTS RELEASE REQUIRES A WHOLE MONITORING

IT IS A MONITORING SYSTEM. YES.

AND A RECOGNIZANCE BOND WOULD NOT BE. SO

DEFINITELY NOT.

SO NORMALLY WE WOULD NORMALLY SEE SOMEONE ON PTS MONITORING, THAN ON A 1500-.

MONITORING O N FIRST APPEARANCE, YOU ALMOST NEVER DO THEM ON MISS DHEENORS ANYWAY. THEY ARE TOO EXPENSIVE AND RARILY RARELY, RARELY , RARELY GET A ROR.

WHO PAYS FOR IT?

THERE IS NO MONETARY REQUIREMENT.

IS THAT FUNDED BY THE STATE? EYE BELIEVE I T IS FUNDED BY THE COUNT-ON.

I BELIEVE IT IS FUNDED

I BELIEVE IT I S FUNDED BY THE COUNTY AND THIS GOES TO THE WISDOM OF DOING ANYTHING ON A PROCEDURAL RULE.

THEY WOULD RATHER HAVE THE PEOPLE OUT OF JAIL. ANOTHER PEOPLE WHO IT IS SAFE TO BE RELEASED , PURSUANT TO THE JUDGE'S DECISION. THOSE PEOPLE NEED TO GET OUT OF JAIL QUICKLY. WHEN THE SECOND APPEARANCE , WHAT HAD TO HAPPEN IS THE CLERK'S OFFICE HAD T O DO DOUBLE WORK TO RECALL ENCARTHESE. THE DEPARTMENT OF CORRECTIONSHAD TO NOT ONLY HOUSE THEM FORA DIFFERENT KAY. THAT ISN'T EXPENSIVE , ALTHOUGH IT IS EXPENSIVE , IT I S ABOUT $30 O R $40 A DAY , THEN THEY TO TRANSPORT THEM, WHICH IS BIG IN TIME AND MONEY , PLUS ALL OF THE ADDITIONAL JUDICIAL TIME AND THE TIME FOR THE STATES ATTORNEYS AND PUBLIC DEFENDERS.THIS IS, AS A MATTER OF POLICY FOR THIS COURT IN MAKING A DECISION

AGAIN, WHAT WOULD PREVENT A JUDGE, IF THIS WERE UPHELD FROM SAYING, OKAY , DEFENDANT 'S A -THROUGH-Z ARE HERE ON FIRST APPEARANCE. DEFENDANT A , I CAN'T RELEASEYOU ON FIRST APPEARANCE SO YOUGO BACK TO THE LINE AND YOU GO AFTER Z , AFTER I GET THROUGHALL OF THE FIRST APPEARANCES , NOW I AM GOING TO GO THROUGH THE SECOND APPEARANCE S.

ABSOLUTELY NOTHING , WHICH I THINK UNDER LIES MY EXACTPOINT , THAT THIS ISN'TPROCEDURAL ANYTHING F THIS COURT IS TO HOLD TO ANYTHING THE LEGISLATURE, DOES IN PROCEDURAL LAW, THIS IS. THEY COULD ABSOLUTELY DO.THAT I THINK THE COURT DIDN'T DO IT THAT WAY BECAUSE IT WAS JUST TOO LACKING IN RESPECT OF THE LEGISLATURE.

DOES THE LEGISLATURE HAVE THE POWER TO SAY THAT THE COURT, A COURT CANNOT SET BAIL WITHOUT THEIR BEING AN APPEARANCE ?

THAT THE COURT CANNOT SET BAIL WITHOUT, I WOULD THINK NOT. I MEAN , I CAN'T IMAGINE A COURT SETTING BAIL, WITHOUT AN APPEARANCE, BUT I F I

CAN THE LEGISLATURE SAY A COURT CANNOT SET BAIL, WITHOUT THE DEFENDANT APPEAR ING ? WITHOUT THEIR BEING A FIRST APPEARANCE ?

NO. I THINK THAT IS UP TO THE COURT TO DECIDE HOW

THE COURT COULD SAY I T IS WITHIN THE REALM OF PROCEDURE , THAT COUNTY COURT CANNOT BRINGTHESE PEOPLE OVER FROM THE JAIL AND MAKE DETERMINATION S AND JUST ENTER $1500 AND LET THEM GO.

