

>> FLORIDA SUPREME COURT IS BACK IN SESSION PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: FIRST OF ALL LET ME THANK EVERYBODY FOR TAKING THE TIME TO COME APPEAR TO PRESENT YOUR VIEWS ON THIS RULE AND FOR EVERYBODY WHO HAS SUBMITTED WRITTEN COMMENTS IS OBVIOUSLY REALLY IMPORTANT ISSUE AND WE APPRECIATE EVERYBODY'S INTEREST IN HELPING THE COURT TO GET THIS RIGHT. WE WILL NOW HEAR FROM YOU ON CASE NUMBER CASE NO. SC22-1123 IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.191 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.140.

>> GOOD MORNING CHIEF JUSTICE I AM THOMAS D. WINOKUR  
APPEARANCE FOR CRIMINAL COURT STEERING COMMITTEE: AS YOU KNOW THE STEERING COMMITTEE DID MAKE THIS PROPOSAL THAT WE ARE DISCUSSING TODAY BUT THE COMMITTEE DOES IN FACT SUPPORT THE RULE AND VISIONS AS WE INDICATED IN OUR COMMENTS IN PARTICULAR I BELIEVE OUR COMMENTS NOTED THAT THE COMMITTEE IS IN AGREEMENT WITH THE COMMENTS SUBMITTED TO THE COURT BY THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION. PRIMARILY I THINK YOU CAN PROBABLY RELY ON THOSE. JUSTICES YOU ARE CONSIDERING WHAT IS ARGUABLY BY MY ESTIMATION THE FIRST SUBSTANTIAL REVISION TO THE SPEEDY TRIAL RULE TO RULE 3.91 SINCE 1984 WHEN YOU ADOPTED THE RECAPTURE PERIOD TO THE RULE.

AS YOU KNOW THESE AMENDMENTS THAT WE ARE CONSIDERING TODAY IS KIND OF A LONG TIME COMING. THIS IS THE THIRD TIME IN THE PAST FOUR YEARS THERE'S BEEN A PETITION BEFORE THIS COURT TO SUBMIT AMENDMENTS TO THE RULE. IN ONE WAY OR ANOTHER EACH OF THOSE POSITIONS WAS LIKE A SAID INITIATED BY THIS COURT ITSELF.

WHILE THE TWO PRIOR ONES THE ONE RIGHT NOW ARE DIFFERENT FROM EACH OTHER THEY ALL HAVE ONE THING IN COMMON AND THE ORAL INTENDED TO ENSURE THE CRIMINAL PROSECUTIONS DECIDED ON THE MERITS AND THEY ARE NOT DISMISSED ON PROCEDURAL GROUNDS WITHOUT ANY KIND OF A CORRESPONDING VIOLATION OF THE CRIMINAL SPEEDY TRIAL PERIOD. TO JUSTIFY THAT DISMISSAL.

THIS LATEST ATTEMPT APPEARS TO ME TO BE A COMPROMISED POSITION COMPARED TO THE FIRST TWO PETITIONS. BUT THE COMMITTEE STILL BELIEVES THAT THE CHANGES ARE AN IMPROVEMENT.

THE WAY I SAY COMPROMISED BECAUSE UNLIKE THE EARLIER PETITIONS THIS ONE DOES IN FACT KEEP THE TIME I'M SORRY THE TIME PERIOD IN THE SPEEDY TRIAL RULE IN PARTICULAR SUBDIVISION NUMBER ONE OR A DOES STILL START AT A REST AND THERE WAS A CHANGE THAT WAS DIFFERENT FROM WHAT WAS IN THE ORIGINAL PETITIONS. THE OTHER IS AT LEAST FOR MOST CASES FAILURE TO COMPLY WITH THE TIME PERIODS IN THE RULE WILL IN FACT RESULT IN A COMPLETE DISCHARGE. THOSE FACTORS WERE NOT IN I THINK IN THE EARLIER PETITIONS AND SO.

>> CAN I ASK YOU JUST MAY BE GET IN THE WEEDS A LITTLE BIT . ONE OF THE MAIN CONCERNS THAT I HAD WAS THE QUESTION AS TO WHEN THERE IS AN ARREST WHEN DOES THAT TAKE PLACE?

AS YOU KNOW PRIOR TO THIS RULE THAT WAS NOT ALWAYS CLEAR AS TO WHEN SOMEBODY WAS ASKED WAS TAKEN INTO CUSTODY AND THEREBY THE RULE BEGINS TO RUN.

HERE UNDER THE NEW PROPOSAL IT SAYS ARREST FOR THE PURPOSE OF THIS RULE MEANS WHEN A PERSON IS TAKEN INTO CUSTODY.

DOES THAT MEAN WHEN A PERSON IS ACTUALLY BOOKED IN THE COUNTY JAIL AND THERE IS A PICTURE TAKEN AND SO ON AND ON OR WHAT DOES IT MEAN WHEN THE POLICE OFFICER BRINGS YOU AND IN HANDCUFFS TO IT AND TELLS YOU YOU ARE UNDER ARREST?

I'M NOT BEING CRITICAL I JUST WANT TO MAKE SURE WE ARE NOT GOING TO HAVE TO BUILD A TON OF CASE LAW ON THIS AND START OVER AGAIN WITH THIS ISSUE. WHAT DOES IT MEAN?

>> Thomas D. Winokur: I THINK YOU PROBABLY WOULD NOT SAY THAT SIMPLY BECAUSE PRIOR TO THE DAVIS CASE WHICH IS THE ONE THAT MOTIVATED THIS PARTICULAR CHANGE IN NOW ARREST IS PRETTY MUCH GOING TO BE CONSIDERED THE SAME. I BELIEVE WHAT THE DAVIS CASE SAID IS LOOK REST HAS BEEN DEFINED BY THIS COURT IN AND WE SHOULD BE USING THAT DEFINITION FOR ARREST FOR THE PURPOSES OF SPEEDY TRIAL RULE. IN THAT PARTICULAR CASE I BELIEVE THIS COURT FOUND THAT IT DID NOT CONSTITUTE AN REST BECAUSE IT DIDN'T HAVE THE INDICIA OF REQUEST INDICATED IN MILTON. PRIMARILY THOUGH I DON'T THINK IT WOULD MAKE A LOT OF DIFFERENCE WHETHER IT DOES.

>> Justice Jorge LaBarga: DURING OUR DISCUSSIONS ABOUT THIS PERHAPS JUSTICE WAS NOT WAS A FORMER FEDERAL PROSECUTOR SOMEBODY MENTIONED IN FEDERAL COURT AND I'M NOT SURE ABOUT THIS THE REST FOR SPEEDY TRIAL PURPOSES STARTS WHEN A PERSON IS BOOKED AND BROUGHT INTO CUSTODY ACTUALLY FORMALLY BOOKED INTO CUSTODY.

>> Thomas D. Winokur: I'M NOT GOING TO SPEAK FOR THE FEDERAL SYSTEM I'M NOT GOING TO SAY SOMETHING KIDS ARE JUSTICE CUIEL WILL SAY THAT I'M WRONG ABOUT.

>> Justice Jorge LaBarga: HE'S USED TO CORRECTING ME ALL THE TIME.

>> Thomas D. Winokur: ABSOLUTELY MY UNDERSTANDING WITH THE FEDERAL SYSTEM IS FAR MORE COMMON THAN THE STATE SYSTEM FOR YOU TO BE CHARGED BEFORE YOU ARE ARRESTED BOOKED GIVEN FIRST APPEARANCE WHATEVER THE PROCEDURE IS. THAT IS ONE REASON WHY THE FEDERAL SPEEDY TRIAL ACT WHILE IT HAS SOME USEFUL POINTS THAT WE CAN USE FOR OUR OWN RULE IT HAS A LOT OF DIFFERENT SYSTEM THAN WE HAVE IN THAT RESPECT.

THAT IT STARTS A CHARGING DOCUMENT WHICH I THINK IS WHY WHEN THEY SAY CHARGE OR ARREST WHICH IS WHEN THE SPEEDY TRIAL TIME STARTS IT IS GENERALLY GOING TO BE CHARGED IF YOU SAY CHARGE OR ARREST IN FLORIDA MEANING THE EARLIER ONE IT'S ALMOST ALWAYS GOING TO BE ARREST.

IN ANSWER TO YOUR QUESTION I DON'T THINK THAT IT REQUIRES A FIRST APPEARANCE IN ORDER TO INVOKE ARREST AS THE RULE IS CURRENTLY COMPOSED.

>> Justice Charles Canady: CONNECTED WITH THAT THE ATTORNEY GENERAL AS I UNDERSTAND IS PROPOSING THAT WE CHANGE THAT PRINT AND GO TO BEGINNING SPEEDY TRIAL WITHOUT DEMAND UPON THE FILING OF A FORMAL CHARGING DOCUMENT DOES THE COMMITTEE HAVE A POSITION ON WHETHER THAT'S A BAD IDEA OR GOOD IDEA?

>> Thomas D. Winokur: I WOULD HAVE TO SAY IF THE COMMITTEE HAD A POSITION IT WOULD BE IN FAVOR OF IT AS MUCH AS THE 2019 PETITION THAT WAS SUBMITTED BY THIS COMMITTEE DID IN FACT CONTAIN.

>> Justice Charles Canady: THE COMMITTEE HAS NOT CHANGED ITS MIND SINCE THEN.

>> Thomas D. Winokur: NOT AS FAR AS I KNOW I THINK IT WOULD STILL BE IN FAVOR MY UNDERSTANDING IS THAT WHAT HE DID IS IT PUT AN APPLICATION ON THE STATE TO FILE AN INFORMATION EXCHANGE RULE 3.134 WHICH PUT AN ADDITIONAL OBLIGATION ON THE STATE THE FILE INFORMATION WITHIN A CERTAIN AMOUNT OF TIME PRINT WHICH WAS MEANT TO ALLEVIATE ANY EXCESS OF TIME BETWEEN ARREST AND CHARGING DOCUMENTS. BUT YES, THE COMMITTEE DID IN FACT SUBMIT A PROPOSAL TO THIS COURT TO BEGIN THE TIME. DURING AT THE TIME OF CHARGE.

>> JUDGE WHAT DATA IF ANY DID THE COMMITTEE RECEIVE ABOUT THE NUMBER OF ACTUAL DISPOSITIONS ON SPEEDY TRIAL GROUNDS?

DO WE HAVE ANYTHING FOR US ABOUT WHAT THE FOLKS ON THE OTHER SIDE: EVIDENCE OF A SOLUTION IN SEARCH OF A PROBLEM?

IT WOULD SEEM TO ME RATHER THAN RELYING ON GOD IT MIGHT BE HELPFUL TO KNOW HOW MANY TIMES THE RECORD SHOWS THAT THERE HAVE BEEN SPEEDY TRIAL DRIVEN DISMISSALS BY THE STATE?

YET I DON'T THINK I SEE A TON OF THAT AND WHAT WE HAVE BEFORE US CAN YOU SPEAK TO THAT?

>> Thomas D. Winokur: I CAN'T SPEAK TO THAT. THE SAME QUESTION HAS OCCURRED TO ME AS CURRENT MEMBERS OF MY COMMITTEE IT IS A VERY IMPORTANT QUESTION. I DON'T HAVE AN ANSWER TO THAT. I WILL SAY I AGREE WITH YOU THAT THERE IS A THIS IS A SOLUTION IN SEARCH OF A PROBLEM I'VE SEEN FOR INSTANCE THE NUMBER OF CASES THAT ARE ACTUALLY DISCHARGED IS THE RESULT OF THE SPEEDY TRIAL RULE IS VANISHINGLY SMALL. I UNDERSTAND THAT.

YOU ARE RIGHT THE PROBABLY DO NEED TO BE SOME NUMBERS TO DETERMINE WHAT THE ACTUAL EFFECT OF THE RULE IS. THAT IS AN EXTRAORDINARILY SMALL PERCENTAGE OF THE EFFECT THAT THE RULE HAS. ARGUABLY A NEGATIVE EFFECT FROM THE PROSECUTION'S PERSPECTIVE.

>> Justice Charles Canady: IS AND IT ALSO TRUE TO THE EXTENT THAT THERE ARE ANY CASES IN WHICH A DISMISSAL UNDER A RULE WORKS A MISCARRIAGE OF JUSTICE GIVEN ALL THE CIRCUMSTANCES THAT ITSELF WOULD BE PROBLEMATIC? EVEN IF IT'S ONLY A FEW CASES.

>> Thomas D. Winokur: I THINK THAT'S AN ETHICAL POINT YOU PROBABLY HEARD IT IS BETTER TO HAVE 1000 GO FREE THAN ONE INNOCENT MAN BE CONVICTED.

I THINK THAT APPLIES HERE. NOBODY INNOCENT IS IN JEOPARDY AT THIS THAT IS

NOT WHAT THE SPEEDY TRIAL RULE IS ABOUT I AGREE I DON'T KNOW HOW MANY UNJUST DISMISSALS ARE NECESSARY FOR THIS COURT TO CONSIDER WHETHER THE RULE SHOULD BE AMENDED. IT IS NOT THE TYPICAL WAY IN MY EXPERIENCE THAT THIS COURT AMENDS ITS RULES.

WITH THAT SAID JUST TO FOLLOW UP ON JUSTICE CURIEL'S QUESTION HOW MANY TIMES IS THE STATE REQUIRED TO PROCESS INFORMATION BECAUSE OF RULE 3.191 ISSUE.

HOW MANY TIMES HAVE THEY NOT BROUGHT CHARGES AT ALL BECAUSE OF RULE 3.191 ISSUES HOW MANY TIMES HAVE THEY NOT BEEN ABLE TO AMEND THE COMPLAINT BECAUSE OF THESE RULE ISSUES PRINT HOW MANY TIMES HAVE THEY HAD TO GO TO TRIAL NOT AS PREPARED BIG AS THEY WANT TO BECAUSE OF RULE 3.191 ISSUES. THERE IS A GREAT EFFECT OF THIS ROUTE IS IMPORTANT TO DEFENDANTS IT IS IMPORTANT TO THE PROSECUTION AS WELL.

I DON'T KNOW OF ANY WAY ANY PLACE THAT THOSE NUMBERS HAVE BEEN COUNTED UP THOSE QUESTIONS I'VE ASKED. I WILL SAY THAT THE PROBLEM IS MUCH MUCH GREATER THAN THE NUMBER OF CASES HAVE BEEN DISMISSED.

PROSECUTORS NOTE THE SPEEDY TRIAL RULE WILL NOT INTENTIONALLY VIOLATE IT AND THEN HAVE A JUDGE DISCHARGED THE CASE. WHEN THEY DO THAT IT IS BECAUSE THERE'S SOME KIND OF AN ISSUE.

>> WHEN I STARTED PRACTICING LAW AND IT WAS A PROSECUTOR BACK IN THOSE DAYS WE DIDN'T HAVE THE SPEEDY TRIAL RULE DID NOT HAVE THE TWO-MINUTE WARNING WE HAVE NOW.

180 DAYS IF YOU DID TRY WITHIN 180 DAYS YOUR DISCHARGE FOREVER. THAT IS HOW IT WENT. I CAN TELL YOU I WAS IN THE SYSTEM FOR SEVEN YEARS I WAS A PROSECUTOR NOT IN THE SYSTEM.

