State of Florida v. Ferman Carlos Espindola; Everett Ward Milks v. State of Florida

CHIEF JUSTICE: THE LAST CASE ON THIS MORNING'S DOCKET IS STATE OF FLORIDA VERSUS ESPINDOLA AND MILKS VERSUS STATE OF FLORIDA. AS YOU ARE GETTING SEATED, I WANT TO UNDERSTAND THE CAST, THE SCENARIO HERE. AS I AM UNDERSTANDING IT, WE ARE TAKING IT AS IF MILKS WAS THE APPEAL CASE, AND THEN YOU ARE GOING TO BE GOING FIRST, BUT SHARING YOUR TIME WITH MR. MUSTO?

YES, EXCEPT I REPRESENT FERMAN ESPINDOLA.

I JUST WANTED TO MAKE SURE. SO YOU ARE GOING TO DIVIDE YOUR TIME, NOW, TEN MINUTES FOR YOU AND FIVE MINUTES, AND THEN YOU WILL SHARE YOUR REBUTTAL TIME?

GOD WILLING, YOUR HONOR.

ISN'T, THIS I THOUGHT THIS WAS A STATE APPEAL.

CHIEF JUSTICE: BUT THERE ARE TWO CASES. MILKS IS THE OTHER CASE. SO AS I UNDERSTAND IT.

YES. YOUR HONOR, THERE ARE TWO APPEALS. ONE OF THEM IS A STATE APPEAL AND ONE OF THEM IS MR. MILKS'S APPEAL.

AND YOU HAVE ALL AGREED TO DO IT THIS WAY.

AND IT JUST SEEMED EASIER TO DO IT THIS WAY, IF THAT WILL SUIT THE COURT. ANY OTHER QUESTIONS? I GUESS BEFORE I START.

CHIEF JUSTICE: YOU CAN NOW INTRODUCE YOURSELF.

I AM JOHN EDDY MORRISON, HERE ON BEHALF OF FERMANES PINNED OLD A FERMANES PINNEDOLA WILL WIN ANY HEARING ON WHETHER OR NOT HE IS A DANGER TO SOCIETY. THE QUESTION IS --

CAN WE GET RIGHT TO THE POINT AS TO WHY IS THIS CASE ANY DIFFERENT FROM THE DOE CASE, SIMPLY BECAUSE THE FLORIDA STATUTE, IN ITS LEGISLATIVE PURPOSES SECTION, SAYS THAT OFFENDERS ARE SEXUAL PREDATORS.

THAT WAS EXACTLY WHERE I WAS GOING. THE ONLY THING THAT STANDS BETWEEN HIM AND A HEARING IS DOE. REMEMBER, DOE WAS BASED --

DOE AND US, TOO, BECAUSE EVEN IF IT IS NOT DOE, IT IS A DUE PROCESS VIOLATION, NOT TO HAVE A HEARING.

DOE GETS ME IN THE DOOR, AND I THINK ROBINSON CLOSES THE DOOR, BUT LET ME DEAL WITH DOE FIRST, BECAUSE I THINK THAT IS THE MOST IMPORTANT ISSUE. REMEMBER IN COMMITTEE THERE WAS NO LEGISLATIVE HISTORY. NO LEGISLATIVE INTENT.

IF WE DON'T BUY THAT PART THAT, IS THAT THE FINDINGS, MAKE IT NECESSARY FOR THERE TO BE A DETERMINATION OF DANGEROUSNESS, THE FACT THAT THEY HAVE EXPLICITLY FOUND IT.

ARE THERE, AND I DON'T, AGAIN, WE HAVE READ THE BRIEFS. THEY ARE EXCELLENT BRIEFS. WHAT ARE OTHER DISTINCTIONS THAT YOU FIND SIGNIFICANT, OR IS THAT YOUR MAJOR DISTINCTION?

THAT IS THE MAJOR DISTINCTION WITH DOE. IF YOU DON'T FIND THAT, THEN --

WAS THERE EMPLOYMENT RESTRICTIONS IN DOE?

YOUR HONOR, I CANNOT RECALL, BUT I THINK THAT IS A SEPARATE ISSUE.

SO YOU DON'T THINK, SO THE ISSUE IS THAT, BECAUSE OUR LEGISLATURE MADE FINDINGS, THAT THEY WERE HAVING THIS SEXUAL PREDATOR REGISTRATION ACT, IN ORDER TO MAKE SURE THAT DANGEROUS SEXUAL PREDATORS WERE NOT ON THE STREET, THAT THERE FOR THERE MUST BE A HEARING WHERE DANGEROUSNESS IS ASSESSED?

THAT IS WHAT DOE HELD. REMEMBER DOE SAID THE HEARING MUST BE RELEVANT TO THE STATUTORY SCHEME.

BUT THE STATUTORY SCHEME ONLY REQUIRES THE FACT OF THE CONVICTION BE ESTABLISHED!

YOUR HONOR, THERE IS A DIFFERENCE BETWEEN THE STATUTORY SCHEME AND THE ELEMENTS, THE NARROW ELEMENTS. THAT IS WHAT I SPENT SO MUCH TIME IN MY BRIEF ABOUT, TALKING ABOUT IN VARIOUS CASES, THE MOST IMPORTANT ONE BEING BELL VERSUS BURSON, A CASE OUT OF GEORGIA, THE UNITED STATES SUPREME COURT. THERE WAS A CASE THERE, WHERE THE ELEMENT WAS SIMPLY HAVE YOU BEEN IN AN ACCIDENT AND HAVE YOU POSTED A BOND. THE COURT, HOWEVER, SAID THE WHOLE POINT OF THE STATUTE IS TO DEAL WITH LIABILITY. PEOPLE WHO ARE LIABLE. AND THEY SPECIFICALLY SAID, SINCE THE STATUTORY SCHEME MAKES LIABILITY AN IMPORTANT FACTOR IN THE STATE'S DETERMINATION TO DENY AN INDIVIDUAL THEIR LICENSE, THE STATE MUST NOT CONSIDER ELIMINATION AS A FACTOR.

LET'S BACK TO THE DOE AND DANGEROUSNESS. THE CONCURRING AND DISSENTING OPINION IN THIS CASE, TALKS ABOUT, REALLY, THE TERM SEXUAL PREDATOR, WHICH MAY OR MAY NOT BE EQUIVALENT TO DANGEROUSNESS, AND THAT DESIGNATION WAS NOT A PART OF THE DOE OPINION, WAS IT? I MEAN, IN DOE AS I UNDERSTAND IT, WHAT COMMITTEE DOES IS THEY EITHER PUT ON IT THAT THIS IS A SEXUAL OFFENDER OR THEY PUT THE ACTUAL CRIME, THE SEXUAL CRIME THAT THE PERSON HAS COMMITTED, WHEN THEY DO THIS REGISTRY. IS THAT CORRECT OR NOT?

COMMITTEE'S REPRESENTATION TO THE UNITED STATES SUPREME COURT, IS THAT THIS WAS JUST AN INFORMATIONAL SYSTEM. WE WERE JUST PROVIDING INFORMATION ON CONVICTIONS.

SO DOES THE FACT THAT THE STATE OF FLORIDA CHOOSES TO CHARACTERIZE THESE CRIMES, OF THESE PEOPLE AS BEING SEXUAL PREDATORS, MAKE ANY DIFFERENCE IN THIS CASE?

YES. BUT I THINK BEYOND JUST LANGUAGE, WHICH THE JUDGE COVERED ON HIS DISSENTING OPINION. THE FACTS ARE THAT THESE PEOPLE PROVIDE AN EXTREME THREAT TO PUBLIC SAFETY, THE LEGISLATURE'S WORDS, THE HIGH-LEVEL THREAT THAT THE SEXUAL PREDATOR PROVIDES TO PUBLIC SAFETY. IF THAT IS THE BASIS FOR THE STATUTORY SCHEME, THEN THERE HAS TO BE A HEARING ON THAT. REMEMBER, PROCEDURAL DUE PROCESS REQUIRES A MEANINGFUL HEARING. THAT IS THE POINT OF BELL VERSUS BURGESS, THE POINT OF ALL OF THOSE CASES THAT I CITED IN MY BRIEF WHICH THE STATE DOES NOT REPLY TO IN THE REPLY AT ALL. YOU HAVE TO HAVE A HEARING ON THE ISSUE THAT MAKES THE STATUTE GO, AND IT IS THE POINT OF THE STATUTE THAT IS THE SERIOUS DANGER.