I THINK THAT WOULD NOT VIOLATE THE SUBSTANTIVE PROCEDURAL PROHIBITION S. I HAVE GOT TO BELIEVE THERE IS A DUE PROCESS PROBLEM THERE . BOTH, AND ACTUALLY EVEN FOR THE STATE WOULD PROBABLY HAVE A DUE PROCESS ISSUE WITH THAT , WITH SUCH A STATUTE, BUT IT IS NOT A SUBSTANTIVE, I T GETS INTO ALL SORTS OF OTHERPROBLEMS BUT IT IS NOT A SUBSTANTIVE PROCEDURAL PROBLEM.

COURTS DO IT ALL OF THE TIME IN ISSUING WARRANT AND THEY SET BONDS ON. THAT THE QUESTION YOU ARECONCERNED ABOUT IS APPOINTMENTOF COUNSEL, INFORMING THEM OF THE CHARGES SETTING HEARINGDATES AND ALL OF THE OTHERSTUFF THAT GOES ON AT A FIRST APPEARANCE, IN ADDITION T O SETTING THE BOND AMOUNT , BUT WHEN THE COURTS ISSUE WARRANTS AND SIGN WARRANTS , THEY PUT BONDS ON THOSE WARRANTS ALL OF THE TIME.

YES , AND THE LAW IS THAT YOU STILL GET A FIRST APPEARANCE AFTER THAT.

RIGHT.

YOU ARE WITH THE PUBLIC DEFENDERS OFFICE IN DADE COUNTY.

YES. YES.

SOMETIMES WE SEE THINGS AGAIN, THEY SAY THERE IS ELEVENTH CIRCUIT AND THEN THE REST OF THE STATE .

YOUR HONOR , I UNDERSTAND THEY ARE DIVIDED.

ARE YOU FAMILIAR WITH WHAT IS IN FACT HAPPENING IN THEREST OF THE STATE, AS TOWHETHER THERE IS, REALLY , EVEN THE ABILITY TO DO THIS PTS INVESTIGATION BY THE TIME OF THE FIRST APPEARANCE?

YOUR HONOR, I ONLY HAVE THE FOLLOWING EXPERIENCE, WHICH SHOULD BE CONSIDERED ANECDOTAL AND NOT SWORN TESTIMONY. WHEN I CONTACTED THE PD'S AROUND THE STATE , TRYING TO FIGURE OUT WHAT WAS HAPPENING , THEY ALL LOOK AT ME AND SAID THERE IS THAT STATUTE? OUR JUDGES DO IT ALL THE TIME! SO AS FAR AS I COULD TELL , THE ONLY COURT THAT EVER ACTUALLY ENFORCED THIS WAS THE ELEVENTH CIRCUIT. NOW, IT MAY , THAT MAY NOT BE TRUE. I JUST MAY NOT HAVE FOUND THE RIGHT PD AROUND THE STATE. THERE HAS GOT TO BE THOUSANDS OF THEM.

WHEN YOU ARE SAYING THAT , WHAT ARE YOU SAYING, THAT JUDGES , EVEN IF A PERSON IS ACCUSED OF ONE OF THESE DANGEROUS CRIMES, PUT PEOPLE PTS ANYWAY?

THEY DIDN'T KNOW ABOUT THE STATUTE , I THINK , YOUR HONOR . WHICH IS NOT THAT UNCOMMON A PHENOMENON . FOR MEMBERS OF THE COURT WHO HAVE BEEN DOWN IN THE REAL BOWELS OF THE JUDICIAL SYSTEM, IT HAPPENS. I JUST HAVE TO TELL YOU.

THE QUESTION IS THEY DON'T RELEASE THEM TO PRETRIAL RELEASE AND USE SOME OTHER FORM OF BOND.

THERE ARE SMALLER JURISDICTION. THEY DON'T REALLY HAVE A PRETRIAL RELEASE. WHEN YOU HAVE A VERY SMALLRULE COUNTY , YOU DON'T REALLY NEED PRETRIAL RELEASE. YOU KNOW TH ESE PEOPLE ANYWAY. RIGHT? WHEN YOU HAVE SORT OF VERY SMALL , THE NEED FOR THAT SYSTEM IS NOT NEARLY AS INTENSE.

I THOUGHT THEY WOULDN'T ALLOW THAT, LET M E MAKE SURE I UNDERSTAND THIS , IS THERE AN ALLOWANCE UNDER THE STATUTE , IF SOMEONE IS CHARGED WITH A DANGEROUS CRIME , THEY DON'THAVE THE ABILITY TO , MONETARY BOND, DO THEY , I , THERE ISN'T A RELEASE O N YOUR OWN RECOGNIZANCE, ALLOWING, IS THERE?