I'VE GOT TO WATCH MY WORDS. [LAUGHTER].

I NEVER HEARD THE CASE BEING DISCHARGE ON THE SPEEDY TRIAL GROUNDS EVEN IN THOSE DAYS WHERE IT WAS JUST A DEADLINE.

IT JUST NEVER HAPPENED AND IN MOST INSTANCES THERE IS A WAIVER.

THERE IS NO WAY WITH DEFENSE COUNSEL'S IN MOST CASES CAN BE PREPARED TO GO IF THERE IS A MOTION FOR CONTINUANCE PRINT IN A HOMICIDE CASE YOU JUST HEARD THE ONE WE HAD HERE IT WAS TWO YEARS BEFORE IT WENT TO TRIAL.

IN MOST CASES THERE IS A WAIVER OF SPEEDY TRIAL THERE HAS NEVER BEEN REALLY AN ISSUE.

I THINK THIS IS A PROBLEM AND A SOLUTION LOOKING FOR A PROBLEM.

>> JUDGE CAN I ASK YOU A QUESTION ABOUT THE 2019 POSITION WHICH I DON'T RECALL BUT ESSENTIALLY RELATED TO ADOPTING THIS IDEA THAT SPEEDY TRIAL RUNS FROM CHARGING DOCUMENTS INSTEAD OF FROM ARREST. AND YOU MENTIONED THAT TO KIND OF ADD TO THAT THAT THERE IS ANOTHER RULE THAT REQUIRED IT TO BE FILED WITHIN A CERTAIN NUMBER OF DAYS AFTER ARREST IS? IS THAT CORRECT.

>> Thomas D. Winokur: THAT IS MY RECOLLECTION.

>> WHAT IS THE REMEDY THERE IF THE STATE DOES NOT FILE THE DOCUMENT

WITHIN WHATEVER TIME PERIOD.

WHAT IS THE REMEDY.

>> Thomas D. Winokur: I DON'T ACTUALLY REMEMBER I CAN TELL YOU THAT IT CERTAINLY WAS NOT DISMISSAL OF THE CHARGE. ESSENTIALLY MY REGULATION IS IF THE STATE I'M SORRY IF THE DEFENDANT BROUGHT SUCH A MOTION THERE HAVE BEEN ARRESTS FOR NO CHARGE. THE STATE WOULD HAVE TO DEMONSTRATE WHY THEY HAD NOT FILED A CHARGE TYPICALLY POSSIBLY THERE IS INVESTIGATION PENDING OR SOMETHING LIKE THAT. AS FAR AS WHAT THE REMEDY WAS IN THE CASE HAD NOT FILED AN INFORMATION. ALL I'M SAYING IT WAS NOT TO DISCHARGE THE DEFENDANT.

>> SOUNDS LIKE THAT'S A VERY COMPLICATED RULE.

>> Thomas D. Winokur: I THINK YOU'RE RIGHT I WISH I HAD A BETTER ANSWER FOR YOU THAT I CAN REMEMBER EXACTLY HOW IT WORKED OUT. EVEN WITHOUT THAT THE PROBLEM WITH STARTING AT ARREST IS THIS IDEA THAT THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL SORT OF KICKS IN AS SOON AS YOU ARRESTED. I'VE SEEN THAT MANY TIMES.

WE HAVE SUPREME COURT CASES WHERE THEY TALKED ABOUT THAT. THE ONLY THING I WOULD SAY ABOUT THAT IS IF YOU LOOK AT THOSE CASES I'M LOOKING AT UNITED STATES VERSUS McDONALD WHICH WAS CITED IN SOME OF THE COMMENTS BEFORE THE COURT HERE TODAY.

SINCE THE SPEEDY TRIAL GUARANTEED TO TRIAL TO REDUCE THE SUBSTANTIAL IMPAIRMENT OF LIBERTY IMPOSED ON THE ACCUSED WERE RELEASED ON BAIL AND ENSURING THE DESTRUCTION OF LIFE CAUSED BY ARREST IN THE PRESENCE OF UNRESOLVED CRIMINAL CHARGES. THOSE ARE THREE REASONS. THE FIRST TWO IS THAT YOU'VE BEEN INCARCERATED I THINK YOU CAN GO BACK TO 1791 I THINK THAT WAS THE PRIMARY CONCERN. WITH THE SPEEDY TRIAL WHY ARE THEY AND TRAILED THERE AWAITING TRIAL BUT ALSO THE DECLARATIONS OF LIBERTY WHEN THEY ARE ON BAIL.

AND JUST THE GENERAL ANXIETY OF HAVING THE CHURCH IS HANGING OVER YOUR HEAD. THE ISSUE I HAVE WITH THAT IS THAT I KNOW OF NO CASE PARTICULARLY THE US SUPREME COURT AND SOLELY NOT THIS COURT HAVE A SAID THE REST ALONE JUST THE MERE FACT THAT AT SOME POINT A POLICE OFFICER PUT HANDCUFFS ON A DEFENDANT THAT THAT ALONE INVOKES THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL.

IT DOES IN FACT TALK ABOUT DISRUPTION OF LIFE AND WHATNOT. BUT ARREST ITSELF DOESN'T NECESSARILY INVOKE THE PURPOSES OF THE SPEEDY TRIAL RULE.

>> PARTICULARLY WHEN YOU HAVE THE ADDITIONAL PROCEDURAL RULES FOR RELEASE IF THERE'S BEEN NO CHARGES FILED.

>> Thomas D. Winokur: THAT IS EXACTLY RIGHT YOUR HONOR I BELIEVE PARTICULARLY WHEN THEY ARE INCARCERATED THE STATE AS ONLY GOT SO MUCH TIME TO FILE INFORMATION. I'M SURE ONE OF THE MANY PEOPLE YOU WILL BE HEARING FROM IS EAGER TO CORRECT ME IF I'VE GOT ANY OF THE DETAILS WRONG.

>> CAN I ASK YOU QUICKLY ABOUT THE REMEDY IN THE CASE OF DISMISSAL

WITHOUT RICHES FOR HOMICIDE AND MANSLAUGHTER IT SEEMS LIKE THAT POLICY JUSTIFICATION BEHIND THAT IS VERY WITH THE CRIME RATHER THAN THE CONVEXITY OF BRING THOSE CASES TO TRIAL AND WHY WE WOULD SINGLE OUT THOSE CRIMES AS OPPOSED TO PEOPLE HAVE MADE THE POINT SEXUAL VISITS AND WHAT HAVE YOU.

>> Thomas D. Winokur: JUSTICE AS I SAID EARLIER THIS RESULT THAT IS BEFORE YOU TODAY IS A COMPROMISE THERE ARE CERTAINLY A LOT OF PEOPLE WHO YOU WILL HEAR FROM JOSÃ‰ THAT IT SHOULD BE THE SAME YOU WANT TO CALL IT DISMISSAL WITH PREJUDICE IF YOU WANT TO CALL IT DISCHARGE PRINT BUT IT SHOULD BE THAT WAY FOR EVERY CASE AND THERE ARE OTHERS WHO BELIEVE IT SHOULD BE WITHOUT PREJUDICE SIMPLY BECAUSE YOU ARE PUTTING INTO THE CREATING A SUBSTANTIVE RIGHTS IF YOU MAKE IT WITHOUT PREJUDICE. WITH PREJUDICE EXCEEDS ME.

AND SO THE COMPROMISE WAS TO SAY IN A HOMICIDE CASE THAT IT IS AN EASY LINE TO DRAW AND THOSE OF THE CASES WHERE THE CHANCES OF INJUSTICE ARE SOMEWHAT GREATER AS MUCH AS YOU HAVE A DECEASED VICTIM OF THE CRIME. AND I THINK THAT IS THE PRIMARY REASON THEY DID THAT IT IS NOT ACTUALLY AFFECT THE CONSTITUTIONAL SPEEDY TRIAL RIGHT TO DO IT THAT WAY. AND THAT WAS A CORE LIMITATION ON THAT PARTICULAR RULE.

I SEE DIAMOND TO THE OTHER PEOPLE TIME I WILL SAVE THE REMAINDER FOR REBUTTAL.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.

>> MR. CHIEF JUSTICE MAY IT PLEASE THE COURT THE ATTORNEY GENERAL SUPPORTS THESE RULES WITH THE ADDITIONAL PROPOSAL WE HAVE PUT FORWARD TO THE TRIGGERING MECHANISM BECAUSE WE BELIEVE WE CAN HAVE A SPEEDY TRIAL RULE THAT WORKS FOR EVERYONE. AND IF THE CURRENT RULE DOES NOT WORK FOR EVERYONE IT PRIMARILY WORKS FOR CRIMINAL DEFENDANTS. AND DOES NOT ADVANCE THE BROADER INTEREST OF OUR JUSTICE SYSTEM INCLUDING RESPECTING THE INTEREST OF THE PUBLIC OF VICTIMS AND OF COURSE PROSECUTORS. I'D LIKE TO START MY REMARKS THIS MORNING BY OBSERVING THE REASON WE HAVE TO BEGIN WITH IN ITS CURRENT ITERATION IS BECAUSE IN 1971 THE LEGISLATURE ADOPTED SECTION SUBSECTION NUMBER TWO OF 918.105 IT ASKED THE COURT TO ADOPT THE RULE OF PROCEDURE TO IMPLEMENT THE CONSTITUTIONAL AND STATUTORY RIGHT OF A SPEEDY TRIAL SO IT COULD BE REALIZED. WE THINK IN POINT OF FACT WHAT THE CURRENT RULE DOES IS EXPAND FOR SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL FAR BEYOND THE RIGHT THAT THE UNITED STATES SUPREME COURT HAS RECOGNIZED. I DON'T THINK YOU'LL HEAR ANY COMMENTERS STAY FROM THE DEFENSE SIDE OF THINGS ARGUING THAT THIS ROLE WITH ITS VERY STRICT AND MECHANICAL TIME CONSTRAINTS IS REQUIRED TO PROTECT THE SIXTH AMENDMENT RIGHTS OF A DEFENDANT JUST TO GIVE YOU AN EXAMPLE UNDER PARKER VERSUS.

[LISTING NAMES] THE SUPREME COURT HAS SAID THAT THE COURT DOES NOT EVEN RUN THE CONSTITUTIONAL SPEEDY TRIAL INQUIRY UNTIL AT LEAST THE ONE YEAR

MARK. WHICH IS WHEN A DEFENDANT CAN SHOW PRESENT OF PRESIDENTS. BUT THAT ALONE IS NOT ENOUGH YOU STILL HAVE TO DO THE INQUIRY CITED THE COURT MANY CASES WHERE DELAYS EVEN IF YEARS FIVE OR SIX YEARS SOMETIMES DEPENDING ON THE CIRCUMSTANCES AND THE COMPLICITY OF THE CASE WILL NOT WARRANT A DISMISSAL UNDER THE SIXTH AMENDMENT.

>> Chief Justice Carlos Muniz: ISN'T THE NORM FEDERAL LAW THE STATE LAW ISN'T THE NORM FEDERAL SPEEDY TRIAL RULES ARE SIGNIFICANTLY MORE PROTECTED THAN WHAT THE CONSTITUTIONAL STANDARD IS?

>> Jeffrey P. DeSousa: I THINK THAT IS RIGHT BUT IF YOU START WITH THE BASELINE THAT THIS RULE IS NOT REQUIRED I THINK IT DOES GIVE YOU MORE FLEXIBILITY TO CONSIDER THINGS LIKE THE ACTUAL EFFECT ON THE GROUND THAT THIS IS HAVING ON THE MINISTRATION OF JUSTICE THROUGHOUT THE STATE. NOW JUSTICE COURIEL ASKED A QUESTION ABOUT THE STATISTICS AND WHAT THOSE LOOK LIKE. UNFORTUNATELY I ALSO DON'T HAVE A CLEAR ANSWER TO GIVE YOU ABOUT THE NUMBER OF DISCHARGES BUT I AGREE WITH THE JUDGE THAT THAT STATISTIC DOES NOT TELL THE WHOLE STORY. BECAUSE THERE ARE SO MANY CASES THAT ARE DISMISSED FOR OTHER REASONS BECAUSE THE RECAPTURE WINDOW HAS STARTED LIKE.

[LISTING NAMES] WITH A PROSTITUTION TO NOT THINK THEY CAN GET THEIR WITNESSES TOGETHER.

ONE OTHER ADDITIONAL POINT I WOULD LIKE TO ADD TO THAT INQUIRY IS DEFECTIVE THIS HAS ON PLEA-BARGAINING. BECAUSE FROM OUR CONVERSATIONS WITH PROSECUTORS THROUGHOUT THE STATE WHAT OFTEN WILL HAPPEN IS ONCE THE NOTICE OF EXPIRATION IS FILED AND THAT VERY SHORT 10 DAY RECAPTURE WINDOW HITS THE DEFENSE HAS REMARKABLE LEVERAGE IN PLEA NEGOTIATIONS WE DO NOT THINK THAT IT SERVES THE INTEREST OF JUSTICE FOR PROSECUTORS TO BE FACED WITH A CHOICE BETWEEN ON THE ONE HAND GETTING NOTHING BECAUSE THE 10 DAYS WILL RUN AND THERE WILL BE A FOREVER DISCHARGE ON THE OTHER HAND GIVING AN ARTIFICIALLY LOW PLEA OFFER JUST TO TRY TO GET SOMETHING OUT OF THE CASE TO SERVE THE INTEREST OF JUSTICE. I THINK YOU HAVE TO ACCOUNT FOR THAT AS WELL.

>> Chief Justice Carlos Muniz: WHAT ARE THE BIGGEST PROBLEMS WITH THE STATUS QUO WHAT IS THE RULE IN YOUR OPINION WHAT IS THE RULE DO WELL TO FIX THOSE?

>> Jeffrey P. DeSousa: WE THINK THE BIGGEST FIXES THAT YOU CAN MAKE OUR OUR PROPOSAL TO CHANGE THE TRIGGERING MECHANISM OF RUNNING THE DAVE FROM THE DATE OF THE FORMAL CHARGE I'M GOING TO GET INTO SOME OF THE ADVANTAGE OF THAT AS WELL BUT TO FULLY ANSWER THE QUESTION WE THINK THAT THE 30 DAY PERIOD FOR RECAPTURE IS REALLY IMPORTANT CHANGE. BECAUSE THERE ARE ARTICLES OUT THERE AND CASE LAW AT THE DOES A GREAT JOB OF CATALOGUING SOME OF THE ABUSES THAT WE'VE SEEN. IF YOU CHANGE THE PERIOD FROM 10 DAYS REALISTICALLY VERY DIFFICULT TO BRING A CASE TO TRIAL IN THAT TIME OR TO DO IT EFFECTIVELY UP TO 30 DAYS THAT

IS MUCH MORE REASONABLE RECAPTURE WINDOW. THAT IMPAIRS NO RIGHTS BECAUSE 30 DAYS WILL STILL GUARANTEE A SPEEDY TRIAL.

>> Chief Justice Carlos Muniz: CAN WE JUST TAKE THE EXISTING RULE SCRATCH OUT REST IN WRITING CHARGE AND SCRATCH OUT 10 IN WRITING 30 AND BE DONE? WOULD THE WORLD TO BE SIGNIFICANTLY BETTER PLACE IF WE DID THAT.

>> Jeffrey P. DeSousa: YES.