LET ME ASK A QUESTION ABOUT DEVELOPMENT.

JUSTICE LEWIS.

IN THE DOE SITUATION, ALTHOUGH ONE MAY SAY THIS IS FOR INFORMATIONAL PURPOSES, BUT INFORMATION FOR WHAT? BE AWARE OF THIS BACKGROUND? CORRECT?

I AM SORRY, YOUR HONOR, I DID NOT HEAR A WORD. SOMETHING AWARE OF THE BACKGROUND.

IN DOE, EVEN FOR INFORMATIONAL PURPOSES, IT WAS INFORMATIONAL FOR SOME PURPOSE.

YES.

INFORMATION TO ADVISE THAT THIS PERSON HAS BEEN CONVICTED OF "X".

RIGHT.

THAT BEING SOME TYPE OF SEXUAL INVOLVEMENT.

YES.

I AM HAVING A DIFFICULT TIME SEEING THAT THERE IS A, THERE MAY BE A DISTINCTION, BUT IS THERE A REAL DIFFERENCE IN PUBLISHING AND SAYING, WELL, IN FLORIDA, WE CALL THESE PEOPLE, WE USE THE WORD "PREDATOR" TO DESCRIBE THEM. IT IS THE SAME INFORMATION, SAME PURPOSE AS TO INFORM THE PUBLIC THAT THEY HAVE BEEN CONVICTED OF "X", BECAUSE THAT IS REALLY THE ONLY THING THAT IS REQUIRED, IS THE FACT OF THE CONVICTION, HOW AUTOMATICALLY, WITHIN THE ENGLISH LANGUAGE, IT IS A DISTINCTION, NO QUESTION, BUT IS IT A MATERIAL, DOES IT MAKE A MATERIAL DIFFERENCE AND WHY?

YES, IT IS MATERIAL, NOT SO MUCH THE WORD SEXUAL PREDATOR, I DON'T WANT TO SORT OF BAT AROUND THE WORD. THE POINT, THE PURPOSE OF WHY YOU ARE DOING THIS, ARE YOU DOING THIS TO SIMPLY OPEN UP THE CRIMINAL COURT FILES, SO PEOPLE CAN FIND INFORMATION, OR ARE YOU WARNING PEOPLE THAT THESE PEOPLE ARE DANGEROUS, AND --

BUT ARE WE BEING NAIVE, IF WE SAID THAT IN COMMITTEE, THE PURPOSES ARE DIFFERENT? WE HAVE 50 STATES, AND IN EACH AND EVERY ONE OF THEM, IT IS BECAUSE OF THE RECOGNITION THAT PEOPLE CONVICTED OF CERTAIN TYPES OF CRIMES, POSE A POTENTIAL THREAT. NOW, I THINK THAT --

I TAKE YOUR HONOR'S POINT, BUT I DON'T THINK THE POINT IS US BEING NAIVE. THAT IS WHAT THE UNITED STATES SUPREME COURT WAS TOLD AND BELIEVED.

WAIT. THE UNITED STATE SUPREME COURT WAS TOLD THIS IS INFORMAL. THAT IS WHY I WAS TRY -- INFORMATIONAL. THAT IS WHY I WAS TRYING TO GET TO, IN THIS CASE, YOU SEE, I THOUGHT YOUR STRONGER POINTS WAS NOT ONLY IS THERE REGISTRATION AND A WEB SITE, BUT THERE IS AFFIRMATIVE NOTIFICATION THAT GOES OUT. THERE IS THIS LABEL, WHICH TO ME, HAS ALWAYS BEEN, MAKES IT A, I MEAN, A GUY IS A SEXUAL PREDATOR FOR LIFE, IS SIGNIFICANT. I DON'T, YOU KNOW, I PERSONALLY FIND THAT TO BE SOMETHING VERY SCARY DESIGNATION. YOU HAVE EMPLOYMENT RESTRICTIONS. YOU HAVE, BUT YOU SAID THIS MORNING YOU DON'T SEE THOSE AS BEING DISTINCTIONS FOR THE PURPOSE OF WHETHER THIS, OUR STATUTE IS DIFFERENT FROM COMMITTEE.

NO, YOUR HONOR. I DON'T MEAN TO SAY THAT THAT DOESN'T DISTINGUISH IT FROM THE COMMITTEE STATUTE. WHAT I MEAN SIMPLY SAYING IS THE COMMITTEE STATUTE, THE UNDERLYING PURPOSE OF THE STATUTORY SCHEME IS DIFFERENT. YOU KNOW IT IS DIFFERENT.

WEREN'T THEY ALL REALLY PASSED, I MEAN, AFTER MEGAN'S LAW, THEY WERE ALL REALLY

PASSED IN ALL OF THESE STATES, BECAUSE FOR WHATEVER INFORMATION WAS GIVEN, THAT THESE PEOPLE WHO PREY ON CHILDREN, THAT INFORMATION NEEDS TO BE DISSEMINATED TO THE COMMUNITIES, TO HELP PROTECT FROM PEOPLE PREYING ON CHILDREN.

IF THAT IS TRUE, THEN MR. ESPINDOLA SHOULD GET A HEARING, TO DETERMINE WHETHER OR NOT HE IS GOING TO DO. THAT.

IF WE ACCEPT YOUR ARGUMENT THAT THAT IS TRUE, THEN THAT WOULD APPLY TO THE CAREER OFFENDERS, TOO, BECAUSE THERE IS LEGISLATIVE 775.26, THE LEGISLATURE FINDS THAT CERTAIN CAREER OFFENDERS BY VIRTUE OF THEIR HISTORIES, ET CETERA, ET CETERA, HAS TO REGISTER.

I AM NOT AS FAMILIAR WITH THAT STATUTE, YOUR HONOR, AND I AM NOT SURE THAT THAT --

HANG ON --

THERE IS TWO DIFFERENT WAYS REGISTRATION COULD BE. ONE IS INFORMATIONAL.

THIS IS INFORMATION PUBLISHED TO THE PUBLIC. THE PUBLIC IS NOTIFIED THAT THIS PERSON IS A CAREER CRIMINAL, SO WHAT I AM SAYING IS, IF WE ACCEPT YOUR ARGUMENT THAT WE LOOK NOT SIMPLY TO THE ELEMENTS OF THE CRIME AND THE REGISTRATION REQUIREMENT, BUT GO BEHIND IT AND LOOK TO THE LEGISLATIVE FINDINGS OR THE RATIONALE AND JUSTIFICATION FOR THE PROCEEDINGS, THAT WE WOULD HAVE TO DO THAT, NOT ONLY FOR THIS BUT FOR CAREER HABITUAL FELONY, MANY, MANY PROCEEDINGS. ALL THE CRIMINAL LAWS ARE BASED UPON PROTECTION OF THE COMMUNITY. AND FINDINGS. AND SO THE SAME PROCEEDING IS IN OTHER STATUTES IN THIS --

YOUR HONOR, I DON'T BELIEVE SO. I BELIEVE MOST OF WHAT YOU REFERRED TO AND I AM NOT EXACTLY SURE YOUR REFERENCE, BUT MOST HABITUAL OFFENDERS IS PART OF A CRIMINAL SENTENCING. THAT IS A WHOLLY DIFFERENT ISSUE THAN WHAT WE ARE DEALING WITH HERE.

THE LEGISLATURE REQUIRES THESE CAREER OFFENDERS TO REGISTER FOR THE PURPOSE OF TRACKING THESE CAREER OFFENDERS FOR THE PURPOSE OF NOTIFYING THE PUBLIC AND THE CAREER AND IT IS IMPORTANT TO NOTIFY THE PUBLIC. SO IF WE ACCEPT THAT ARGUMENT, YOU WOULD NOT ONLY HAVE TO HAVE A PREDEPOSITION IN THIS CASE BUT IN OTHER CASES.

THERE IS NOTHING SAYING THEY ARE CURRENTLY DANGEROUS. THAT IS THE GIST OF THE THIS, NOT THAT THESE PEOPLE DID SOMETHING IN THE PAST BUT THAT THEY ARE GOING TO DO IT AGAIN.

I THINK THAT IS WHAT THE QUESTIONS HAVE BEEN THIS MORNING, IS THAT THAT THAT IS THE FOUNDATION FOR MEGAN'S LAW AND FOR THE FLORIDA LAW, IT IS NOT INFORMATION FOR INFORMATION IN THE AIR. IT IS TO SURVEY AND THE PURPOSE IS TO LET PEOPLE KNOW.