IT DEPENDS. YOUR HONOR, I AM SORRY . THEN WE ARE BACK TO WHAT THAT RECOGNIZANCE BOND S.

ALL IT MEANS IS BOND IS.

ALL IT MEANS IS THEY ARE OUT ON THEIR OWN. WHY WOULDN'T JUDGES BE DOING THAT, EXCEPT THEY WANT TO DO A MORE COMPLETE PTS IN PLACES LIKE DADE COUNTY .

I THINK THAT GOES TO THE WISDOM OF THE LEGISLATION , WHICH I ALSO THINK IS SUSPECT, BUT THIS COURT OBVIOUSLY DOES NOT SIT AS THE JUDGE OF THE LEGISLATURE ON THAT BUT I T CERTAINLY SETS A S TO WHETHER IT IS PROCEDURAL , AND THIS IS, IF ANYTHING I S .

CHIEF JUSTICE: THANK YOU.MR. MARSHAL , HOW MUCH TIME? COUNSEL .

THE ISSUE IS TROUBLE ING ME, BECAUSE WE ARE CONCERNED WITH PEOPLE CHARGED WITH A DANGEROUS CRIME. THERE IS A GOOD IDEA FOR A PRESUMPTION TO BE CREATED AND THAT I S SUBSTANTIVE , BUT THIS PART , ABOUT, AGAIN , NOW SHALL RETAIN DISCRETION TO RELEASE THE ACCUSED ON ELECTRONIC MONITORING OR THE STATE HAS TO BE ABLE TO TELL US WHAT IS A RECOGNIZANCE BOND .

I TRIED. I WANTED TO LEARN WHAT THAT TERM MEANT, AND I THOUGHT IWAS THE ONLY ONE AND I AM GLAD TO KNOW THAT M Y , YOU KNOW

DON'T THEY HAVE THOSE IN THE FEDERAL SYSTEM, WHERE INDEED THERE IS A PROMISEAFTER FINANCIAL RESPONSIBILITY TIED TO THE RECOGNIZANCE .

IN MY RESEARCH ON THAT ISSUE, THAT IS , YOU ARE JARRING MY MEMORY OF BURNING ACROSS,

SOMETHING ALONG THOSELINES, AND I THINK THAT IS WHERE, THERE IS NOTHING IN FLORIDA LAW, OTHER THAN THIS STATUTE.

WOULDN'T THE STATE , ASSUMING THAT WE ARE TRYING, AGAIN, WE WANT TO AFFECT THE INTENT OF THE LEGISLATURE , WHICH IS TO REALLY BE CAREFUL BEFORE YOU LET WE DON'TWANT TO AFFECT THE INTENT OF THE LEGISLATURE, WHICH IS WE DON'T WANT TO LET PEOPLE OUT WHO ARE BEING CHARGED WITH DANGEROUS CRIMES, AND THAT IS A VERY COMMON ONE IN THE COUNTY COURTS AT THIS POINT IN OUR COUNTRY'S HISTORY , ARE YOUFAMILIAR WITH OTHER PARTS OF THE STATE , ARE ALLOWING PEOPLE JUST TO SIGN OFF ON A BOND , AS AN ALTERNATIVE TO

NO , I AM NOT.

YOU DON'T KNOW ANYTHING THAT IS GOING ON. YOU DON'T KNOW, SINCE 2000 , AND WE ARE NOW IN 2004, WHAT IS BEING DONE IN THE REST OF THE STATE, TO EITHER HONORTHIS PROVISION OR IGNORE IT.

I DON'T.

BUT YOU ARE HERE TODAY , TELLING US THAT THIS IS SUBSTANTIVE, AND EVEN THOUGH WE COULD DO WHAT JUSTICE CANTERO SAID AND SAY AFTER YOU GO FROM A -TO-Z , A TO M GOES TO THE BASK THE LINE AND THE STATE SAYING THAT THAT WOULD BE COMPLYING WITH THE STATUTE , EVEN THOUGH AS JUSTICE ANSTEAD SAID, THAT WOULD BE A SHAM PROCEEDING.