>> ISN'T THE TROUBLE WITH THAT 3161 AND BY MY COUNT THE SEVEN STATES THAT HAVE ADOPTED THE FEDERAL SYSTEM DOESN'T COMPLETELY DISPENSE WITH THE IDEA OF ARREST BEING RELEVANT AS OPPOSED TO INDICTMENT OR INFORMATION. THERE IS A CONSTITUTIONAL RATIONALE BEHIND THAT BOTH INTEREST AND INDICTMENT ARE SUPPORTED BY PROBABLE CAUSE.

THE SPEEDY TRIAL CLOCK ONE OTHER WAY OF RAISING THIS CONSTITUTIONALLY BEGINS TO RUN FROM ONE OF TWO DIFFERENT DETERMINATION OF PROBABLE CAUSE. THE ARRESTING OFFICER'S DETERMINATION THAT THERE IS PROBABLE CAUSE TO SUPPORT AN ARREST AND A GRAND JURY DETERMINATION THAT THERE IS PROBABLE CAUSE TO SUPPORT INDICTMENT. BOTH THE RELEVANT DIFFERENT WAYS IN THE WAY THE FEDERAL RULE SPLITS IT IS ON THE BASIS ESSENTIALLY OF A DEMAND WHICH IS WHY AT AN ARRAIGNMENT FEDERAL AGREEMENT YOU DEMANDED SPEEDY TRIAL AS A MATTER OF COURSE.

I GUESS TO ADD ONTO THE CHIEFS QUESTION WOULD WE HAVE TO PRESERVE IN THE ROLE SOME NOTION THAT FROM EITHER OF THESE TWO POTENTIAL STARTING POINTS WE WOULD STILL HAVE A SPEEDY TRIAL DEADLINE THAT WOULD ACCOMMODATE THE FACT THAT YOU HAVE THESE TWO DIFFERENT PROBABLE CAUSE DETERMINATIONS?

>> Jeffrey P. DeSousa: IN LARGE PART THE CONCERN IS ADDRESSED BY RULE 3.134 WITH ITS TIMING MECHANISMS FOR WHEN CHARGES MUST BE BROUGHT. BECAUSE BY THE 40TH DAY THE RULE IS VERY CLEAR THAT THERE MUST BE A RELEASE ON RECOGNIZANCE NOW YOU SOLVED MUCH OF THE PREJUDICE.

>> THAT IS IF ONLY SOMEBODY IS IN CUSTODY.

>> Jeffrey P. DeSousa: THAT IS TRUE JUSTICE GROSSHANS I THINK THE OTHER PART OF THE EQUATION IS WE HAVE A STATUTE OF LIMITATIONS FOR SECOND AND 3RD DEGREE FELONIES IT IS THREE YEARS I DO THINK YOU ARE REDUCING DEBT. IN A WAY THAT IS POTENTIALLY PROBLEMATIC JUSTICES OF THIS COURT FOR LONG TIME HAVE BEEN RAISING THE CONCERN THAT THAT IS IMPINGING UPON THE LEGISLATURE'S PREROGATIVE TO SET THAT STATUTE OF LIMITATIONS FOR THREE YEARS OR FIVE YEARS OR WHATEVER IT MAY BE. WE SUPPORT CHANGING THE TRIGGERING MECHANISM IN SUBSECTION A NOT MAKING AN ADDITIONAL CHANGE ALONG THE LINES.

>> Justice Charles Canady: LET ME ASK THIS QUESTION IF YOU KNOW OF YOUR HEAD IF I GET ARRESTED TODAY AND I'M IN CUSTODY.

>> Justice Jorge LaBarga: HOW LONG DOES THE STATE HAVE TO FILE CHARGES.

>> Jeffrey P. DeSousa: THE LIMIT IS 40 DAYS

>> I CAN BE IN CUSTODY FOR 40 DAYS BEFORE SPEEDY TRIAL BEGINS TO RUN

UNDER YOUR PROPOSAL.

>> Jeffrey P. DeSousa: THAT IS THE OUTER LIMIT BUT 21 DAYS WILL TRIGGER YOUR ADVERSARIAL PRELIMINARY HEARING WE GET TO OFFER EVIDENCE THERE IS NO PROBABLE CAUSE REALLY 30 DAYS IS WHEN THINGS START ROLLING.

>> I HAVE THE ADVERSARIAL HEARING THE JUDGE FINDS THERE IS PROBABLE CAUSE I'M STILL IN CUSTODY AND A SPEEDY TRIAL IS STILL NOT RUNNING UNTIL HE FILED THE CHARGES.

>> Jeffrey P. DeSousa: I DO THINK IT'S USEFUL TO POINT OUT JUSTICE LABARGA THERE'S ALWAYS THE CONSTITUTIONAL BACKSTOP OF THE SIXTH AMENDMENT. AND SO IF THERE'S A CONSTITUTIONAL PROBLEM WELL OUTSIDE THE CONFINES OF THIS RULE SOMEBODY CAN MOVE FOR DISMISSAL IT IS JUST MORE DIFFICULT BECAUSE THE CONSTITUTIONAL PROTECTIONS IS SO MUCH LESS PROTECTIVE THAN.

>> ARE YOU WORRIED ABOUT 11 MONTHS LEFT TO GO BY.

[LAUGHTER].

>> UNDER YOUR PROPOSAL SUMMARY CAN BE ARRESTED THERE IS BEEN A FINDING OF PROBABLE CAUSE AS JUSTICE COURIEL SAID BY SOMEBODY THEY CAN BE ARRESTED THEY CAN BE UNDER EXTENSIVE BAIL CONDITIONS. AND THREE YEARS LATER THERE CAN STILL NOT OF BEEN INFORMATION FILED AND THAT WOULD BE ADEQUATE TO PROTECT ANY CONSTITUTIONAL ISSUE?

>> Jeffrey P. DeSousa: AGAIN GOING BACK TO THE STATUTE 918 BONA FIDE THINK THAT IS THE WHOLE POINT OF THE ROPE TO MAKE SURE YOU'RE SAFEGUARDING CONSTITUTIONAL RIGHTS IN UNITED STATES VERSUS McDOWELL'S REPORT WAS VERY CLEAR WHEN CHARGES ARE DISMISSED IN OUR CIRCUMSTANCE IF THERE IS AN ELECTION FILED THAT THE FEDERAL CONSTITUTIONAL CLOCK IS NOT RUNNING.

>> Justice Charles Canady: ISN'T McDONALD AN ODD CASE THERE WERE TWO DIFFERENT SOVEREIGNS INVOLVED THERE.

>> Jeffrey P. DeSousa: PERHAPS.

>> Justice Charles Canady: IT HAD TO DO WITH CHARGES BY THE MILITARY HAVING BEEN DROPPED THE RELATIONSHIP BETWEEN THAT AND SUBSEQUENT CHARGES BY THE STATE.

ISN'T THAT CORRECT.

>> Jeffrey P. DeSousa: SURE ALTHOUGH I THINK THE BASIC PRINCIPLE THE COURT ESPOUSED.

>> Justice Charles Canady: THE COURT SEEM TO BE.. THAT DIDN'T SEEM TO FACTOR IN WHAT THEY WERE TALKING ABOUT. WHEN I SAY ODD IT SEEMS ODD TO SHOOT THERE WOULD NOT HAVE BEEN RESOLVED ON THE FACT THAT WE GOT TWO DIFFERENT SOVEREIGNS.

>> Jeffrey P. DeSousa: SURE I'M SURE THAT IS ANOTHER WAY TO GET TO THE RESULT.

>> Justice Charles Canady: IT WOULD BE THE ONE TO OCCUR TO ME FIRST. OBVIOUSLY NOT IN THE US SUPREME COURT DID NOT OCCUR TO THEM.

>> Chief Justice Carlos Muniz: GOT THE CHARGING ISSUE THE 30 DAY ISSUE IS THERE OTHER SIGNIFICANT PROBLEMS YOU THINK WITH THIS RULE THAT ADDRESSES WELL?

>> Jeffrey P. DeSousa: GIVEN THE STATE TO RECAPTURE WINDOW IN ALL CASES I DO THINK IT IS IMPORTANT.

THAT'S AN IMPORTANT CHANGE IN BECAUSE OF A CASE LIKE McDONALD'S THERE IS NO FEDERAL CONSTITUTIONAL PROBLEM WHEN CHARGES HAVE BEEN NO ACCIDENT OR NO PROCESS. I KNOW MY TIME IS SHORT.

I APPRECIATE THAT. ONE OF THE COMMENTS THAT IS MADE FROM THE FPDA THE PUBLIC DEFENDERS IF YOU LOOK AT THE BOTTOM OF PAGE 5 OF THEIR BRIEF TO RAISE A LOGISTICAL PROBLEM WHICH I DO THINK IS WORTH TALKING ABOUT. BECAUSE THEY POINT OUT THAT THE STATISTICS THEY USE WERE IN A TWO-YEAR SPAN OF 62,000 CASES WHERE THE PD WAS APPOINTED WITH THE CHARGE THERE WAS NO ACTION NO CHARGES WERE FILED. SOMETHING LIKE 70,000 CASES IN THE SAME PERIOD WHERE THERE WAS A NORMAL PROCESS SO NO CHARGES FILED BUT THEN DISMISSED THEY SEE THIS NOTICE OF EXPIRATION REQUIREMENTS IN ALL CASES POSES SOME LOGISTICAL PROBLEMS FOR US. BECAUSE IT'S A LOT OF WORK FOR CLERKS AND FOR PUBLIC DEFENDERS SO I THINK WE SOLVE MUCH OF THAT NOTICE OF EXPIRATION PROBLEM WITH OUR PROPOSAL OF RUNNING THE TIME FROM FORMAL CHARGING YOU TAKE THE 62,000 CASES THEY ARE NOT A PROBLEM BECAUSE THERE IS NOT A FORMAL CHARGE IN MOST CASES. WE ALSO TRY TO MEET THEM HALFWAY WITH RESPECT TO THIS PROBLEM WITH THE WHOLE PROCESS WE OFFERED THE SOLUTION I THINK IT'S A GOOD ONE.

ALLOW PROSECUTORS TO NOL PROCESS WITH PREJUDICE.

THE FPD SAYS THE FPD IS NO CHARGE MET CIRCUMSTANCE THE ASA NOL PROCESS WITH PREJUDICES THERE'S NO NEED TO FILE A NOTICE OF EXPIRATION BECAUSE THE CASE IS OVER. I THINK THE NOSE EXPIRATION REQUIREMENT NOR CASE IS VERY VALUABLE AND TOO BLUNT AND EVEN LOGISTICAL PROBLEMS YOU CAN ADOPT THAT FEE.

IN ANY EVENT IF YOU THOUGHT AT THE END OF DAY THERE WAS A PROBLEM OF NOTICE OF EXPIRATION IN ALL CASES THE ANSWER WOULD NOT BE TO SCRAP THE WHOLE PROJECT AND MAKE NONE OF THESE CHANGES. YOU MIGHT INSTEAD CONSIDER THIS IS NOT SOMETHING THAT WE DISCUSSED IN OUR COMMENTS BUT YOU MIGHT INSTEAD CONSIDER REQUIRING THE NOSE EXPIRATION IN ALL CASES BUT ONLY ALLOWING IT TO BE FILED IF THERE WERE ACCIDENT CHARGING IF THERE WERE PENDING CHARGES UNDER McDONALD IS NOT A 6TH AMENDMENT PROBLEM BECAUSE THE CLOCK IS NOT RUNNING WHEN THERE ARE NO CHARGES. IN THAT WAY YOU DRESS ALL THE LOGISTICAL PROBLEMS YOU ONLY NEED TO FIND THE IN A WEEK IF THE CHARGES ARE PENDING AND THAT GIVES THE STATE THE 30 DAY WINDOW WE THINK THAT WILL CURE A LOT OF PROBLEMS.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Amira Fox: GOOD MORNING CHIEF JUSTICE AND MEMBERS OF THE COURT MAY I PLEASE THE COURT MY NAME IS AMIRA FOX I AM THE STATE ATTORNEY FOR THE 20TH JUDICIAL CIRCUIT WHICH IS SOUTHWEST FLORIDA HENRY GLADES LEE COUNTY AND COLLIER COUNTY I APPEAR ON BEHALF OF THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION MYSELF AND THE OTHER OFFICERS OF LAST YEAR'S

ASSOCIATION. OFFICERS HAVE CHANGED THIS AND WE SUBMIT THE BRIEF TO YOU IN SUPPORT OF CHANGING THE CURRENT SPEEDY TRIAL RULE. WHICH WE BELIEVE RESULT IN NUMEROUS INJUSTICES ACROSS THE STATES.

I WAS ALSO A MEMBER OF THE WORKGROUP WHICH WAS FORMED ALONG WITH MY COLLEAGUES STATE ATTORNEY.

[LISTING NAMES].

WE WERE THE TWO STATE ATTORNEY MEMBERS OF THE WORKGROUP FORMED TO DISCUSS WILL BE A BETTER WAY TO DEAL WITH THE SPEEDY TRIAL RULE SO THAT SOMEBODY INJUSTICES DON'T COME OUT OF THE CURRENT RULE.

THE WORKGROUP POSITIONED WHICH RESULTED IN THE AMENDMENTS THAT YOU HAVE IN FRONT OF YOU NOW WAS A COMPROMISE.

WE AS PROSECUTORS WENT TO THE WORKGROUP ARGUING VERY STRONGLY FOR A SPEEDY TRIAL RULE WHICH STARTS AT THE TIME THE CHARGING DOCUMENTS IS FILED. THE REASON WE ARGUED VERY STRONGLY FOR THAT IS THAT EACH ONE OF US AS STATE ATTORNEYS AS WE MET AND TALKED ABOUT THIS MYSELF AND THE OTHER STATE ATTORNEY WAS ON THE COMMITTEE CAN PUT TWO EXAMPLE OF TERRIBLE INJUSTICES OCCURRING BECAUSE OF ARRESTS STARTING THE SPEEDY TRIAL RUNNING. I WILL TELL YOU THE EXAMPLE FOR MY JURISDICTION. WE HAD A DRIVE-BY SHOOTING IN THE CITY OF FORT MYERS. A FIVE-YEAR-OLD WAS HIT BY ONE OF THE BULLETS AND HE DIED. THE POLICE MADE AN ARREST BASED ON AN EYE WITNESSED.

I SAW THAT HAPPEN AND HERE IS WHO DID IT SPEEDY TRIAL STARTED TO RUN. VERY UNFORTUNATELY THAT EYEWITNESS THIS HAS TO DO WITH RIVAL GANG MEMBERS SHOOTING AT EACH OTHER SHE WAS AFFILIATED WITH ONE OF THE GANGS SHE RECANTED.

GUESS WHAT HAPPENED SPEEDY TRIAL CONTINUE TO RUN WE DO NOT HAVE ENOUGH EVIDENCE TO PROCEED WITHOUT THAT EYEWITNESS.

OBVIOUSLY THAT EYEWITNESS BECAME UNRELIABLE. AND CERTAINLY CANNOT BE USED TO FORM A BASIS FOR A MURDER CONVICTION.

THE CASE WAS DISCHARGED DUE TO SPEEDY TRIAL.

>> WAS IT DISCHARGED DUE TO SPEEDY TRIAL OR WAS IT DISCHARGED DUE TO THE RECENT OF YOUR CENTRAL WITNESS. HELP ME UNDERSTAND HOW THAT WORKS.