YOUR HONOR, IF THAT IS CORRECT, THEN THE STATE'S REPRESENTATIONS AND COMMITTEE BEFORE THE UNITED STATES SUPREME COURT ARE CORRECT. IN OTHER WORDS COMMITTEE WON DOE BY SAYING IT IS NOT ABOUT PUBLIC SAFETY F THAT IS CORRECT, THEN THAT IS CONNECTICUT VERSUS DOE, BUT IF WHAT YOU ARE ALL SAY GOING THIS STATUTE IS CORRECT, IT IS CLEARLY RELEVANT. THE SECOND POINT IS --

YOU ARE INTO MR. MUSTO'S TIME.

YES, I AM. THE SECOND POINT IS THAT, IF THE, IF THAT IS CORRECT, THAT THIS IF THIS IS NOT ABOUT PUBLIC SAFETY THAT, IS NOT RELEVANT, THEN THE STATE SUBSTANTIVE DUE PROCESS IS IN DEEP TROUBLE.

CHIEF JUSTICE: WHICH THAT WAS NOT RAISED BELOW. THE SUBSTANTIVE DUE PROCESS --

IT WAS RAISED, AS SOON AS IT BECAME CLEAR THAT DOE HAD SAID PERHAPS THIS IS REALLY SUBSTANTIVE DUE PROCESS. YES, IT WAS RAISED, AND WITH THAT, ILL LEAVE IT UP TO MR. MUSTO TO DISCUSS SUBSTANTIVE DUE PROCESS.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING YOUR HONORS. MAY IT PLEASE THE COURT. ANTHONY MUSTO ON BEHALF OF EVERETT WARD MILKS. YOUR HONORS, FOUR SEPARATE TIMES IN YOUR OPINION, WE RECOGNIZE THAT THE REASON FOR THE SEXUAL PREDATORS ACT WAS TO PROTECT THE PUBLIC. GIVEN THAT PURPOSE, THE STATE HAS NO INTEREST WHATSOEVER AND THEY HAVE NOT EVEN CLAIMED AN INTEREST IN THEIR BRIEF, INCLUDING, WITHIN THE PRESCRIPTIONS OF THAT ACT, PEOPLE WHO ARE NOT DANGERS TO THE COMMUNITY.

YOU AGREE THAT THIS IS A DIFFERENT ISSUE FROM ROBINSON, THAT THERE WAS A SEXUAL ELEMENT TO THESE CRIMES. SO ROBINSON, ITSELF, DOESN'T APPLY.

ROBINSON, ITSELF, DOES NOT APPLY. HOWEVER, I THINK IF YOU LOOK AT ROBINSON, THE SAME RATIONALE SHOULD APPLY, FOR EACH OF SEVERAL REASONS. NUMBER ONE, AS I JUST SAID WHEN YOU ARE TALKING ABOUT SOMEONE WHO IS NOT DANGER TO THE COMMUNITY, THE STATE HAS NO INTEREST IN IMPOSING ANY RESTRICTIONS.

WHAT WAS HIS BACKGROUND? WE KNOW A LOT ABOUT MR. ESPINDOLA. WHAT IS YOUR CLIENT'S CRIME?

UNDERSTANDING THAT MY CLIENT ENTERED A PLEA HERE, SO WE DO NOT HAVE ACTUAL --

WHAT DID HE ENTER A PLEA TO?

HE ENTERED A PLEA TO LEWD AND LASCIVIOUS MOLESTATION UNDER 800.04.

OF A CHILD?

OF A CHILD. OF HIS DAUGHTER, AND I THINK THAT GETS INTO ONE OF THE PROBLEMS OF THIS ACT, IS WHEN YOU DO HAVE A SITUATION LIKE THIS WHERE THERE IS A PLEA AND THEN FOUR MONTHS LATER, THE STATE COMES IN AND SAYS WE WANT YOU TO BE PUT ON THIS REGISTRY, YOU MAY NOT HAVE THE FACTS IN THE RECORD THAT ARE APPARENT. IN ROBINSON THEY WERE APPARENT AND YOU WERE ABLE TO DO IT. ASSUME ROBINSON HAD ENTERED A PLEA AND WE DON'T KNOW ANYTHING ABOUT THE FACTS. WE DIDN'T KNOW THAT HE DROPPED THE KID OFF AT A DOCTOR'S OFFICE AND THAT SORT OF THING. ROBINSON WOULD BE IN THE SAME SITUATION AS MILKS ANDES PIN DOLE A HE WOULD HAVE COME IN -- AND ESPINDOLA.

HE DID NOT SHOW THAT THERE WAS A SEXUAL ELEMENT TO THE CRIME, AND THAT IS THE ONLY CRIME IN THE STATUTE THAT IS NOT AN IDENTIFIABLE SEXUAL CRIME.

FALSE IMPRISONMENT.

CORRECT. YES.

CORRECT.

THAT IS CORRECT. BUT THE BOTTOM LINE WOULD BE THAT, IF, AFTER FOUR MONTHS, THEY CAME IN IN ROBINSON AND SAID THERE WAS A PLEA, AND THEY CAME IN FOUR MONTHS LATER, LIKE THEY DID HERE, MR. ROBINSON SAYS I WANT TO SHOW YOU THERE WAS NO SEXUAL COMPONENT

TO, THIS AND THE JUDGE WOULD HAVE TO SAY, AS THE JUDGE IN MILKS, I AM SORRY. YOU ONLY GET A HEARING AS TO WHETHER YOU WERE CONVICTED AS TO THIS CRIME.

IS YOUR CLIENT ON SEX OFFENDER PROBATION? IS HE ON PROBATION OR IS HE IN JAIL?

AS I RECALL HE IS IN JAIL.

IN PRISON.

YES.

THE STATE MADE A FAIRLY COMPELLING ARGUMENT THAT MOST OF THE RESTRICTION INS THIS STATUTE, ARE ACTUALLY FOUND IN OTHER PLACES. THAT IS RESTRICTIONS OF EMPLOYMENT, REQUIREMENTS FOR REGISTRATION, DO YOU HAVE A RESPONSE TO THAT?

YES. A, ALTHOUGH MOST OF THEM MAY BE, THEY ARE NOT ALL.

WHICH IS SIGNIFICANT THAT IS NOT?

SIGNIFICANT. CURRENT ADDRESS. TEMPORARY ADDRESS. SOCIAL SECURITY NUMBER. THIS COURT HAS RECENTLY FORMED A COMMITTEE TO DO THINGS LIKE WEED OUT SOCIAL SECURITY NUMBERS FROM ELECTRONIC DATABASES THROUGH OUR COURT SYSTEMS AND SO ON.

THIS IS A VERSION OF MEGAN'S LAW.

YES, IT IS.

AND IS IT THE CASE, AND APPARENTLY EVERY STATE HAS SOME FORM AFTER MEGAN'S LAW.

THAT IS MY UNDERSTANDING.

AND IS IT THE CASE THAT, IN THE MAJORITY OF THE THOSE STATES, THAT THE MEGAN'S LAW CONTAINS RESTRICTIONS ON EMPLOYMENT AND THINGS OF THAT NATURES, BESIDES JUST INFORMATIONAL THINGS, RESTRICTIONS ON EMPLOYMENT, WHERE YOU CAN BE SEEN, AROUND THE SCHOOL OR SOMETHING LIKE THAT. DO THEY CONTAIN THOSE RESTRICTIONS?

CERTAINLY A SUBSTANTIAL NUMBER. I BE COULDN'T TELL YOU --

HAS ANY OTHER STATE HELD THAT THOSE RESTRICTIONS VIOLATE A SUBSTANTIVE DUE PROCESS.

I DON'T KNOW THAT ANY STATE HAS ACTUALLY CONSIDERED THAT, BECAUSE THE SUBSTANTIVE DUE PROCESS ISSUE, AS MR. MORRISON INDICATED, REALLY ONLY CAME TO LIGHT AFTER THE DECISION IN DOE.

JUSTICE SUTER'S INVITATION. AND THE INVITATION THAT WAS IN THERE, BUT REALISTICALLY, IF YOU LOOK AT THE POTENTIAL PURPOSE BEHIND THE LAW AND AS MR. MORRISON SAID, THE SUPREME COURT IN DOE, FOR WHATEVER REASON, ACCEPTED THAT IT WAS NOT TO PROTECT THE COMMUNITY IN CONNECTICUT. WE CAN LOOK AT THAT AND SAY THAT IS ABSURD BUT THEY ACCEPTED IT. THE BOTTOM LINE IS THAT IS NOT THE CASE HERE.