THE THING THAT I WOULD LIKE TO USE IS JUSTICE CANTERO 'S EXAMPLE , BECAUSE I THINK THAT POINTS OUT, THE DEFENDANT , PROBABLY CLAIMS THAT THAT SAYS HOW THIS IS SO PROCEDURAL. MY ARGUMENT IS THE COMPLETE OPPOSITE. THERE IS NOTHING IN THIS THA T SAYS ANYTHING ABOUT THE PROCEDURE TO BE USED IN DOING THIS. ALL IT SAYS

LET ME ASK YOU, AS A PERSON , YOU ARE WITH THE ATTORNEY GENERALS OFFICE.WE ARE TRYING , WE ARE IN REVISION SEVEN. WE ARE LOOKING TO SAY WE WANT TO DO SMART THINGS, SO SAY YOUARE ARGUING FOR THIS COURT THAT THERE WASN'T ANYTHING. WOULD YOU REALLY WANT TO BE ARGUING THAT, IF PTS, ALL OF THE WORK, LEG WORK HAD BEEN DONE THAT HAS BEEN REPRESENTED, THAT THE JUDGE WOULD, SHOULD SET A SEPARATE HEARING AND SAY, AND IT IS OKAY IF IT BE DONE ONE HOUR AFTER THE FIRST APPEARING AFTER THE FIRSTHEARING.I AM ASKING YOU AS AN OFFICEROF THE COURT, WOULD YOU REALLY WANT US TO PROMULGATE SUCH A RULE? WOULD THAT BE A GOOD USE OF JUDICIAL RESOURCES AND THE STATE'S RESOURCES?

I THINK THE RULE SHOULD , TO THE EXTENT THAT IT CAN , INCORPORATE WHAT THE LEGISLATURE IS ATTEMPTING TO DO HERE , AND THAT WOULD INCLUDE A RULE WHICH WOULD REQUIRE , PRIOR TO PRETRIAL RELEASE , OR THESE NONMONETARY PRETRIAL RELEASE SERVICES, THAT THE PRETRIAL RELEASE DIVISION SERVICES , CERTIFY AND VERIFY THE LAUNDRY LIST OF THINGS THAT IS SET OUT IN THE LEGISLATURE.

THAT IS DONE. WE ARE ASSUMING THAT THAT WOULD HAVE TO BE DONE AT FIRST APPEARANCE.

RIGHT. YOU ARE ASSUMING THAT THAT HASTO HAVE HAPPENED BUT THERE IS NOTHING THAT SAYS THAT HAPPENS IN EVERY CASE , AND I BELIEVE THAT IS THE POINT THAT WE TRIED TO REACH.

LET ME ASK YOU ONE OTHER QUESTION. I REALIZE YOUR TIME , JUSTICE BELL USED THE EXAMPLE FOR INSTANCE, WHICH HAS BEEN UNIVERSALLY PRACTICED AS LONG AS I REMEMBER , WHEN YOU ISSUE MANY ARREST WARRANTS , YOU MAKE AN AUTOMATIC PROVISION IN THERE THAT THE DEFENDANT MAY BE RELEASED ON THE POSTING OF SUCH-AND-SUCH A BOND OR SOMETHING

LIKE. THAT WOULD THAT PRACTICE B E OUT LAUD UNDER THE STATUTE ? DO YOU UNDERSTAND WHAT I AM SAYING? THAT THE JUDGE PUTS IN THE WARRANT THAT, UPON THE ARREST OF THE PERSON , THAT THEY MAY BE RELEASED O N THESE CONDITIONS . AND DOES THAT , AT THE TIME THAT THE WARRANT IS ISSUED , WOULD THAT PRACTICE IN THIS, FOR THESE CRIMES COULD IT BE A MONETARY CONDITION?

THEY HAVE A VARIETY. IN OTHER WORDS THE JUDGE SETS THAT IN THE WARRANT , SAYS THAT THEY MAY BE RELEASED , AND IT SETS THE CONDITIONS.I AM JUST ASKING IF THAT PRACTICE WOULD BE

IF YOU READ THE STATUTE , JUST THAT ONE PROVISION , ALL IT PREVENTS IS RELEASE UNDER NONMONETARY CONDITIONS AT FIRST APPEARANCE, SO IF THIS OCCURS BEFORE FIRST APPEARANCE, THEN I SUPPOSE THAT PRACTICE WOULD STILL BE PERMISSIBLE .

CHIEF JUSTICE: ALL RIGHT. THANK YOU VERY MUCH FOR YOUR HELP ON A VERY IMPORTANT CASE. THANK YOU. THE COURT WILL NOW STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE. \par