>> Amira Fox: YES YOUR HONOR THE SPEEDY TRIAL WAS EVIDENTLY RUNNING BECAUSE THE REST HAD TAKEN PLACE. WE SCRAMBLED THE ENTIRE TIME.

HUNDRED 75 DAYS TO TRY TO DEVELOP SOME OTHER EVIDENCE BESIDES THIS EYEWITNESS. I THINK YOU COULD SAY WELL IF SHE HAD NOT DONE THAT THEN THE STATE WOULD NOT HAVE LOST THE CASE. BUT REALLY HAPPENED WAS A PROCEDURAL RULE TOOK OVER WHAT WOULD'VE GIVEN US UNDER THE STATUTE OF LIMITATIONS FOR MORE TIME AFTER THAT ARREST IF THE STATUTE IF THE SPEEDY TRIAL RULE WAS TRIGGERED BY WHEN WE DECIDED WE HAD ENOUGH TO FILE.

RIGHT NOW IT IS DEPENDENT ON THE LAW ENFORCEMENT DESIGNS. LAW ENFORCEMENT DECIDES WHEN TO REST.

>> I WAS ESTATE ATTORNEY NOT ELECTED ONE AN ASSISTANT STATE ATTORNEY IN

CASES OF THE MAGNITUDE YOU JUST DESCRIBED TYPICALLY THERE IS A CONVERSATION BETWEEN LAW ENFORCEMENT AND THE STATE ATTORNEY'S OFFICE AND THERE IS A ADVICE FROM THE STATE ATTORNEY'S OFFICE AS TO WHEN NOT TO MAKE THAT ARREST.

>> Amira Fox: JUSTICE LABARGA I THINK WE ARE LUCKY IN OUR CIRCUIT THE LAW ENFORCEMENT DOES CONSULT WITH US AND WE HOPE THAT EVERY TIME THERE'S A CASE LIKE THIS THEY WILL CALL US AND DISCUSS WHETHER THERE IS ENOUGH. THE PROBLEM IS THE LAW ENFORCEMENT IS SEPARATE THAN US. THEY ARE THEIR OWN ELECTED SHERIFF THE POLICE CHIEFS ARE APPOINTED BY THE CITY COUNCILS. THEY HAVE A WHOLE DIFFERENT PRESSURE ON THEM.

WHICH IS YOU BETTER GET THIS PERSON OFF THE STREET BEFORE THEY HURT SOMEBODY ELSE. SO EVEN WHEN WE ARE SAYING PLEASE DON'T START SPEEDY TRIAL RUNNING YET WE ARE NOT READY WE WANT MORE THEY ARE SAYING OUR DUTY AS A LAW ENFORCEMENT OFFICER AND/OR PUBLIC IS TO KEEP THE COMMUNITY SAFE AND WE ARE GOING TO MAKE THE ARREST.

>> IS IT YOUR POSITION OR THE POSITION OF YOUR GROUP THERE SHOULD BE ANY SORT OF RESTRICTION ON THE TIME FRAME FOR CHARGING SO IF SOMEBODY IS ARRESTED IS IT JUST THE STATUTE OF LIMITATIONS THAT DICTATES HOW LONG YOU HAVE TO CHARGE OR SHOULD THERE BE AN ADDITIONAL RULE?

>> Amira Fox: TO ANSWER YOUR QUESTION I DON'T THINK THERE SHOULD BE AN ADDITIONAL RULE. THERE ARE ALREADY EXISTING PROTECTIONS THE DEFENDANT TO MAKE A MOTION FOR A DISMISSAL BASED ON CONSTITUTIONAL SPEEDY TRIAL DUE PROCESS. WE THINK THE STATUTE OF LIMITATIONS IS WHAT THE LEGISLATURE PUT INTO PLACE TO SAY YOU HAVE THIS AMOUNT OF TIME TO TRY THIS CASE. IN ITS EARLY CASE INVOLVING DEBT THEY'VE CHOSEN TO PUT IN YOU HAVE AN AMOUNT OF TIME TO TRY THIS CASE WE ADDRESSED THE CONCERN OF THE DEFENDANT SITTING IN JAIL ALL TIME BECAUSE THIS DEFENDANT HAS TO BE RELEASED AT THE OUTSIDE TIME OF 40 DAYS IF WE HAVE NOT FILED A CHARGE.

>> IF THAT IS THE LEGISLATORS POSITION BY WOULD THEY HAVE ASKED US TO CREATE A SPEEDY TRIAL RULE.

>> Amira Fox: I THINK THE LEGISLATURE DID ASK FOR SPEEDY TRIAL RULE TO BE GRADED OUR POSITION IS THE SPEEDY TRIAL RULE IS FAR TOO RESTRICTIVE. IT RESULTS IN THESE TERRIBLE INJUSTICES AND I WANT TO SAY THE OTHER THINGS THAT YOU ASKED.

[LISTING NAMES] WHAT ELSE IS IMPORTANT IN THIS WE AGREE WITH HIS POSITION THAT THE 30 DAYS IS IMPERATIVE WE HAVE TWO OF THEM WHERE WE CAN'T GET YOUR REASON. IN THAT AMOUNT OF TIME. WE CAN'T WRANGLE THE WITNESSES TOGETHER IN A LOT OF CASES IN 10 DAYS. SO 30 DAYS IS A HUGE CHANGE.

>> IF THE CHIEF LET ME I WILL GO WE ARE TALKING ABOUT WITH THE LEGISLATURE HAS DONE WITH HAS BEEN DONE UNDER THE UMBRELLA OF THAT STATUTE. ORDINARILY ONE BRANCH OF GOVERNMENT CANNOT DELEGATE ITS FUNDAMENTAL AUTHORITY TO ANOTHER BRANCH OF GOVERNMENT. ORDINARILY, THE LEGISLATURE CANNOT DELEGATE TO THIS COURT SUBSTANTIVE LAW MAKING AUTHORITY. ISN'T

THAT CORRECT?

WE TOLD YES YOUR HONOR.

>> Justice Charles Canady: TO THE EXTENT THAT THIS RULE GOES BEYOND WHAT WOULD BE NECESSARY TO ESTABLISH A FRAMEWORK FOR ENSURING THE PROTECTION OF THE CONSTITUTIONAL RIGHTS HAVEN'T BEGUN OVER INTO THE SUBSTANTIVE TERRITORY SUBSTANTIVE LAWMAKING TERRITORY THAT IS PROBLEMATIC?

>> Amira Fox: YOUR HONOR OUR POSITION IS THAT YOU HAVE. THAT THE STATUTE SAID YOU SHOULD WRITE A RULE THAT GIVES THE DEFENDANT A RIGHT TO THE CONSTITUTIONAL STATUTORY RIGHT TO SPEEDY TRIAL AND A RULE WAS WRITTEN. IN THE RULE IS SO MUCH MORE RESTRICTIVE THAN WHAT THE STATUTE SAYS. AND IN FACT INTERFERES DAILY WITH THE STATUTE OF LIMITATIONS. I THINK IF YOU CAN CALL ANY PROSECUTOR IN THE STATE APPEAR ASSISTANT STATE ATTORNEY OR STATE ATTORNEY THEY CAN GIVE YOU HEARTBREAKING EXAMPLES OF THAT RULE A PROCEDURAL RULE STOMPING ALL OVER THE STATUTE OF LIMITATIONS AND THUS ARGUABLY, INTERFERING WITH THE SUBSTANTIVE LAW.

>> Chief Justice Carlos Muniz: WHAT IS A RULE THAT IS LIMITED TO SOMETHING LIKE JUSTICE CANADY SUGGESTED CONCEPTUALLY OVER THAT LOOK LIKE.

>> Amira Fox: YOU SEE AT THE VERY BEGINNING OF OUR BRIEF WE SUGGESTED THE RULE COULD SIMPLY SAY THAT THE DEFENDANTS SPEEDY TRIAL RIGHT SHOULD COMPLY WITH THE STATE AND FEDERAL CONSTITUTIONS IN THE SIXTH AMENDMENT. LEAVE IT AT THAT.

AS FAR AS THE GENERAL PURPOSE OF THE RULE.

AND THEN THERE'S ALSO A SUGGESTION WITH THE WITH AND WITHOUT PREJUDICE THAT YOU COULD CERTAINLY HAVE A SYSTEM WHERE YOU DISMISS EVERY CASE WITHOUT PREJUDICE.

THERE IS A SUGGESTION YOU CAN GO CLOSER TO THE FEDERAL SYSTEM OF EVERY SINGLE CASE A JUDGE WOULD RAISE SHOULD THIS BE WITH OR WITHOUT PREJUDICE TAKING INTO ACCOUNT THE SERIOUSNESS OF THE CHARGE THE ADMINISTRATION OF JUSTICE AND WHETHER RE-PROSECUTING THE CASE WOULD AFFECT THE MENSTRUATION OF JUSTICE.

>> Justice Charles Canady: IN OTHER WORDS WITH PREJUDICE IF THE VIOLATION CONSTITUTED A COUSIN TO SHOW VIOLATION.

>> Amira Fox: CORRECT YOUR HONOR I THINK THAT'S EXACTLY RIGHT.

WE ALSO AGREE ANOTHER WAY TO CURE THIS WOULD BE TO MAKE THIS A SYSTEM AS IN THE FEDERAL SYSTEM OF CASE WILL BE DISMISSED IF YOU DON'T FILE WITHIN A CERTAIN AMOUNT OF DAYS AND LET'S WEIGH WHETHER OR NOT IT WOULD BE WITH OR WITHOUT PREJUDICE.

I DO WANT TO BRIEFLY ADDRESS IF YOU WOULD LET ME JUST FINISH UP THE WITH AND WITHOUT PREJUDICE AND WHY WE CHOSE THE DEATH OF THE HUMAN BEING WHICH BY THE WAY WE THINK IT SHOULD READ DEATH OF A HUMAN BEING NOT MURDER OR MANSLAUGHTER BECAUSE THERE ARE OTHER DEATH CASES LIKE FICO HOMICIDE. THE REASON WE DID FOCUS ON THOSE TWO CHARGES IS BECAUSE THE

EXAMPLES THAT WERE COMING OUT OF THE DIFFERENT STATE ATTORNEY'S OFFICES REALLY BELIEVED SEVERE JUSTICE HAD BEEN DONE WAS IN HOMICIDE CASES. ALMOST ACROSS THE BOARD. THAT IS WHY WE CHOSE THAT THERE WAS A NEGOTIATED POSITION OF THE WORK GROUP THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION FEELS THAT IT ACTUALLY WOULD BE A BETTER IDEA IN A BETTER SCHEME TO BE OUT LET THE JUDGE WAY OUT USING THAT SET OF CIRCUMSTANCES AND FACTORS LIKE YOU DO IN THE FEDERAL SYSTEM WHETHER THE DISMISSAL SHOULD BE WITH OR WITHOUT PREJUDICE IN EVERY CASE. THE DEATH CASES WERE A COMPROMISED POSITION OF THE WORKER.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.

>> Amira Fox: THANK YOU SO MUCH.

>> Susan H. Rothstein-Youakim: GOOD MORNING MAY IT PLEASE THE COURT APPEARANCE FOR APPELLATE COURT RULES COMMITTEE:

SUSAN H. ROTHSTEIN-YOUAKIM BY A VOTE OF 39/0 WITH ONE ABSTENTION THE COMMITTEE HAVE NO OBJECTION TO THE SUBSTANCE OF THE PROPOSED AMENDMENT TO RULE 9.140. OUR COMMITTEE WAS OUR COMMENT WAS NARROWLY DRAFTED BY DESIGN WE THINK FAIRLY STRAIGHTFORWARD. UNLESS THE COURT HAS QUESTIONS ABOUT IT I WOULD INSTEAD LIKE TO USE MY TIME TO UPDATE THE COURT ON A MATTER THAT THE COMMITTEE THANKS MAY BE RELEVANT TO THE AMENDMENTS UNDER CONSIDERATION TODAY.

SINCE FILING HER COMMENT IN NOVEMBER LAST YEAR THE COMMITTEE HAS BEEN CONSIDERING WHETHER THE DENIAL OF DEFENDANT'S MOTION OR STAND YOUR GROUND IMMUNITY SHOULD BE REVIEWABLE BY INTERLOCUTORY APPEAL RATHER THAN PROBATION. IN CONNECTION WITH THAT REQUEST FOR AMENDMENT THE COMMITTEE HAS BEEN CONSIDERING ADDITIONAL PROPOSED COMMITMENTS TO RULE 9.140 SETTING FORTH THE PROCEDURE FOR THESE PREVIOUSLY NONEXISTENT GROUNDS FOR INTERLOCUTORY APPEAL. IF THE COMMITTEE HAS NOT YET CONSIDERED WHETHER THE RIGHT TO APPEAL UNDER THE AMENDMENT WERE DISCUSSING TODAY MIGHT BE APPROPRIATELY GROUPED WITH THESE OTHER INTELLECTS INTERLOCUTORY APPEALS FOR PROCEDURAL PURPOSES BUT WE DID WANT THE COURT TO KNOW THAT THAT IS IN THE PIPELINE AND ANTICIPATE HAVING SOME PROCEDURE HOPEFULLY BY THE END OF THE YEAR. BUT WE ARE STILL IN THE FAIRLY EARLY STAGES. NONE THE LESS IN CONNECTION WITH ANY PROPOSED AMENDMENTS PROVIDING FOR INTERLOCUTORY APPEAL PROCEDURE THE COMMITTEE MOST LIKELY WOULD ALSO RECOMMEND AMENDING RULE 9.0 0301B1B TO EXPRESSLY INCLUDE A REFERENCE TO RULE 9.140 AS IT CURRENTLY STANDS THAT RULE PROVIDES THAT THE DISTRICT COURT OF APPEAL SHALL REVIEW I APPEAL NON-FINAL ORDERS AS PRESCRIBED BY RULE 9.130.

IN SO THE COURT MAY WANT TO CONSIDER WHETHER IT WOULD BE APPROPRIATE TO AMEND THAT RULE IN CONNECTION WITH THIS SET OF AMENDMENTS.

UNLESS THE COURT HAS ANY QUESTIONS I WILL CONCEDE THE REST OF MY TIME THANK YOU VERY MUCH THE COMMITTEE ALWAYS APPRECIATES THE OPPORTUNITY TO PROVIDE INPUT THANK YOU FOR LETTING US TO APPEAR TODAY.

>> Chief Justice Carlos Muniz: THANK YOU.

>> YOUR HONOR BENJAMIN H. EISENBERG APPEARANCE FOR THE FLORIDA PUBLIC DEFENDER ASSOCIATION: WE ARE HERE IN THE THIRD PROPOSAL TO FIX WITH THE MOST SIGNIFICANT CHANGE TO SPEEDY TRIAL RULE AS THE ADVENT OF THE CAPTURE. IN 1984 FROM THE INCEPTION OF THIS PROPOSAL INITIAL CONSENSUS VIEW THAT THE SPEEDY TRIAL RULE INTERNALLY WORKING AND THEREFORE MAJOR OVERHAUL IS UNNECESSARY.