LET ME JUST GO BACK TO SOMETHING YOU SAID ABOUT WHAT MAKES THIS DIFFERENT, THAT THEY HAVE TO GIVE THEIR SOCIAL SECURITY NUMBER AND ADDRESS. I MEAN, I WOULD HAVE, IF THE LEGISLATURE WANTED TO SAY THAT THAT INFORMATION FOR EVERY CONVICTED FELON, IS TO BE AVAILABLE AND PUBLISHED AND ON THE INTERNET, I KNOW, ARE YOU SAYING THAT THAT, THIS INFORMATION ABOUT THE BACKGROUND OF THOSE PEOPLE, WOULD BE UNCONSTITUTIONAL? THAT THAT WOULD HAVE HAD TO SHOW THAT THEY POSE A FUTURE

THREAT, BEFORE THE STATE COULD DO THAT KIND OF THING?

I WOULD SAY TWO THINGS. FIRST OF ALL, THEY WOULD HAVE TO DO SO, IF IT WAS CLEAR AS IT IS HERE ABUNDANTLY, THAT THE PURPOSE IS PROTECTION OF THE COMMUNITY, AND I WOULD CITE YOUR HONORS TO THE HAWAII CASE THAT I JUST FILED A NOTICE OF SUPPLEMENTAL AUTHORITY. HAWAII HAD A VERY SIMILAR STATUTORY SCHEME, AND THEY FOLLOWED ESPINDOLA ON THAT. I WOULD ALSO POINT OUT THAT SOME OF THESE THINGS WHICH ARE NOT PUBLIC RECORD, IT DOES IMPINGE ON A RIGHT TO PRIVACY, AND WE HAVE A RIGHT TO PRIVACY IN FLORIDA THAT IS GREATER THAN THE FEDERAL CONSTITUTION.

THE PRIVACY AND SUBSTANTIVE DUE PROCESS, YOU ARE MUCH INTO YOUR REBUTTAL.

OKAY. VERY WELL. THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT. CHRISTOPHER KISE, SOLICITOR GENERAL ON BEHALF THE PEOPLE.

MR. KISE, AT THE TIME OF YOUR BRIEFS IN THESE TWO CASES, YOU DIDN'T HAVE THE BENEFIT OF OUR VERY WELL-REASONED OPINION IN STATE VERSUS ROBINSON. NOW THAT YOU HAVE SEEN THAT OPINION, DO YOU STILL ARGUE THAT THERE IS NO LIBERTY INTEREST INVOLVED HERE, OR DO WE GET PAST THAT NOW?

I THINK THE STATE, GIVEN THE WELL-REASONED OPINION IN ROBINSON AND THE WELL-WRITTEN OPINION IN ROBINSON --

AND WELL-REASONED.

AND WELL-REASONED. I WOULD POINT OUT JUST BRIEFLY, NOT TO BE LABOR THIS IN SOME RESPECTS, POINTING TO JUSTICE WELLS'S DISSENT IN THAT CASE, THAT I THINK THIS CASE IS A BETTER CASE TO ADDRESS THOSE ISSUES, BUT THE COURT HAS APPARENTLY SPOKEN ON. THAT I WOULD ALSO SAY, FROM THE STATE'S PERSPECTIVE THAT IT IS THE CONVICTION AND NOT THE DESIGNATION, THAT CREATES THE STIGMA.

THIS IS MY CONCERN, IS THAT WE START OUT WITH MEGAN IN NEW JERSEY AND A REAL CONCERN THAT SEXUAL OFFENDERS WHO ARE PREYING ON CHILDREN WOULD BE MOVING BACK INTO NEIGHBORHOODS AND WE HAVE SEEN WHAT HAPPENED, YOU KNOW, AGAIN, WITH THAT SEXUAL OFFENDER GOES BACK, EVERYBODY, HE OR SHE IS OSTRACIZED. HAVEN'T WE GOT TO A POINT WHERE, IF A PERSON LIKE MR. ESPINDOLA IS PLACED IN THE SAME CATEGORY AS A SERIAL CHILD MOLESTER, THAT WE HAVE GOTTEN SO OVERBROAD, AND THE AMBITIOUS INTENT TO TRY TO, REALLY, SOLVE THE PROBLEM WHICH IS OF CHILD MOLESTERS, THAT WE HAVE PUT MR. ESPINDOLA IN THE SAME CATEGORY, BRANDED FOR LIFE OR AT LEAST TWENTY YEARS, AS A SEXUAL PREDATOR, WITH ALL OF THE RESTRICTION THAT IS GO WITH THAT LIBERTY INTEREST, AND YOU KNOW, I WOULDN'T WANT TO TURN EVERY, I THINK, YOU KNOW, OVERWHELMING MAJORITY OF CASES ARE GOING TO APPEAR ON THEIR FACE TO BE THESE ARE, EVEN MR. MUSTO'S CLIENT DOESN'T SOUND LIKE HE WOULD HAVE MUCH OF A CHANCE, BUT IN THE ESPINDOLA CASE, WHAT IS THE STATE, YOU KNOW, AGAIN I KNOW WE ARE NOT SUPPOSED TO GET TO THE STATE'S INTEREST, IF THERE IS NO REASON TO HAVE A HEARING, BUT I JUST, I GUESS MAYBE IT GOES TO THE SUBSTANTIVE DUE PROCESS ISSUE THAT, ISN'T THIS STATUTE JUST CREATING THIS IRREBUTTABLE PRESUMPTION, AND THAT IN THAT, THERE ARE GOING TO BE SOME PEOPLE THAT, REALLY, DON'T BELONG THERE, ESPECIALLY THE STATE ACKNOWLEDGED IT BY GIVING HIM PROBATION, WHICH THE STATE THERE FOR HAD TO AGREE MEANT NO THREAT.

I AM GOING TO RESPOND TO YOU AND LET ME DO MY BEST.

THAT MIGHT BE MY ONLY SHOT THIS MORNING.

YOU ARE THE CHIEF JUSTICE. FIRST, LET ME SAY THIS, THAT WITH RESPECT TO CONNECTICUT V DOE BEING NO INTEREST IN PUBLIC SAFETY AND JUST INFORMATION, I WOULD VERY MUCH DISAGREE WITH THAT. THE UNITED STATES SUPREME COURT, THIS COURT, AND THE FLORIDA LEGISLATURE, HAVE, ALL, RECOGNIZED THE COMPELLING INTEREST THAT THE STATE HAS IN PUBLIC SAFETY IN THAT CASE, AND THEY EXPRESSLY RECOGNIZE IT RIGHT IN THE VERY BEGINNING OF THE OPINION, SO THE IDEA THAT THERE WASN'T A PUBLIC SAFETY INTEREST THERE, REALLY WOULD BE IN DISPUTE.

WEREN'T THEY SAYING THAT THAT STATUTE ONLY HAD INFORMATIONl ASPECTS? IN OTHER WORDS IT IS ON THE INTERNET. THAT IS WHY I THOUGHT THEY DIDN'T HAVE A PROACTIVE, YOU KNOW, YOU HAD TO NOTIFY THE COMMUNITY.

OURS IS ON THE INTERNET, AND WE HAVE, I WILL POINT OUT, THE SAME EXACT DISCLAIMER THAT CONNECTICUT'S STATUTE HAS. IF YOU GO ON OUR WEB SITE, THE FDLE WEB SITE AND LOOK, IT SAYS THE SAME THING. WE ARE NOT TELLING YOU THAT THESE PEOPLE ARE CURRENTLY DANGEROUS. WE PROVIDE INFORMATION ABOUT THEM SO THAT YOU CAN MAKE UP YOUR OWN MIND.

ISN'T THAT THE VERY OPPOSITE OF THE STATUTE, ITSELF, WHICH SAYS THAT THE REASON WE ARE DOING THIS IS BECAUSE THESE PEOPLE ARE CURRENTLY DANGEROUS? A THE REASON THEY ARE DOING IT IS BECAUSE THE LEGISLATURE HAS MADE A DETERMINATION THAT SOCIETY NEEDS PROTECTION FROM A CERTAIN ELEMENT, AND I THINK AS JUSTICE PARIENTE GAVE IN THE ROBINSON ORAL ARGUMENT, FELONS AREN'T ALLOWED TO CARRY GUNS. NOW, DO WE NEED TO HAVE A HEARING TO DETERMINE FOR EVERY FELON NOW, TO DETERMINE WHETHER OR NOT THEY MIGHT BE ABLE TO CARRY A GUN? SOME MIGHT BE DANGEROUS AND SOME MIGHT NOT BE DANGEROUS. SOME MIGHT NOT BE ALLOWED TO VOTE IN THIS STATE. SHOULD WE HAVE A HEARING TO DETERMINE WHETHER THEY ARE GOOD CITIZENS OR NOT?