>> Justice Charles Canady: COUNSEL YOU HEARD THE QUESTION ASKED EARLIER ABOUT OUR AUTHORITY TO ADOPT SUBSTANTIVE LAW. AND THE LEGISLATURE'S DELEGATION HERE WHAT YOU HAVE TO SAY ABOUT THAT WHY ISN'T THAT ITSELF A PROBLEM IF WE ARE OPERATING UNDER A RULE HERE THAT HAS THESE SUBSTANTIVE RESULTS IT REALLY GOES BEYOND ANYTHING PROCEDURAL PURELY PROCEDURAL WHILE ISN'T THAT PROBLEMATIC?

>> Benjamin H. Eisenberg : YOUR HONOR I DON'T FIND THAT PROBLEMATIC FIRST THERE IS THE STATUTE CURRENTLY REFERENCED.

>> Justice Charles Canady: WHAT ABOUT THE POINT THAT ONE BRANCH CANNOT DELEGATE ITS AUTHORITY TO ANOTHER BRANCH.

>> Benjamin H. Eisenberg : I DON'T BELIEVE THAT IS OCCURRING IN THIS CASE THE STATE IS BRIEFLY MADE REFERENCE TO PARKER VERSUS WINDOW IF YOU READ THE OPINION HE STARTS OFF THESE TWO PROPOSALS THAT WE HAVE IN OUR SPEEDY TRIAL RULE PUSHED TO THE NINE STATES SUPREME COURT THAT MEANS HAVING A SET DATE AND HAVING A DEMAND.

IN DENYING HAVING THESE SET DATES THE UNITED STATES SUPREME COURT SAID DIDN'T HAVE THE RULEMAKING AUTHORITY BUT THE UNITED STATES SUPREME COURT ALSO DID THE SAME ON 523 THE STATE OF COURSE ARE FREE TO PRESCRIBE A REASONABLE PERIOD CONSISTENT WITH CONSTITUTIONAL STANDARDS.

>> Justice Charles Canady: THAT BECOMES A MATTER OF STATE LAW. WHO GETS TO DO IT?

IF THE LEGISLATURE WANTED AS A MATTER OF SUBSTANTIVE LAW ESTABLISHED SOMETHING MORE PROTECTIVE THAN THE CONSTITUTION REQUIRES THEY ARE CERTAINLY FREE TO DO IT.

BUT THAT IS NOT WHAT HAPPENED HERE THEY HAVE KIND OF PUNTED THAT TO US.

>> Benjamin H. Eisenberg : ACCEPTED THIS COURT ALL THE WAY BACK IN 1971.

>> Justice Charles Canady: I KNOW WE HAVE DONE IT HONESTLY WE ARE HERE BECAUSE OF THAT I'M STILL STRUGGLING TO UNDERSTAND AT LEAST POTENTIALLY PROBLEMATIC?

>> Benjamin H. Eisenberg : I DON'T VIEW IT AS PROBLEMATIC BECAUSE AS THIS COURT HELD IN THIS STATE VERSUS BAKER THE RULE WOULD MERELY PROVIDES THE PROCEDURES BY WHICH BECAUSE ADDITIONAL RIGHT TO A SPEEDY TRIAL IS ENFORCED.

>> Justice Charles Canady: THERE IS NO QUESTION IF YOU LOOK AT OUR CASE LAW THERE ARE GOING TO BE PEOPLE WHO WERE DISCHARGED FOREVER UNDER THE OPERATION OF THESE RULES DISCHARGED FOREVER WHO DID NOT HAVE THEIR

CONSTITUTIONAL SPEEDY TRIAL RIGHT VIOLATED. ISN'T THAT CORRECT THEY ARE LOST IF THEY BROUGHT A CONSTITUTIONAL SPEEDY TRIAL CHALLENGE.

>> Benjamin H. Eisenberg : EXCEPT AS THIS COURT SAYS THIS PROVIDES THE PROCEDURES TO WHICH THE SPEEDY RIGHT IS ENFORCED IN THE STATE THE PROBLEM IS THAT AS THE COURT RECOGNIZED IN BARKER VERSUS WINDOW THE ONLY REAL REMEDY FOR SPEEDY TRIAL VIOLATION IS DISMISSAL WHERE SOMEONE HAS THE RIGHT TO A JURY TRIAL AND THEY HAVE NOT GOT THE CORRECT NONJURY TRIAL IN THAT CASE YOU GET A NEW TRIAL BUT YOU CAN'T REWIND THE CLOCK WHEN THERE'S BEEN A SPEEDY TRIAL VIOLATION. IN ANY EVENT IN THE PROPOSALS THAT HAVE BEEN PUT TO US.

>> HOW DOES THAT ARGUMENT COEXIST WITH THE EXISTENCE OF RECAPTURE PERIOD?

YOU CAN SEE NOT ARGUING FOR THE ELIMINATION OF RECAPTURE.

>> Benjamin H. Eisenberg : NO YOUR HONOR!

THAT SEEMS TO BE A FAIRLY IMPORTANT CONCESSION FOR THE FOLLOWING REASON SPEEDY TRIAL RIGHT IS DIFFERENT FROM THE STATUTE OF LIMITATIONS IN A FUNDAMENTAL WAY. THE STATUTE OF LIMITATIONS IS ABOUT WHETHER CONDUCT IS TOO OLD TO BE CHARGED. A SPEEDY TRIAL VIOLATION BY CONTRAST IS ABOUT WHETHER CHARGES HAVE BEEN PENDING TOO LONG TO FUNDAMENTALLY DIFFERENT INQUIRIES. THE EXISTENCE OF THE RECAPTURE. RECONCILES THESE TWO THINGS FROM MY PERSPECTIVE. I WOULD LIKE TO VIEW ON THIS BECAUSE I DON'T THINK IT IS TRUE THAT THE ONLY REMEDY FOR A SPEEDY TRIAL VIOLATION IS DISMISSAL WHICH IS WHAT YOU JUST SAID.

SOMETIMES OUR RULE SAYS THE APPROPRIATE REMEDY IS RECAPTURE. UNDER CERTAIN CIRCUMSTANCES.

WHEN THERE'S BEEN AN APPROPRIATE SHOWING.

HELP ME UNDERSTAND YOUR ARGUMENTS THAT THE ONLY REMEDY FOR SPEEDY TRIAL VIOLATION IS DISMISSAL.

>> Benjamin H. Eisenberg : RECAPTURE.

IS THE LAST OPPORTUNITY FOR THE STATE ONCE HE GOES TO THE RECAPTURE PERIOD AND STATE IS NOT BROUGHT THE DEFENDANT TO TRIAL THAT'S WHEN THERE'S A SPEEDY TRIAL VIOLATION OF THE RULE REQUIRES DISMISSAL THAT WOULD BE MY POSITION IS THAT THIS COURT HAS HELD ONCE A SPEEDY TRIAL PERIOD HAS RUN DOESN'T THIS ALL MEAN THERE'S BEEN A SPEEDY TRIAL VIOLATION THAT REQUIRES THE NOTICE OF EXPRESSION OF WHAT IS THE RECAPTURE PERIOD IS INVOKED. I WILL NOTE I THINK THAT THE RECAPTURE PERIOD IS INAPPROPRIATE IN THE CONTEXT OF YOU HAVE HERE WHICH IS THAT REALLY THE BULK OF THE PROPOSAL IS TO DO IS TO REMOVE THE CALL THE AUTOMATIC DISCHARGE RULE WHICH WAS SEEN IN CASES LIKE STATE VERSUS AG.

[LISTING NAMES].

THE REASON I SAY THAT IT'S INAPPROPRIATE IS BECAUSE IT'S NOT A SELF EXECUTING RULE. THE ISSUE THERE IS THAT THERE WAS A CASE AS CITED BY.

[LISTING NAMES].

STATE DEFILED THE CHARGING DOCUMENT OF 175TH DAY THE STATE WAS IN COMPLIANCE EVEN THOUGH THE DEFENDANT WAS NOT READY TO GO TO TRIAL AT THAT POINT THE DEFENDANT WAS UNAVAILABLE. WHEN THERE'S NOT A CHARGING DOCUMENT IT PUTS THE DEFENSE AND WITH ANYBODY IN AN INCREDIBLE BIND YOUR FILE IN NOTICE OF EXPIRATION YOU'RE WANTING TO IMPLICATE THE PROCEDURES OF THIS RULE AND SAY I AM READY TO GO TO TRIAL. HOW CAN ONE SAY THEY'RE READY TO GO TO TRIAL WHEN THEY DON'T HAVE THE CHARGE.

>> Justice Charles Canady: THE ATTY. GEN. HAS A SOLUTION TO.

>> Benjamin H. Eisenberg : DAVIS SOLUTION THAT IS UNSATISFACTORY WHICH GOES BACK TO DENTON THISTLE CENTER GEN. MEADE BEGIN WE'VE HAD SEVERAL COMMENTS BEFORE THIS NONE OF WHICH HAVE BEEN ABLE TO IDENTIFY ALTHOUGH AS JUSTICE CURIEL SAID MAYBE THEY HAVE A GUT FEELING THIS GOING TO HAPPEN BUT THEY HAVE NOT BEEN ABLE TO IDENTIFY THAT THIS IS A PERVASIVE ISSUE THAT'S WHY FOR EXAMPLE IN 1984 THE COURT DETERMINED THAT AFTER THIS RULE WAS INFLUENCED IN 1971 RECAPTURE PERIOD WAS NECESSARY BUT HERE THERE IS NOT RECURRING ISSUES THAT HAVE BEEN IDENTIFIED. I JUST WENT UP ARE NOT LIKE STATE VERSUS AG THAT WAS ONE WITH THE VICTIM WAS COMATOSE BUT THIS COURT INDICATED THAT THE DEFENSE COULD'VE MOVED FOR AN EXTENSION OF SPEEDY TRIAL BASED ON EXCEPTIONAL CIRCUMSTANCES IN.

[LISTING NAMES] THAT WAS ONE FOR THE STATE TO DO WAS EXECUTE DILIGENCE. BUT TO GO BACK TO BEFORE WITH THE RECAPTURE PERIOD IN THE CIRCUMSTANCES AND STATE VERSUS NEVER THAT'S A CASE WHERE THE STATE FILED THEIR INFORMATION THE HUNDRED 75TH DAY THE DEFENDANT FILED A NOTICE OF EXPRESSION IN THIS COURT HELD HE WAS UNAVAILABLE BECAUSE HE WAS NOT READY IF YOU FILE A NOTICE EXPIRATION IN A CASE WHERE THERE'S NO CHARGES IS NO CHANCE ANYBODY WILL BE READY IT DOESN'T EVEN CREATE A TIMELINE WHICH THE STATE NEEDS TO FILE A CHARGING DOCUMENT WITHIN THE RECAPTURE PERIOD AND SO YOU MIGHT HAVE A COURT THAT'S HOLDING A HEARING ON A CLOSED CASE ALONG WITH THERE'S NEVER BEEN INFORMATION AND SENDING A CASE FOR TRIAL WITHIN THE 30 DAY TIME PERIOD WHERE NOBODY KNOWS WHAT THE CHARGES ARE GOING TO BE BECAUSE IT IS VERY MUCH IS THE CASE THAT PEOPLE CAN BE ARRESTED ON ONE CHARGE AND ULTIMATELY BE PROSECUTED ON A DIFFERENT CHARGE.

>> COULD YOU ADDRESS THE SUGGESTION TO MAKE THE TRIGGER THE CHARGING RATHER THAN THE REST. IT SEEMS LIKE A YOU GET MORE CERTAINTY AS TO WHAT IN TERMS OF THE IMPLANTATION. I THINK YOU ALSO WOULD HAVE A RULE THAT MORE CLOSELY ALIGNS WITH THE RIGHT THAT IS AT ISSUE.

I KNOW YOU'RE AGAINST THAT WOULD LIKE TO HEAR WHAT YOUR THOUGHTS ARE.

>> Benjamin H. Eisenberg : . THAT IS NOT THE PROPOSAL THAT IS BEEN PROPOSED BUT IN THE EVENT I THINK THE CURRENT RULE PROVIDES A LOT OF CERTAINTY THEY PROVIDE EXACT DATES NOW THAT THIS COURT IN DAVIS HAS ESTABLISHED WHAT IT MEANS TO BE ARRESTED UNDER SUBSECTION D OF THIS RULE WE HAVE A LOT OF CERTAINTY OKAY SOMEONE HAS BEEN ARRESTED WE KNOW EXACTLY WHEN TO

CHARGE WE KNOW EXACTLY WHEN THEY NEED TO BE SENT TO TRIAL WHEREAS WE'VE ALREADY TALKED ABOUT A NO JUSTICE.

[LISTING NAMES] ANOTHER HAS DISCUSSES THE PROBLEM WITH SOMEBODY WHEN THEY'RE TAKEN INTO CUSTODY ALMOST INDEFINITELY AND EVEN WHEN THEY ARE ON THE 40TH DAY POTENTIALLY RELEASED THEY STILL HAVE THE PENDING PROSECUTION WE'VE ALSO TALKED ABOUT McDOUGALL THERE IS A CERTAIN EMPHASIS PLACED ON SOMEBODY'S FORMALLY ARRESTED SHOULD BE ABLE TO EXECUTE THE RIGHT AND THERE SHOULD BE DEADLINES I WOULD ALSO NOTE ONCE AGAIN NOBODY HAS POINTED THAT THERE IS A PERVASIVE PROBLEM IN DOING SO WE'VE TAKEN A SLEDGEHAMMER TO A SET OF SMALL SUBSET OF CASES.

>> IF IT RUNS FROM THE CHARGING DOCUMENT DOES NOT ALLEVIATE YOUR CONCERNS WHEN IT COMES TO THE FILING OF THE EXPRESSION IN THOSE CASES AND SOME OF THOSE ADMINISTRABLE ISSUES WOULDN'T CLEAR UP SOME OF THAT.

>> Benjamin H. Eisenberg : I DON'T THINK SO I THINK IT WOULD CREATE A BACKLOG IN THE COURT SYSTEM I THINK RIGHT NOW IF THE CLOCK STARTS WHEN SOMEBODY HAS BEEN INTRODUCED AS THE COL. JUSTICE SYSTEM I THINK ONE OF THE THINGS WE SAW DURING THE COVID PANDEMIC WHEN THE SPEEDY TRIAL RULES ARE LARGELY RELAXED IS THE CASES ARE GOING TO LANGUISH AND THERE'S GOING TO BE SO MUCH LESS.

>> Justice Charles Canady: THAT WAS BECAUSE IN THAT PERIOD THERE WAS NOT THE THREAT OF JURY TRIALS WHICH WE KNOW IS WHAT CONCENTRATES THE MIND TO MOVE PEOPLE TO PLEA AGREEMENTS IS NOT CORRECT?

>> Benjamin H. Eisenberg : IS PART OF IT BUT WITH THE SPEEDY TRIAL RULE IT IS NOT JUST THE ACTUAL SPEEDY TRIAL ITSELF IT IS THE THREAT OF THE SPEEDY TRIAL THAT CREATES AN INCENTIVE FOR PEOPLE TO ACT THAT CREATES THE INCENTIVE FOR THE STATE TO TAKE ACTION.

>> THE IDEA OF CASES PILING UP THERE IS NO CASE UNTIL IT DISCHARGE. RIGHT REALLY THERE IS UNREST BUT WHAT WOULD PILEUP WHERE PEOPLE WERE ARRESTED SO PROBLEMS MAY BE FOR THE JAIL OR BAIL BUT IT DOESN'T REALLY CREATE A HUGE BACKLOG OF CASES. CORRECT.

>> Benjamin H. Eisenberg : IT WOULD IN THE CIRCUMSTANCES THAT THE BACKLOG IS REALLY YES IT WOULD BE CIRCUMSTANCES OF SOMETIMES THE CASE IS OPENLY THEY DO HAVE TO HAVE THE HEARING UNDER 3.134 AND UNDER THE PROPOSAL OF THE FILE THE NOTICE OF EXPRESSION ONCE THE TIME IS RUN. THE BACKLOG OF CASES TO THE DEGREE NOW ALLOWING THE STATE ONE OF THE THINGS THAT WAS REALLY THE ORIGINAL RULES IS INCLUDED SUBSECTION O INSTEAD THE STATE CANNOT USE THE.

[LISTING NAMES] ESSENTIALLY THAT WAS EXTENDED ALSO TO KNOW ACTIONS AND WHEN THE STATE IS TAKEN NO ACTION NO USE THAT DID NOT GET AROUND THE SYSTEM THAT'S WHAT WE ARE TALKING OUT WITH LANGUISH IN CASES. THE SPEEDY TRIAL.

>> Justice Charles Canady: IN CONNECTION TO THAT WHAT YOU SAY ABOUT McDONALD

THE SUPREME COURT DECISION IN McDONNELL.

>> Benjamin H. Eisenberg : THERE ARE SEVERAL ASPECTS OF McDONALD I THINK IT'S ONE OF THE MOST IMPORTANT POINTS FOR US THEY PLAY AN EMPHASIS ON THE SIXTH AMENDMENT SPEEDY TRIAL RULE WHEN YOU FORMALLY ARRESTED THERE WOULD BE OF IMPORTANCE THERE.

OUR POSITION ON THIS IS THE CURRENT SPEEDY TRIAL RULE ARE NOT BROKEN. THERE IS NOT A WIDESPREAD ISSUE.

AND CURRENTLY IF WE WERE TO ACCEPT THE PROPOSALS THEY WOULD CREATE IN A ADMINISTRATIVE NIGHTMARE WOULD CREATE BACKLOGS AND COURTS. IT IS REALLY UNNECESSARY BECAUSE AS JUSTICE LABARGA HINTON ON PROSECUTORS NOTE THE DEADLINES. THEY NOTE THE CASES WHEN THEY NEED TO FILE INFORMATION WHEN THEY NEED TO BRING THE CASES. MOST OF THE SERIOUS CASES WE GO TO THE CHANGES RELATED TO MURDER AND MANSLAUGHTER WAS OF THOSE SERIOUS CASES THE STATE ATTORNEYS WILL ASSIGN THE BEST STATE RETURNS THE POLICE WILL USE THEIR BEST RESOURCES MANY OF THOSE CASES RESULT IN A WAIVER OF A SPEEDY TRIAL BECAUSE DEFENSE WAS TO BE ABLE TO PREPARE AS MUCH AS POSSIBLE ABILITY THINK OF THESE CHANGES ARE NECESSARY WOULD ASK THE COURT BASED ON THE COMMENTS DO NOT MAKE THE CHANGES AS STATED.

>> Chief Justice Carlos Muniz: THANK YOU BEFORE YOU SIT DOWN LET ME ASK YOU THOSE ETHICAL OBJECTIONS ASIDE CAN YOU TELL US WHAT IF WE CHANGE REST TO CHARGE IN TODAY'S UP TO 30 DAYS FOCUSING JUST ON THE CONSEQUENCES THAT WE SHOULD BE AWARE OF THE EFFECT OF MAKING THOSE CHANGES WOULD YOU WANT US TO KNOW ABOUT THAT?

>> Benjamin H. Eisenberg : I THINK I'VE ALREADY SAID WHAT I THINK THE BIGGEST THING IS GOING TO BE WHICH IS THAT THE ARREST IS NOT SOMETHING UNREST IS NOT SOMETHING THAT HAPPENS AND THEN YOU'RE DONE. IT IS A MOMENT OF SIGNIFICANCE. THAT INCLUDES YOU INTO THE CRIMINAL JUSTICE SYSTEM WITH WHICH IT DOES INVOKE YOUR CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AND SHOULD INVOKE YOUR PROCEDURAL RIGHT TO A SPEEDY TRIAL AS WELL. BECAUSE IT'S A MATTER OF YOU SHOULD BE ABLE TO CLEAR HER NAME AT THE EARLIEST MOMENT THE CURRENT RULE ALLOW FOR THAT QUITE FRANKLY IT IS SOMETHING THAT IS NOT ONLY A MATTER OF PROTECTING THE RIGHTS ALSO A MATTER OF COURT MANAGEMENT. WITHOUT THESE RULES CASES WILL LANGUISH FOREVER OR COME IN AND OUT IN AND OUT OF THE COURT SYSTEM I DON'T THINK THAT BENEFITS ANYONE ESPECIALLY WHEN THE LEGISLATURE AND OUR VOTERS HAVE PUSHED FOR MORE INITIATIVE FOR CASES TO BE MORE TIMELY .

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH I APPRECIATE IT.

>> Jason H. Cromey : APPEARANCE FOR CRIMINAL PROCEDURE RULES COMMITTEE: JASON H. CROMEY WE DID AGREE ON THE COMMENT WE PRODUCED. THE COMMITTEE WAS DIVIDED THE MINORITY POSITION WAS TAKEN BY THE COMMITTEE IS REALLY IN SYNC WITH THE ATTORNEY GENERAL'S POSITION ON THIS. THEY HAD A CERTAIN FEW KEY POINTS THAT IT WAS SUGGESTED ELIMINATING SPEEDY TRIAL

WITHOUT THE MAN PRINT SOMEBODY SUGGESTED POTENTIALLY HAVING A SPEEDY TRIAL ON DEMAND RULE. THE CHARGING DOCUMENT BEING THE TRIGGERING DATE THERE WAS SOMETHING THAT WAS SUGGESTED BY ONE OF THE PEOPLE IN THE MINORITY ON THE COMMITTEE. FRANKLY THERE WAS NOT REALLY HASHED OUT VERY MUCH I CAN'T I WOULD LIKE TO GIVE YOU A POSITION WE HAVE A NAP BUT AS DIVIDED AS THE COMMITTEE WAS IN THE LACK OF REAL SUBSTANTIVE DISCUSSION ON THAT I PREFER NOT TO.

THE CENTRAL POINT REALLY WAS THAT DEFENDANT IS ENTITLED TO A SPEEDY TRIAL NOT A SPEEDY DISCHARGE WAS THE GENERAL THEME ON THE MINORITY GROUP. IN TERMS OF THE MAJORITY OF THE COMMITTEE, THEIR GENERAL THEME WAS ESSENTIALLY THE CURRENT RULE IS NOT BROKEN THERE IS NO NEED TO FIX IT IT'S BEEN WORKING FOR 50 YEARS PEOPLE KNOW HOW TO USES GEORGE'S PROSECUTORS CLARK'S DEFENSE LAWYERS EVERYBODY KNOWS HOW IT RUNS IT DOES NOT CAUSE GENERAL PROBLEMS IN OUR DAY-TO-DAY OPERATIONS AS BEING SUGGESTED HERE.

SOME OF THE CONCERNS THAT WE HAD IN THE MAJORITY WERE THE POSITION THE DEFENSE LAWYERS IS PUT INTO WHATEVER THE STATE DOES NOT FILE A CHARGE OR DOES NOT PROSECUTE A CASE WITH THAT THEN DETERMINE WHETHER OR NOT WE WILL FILE THE NOTICE OF EXPIRATION. THAT'S A DIFFICULT DECISION FOR AN ATTORNEY TO MAKE PRINT THEIR CONCERNS WOULD BRING US INTO ETHICAL ISSUES AND COUNTRIES. I DON'T KNOW WHAT THE CHARGES ARE I HAVE AN ARREST REPORT THAT IS IT BECAUSE THERE'S BEEN NO ARRAIGNMENT NO DISCOVERY OBLIGATIONS HAVE BEEN TRIGGERED THE STATE DOES NOT HAVE TO GIVE US ANY INFORMATION I'VE JUST GOT MY CLIENT AND AN ARREST REPORT ABSORB THE TELL THEM I THINK WE SHOULD GO TO A JUDGE AND SAY WE ARE READY TO TRY THIS CASE.

>> IN TERMS OF BEING ABLE TO MAKE THIS RULE WORK IN THE FUTURE IF HE WAS FROM THE CHARGING DATE THAT CONCERN IS ALLEVIATED?

>> Jason H. Cromey : THAT COULD POTENTIALLY FIX THAT I'M SURE SOME PEOPLE ON THE COMMITTEE WOULD LIKE TO CHANGE TO BE MADE. THE STATE SYSTEM IS MUCH MORE REACTIVE THAN THE FEDERAL SYSTEM I THINK WAS DISCUSSED EARLIER MOST FEDERAL CASES THIS CASE WILL COMMENCE BY INDICTMENT THAT IS HOW IT GOES.

>> DO WE HAVE THE DATA I DON'T KNOW IF THE DATA SUPPORTS THAT. THOSE ARE COMMONLY UNDERSTOOD TROPES ABOUT THE FEDERAL SYSTEM. I QUESTION WHETHER THE MAJORITY FEDERAL ARREST ARE NOT REACTIVE.

>> Jason H. Cromey : MY NEXT SENTENCE WAS GOING TO BE I DON'T PRACTICE FEDERAL SO I DON'T KNOW.

THAT WAS A CONCERN THAT WE DID HAVE. AND ALSO DEAR DEAR IF WE'VE DEFILED EVERY THAT NOTICE OF EXPIRATION ON THE CASE WHETHER THERE IS NO CHARGE TO GUARANTEE OR STILL KEEP MOST PRETRIAL RATES INTACT FOR CLIENT THERE HAS TO BE A COUNTER CALL WITHIN FIVE DAYS THERE HAS TO BE HEARING. I'M GOING TO FILE MY PLEADING WE WILL COME TO COURT THE JUDGE WILL HAVE TO

MAKE A RULING ESTATE OR PUT ON EVIDENCE OF WHETHER AN EXCEPTION EXISTS IN THE CASE IN THIS CASE HAVE NOT CHARGE WE NEED TO GET A TRIAL DATE. CANNOT GET A TRIAL DATE WHATEVER HAPPENS THEN SUBSEQUENTLY ABOUT TO SUBMIT AN ORDER OR A MOTION TO DISCHARGE THE CASE AND THE JUDGE HAS THE SON OF THE ORDER IT IS CREATING THIS ENTIRE PROCESS THAT EXIST IN CASES ARE CLOSED.

AGAIN IT IS ONE THAT CAUSES CONCERN.

>> CAN I ASK ABOUT SUBSECTION E ACTIVELY PUTTING CHARGES IN OTHER COUNTIES.

>> Jason H. Cromey : THAT ONE YOU ARE TALKING ABOUT THE CONCERN WE HAD ABOUT WHETHER SPEEDY TRIAL KEEPS RUNNING.

>> RIGHT.

>> Jason H. Cromey : THE CONCERN THERE I WILL GIVE AN EXAMPLE OF WHERE PRACTICE AND THE FIRST CIRCUIT COUNTIES ARE RIGHT NEXT TO EACH OTHER I CAN HAVE A CLIENT THAT COMMITS A HANDFUL OF CAR BURGLARIES IN THE SAME DAY HE WAS DOING THE SAME THING 10 MILES AWAY IN SANTA ROSA COUNTY. THE CLIENT IS PROBABLY GOING TO DOC TO BE I DON'T KNOW OF THAT TWO COUNTIES TWO CASES TO FELONY CHARLES PENDING IT IS NOT UNCOMMON TO GET AN ORDER SIGNED BY THE JUDGE TO TRANSPORT FROM COUNTY ONE TO COUNTY NUMBER TWO TO RESOLVE THE CASE OVER THERE BUT IF I'VE DONE THAT BY NOW SACRIFICED MY RIGHT TO SPEEDY TRIAL IN THE OF THE COUNTY? BECAUSE TECHNICALLY I'M OUTSIDE OF THE JURISDICTION.

THERE WAS AN ORDER SIGNED I WAS TRANSPORTED OVER THERE I WAS THERE FOR THREE OR FOUR DAYS BUT UNDER THE CURRENT PROPOSAL I AM NOW CONSIDERED TO BE UNAVAILABLE FOR PURPOSES OF SPEEDY TRIAL. THAT WAS A CONCERN TO BE HAD BUT WHAT IS THE INTENT THERE?

WHAT IS THAT THE INTENT BE IN THE RULE AS WRITTEN. OR THE MEMBER IS RUN. DOES THAT ADDRESS THE ISSUE?

I'M OUT OF TIME.

>> Chief Justice Carlos Muniz: ANYTHING ELSE YOU WANT TO SAY.

>> Jason H. Cromey : NO NOT REALLY.

IT'S A LITTLE TRICKY WHEN WE ARE ON 5050 ABOUT HOW WE FEEL ABOUT IT.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH WE APPRECIATE IT.

>> Warren W. Lindsey: WARREN W. LINDSEY MY NAME IS APPEARANCE FOR SPEEDY TRIAL SUBCOMMITTEE OF THE CRIMINAL LAW SECTION: THE CRIMINAL LAW SECTION IS UNIQUE AND WE ARE COMPOSED OF GEORGE'S PROSECUTORS DEFENSE LAWYERS AS WELL AS LAW PROFESSORS SO WE TRY TO TAKE A BALANCED APPROACH AND WE HAVE OVER 2300 MEMBERS I WAS ALSO A MEMBER OF JUSTICE LAWSONS WORKGROUP AND THE WORKGROUP NEVER TOOK NATURAL FINAL POSITION ON ANYTHING.

BUT PART OF OUR MISSION IS TO TRY TO BALANCE DIFFERENT INTERESTS IN THE SYSTEM AND TO PROMOTE JUST FAIR AND EFFICIENT DISPENSATION OF JUSTICE.

REX MR. LINDSEY CAN I ASK YOU A QUESTION YOU CAN EITHER SHARE FROM THIS

SECTION OR JUST FROM VIEW. IF THERE IS NOT A SECTION POSITION.  
WHAT IS DO YOU THE MOST CONCERNING ISSUE WITH CHANGING THE TIME TO RUN  
FROM CHARGING INSTEAD OF ARREST.

>> Warren W. Lindsey: I THINK THERE ARE SEVERAL ISSUES WE WOULD DISAGREE  
WITH DOING AT FIRST THAT ONE THING THAT WAS NEVER DISCUSSED IS FROM MY  
EXPERIENCE I'VE BEEN PRACTICING FOR 43 YEARS ON A BOARD CERTIFIED CRIMINAL  
TRIAL LAWYER MANY TIMES THERE IS A CHARGE WHERE THE PERSON IS NOT  
RUSTED THAT IS NEVER BEEN DISCUSSED TODAY. BUT I HAVE â ; IT IS NOT A LARGE  
PERCENTAGE BUT THERE ARE MANY CASES WHERE THE STATE INVESTIGATES A  
CASE DECIDES TO BRING IN INFORMATION AND THE INFORMATION STAYS OUT THERE  
AND JUST FLOATS AROUND FOR A WHILE AND I'VE HAD MANY CASES WHERE THE  
DEFENDANT WAS NOT ARRESTED FOR MONTHS AND MONTHS AFTER AND  
INFORMATION HAD BEEN FILED WHERE THERE WERE NOT ORIGINALLY RUSTED THAT  
IS ONE PROBLEM.