AREN'T THOSE VERY DIFFERENT SITUATIONS WHERE YOU ARE PUTTING OUT TO ANYONE IN THE PUBLIC ON THE INTERNET, THAT SAYS THIS PERSON IS A SEXUAL PREDATOR, AND THAT REALLY IN MY MIND, CARRIES A VERY, VERY SERIOUS CONNOTATION.

RESPECTFULLY, YOUR HONOR, THE NOTION THAT SOMEONE MOLESTS A KINDERGARTEN CHILD OR SOMEONE RAPES A DRUGGED WOMAN, CARRIES A SERIOUS CONNOTATION WITH IT, AND FRANKLY --

AND PUT THAT ON THE INTERNET, UNDER THE DOE CASE, IT WOULD BE PERFECTLY FINE, IF YOU PUT EXACTLY WHAT CRIME THE PERSON WAS CONVICTED OF ON THE INTERNET.

THAT IS INCLUDED.

MY PROBLEM WITH THIS REALLY IS SORT OF SIMILAR TO JUDGE COPES, WHICH YOU ARE SAYING THAT THIS PERSON IS, YOU ARE SAYING, A SEXUAL PREDATOR, WHICH CONTRARY TO THIS DISCLAIMER, IN MY MIND MEANS THIS PERSON IS A DANGEROUS PERSON. WHAT DOES PREDATOR AND PREYING ON SOMEONE MEAN?

IF THE COURT IS TROUBLED WITH THE NOMENCLATURE, I WOULD ASK THE COURT TO LOOK AT THE SUBSTANCE OF THE INFORMATION PROVIDED AND THE PURPOSE OF THE STATUTE. I MEAN, OBVIOUSLY THERE IS A PUBLIC SAFETY INTEREST HERE AND I THINK IT IS LEGITIMATE COMPELLING ONE THAT THIS COURT RECOGNIZED IN ROBINSON.

ISN'T THE PROBLEM THE OVERBREADTH, IN OTHER WORDS SAYING WE ARE GOING TO LEAVE THIS TO THE PUBLIC TO DECIDE WHICH ONE OF THEM ARE REALLY DANGEROUS, EVEN THOUGH WE ARE DECIDING THAT ALL THESE PEOPLE THAT HAVE THESE CONVICTIONS ARE SEXUAL PREDATORS AND THEREFORE ARE SEXUAL PREDATORS FOR LIFE. ON THE OTHER HAND, WE ARE

DISCLAIMING THAT WE ARE REALLY SAYING ANYTHING ABOUT THEM, SO IT IS UP TO ME, IF I HAVE MR.ES MR. ESPINDOLA MOVING IN, TO TRY TO FIGURE OUT HIS CRIME, WE ARE ASKING THE PUBLIC TO DO THE STATE'S WORK, AS OPPOSED ASKING THE STATE TO BE MORE NARROWER, AS TO WHO IS ON THIS LIST AND LETTING THE PUBLIC KNOW THAT THE GUY NEXT DOOR IS SOMEONE THAT THEY NEED TO WATCH OUT FOR. YOUR ADDRESSING, NOW, A MORE SUBSTANTIVE ISSUE, AND WE DO NOT BELIEVE THERE IS A SUBSTANTIVE DUE PROCESS ARGUMENT. I THINK THOSE WERE CLOSED BY DOE AND BY THIS COURT'S OPINION IN ROBINSON, BUT I THINK THAT, UNDER THE RATIONAL RELATIONSHIP TEST, THIS STATUTE DOES MEAN THE, IT IS USING A RATIONALLY RELATED MEANS TO ACCOMPLISH A COMPELLING PUBLIC INTEREST, AND I DO NOT THINK IT IS OVERLY BROAD IN THAT SENSE.

WHY NOT PROVIDE AN OPT-OUT PROCEDURE, WHERE A DEFENDANT COULD COME AND PROVE THAT THEY ARE NOT DANGEROUS? LET ME GIVE AWFUL EXAMPLE THAT I HAD AS A TRIAL JUDGE. A 17-YEAR-OLD GIRL STARTED HAVING SEX WITH A 15-YEAR-OLD BOY. SHE IS MENTALLY RETARDED. HER MENTAL AGE WAS 13 OR 14. SHE ENDED UP GETTING PREGNANT. THEY ENDED UP HAVING SEX. SHE WAS 18 AND HE WAS 15, AND SHE GOT CHARGED, AND EVERYBODY WAS TRYING TO FIGURE OUT HOW TO AVOID THE IMPLICATION OF THE STATUTE, BUT IT COULDN'T BE DONE WITHOUT DISMISSAL OF THE CHARGES BECAUSE THERE WAS NO ABILITY TO OPT OUT OF IT AND THIS LADY WAS NOT GETTING PUBLIC HOUSING, PUBLIC BENEFIT, COULDN'T BE AROUND KIDS. ALL OF THIS WHICH IS EVEN A WORST CASE THAN THE ESPINDOLA CASE AND THERE WAS NO ABILITY FOR THE COURT TO KEEP THIS YOUNG LADY FOR 20 YEARS, HAVING ALL OF THESE SHACKLES AROUND HER NECK, AND WHAT IS THE STATE INTEREST IN NOT, AS JUSTICE PARIENTE SAYS, NARROWING IT OR AT LEAST PROVIDING AN OPT-OUT FOR AN EXTREME SITUATION?

THAT IS CORRECTLY A POLICY FOR THE LEGISLATURE AND THAT IS KIND OF WHAT THEY HAVE DETERMINED. THEY HAVE DETERMINED THAT THERE IS THIS CATEGORY AND AS LONG AS IT PASSES THE RATIONAL RELATIONSHIP TEST, YOU ARE NEVER, THERE ARE HYPOTHETICALS THAT CAN BE CREATED FOR ALMOST ANY LINE DRAWN.

THESE AREN'T HYPOTHETICALS. WE HAVE MR. ESPINDOLA, AND THE CONNECTICUT STATUTE NOT ONLY DIDN'T HAVE A LABEL AS PREDATOR, AT LEAST AS YOU READ THE OPINION, THEY, ALSO, DID HAVE A WAY THAT THEY, THAT SOMEONE COULD PETITION THE COURT FOR A RESTRICTED DISSEMINATION, UNDER CERTAIN CIRCUMSTANCES. FLORIDA DOESN'T HAVE THAT, DOES IT? A.

THAT'S CORRECT. AND THE U.S. SUPREME COURT POINTED OUT THE FACT THAT THERE IS NO, AGAIN, WHATEVER THE PURPOSE WAS, THERE WAS INFORMATIONAL, IT DIDN'T SAY ANYTHING ABOUT ANY OTHER RESTRICTIONS ON THE PERSON, AND THEY PARTICULARLY POINTED OUT THIS OPT-OUT, AND YOU DON'T THINK THAT IS SIGNIFICANT, THAT THERE WAS AN OPT-OUT IN THE CONNECTICUT STATUTE, AND THAT THEY DIDN'T, ALSO, LABELED PEOPLE AS SEXUAL PREDATORS?

I DO NOT, YOUR HONOR. THE STATE SUBMITS, AGAIN, THAT FROM A SUBSTANTIVE VIEW PROCESS STANDPOINT, IT IS, THE MEANS THAT THEY ARE USING ARE RATIONALLY RELATED TO THIS COMPELLING INTEREST THAT EVERYONE HAS RECOGNIZED EXISTS. IN TURNING, SORT OF LOOKING AT THIS AS THE CURRENTLY DANGEROUS, FROM THE CURRENTLY DANGEROUS ASPECT OF IT, IT REALLY TURNS THE WHOLE POLICY OF THE LEGISLATURE ON ITS HEAD. I MEAN, THE LEGISLATURE HAS ALREADY DETERMINED THAT THERE IS A COMPELLING INTEREST IN PROTECTING SOCIETY IN A BLANKET MEASURE, FROM CERTAIN INDIVIDUALS WHO MEET THE DESIGNATED OFFENSES.

BUT NOW GOING BACK TO THE TRIPART QUESTION THAT I HAD AND MAYBE IT AS TO A CHALLENGE, BUT IN AGREEING TO PROBATION IN THIS CASE, THE STATE HAD TO LIKELY AGREE THAT HE WAS ENGAGING IN A COURSE OF CRIMINAL CONDUCT, BECAUSE THAT IS IN THE PROBATIONAL STATUTE. YOU CAN'T AGREE TO PROBATION, UNLESS THE PERSON FITS IN THAT

CATEGORY, SO HOW DO YOU ANSWER THAT QUESTION, AS LEAST WITH REGARD TO THIS MR. ESPINDOLA DEFENDANT?

MR. ESPINDOLA MEETS THE CRITERIA OF FITTING INTO THE STATUTE. THE MEANS THAT ARE UTILIZED, CURRENTLY DANGEROUS HAS BEEN DETERMINED. I MEAN, THERE IS NO --

YOU SEE, THAT IS WHERE I GUESS I AM HAVING THE TROUBLE. HOW HAS CURRENT DANGER BEEN DETERMINED, WHEN HE ENTERED A NOLO PLEA, TO A CRIME THAT, BECAUSE OF THE UNIQUE CIRCUMSTANCES, ENDED UP BEING ONE OF THESE QUALIFYING OFFENSES, I GUESS BECAUSE THERE WAS ANOTHER PERSON THERE AND BECAUSE HE, AS WELL AS THE VICTIM, ENDED UP BEING UNDER THE INFLUENCE OF THIS DRINK, I GUESS LIKE AN ECSTASY OR WHATEVER, SOMETHING LIKE THAT. THEY ARE CALLED. I MEAN, HOW IS THAT, WHY WAS THERE, HOW IS THERE A DETERMINATION OF DANGEROUSNESS?

THERE IS A DETERMINATION AT THE TIME THAT HE PLEADS NOLO OR NO CONTEST TO, AND THERE IS A MATTER OF POLICY THAT IT IS IMPORTANT TO CREATE THIS DATE A BASE OF INFORMATION THAT IS AVAILABLE TO THE PUBLIC, SO THAT THEY CAN DRAW THEIR CONCLUSIONS ABOUT WHETHER OR NOT THIS PERSON, THEY WANT THIS PERSON IN THEIR NEIGHBORHOOD OR THEY WANT THIS PERSON NEAR THEIR CHILDREN.

HAS THERE BEEN AN AS-APPLIED CHALLENGE IN THIS CASE?

I AM SORRY?

HAS THERE BEEN AN AS-APPLIED CHALLENGE IN THIS CASE?

I DON'T BELIEVE SO, AND I BELIEVE THAT IS PART OF THE PROBLEM WITH LOOKING AT THE SUBSTANTIVE DUE PROCESS ANALYSIS IN THIS CASE, THAN IS THAT, UNLESS THEY CAN DEMONSTRATE THAT THERE IS ABSOLUTELY NO CIRCUMSTANCE WHATSOEVER UNDER WHICH THIS STATUTORY SCHEME IS VALID, THEN THERE IS NO WAY TO EVEN ADDRESS THE SUBSTANTIVE DUE PROCESS CLAIM THAT IS RAISED AS A FACIAL CHALLENGE.

WAS THE SUBSTANTIVE DUE PROCESS ISSUE ARGUED IN THE TRIAL COURT?

IT WAS NOT ARGUED PER SE. I KNOW THAT MR. MILKS'S COUNSEL CONTENDS THAT THE ARGUMENT ABOUT DUE PROCESS, ENCOMPASSED BOTH, BUT, AGAIN, TAKING THAT, TAKING HIM AT HIS WORD AND ASSUMING THAT FOR A MOMENT, IT STILL IS A FACIAL CHALLENGE. IT WOULD NOT BE AN AS-APPLIED CHALLENGE, AND THEREFORE AGAIN, THEY WOULD HAVE TO MEET BURDEN OF DEMONSTRATING THAT THERE IS NO CIRCUMSTANCES UNDER WHICH THIS STATUTE --

WE TOOK THIS IN CONFLICT WITH EACH OTHER? ANOTHER ORIGINAL CASE ESPINDOLA, WAS TAKEN AT SOME POINT, I BELIEVE, ON APPEAL OF THE ORIGINAL MOTION, AT SOME POINT THIS SUMMER.

THE BASIS FOR CONSTITUTIONALITY AND THE CONFLICT BETWEEN ESPINDOLA AND MILKS, RELATE TO THE DUE PROCESS ISSUE, NOT SUBSTANTIVE DUE PROCESS.

I BELIEVE THAT IS THE CASE BECAUSE ESPINDOLA SPOKE ON ROBINSON, AND THE COURT ADDRESSED THE PROCEDURAL DUE PROCESS ISSUE, IN THAT WELL-WRITTEN OPINION, INDICATING THAT THIS REALLY ISN'T ABOUT A HEARING, AND USING THE SAME RATIONALE THAT WAS UTILIZED BY THE UNITED STATES SUPREME COURT IN CONNECTICUT V DOE, THIS COURT SAID THE SAME THING ABOUT OUR STATUTE, WHY HAVE A HEARING TO DETERMINE SOMETHING THAT IS IRRELEVANT FOR THE PURPOSES OF THE STATUTORY SCHEME. THE SOLE ISSUE IS WHETHER THE PERSON MEETS THE LEGISLATIVE REQUIREMENT. WITH RESPECT TO THE DUE PROCESS, WE WOULD CONTEND AS WELL, AND NOT TO YIELD THAT WE THINK IT IS PROPERLY

BEFORE THIS COURT BUT NOT KNOWING WHAT THE COURT'S DETERMINATION IS GOING TO BE IN THAT REGARD, I JUST WANT TO ADDRESS A COUPLE OF POINTS ABOUT WHETHER WE MEET THE STANDARD THERE, UNDER THE RELATIONSHIP TEST, AND I REALLY WOULD CONTEND THAT THERE IS NOT A SIGNIFICANT PRIVACY RIGHT HERE, AS THERE IS REALLY NO REASONABLE EXPECTATION OF PRIVACY IN THIS PUBLIC INFORMATION. I MEAN, YOU ARE PROVIDING INFORMATION TO THE GOVERNMENT, ABOUT YOUR NAME, YOUR ADDRESS, YOUR SOCIAL SECURITY NUMBER, INFORMATION THAT IS PROVIDED IN MANY OTHER CONTEXTS.

WHAT ABOUT THE LIBERTY INTEREST? ANOTHER LIBERTY INTEREST, AGAIN, AS INDICATED IN THE ROBINSON CASE, THE STATE WOULD HAVE TO CONCEDE, BECAUSE THE COURT APPEARS TO HAVE DECIDED THAT THERE IS A SUFFICIENT LIBERTY INTEREST AT STAKE HERE.

AND THE LIBERTY INTEREST HAS TO BE FUNDAMENTAL TO IMPLICATE SUBSTANTIVE DUE PROCESS?

IT WOULD HAVE TO BE FUNDAMENTAL, YOUR HONOR, TO IMPLICATE THE STRICT SCRUTINY STANDARD BUT NOT TO IMPLICATE SUBSTANTIVE DUE PROCESS IN GENERAL TERMS, AND I WOULD SUBMIT TO THE COURT THAT THE RATIONAL RELATIONSHIP TEST APPLIES BECAUSE WE ARE NOT DEALING WITH FUNDAMENTAL RIGHTS. THE RIGHT TO WORK IS A CONSTITUTIONAL RIGHT, BUT THIS COURT HAS DECIDED ON SEVERAL OCCASION, THAT IS NOT FUNDAMENTAL. THE CHOICE OF A SPECIFIC OCCUPATION AND CARRYING OUT IN A SPECIFIC WAY, LIKE IN THE CHILES CASE DEALING WITH COMMERCIAL FISHERMEN AND THE NET BAN, IS NOT A FUNDAMENTAL RIGHT. THE SAME IS TRUE WITH THE PRIVACY INTEREST IN THIS CASE.

COULD THIS RESPONDENT OR DEFENDANT ESPINDOLA, QUALIFY TO, WENT TO LAW SCHOOL, BE ADMITTED TO THE BAR, BASED ON THIS ONE FELONY CONVICTION?

I AM NOT SURE, YOUR HONOR, AND I APOLOGIZE FOR THAT. I THINK THERE WOULD CERTAINLY BE SOME ISSUE REGARDING THAT, RECALLING WORKING WITH LAWYERS IN THAT REGARD WHEN I WAS IN LAW SCHOOL. THERE WOULD BE SOME ISSUE REGARDING THE FELONY. WHETHER OR NOT HE WOULD ULTIMATELY BE ADMITTED, THAT I AM NOT SURE OF.