>> Justice Charles Canady: I DON'T UNDERSTAND WHY THAT'S A PROBLEM THE SPEEDY  
TRIAL STARTS RUNNING FROM THE TIME THE INFORMATION IS FILED.  
AM I MISSING SOMETHING.

>> Warren W. Lindsey: I THINK WHAT OTHER COUNSEL HAS TALKED ABOUT ABOUT THE  
REASONS FOR SPEEDY TRIAL ABOUT ANXIETY ABOUT INCARCERATION THE PREMISE  
FOR THE SPEEDY TRIAL DON'T EXIST IN THOSE CASES WHERE THERE IS AN  
INFORMATION.

>> Justice Charles Canady: THIS IS MORE FAVORABLE TO THE DEFENDANT THE  
CIRCUMSTANCES YOU ARE DESCRIBING IT SEEMS LIKE IT'S MORE FAVORABLE TO  
THE DEFENDANT.

>> Warren W. Lindsey: IT WOULD BE DESPITE THAT I STILL THINK THAT WOULD NOT BE  
ADDRESSING THE CORE REASONS FOR THE SPEEDY TRIAL RULE THAT A PERSON  
HAS BEEN INCARCERATED THAT THEY HAVE ANXIETY.

>> Justice Charles Canady: ONE THING THERE IT BECOMES AN ACCUSED AT THAT  
POINT WHICH IS ALL THIS IS ABOUT A PERSON BEING ACCUSED UNDER THE  
CONSTITUTIONAL PROVISION I'M SORRY.

>> Warren W. Lindsey: UNDERSTAND IT IS AGAINST THE DEFENSE POSITION I THINK  
AGAIN I GUESS I'M NOT BEING ARTICULATE I DON'T THINK THAT THE CORE REASONS  
FOR SPEEDY TRIALS OF THE THINGS THAT WERE BROUGHT UP BY THE FIRST  
COUNSEL TALKED ABOUT. ONE OF THE THINGS THAT THE CRIMINAL SECTION DID  
AGREE WITH IS WE AGREED THAT AFTER DISCUSSION IN THE DISCUSSION GROUP  
THAT THE RECAPTURE PERIOD SHOULD BE EXTENDED FROM 15 DAYS UP TO 30 DAYS  
I THINK THAT WOULD ADDRESS SOME OF THE ISSUES I THINK JUSTICE COURIEL  
TALKED ABOUT BECAUSE I THINK SPEEDY TRIAL IS A BALANCING TEST BETWEEN  
WHAT IS FAIR TO PROTECT THE DEFENDANT'S RIGHTS TO SPEEDY TRIAL WEIGHED  
AGAINST THE STATE AND THE OTHER OBLIGATIONS TO BRING A CHARGE IN AN  
EXPEDITIOUS WAY.

>> Chief Justice Carlos Muniz: I'M SORRY CAN YOU FINISH ANSWERING JUSTICE  
GROSSHANS QUESTION IT SOUNDS LIKE YOU HAD SEVERAL.

>> Warren W. Lindsey: YES YOUR HONOR NUMBER WOULD BE IF YOU DID THAT YOU HAD AN ARREST FOR INFANTS IN ORANGE COUNTY WHEN SOMEBODY IS RESTING THIS IS SOMETHING JUST A QUICK SEGUE AGAINST THIS JUST LISTENING TO THE COURTS QUESTION I THINK IF YOU WANT TO HAVE THIS ADDRESSED I THINK THERE IS A PERCEPTION THAT CASES ARE BEING LOST IN THE SYSTEM WHICH IS RESULTING IN THIS CHARGE WHICH I DON'T THINK IS CORRECT. YOU CAN HAVE LIKE A STATUS HEARING AFTER PERSON IS RUSTED CREATING A RULE THAT REQUIRES THERE TO BE STATUS HEARING AFTER 60 DAYS TO ALERT ALL THE PARTIES OF THE EXISTENCE OF THE CASE. FOR INSTANCE IN.

[LISTING NAMES] COUNTY TO DO THAT. IN ORANGE COUNTY FOR A PERSON GETS ARRESTED THERE IS NO SUBSEQUENT DATA SET UNLESS AND UNTIL THE CHARGES ARE FILED.

I THINK JUSTICE GROSSHANS YOU WERE PROSECUTOR IN ORANGE COUNTY. IT IS NOT UNIFORM THROUGHOUT THE STATE BUT IN ANSWER TO YOUR QUESTION JUDGE OR JUSTICE GIVEN THINK WOULD BE WOULD HAVE A PERSON ARRESTED THEN THEY CAN BE CHARGED A YEAR LATER OR SOMETHING LIKE THAT IT WOULD JUST BE AN UNWORKABLE SITUATION. I THINK YOU SHOULD KEEP IT AS WERE AT THE TIME OF THE REST AND NOT CHANGE IT FROM THAT. BUT WE DO BELIEVE MANY OF THE ISSUES WOULD BE ADDRESSED BY ANY OF THE WORKGROUP FOR INSTANCE. [LISTING NAMES] . THE STATE ATTORNEY OF THE 12TH CIRCUIT BROUGHT UP THAT ONE OF THE ISSUES WAS GETTING JURIES JURORS TOGETHER IN SMALL RURAL COUNTIES. FOR THAT REASON WE AGREED TO THE EXTENSION OR WE THOUGHT IT WAS FAIR TO EXTEND THE RECAPTURE PERIOD TO 30 DAYS.

BUT OTHERWISE ADDRESSING WHAT JUSTICE COURIEL SAID WE'LL HAVE STORIES AND WHAT JUSTICE CANADY SAID ABOUT EVEN ONE MISCARRIAGE OF JUSTICE IS A NEGATIVE THING. NO ONE CAN DISAGREE WITH THAT BUT THERE IS GOING TO BE OUTLIER CASES.

>> Justice Charles Canady: COUNSEL I KNOW YOU'RE GOING OVERTIME CAN YOU ADDRESS THE QUESTION I RAISED A COUPLE TIMES ABOUT OUR AUTHORITY. WHEN WE HAVE PROMULGATED A RULE WHICH IS DISCHARGING PEOPLE FOREVER WHEN THAT IS NOT CONSTITUTIONALLY REQUIRED, WHY AM I WRONG IN HAVING SOME SENSE BUT THAT MAY NOT BE OUR PROPER ROLE TO BE CARRYING OUT ESSENTIALLY IF THE LEGISLATURE WANTS TO GIVE THEM GREATER PROTECTION THAN THE CONSTITUTION REQUIRES THAT IS FINE THE LEGISLATURE CAN DO IT. IT IS NOT FOR US TO DO IS NOT US FOR US TO CREATE SUBSTANTIVE RULES OF LAW THAT GO BEYOND WHAT THE CONSTITUTION IS.

BECAUSE OTHERWISE WE ARE EXERCISING LEGISLATIVE POWER TO ADOPT SUBSTANTIVE LAW. WHAT AM I MISSING?

>> Warren W. Lindsey: JUSTICE I AGREE WITH THE ARGUMENTS IN RESPONSE TO THAT QUESTION WERE MADE BY COUNSEL FOR THE PUBLIC DEFENDERS ASSOCIATION I THINK THAT THE LEGISLATIVE ENACTMENT EMPOWERED THE COURT TO PROVIDE SEIZURE.

>> Justice Charles Canady: ASKED THE DELEGATION OF LEGISLATIVE POWER TO US. IF

WE ARE UNDERSTANDING IT THIS WAY IF THEY ARE JUST EMPOWERING US TO SET A FRAMEWORK TO PROTECT THE CONSTITUTIONAL RIGHTS THAT IS ONE THING. BUT TO ADOPT THE RULES THAT WILL DISCHARGE PEOPLE WHO WOULD NOT BE DISCHARGED PURSUANT TO THE REQUIREMENT OF THE CONSTITUTION THAT SEEMS TO GO BEYOND THAT.

>> Warren W. Lindsey: I THINK RESPECTFULLY OF THE COURT HAS THAT POWER GIVEN TO THEM PURSUANT TO THE LEGISLATIVE ENACTMENT AND THE ARGUMENTS OF COUNSEL FOR PUBLIC DEFENDER.

>> Justice Charles Canady: THEY CAN DELEGATE DID THAT TO US.

>> Warren W. Lindsey: I THINK THAT THEY CAN.

>> Chief Justice Carlos Muniz: ON A HAPPY NOTE CAN YOU TAKE 15 OR 30 SECONDS TO FINISH UP?

>> Warren W. Lindsey: YES OUR POSITION IS OTHER THAN JUST THERE IS NO STATISTICAL EVIDENCE PRESENTED THAT THE SPEEDY TRIAL RULE AS IT CURRENTLY IS NOT WORKING WELL THE HUGE CONSENSUS ON THE CRIMINAL LAW SECTION THERE SHOULD BE NO CHANGES MADE EXCEPT FOR THE CHANGE TO INCREASE THE RECAPTURE PERIOD FROM 15 TO 30 DAYS. THANK YOU YOUR HONOR.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH AND THANK YOU FOR YOUR WORK ON THE WORKGROUP.

MY NAME IS JUDE M. FACCIDOMO

APPEARANCE FOR FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS: I RISE HERE TODAY IS THE PAST PRESIDENT OF THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS.

AND IN OPPOSITION TO THE PROPOSED COMMITMENTS. PROBABLY MORE RELEVANT TO MY PARENTS ARE TODAY IS I ALSO WAS A DEFENSE REPRESENTATIVE ON JUSTICE LAWSON'S SPECIAL SUBCOMMITTEE AND WHILE I THINK IT WAS CERTAINLY A WORTHWHILE ENDEAVOR AND WE ALL APPRECIATED JUSTICE LAWSON TRYING TO BRING THE PARTIES TOGETHER I THINK WE ALL RECOGNIZE THAT EVEN IN THE CONTEXT OF AND AS THE CHARLOTTE SYSTEM THIS RULE IN PARTICULAR CREATES TWO VERY CLEARLY DELINEATED CAMPS AS WAS NOTICED IN THE PROLOGUE TO THE EVENTS THEMSELVES HERE TODAY THAT COMMITTEE DID NOT VOTE AND DID NOT REACH A CONSENSUS SO I WILL RESPECTFULLY DISAGREE WITH MY FRIEND MS. FOX THE WHAT YOU HAVE BEFORE YOU IS A RESULT OF THAT COMMITTEE BECAUSE MYSELF MR. LINDSAY AND ELECTED PUBLIC DEFENDER OF THE 15TH JUDICIAL CIRCUIT ARE VERY MUCH OPPOSED TO THESE PROPOSED AMENDMENTS WE QUESTIONED FIRST THERE NECESSITY THEN FRANKLY WE THINK MANY OF THEM ARE ILL ADVISED.

I THINK THE ISSUE THAT IS BEEN RAISED HERE IN JUSTICE CANADY I'D BE HAPPY TO ADDRESS THE QUESTIONS YOU'RE PROBABLY GOING TO ASK ME AS WELL.

>> Justice Charles Canady: YOU THINK I'M GOING TO CONTINUE BEING THAT THAT HORSE.

>> Jude M. Faccidomo : ABOUT GOING LAST YOU GET THE SENSE THE BIBLE WHAT'S COMING I ALSO UNDERSTAND THERE IS THIS QUESTION REGARDING DAG'S

PROPOSAL I'D BE HAPPY TO ADDRESS THOSE WILL ALSO WAS CAUTIOUSLY OPTIMISTIC THAT I WOULD NOT NEED TO.

>> Chief Justice Carlos Muniz: THERE WAS NO DEAL AND EVERYTHING IS ON THE TABLE SPEEDY

>> THAT IS WHAT A CUP TO PICK UP UNDERSTAND THE QUESTION HOW CAN THIS COURT CREATE A SUBSTANTIVE RIGHT THAT IS SOLELY WITHIN THE PURVIEW OF THE LEGISLATURE AGAIN AS MY COLLEAGUES HAVE AS WE RELIED HEAVILY ON IN OUR COMMENTS .91 8.015. I UNDERSTAND THE CONCERN THAT THIS RULE AS IT IS WRITTEN NOW GOES BEYOND THAT I RESPECTFULLY DISAGREE THERE ARE INSTANCES WITHIN THE RULES WHERE DISCHARGE HAPPENS MOTIONS TO DISMISS ETC. DARRELL CONTAINED WITHIN THE RULES OF PROCEDURE. AS IS SUBSECTION NUMBER ONE OF 918.015 IT INSTRUCTS THIS COURT TO CREATE THAT SUBSTANTIVE RIGHT THE RIGHT TO A SPEEDY TRIAL.

IT DOESN'T TALK ABOUT TIMELINES IT DOESN'T TALK ABOUT FRAMEWORKS DOESN'T TALK ABOUT RECAPTURE. BELIEVES THAT ALL DO YOUR HONOR'S THAT'S WHY WE BELIEVE THE RULE IS WRITTEN IS NOT ONLY CONSTITUTIONAL BUT FUNCTIONS WELL I WILL POINT TO JUSTICE COURIEL'S QUESTION AND I THINK OUR COLLEAGUES HERE HAVE CONCEDED THIS POINT THAT THERE IS NOT THIS LENGTHY LIST OF GRAVE INJUSTICES THAT ARE OCCURRING VIA SOME ANECDOTAL EVIDENCE AND SIMILARLY ON OUR SIDE AS OPPONENTS OF THIS RULE I'M SURE WE CAN OFFER ANECDOTAL EVIDENCE OF INNOCENT PEOPLE HELD TO ANSWER FOR CHARGES WILL BEYOND A SPEEDY TRIAL ISSUE.

I THINK IF THERE WERE THIS PILE OF CASES WHERE SIGNIFICANT INJUSTICES WERE TAKING PLACE WITHIN THE COMMENTS IN FRONT OF YOUR OWNERS WOULD HAVE STACKS OF EXCEL SPREADSHEETS CITING CASE NUMBER, DEFENDANT, VICTIM AND WHAT ENDED UP HAPPENING AS FAR AS A DISCHARGE AND DOES NOT EXIST. THAT SPEAKS TO THE TEAM I THINK RUNNERS PROBABLY SAW IN THE RATHER ROBUST COMMENTS TO THIS RULE. IT IS BUSILY STRUCK A NERVE BUT IT IS BEEN SAID BEFORE AND I WON'T REPEAT IT THAT THIS IS A SOLUTION IN SEARCH OF A PROBLEM.

MORE COLLOQUIALLY IF IT IS NOT BROKE DON'T FIX IT. AS THE ATTY. GEN. POINTED OUT IN THEIR COMMENTS NO RULE IS PERFECT.

WE WISH THEY WERE TO DO THE BEST THAT WE CAN OR I DON'T DO ANYTHING YOU PROMULGATE RULES AS BEST WE CAN.

THERE IS GOING TO BE A PUSH AND PULL. AS MY COLLEAGUE MR. LINDSAY POINTED OUT THE IDEA IS TO STRIKE A BALANCE. NO RULE IS PERFECT BUT FRANKLY I THINK FOR AN ISSUE AS COMPLEX AS THIS AND THE CALLS TO ATTENTION SO MANY POTENTIAL RIGHTS AND POTENTIALS FOR ABUSES THIS WORKS ABOUT AS PERFECTLY AS IT CAN.