WHAT ABOUT THE FACT OF CREATING AN IRREBUTTABLE PRESUMPTION FROM THE FACT OF CONVICTION, THAT HE IS, AGAIN, DANGEROUS, CURRENTLY DANGEROUS TO THE COMMUNITY?

I THINK, YOUR HONOR, THAT ALMOST ANY LINE DRAWING IN THE LAW, CREATES SOME FORM OF PRESUMPTION. AND I THINK PERHAPS JUSTICE LEWIS MAY HAVE MENTIONED THIS IN THE ROBINSON ARGUMENT, THAT WHEN YOU GET INTO THE ISSUES OF DESIGNATING INDIVIDUALS IN TERMS OF CRIMINAL CONDUCTOR DRAWING A LINE, YOU ARE CREATING SOME SORT OF PRESUMPTION. I MEAN, NOT ALLOWING FELONS TO POSSESS FIRE ARMS, CREATES SOME PRESUMPTION.

BUT THAT IS WHERE THE LIBERTY, AND, AGAIN, NOT HAVING REVIEWED MY CONSTITUTIONAL LAWES REENTLY, BUT ISN'T -- CONSTITUTIONAL LAW RECENTLY, ISN'T THAT WHERE THE LIBERTY INTEREST REALLY PLAYS A PART, LOOKING AT THE SIGNIFICANT OF WHAT SOMEONE, FACED WITH SEXUAL REGISTRATION RESTRICTIONS IS REQUIRED TO DO IN RESTRICTIONS, AS OPPOSED TO THE GENERAL PROHIBITION AGAINST FELONS?

YES, YOUR HONOR. WE HAVE TO LOOK AT THE NATURE OF THE INTRUSION AND DETERMINE WHETHER OR NOT IT IS A FUNDAMENTAL RIGHT, WHICH IS T IS NOT, AND LOOK AT THAT AND DETERMINE WITH THE RATIONAL COMPARISON TEST, AND DETERMINE WHETHER OR NOT THIS MEETS THE STANDARD OF BEING RATIONALLY RELATED TO A GOVERNMENT OBJECTION, AND IN THIS CASE THE COURT HAS RECOGNIZED AND THE LEGISLATURE HAS RECOGNIZED AND THE U.S. SUPREME COURT HAS RECOGNIZED IT IS A COMPELLING PUBLIC AND GOVERNMENT INTEREST, AND THIS IS IN ALL OF THE STATUTES.

HAVE WE TALKED ABOUT WHETHER SEVERAL STATES HAVE HEARING REQUIREMENT, CORRECT?

I BELIEVE SO.

AND FLORIDA DID HAVE ONE AT ONE POINT.

IN 1995 AN OR '96, I BELIEVE THAT THE STATUTE WAS CHANGED TO ELIMINATE THE HEARING, AND IF YOU LOOK AT THE LEGISLATIVE HEARING LANGUAGE REQUIREMENT, AND IF YOU LOOK AT THE LEGISLATIVE HISTORY, I WOULD SUBMIT IN REDO, THIS COURT HAS DETERMINED WHY HAVE A HEARING TO DETERMINE SOMETHING THAT WE HAVE ALREADY DETERMINED, AND I BELIEVE IT IS IN THE LEGISLATIVE HISTORY BUT I CAN'T REMEMBER, OFF THE TOP OF MY HEAD.

WHAT ABOUT THE OPT-OUT, IS THAT PRETTY STANDARD, AS IN CONNECTICUT, IN MATERIALS OF PROVISIONS TO HAVE?

I DON'T KNOW THE TONIGHT'S THAT.

WHEN THIS IS RELATED, TO ME TALKING ABOUT WHETHER EVERY OTHER STATE HAS UPHELD IT, TO ME, I DON'T KNOW IF FLORIDA IS ON THE OUTER EDGE OF ALL.

MEGAN'S LAW, WE HAVE GOT THE MOST DRACONIAN BECAUSE OF CALLING THEM SEXUAL PREDATORS, RESTRICTION POSFOR LIFE, RESTRICTIONS ON EMPLOYMENT, AND NO OPT-OUT PROVISION, SO IT WOULD JUST BE HELPFUL TO KNOW WHERE WE ARE IN, IF WE ARE THE WORST.

I WOULD BEHESTTANT TO HAZARD A GUESS.

IT IS HARD TO IMAGINE ANYTHING BEING ANY WORSE UNDER REGISTRATION.

WELL, I THINK MOST OF THEM, THE ONES THAT I HAVE LOOKED AT ANYWAY, ARE VERY SIMILAR, AND I THINK THE CONNECTICUT STATUTE, OTHER THAN THE NOMENCLATURE, IS IDENTICAL IN THE WAY IT WORKS BUT WITHOUT DOING A SIDE-BY-SIDE COMPARISON, I WOULDN'T WANT TO MAKE A REPRESENTATION TO THE COURT ABOUT THE DEGREE.

IT WOULD BE A SIGNIFICANT COMPARISON, BECAUSE IT WOULD ALLOW RESTRICTED CIRCUMSTANCES, FOR NOT THE NORM, BUT FOR THE ABERRATION, TO ALLOW THAT PERSON TO HAVE THAT OPT-OUT.

WELL, AND I THINK YOUR HONOR, THEN, IS NOW ANALYZING THE ISSUE UNDER MORE OF A STRICT SCRUTINY STANDARD THAN UNDER A RATIONAL RELATIONSHIP STANDARD, BECAUSE THERE PERHAPS YOU REALLY HAVE FOCUS IN ON, IS THIS ABSOLUTELY THE MOST POSITIVELY NARROW WAY THAT WE CAN ACCOMPLISH THE OBJECTIVE? I WOULD SUGGEST TO THE COURT THAT IT STILL MEETS THAT STANDARD, THAT WE CAN STILL GET PAST STRICT SCRUTINY, BUT I DON'T WANT TO CONCEDE THAT WE ARE DEALING WITH FUNDAMENTAL RIGHTS. AS JUDGE AZURI SAID IN THE COUNTY COMMISSIONERS VERSUS DBD CASE, THERE WE ARE INVOLVING INDIVIDUALS INVOLVED IN ADULT ENTERTAINMENT, AND THEY WERE REQUIRED, THE DANCERS, AS REFERENCED IN THE OPINION, WERE REQUIRED TO SUBMIT CERTAIN INFORMATION TO THE COUNTY.

YOU KNOW WE DON'T LISTEN TO JUDGE AZURIA.

I JUST THOUGHT THAT WAS AT HOME. I AM SORRY.

WITH REGARD TO ARGUMENT, EVEN THOUGH WE WOULD NOT APPLY A STRICT SCRUTINY ANALYSIS FOR THESE IRREBUTTABLE PRESUMPTIONS, THERE IS NOT MANY FLORIDA CASES IN

THIS AREA, BUT MOST OF THEM, REALLY, ARE QUITE DEMANDING, WITH REGARD TO THE WAY IN WHICH THE FLORIDA COURTS HAVE DEALT WITH IRREBUTTABLE PRESUMPTIONS UNDER ANY AREA OF THE LAW.

THAT'S CORRECT, YOUR HONOR. I MEAN, THEY ARE FAIRLY DEMANDING, AND I WOULD SUBMIT, THOUGH, THAT WE STILL MEET THAT STANDARD, EVEN WITH THE STATUTE, BECAUSE THERE IS, BECAUSE OF THE NATURE OF THESE OFFENSES AND BECAUSE OF WHAT THE LEGISLATURE HAS ALREADY RECOGNIZED AND WHAT I THINK THE COURTS HAVE RECOGNIZED, A LOT OF THESE CRIMES GO UNDETECTED BECAUSE THE INDIVIDUAL IS EITHER UNWILLING OR UNABLE TO COME FORWARD. YOU HAVE OFFENSES THAT GO ON THAT ARE NOT PROSECUTED. AND I THINK THAT IS WHAT THE LEGISLATURE RECOGNIZING BY ENGAGING IN THIS BLANKET MEASURE, THERE IS NO WAY TO DETERMINE WHETHER THIS PERSON IS DANGEROUS AT THIS MOMENT BUT PUT THIS AMERICAN IN A SCHOOLYARD AND THEY MIGHT BECOME DANGEROUS SIX MONTHS OR A YEAR FROM NOW, AND I THINK THE COURT, USING VERY NARROW MEANS UNDER THE CIRCUMSTANCES, THAT IT IS JUST NOT WORTH THE RISK UNDER SOCIAL CIRCUMSTANCES. IT IS JUST NOT WORTH THE RISK.

CHIEF JUSTICE: FOUR MINUTES OF REBUTTAL, AND I WANT TO MAKE SURE BECAUSE I KNOW THIS IS ALWAYS BEING TELEVISED, THAT JUST BECAUSE WE SAID SOME THINGS AND LAUGH, THAT DOESN'T MEAN THAT WE UNDERSTAND FOR YOUR CLIENT AND FOR ALL OF THOSE INVOLVED, THAT THESE ARE NOT VERY SERIOUS MATTERS.

I UNDERSTAND THAT AND I WOULD LIKE TO POINT OUT THAT MR. MORRISON AND I WOULD LIKE TO POINT OUT THAT ROBINSON WAS VERY WELL-WRITTEN.

REGARDLESS OF ANY EDITORIAL COMMENT ON ROBINSON, THE BOTTOM LINE ON ROBINSON FROM THE MAJORITY PERSPECTIVE, WAS THAT IT WAS STATED TO BE A VERY NARROW DECISION, BASED UPON A CONCESSION MADE BY THE STATE, AND IN THE FINAL ANALYSIS, IF THE RESULT WAS THAT THERE WAS AN AS-APPLIED CHALLENGE.

THAT'S CORRECT, BUT I THINK PERHAPS THE MOST SIGNIFICANT ASPECT OF THAT, AND THIS TIES INTO THE QUESTIONS THAT CHIEF JUSTICE PARIENTE AND JUSTICE BELL WERE ASKING ABOUT THE OPT-OUT PROVISION, I THINK THE STATEMENT ROBINSON'S DESIGNATION AS A SEXUAL PREDATOR CAN FULFILL NONE OF THE STATUTE'S PURPOSES.

THAT IS BECAUSE HE WAS NOT CONVICTED OF A SEXUAL CRIME.

THAT'S CORRECT, BUT GIVEN THAT THE DANGER TO THE COMMUNITY, AND YOU WANT TO PROTECT THE COMMUNITY, THAT THE SAME SECTION APPLIES, AND THAT IS WHY IN THE DUE PROCESS ANALYSIS, IT IS CRITICAL TO AT LEAST HAVE THE OPT-OUT PROVISION.

DO YOU AGREE THAT, IF WE LOOK AT THE SUBSTANTIVE PROVISION, THAT WE LOOK AT IT ON A RATIONAL BASIS TEST, THAT THE LIBERTY INTERESTS INVOLVED, DON'T RISE TO FUNDAMENTAL RIGHTS, IN ORDER TO INVOKE THE STRICT SCRUTINY TEST?

NO. I DON'T AGREE WITH THAT.

OKAY. SO HOW, WHICH IS THE FUNDAMENTAL RIGHT?

WELL, FIRST OF ALL THIS COURT HAS REPEATEDLY STATED THAT THE RIGHT TO PRIVACY UNDER THE FLORIDA CONSTITUTION, IS A FUNDAMENTAL RIGHT.

THAT IS ASSUMING THE RIGHT OF PRIVACY IS IMPLICATED. LET'S GO WITH THE RIGHT THAT JUSTICE CANTERO, IN HIS MAJORITY OPINION IN ROBINSON, IDENTIFIED, ARE ANY OF THOSE FUNDAMENTAL RIGHTS?

WELL, I THINK THEY ARE BECAUSE THEY FALL WITHIN THE RUBRIC OF THE DUE PROCESS CLAUSE, WHICH IS WITHIN THE FUNDAMENTAL RIGHT, BUT PRIMARILY THE COURTS THAT HAVE REPEATEDLY DEALT WITH THESE, RECOGNIZE THAT THE RIGHT TO PRIVACY IS IMPLICATED. THE STATE HAS ARGUED IN IS NOT THAT IMPLICATED BECAUSE IT -- ARGUED IT IS NOT THAT IMPLICATED BECAUSE IT IS NOT THAT MUCH OF AN INTRUSION. IT IS A STRICT SCRUTINY STANDARD.

I HAVE A PROBLEM WITH THE PRIVACY ISSUE, BECAUSE WHEN SOMEONE IS PLEADING TO WHATEVER THEY ARE, THAT THEY ARE COMMITTING A CRIME, THERE IS A REASON EXPECTATION THAT THEY ARE NOT GOING TO HAVE THEIR NAME AND SOCIAL SECURITY NUMBER, IDENTIFYING DATA, AVAILABLE ON THE INTERNET, WHOEVER ELSE WE PROTECT TO SOCIAL SECURITY NUMBERS, THAT THAT CONVICTED FELON IS NOT GOING TO BE AT THE TOP OF THE LIST.

CORRECT IF THAT WAS PART OF THE SENTENCING, BUT THIS IS NOT PART OF SENTENCING. IT IS PART OF A COLLATERAL CONSEQUENCE, SO IT IS OUT THERE OF.

I DON'T KNOW HOW THAT LESSENS OR INCREASES THE REASONABLE EXPECTATION OF PRIVACY, JUST AS THEY CAN DO IT AT SENTENCING, AS PART OF PROBATION, WHY IS THAT PRATT AND IN THE STATUTE? WHY IS THAT SEPARATE IN THE STATUTE?

BEAR IN MIND HERE, THIS TALKS ABOUT REBUTTABLE PRESUMPTIONS AND SO ON. WHEN WE ANALYZE THIS SITUATION, THE STATE TALKS ABOUT ITS COMPELLING INTEREST TO PUT PEOPLE IN THE SEXUAL PREDATOR REGISTRY AND SO ON, WHO ARE IN FACT DANGERS TO THE COMMUNITY. THEY ASSERT NO INTEREST IN THOSE WHO ARE NOT DANGER, AND THAT IS WHY THOSE PEOPLE HAVE TO HAVE AN OPPORTUNITY TO SHOW THAT THEY ARE NOT A DANGER.

I UNDERSTOOD WHAT MR. KISE WAS SAYING, THAT THERE IS A RATIONAL BASIS UPON WHICH THE LEGISLATURE COULD MAKE THE DECISION THAT THESE SPECIFIED CRIMES, ARE TO HAVE THIS RESULT AND THIS TYPE OF DESIGNATION. ISN'T THAT THE ARGUMENT?

AND THAT IS, YES, AND THAT IS THE FIRST PRONG OF A TEST TO INVOLVE THE QUESTION OF A PRESUMPTION. THE CASE LAW IS VERY CLEAR, YOU CANNOT HAVE A REBUTTABLE PRESUMPTION. IF YOU ESTABLISH THAT RELATIONSHIP THAT YOU ARE TALKING ABOUT, YOUR HONOR, YOU CAN THEN ESTABLISH A REBUTTABLE PRESUMPTION. YOU CAN SAY, YES, IF YOU ARE CONVICTED OF ONE OF THESE CRIMES, IT IS PRESUMED THAT AIR DANGER, BUT THE SECOND PRONG OF THAT TEST, SAYS THAT THE PERSON HAS TO HAVE A FAIR OPPORTUNITY TO REBUT IT. THAT IS WHAT --

DON'T STATUTES ALL THE TIME, HAVE IRREBUTTABLE PRESUMPTIONS? SCALIA REFERRED TO THE FACT THAT, IF YOU ARE UNDER 16, IT IS AN I EVER REBUTTABLE PRESUMPTION THAT YOU CAN'T DRIVE AND SO WE ARE NOT GOING TO LET YOU DRIVE. IT HAS NEVER BEEN HELD YOU HAVE TO TEST EACH 15-YEAR-OLD, TO SEE IF THEY CAN DRIVE, BEFORE YOU CAN HAVE A LAW LIKE THIS.

IT IS IMPORTANT THAT EACH STATUTE CAN SET UP RIGHT TO SOMETHING, WHICH YOU CAN SET UP YOUR CRITERIA THAT YOU WANT, IT TO ESTABLISH A RIGHT, VERSUS THE GOVERNMENT IS GOING AND DOING SOMETHING TO YOU.

CHIEF JUSTICE: WITH THAT, I WANT TO THANK ALL THREE OF YOU FOR A VERY WELL DONE ORAL ARGUMENT AND YOUR BRIEFS, ALSO, VERY INFORMATIVE, AND WITH THAT THE COURT WILL BE IN RECESS.

MARSHAL: PLEASE RISE.