>> Chief Justice Carlos Muniz: I'M SORRY TO INTERRUPT YOU CAN YOU GET SPECIFIC EVERYBODY I KNOW IS MAKING GOOD FAITH ARGUMENTS AND GIVING US THE VALUE OF THEIR EXPERIENCE AND EVERYTHING CAN YOU BE AS SPECIFIC AS POSSIBLE AND TELL US WHAT ARE THE CONSEQUENCES THAT YOU WANT US TO BE AWARE OF

IF WE CHANGE THE TRIGGERING DATE TO CHARGE RATHER THAN REST?

>> Jude M. Faccidomo : LET ME SPEAK TO THAT MR. CHIEF JUSTICE FIRST I WILL ADDRESS WHAT I CONSIDER TO BE A PRACTICAL ISSUE. STANDING HERE AS REPRESENTATIVE OF THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS MY DEFENSE OF THIS RULE IS FIRST AND FOREMOST THAT THIS PROTECTS DEFENDANTS RIGHTS. PUTTING THAT ASIDE LET'S ACKNOWLEDGE THE REALITY THAT THIS RULE CREATES A FRAMEWORK WHEN I SAT ON CRIMINAL PROCEDURE RULES IN 2018 AND THE PROCEDURES OR THE PROPOSAL FIRST CAME UP THE LOUDEST VOICE AN OBJECTION WAS FROM THE JUDGES.

AND THE REASON IS THIS CREATES A FRAMEWORK ONE OF THE JUDGES ON THE COMMITTEE SAID SOMETHING THAT KIND OF STUCK WITH ME WHICH IS IF YOU GIVE A LAWYER TIME HE OR SHE WILL TAKE IT. AND BY STARTING THE CLOCK AT CHARGING DOCUMENTS YOU ARE EXTENSIVELY MAKING THE SPEEDY TRIAL RULE THE STATUTE OF LIMITATIONS. LET'S TALK ABOUT THAT FOR A SECOND BECAUSE ONE THING THAT HAS NOT BEEN ADDRESSED HERE TODAY IS THE FLORIDA DOES NOT REQUIRE THE STATE TO IMPANEL A GRAND JURY TO CHARGE. THAT MEANS THAT EVERY CITIZEN WITHIN THE STATE OF FLORIDA IS SUBJECT TO ANY LAW ENFORCEMENT WALKING THE STREETS OFTEN SUBJECTIVE DETERMINATION OF PROBABLE CAUSE TO MAKE AN ARREST AND THEY ARE THEN IF WE ADOPT THE PROPOSAL OF THE ATTY. GEN. SUBJECT TO THAT PROSECUTION FOR THE EXTENT OF THE STATUTE OF LIMITATIONS IN TO JUSTICE LABARGA!

EVEN THOUGH THERE IS THE POTENTIAL REMEDY OF BEING RELEASED FROM CUSTODY IT IS NAÏVE OF US TO SUGGEST THAT JUST BEING OUT OF JAIL IS A RELIEF FROM THE SPECTER OF THAT PROSECUTION.

LET'S KEEP IN MIND THAT THE 40 DAYS ESPECIALLY FOR INDIGENT DEFENDANTS IS A LIFETIME. YOU CAN LOSE HOUSING YOU CAN LOSE EMPLOYMENT YOU CAN LOSE CUSTODY OF YOUR CHILDREN. SIMPLY BECAUSE YOU CAN BE RELEASED FROM JAIL.

>> Justice Charles Canady: THEY ARE NOT GOING TO TRIAL WITHIN THAT PERIOD ANYWAY NOW WITHIN 40 DAYS.

>> Jude M. Faccidomo : UNDERSTANDABLE LEASE IS BEEN A DETERMINATION BY THE STATE ATTORNEY'S OFFICE

>> THIS IS THE CASE WORTHWHILE PROSECUTING OFTEN TIMES I PRACTICE LARGELY IN MIAMI-DADE COUNTY WE HAVE 100 CASES NO ACTION IN ANY GIVEN WEEK JUST BECAUSE THEY ARE NOT PROSECUTABLE CASES.

IF WE CHANGE IT TO UPON THE FILING AND PROSECUTOR JUST DOESN'T GET AROUND TO IT THAT PERSON IS SUBJECT TO THAT PROSECUTION FOR THE EXTENT OF THE STATUTE OF LIMITATIONS.

I THINK THAT'S A VERY REAL PROBLEM I THINK WOULD POTENTIALLY BE UNCONSTITUTIONAL BECAUSE BY MAKING THE SPEEDY TRIAL CLOCK BEGIN AT THE CHARGING DOCUMENT WE ARE MAKING THE STATUTE OF LIMITATIONS SPEEDY TRIAL WINDOW WHICH I THINK WOULD SUBVERT THE INTENT OF 918.015 WHICH IS CREATING A MORE SUBSTANTIVE SPEEDY TRIAL RIGHTS.

>> Justice Charles Canady: MORE SUBSTANTIVE THAN WHAT.

>> Jude M. Faccidomo : DUE PROCESS CONSIDERATION UNDER THE SIX COMMITMENT.  
>> Justice Charles Canady: THE STATUTE SAYS AS WE SHALL RULE OF COURT PROVIDE PROCEDURES THROUGH WHICH THE RIGHTS OF THE SPEEDY TRIAL IS GUARANTEED BY OUR STATE SPEEDY TRIAL PROVISION SHALL BE REALIZED.

IT IS ALL HINGED ON THAT. WE'VE NEVER SAID THAT THERE IS A DIFFERENCE BETWEEN OUR CONSTITUTIONAL SPEEDY TRIAL PROVISION UNDER THE FLORIDA CONSTITUTION AND UNDER THE SPEEDY TRIAL PROVISION UNDER THE U.S. CONSTITUTION IS NOT CORRECT.

>> Jude M. Faccidomo : I THINK WE HAVE.

>> Chief Justice Carlos Muniz: YOU ARE WALKING INTO THE TRAP.

[LAUGHTER] WAS SOME OF THE OTHER CONSEQUENCES YOU WANT US TO KNOW ABOUT.

>> Jude M. Faccidomo : OF STARTING THE CLOCK.

>> Chief Justice Carlos Muniz: DELETE THE HUGE BENEFIT TO US OF THIS WHOLE THING IS THAT WE DO THINGS WE DO OUR BEST TO KNOW WHAT THE EFFECT OR EFFECT THEY WILL HAVE IN THE WORLD THE PHILOSOPHICAL STUFF WE CAN HANDLE THAT. HOW IS THIS GOING TO BE SOME HUGE DISASTER FOR THE SYSTEM OR WHATEVER THAT IS OR HUGE IMPROVEMENT

>> WENT PERSON ACCUSED OF A CRIME ARRESTED FOR CRIME IT GENERATES A COURT CASE. HERE WE ARE CONTENDING BACKLOG OF CASES FROM TACOMA 19 PANDEMIC BACK IN FRONT OF THAT WAVE AND NOW WE ARE GOING TO POTENTIALLY INACTIVE RULE I CERTAINLY HOPE WE DON'T WHICH GIVES THE PROSECUTING AUTHORITY BY THE WAY LET'S ACKNOWLEDGE THAT THE VAST AUTHORITY SOLELY WITHIN THE EXECUTIVE BRANCH REQUIRING A TWO-PAGE DOCUMENT AND A SIGNATURE TO FILE A CHARGE. IT IS REALLY NOT THAT HARD FOR THEM TO DETERMINE IF THE CASE IS PROSECUTABLE. BUT BACK TO YOUR QUESTION MR. CHIEF JUSTICE, IT IS GOING TO EXTEND ALL OF THESE CASES. WHAT YOU WILL SEE INEVITABLY IS CASE LOADS AND DOCKET NUMBERS EXPLODING WITH DEFENDANTS ON CASES THAT ARE POTENTIALLY NOT VIABLE NOT PROSECUTABLE OR EVEN INNOCENT PEOPLE WHO HAVE BEEN ARRESTED UNDER THIS HEADING BECAUSE THE STATE ATTORNEY'S OFFICE NO LONGER HAS THE INCENTIVE OR THE NEED TO BRING TIMELY CHARGES. AS I SAID IF YOU GIVE A LAWYER TIME THEY ARE GOING TO TAKE IT BUT WE HAVE A CLOCK HERE FOR THAT EXACT REASON.

I AM RUNNING OUT OF TIME I WOULD LIKE TO CLOSE BY POINTING OUT AGAIN I DON'T BELIEVE THERE IS THIS ARMAGEDDON OF INJUSTICE WHERE THESE SERIOUS CASES ARE BEING DISCHARGED ON SPEEDY TRIAL VIOLATIONS. AT THE RISK OF BEING ANECDOTAL MYSELF WHILE PREPARING TO APPEAR BEFORE YOUR OWNERS I ASKED THE QUESTION I PERSONALLY HAVE NEVER HAD A CASE DISCHARGED ON SPEEDY TRIAL VIOLATION.

I'VE NEVER SPOKEN TO SOMEBODY WHO HAS. HAVE NOT SEEN ANY EMPIRICAL DATA THAT DOES IT.

>> CAN I ASK YOU A QUICK QUESTION WHAT YOU SAY TO THE ARGUMENT IN REFERENCE TO YOUR POSITION THAT IT CREATES A FRAMEWORK A STRUCTURE

FIRE SYSTEM THAT'S WHAT KEEPS THE SYSTEM IN LINE?

WHAT DO YOU SAY TO THE ARGUMENT THAT EVERYBODY WEAVES IT ANYWAY?

THE WHOLE STRUCTURE THING GOES OUT THE WINDOW BECAUSE THEY HAVE THIS MASSIVE CASELOAD OF PEOPLE WHO HAVE WAIVED SPEEDY TRIAL IN THEIR SITTING AROUND WAITING FOR TO HAPPEN THE CHILD HAPPEN OR SOMETHING TO HAPPEN.

>> Jude M. Faccidomo : IN RESPONSE TO THAT JUSTICE LABARGA YES THAT'S AN ACCURATE STATEMENT IT IS GENERALLY WAIVED BUT IT IS THE DEFENDANT'S RIGHT TO WAIVE AGAIN MY POINT HERE I THINK THE OVERARCHING POINT HERE THAT THIS RULE IS NOT A PUNISHMENT TO THE PROSECUTOR SO MUCH AS A PROTECTION FOR THE DEFENDANTS BUT IT IS THOSE CASES WHERE IT IS BROUGHT UP BY THE COURT . IN MIAMI-DADE COUNTY WE HAVE IT PRINTED ON OUR CALENDAR WHEN THE SPEEDY TRIAL ENDS AND IS ONE OF THE FIRST THINGS THE JUDGE BRINGS UP ON A CASE THAT HAS NOT HAD IT WAIVED. IT IS CERTAINLY THE IMPETUS BEHIND A MORE EFFICIENT PROSECUTION. SO YES, WHILE THERE ARE WAIVERS GETTING RID OF IT ENTIRELY WHICH A LOT OF THESE PROPOSED AMENDMENTS DO AND WHAT CERTAINLY I BELIEVE STARTING AT THE TIME OF CHARGING WOULD DO, WOULD HAVE A RIPPLE EFFECT THROUGHOUT THE SYSTEM.

>> Justice Jorge LaBarga: THANK YOU VERY MUCH.

>> Chief Justice Carlos Muniz: MARSHALL DID THE REBUTTAL TIME GET USED FOR THE FIRST SPEAKER ANY OF THE THREE OF YOU IF YOU CAN PICK ONE AND COME BACK FOR THREE MINUTES JUST TO RESPOND TO THE ARGUMENTS.

THERE WE HEARD.

>> THANK YOU MR. CHIEF JUSTICE I JUST HAVE A COUPLE POINTS I WANT TO MAKE IN RESPONSE TO SOME OF THE OTHER ARGUMENTS PRINCIPAL JUSTICE CANADY JUST TO CONTINUE BEATING A DEAD HORSE YOU RAISED AN EXCELLENT POINT REGARDING IMPROPER DELEGATION ON THAT STATUTE TO THE EXTENT IT ASKS THIS COURT TO TAKE SOME OF ITS SUBSTANTIVE DUTIES FOR ITSELF PRINT NOT SURE IF THEY CAN DO THAT. THEY CAN ENACT A STATUTE WHICH SAYS THAT THE STATE MUST TRY EVERYBODY WITHIN 175 DAYS OF ARREST OR THEY WILL BE DISCHARGED FOR THE DOES STRIKE ME AS A SUBSTANTIVE RIGHT. I DON'T THINK THEY CAN DELEGATE THAT TO THIS COURT. NOW THAT SAID I DON'T THINK THERE IS A LOT SAID ABOUT THE FACT THAT THIS IMPINGES INTO SUBSTANTIVE RIGHTS AND IT'S AN IMPROPER SEPARATION OF POWERS TO HAVE IT. I DON'T EVEN THINK YOU HAVE TO GET THERE. TO RECOGNIZE THAT A CHANGE SHOULD BE MADE EVEN IF THIS RULE WERE 100% PROCEDURAL THESE ARE GOOD AMENDMENTS THESE ARE PROPER AND IMMENSE AND THEY SHOULD BE MADE REGARDLESS OF THAT CONSTITUTIONAL MATTER. REGARDING THE IDEA THAT POSSIBLY WE CAN GO BEYOND WHAT THIS PROPOSAL IS. AND MAKE IT TO WHERE THE SPEEDY TRIAL WOULD START TO THE TIME OF THE CHARGING DOCUMENTS.

JUSTICE GROSSHANS GAVE THE EXAMPLE OF A DEFENDANT WHO IS BEEN ARRESTED IS ON AGGRESSIVE BAIL CONDITIONS AND DOESN'T GET CHARGED FOR A VERY VERY LONG TIME.

FIRST OF ALL THE RULE PROPOSED RIGHT NOW THE START ADDRESS TO WHERE WE

WOULD NOT HAVE TO TRUST THAT HERE WOULD HAVE TO BE FLUSHED OUT IF THERE WAS A CHANGE MADE. OBVIOUSLY THE PERIOD BETWEEN THE REST OF CHARGING DOCUMENTS IT IS NOT RELEVANT IT CAN'T NOT BE IGNORED THE CONSTITUTION RIGHT DOES NOT IGNORE IT.

THIS IS A RULE IT IS NOT INTENDED TO BE COEXTENSIVE WITH THE CONSTITUTIONAL RIGHTS. STARTING THE CLOCK AT ARREST HAS PROCEDURAL ADVANTAGES I THINK THAT WOULD MAKE IT A GOOD IDEA. IT MAKES IT A COURT PROCEDURE INSTEAD OF SOMETHING.

>> Justice Charles Canady: YOU MEET AT CHARGING YOUR TALKING CHARGING NOT REST.

>> YES ALSO SINCE I WAS ASKED BEFORE AND DIDN'T KNOW ABOUT THE 2019 PROPOSAL IT DOES IN FACT ADD SUBDIVISION DEFENDANTS IT SAYS THE STATE FROM THE DATE OF ARREST THE DEFENDANT MAY MOVE THE COURT TO REMOVE CONDITIONS OF PRETRIAL RELEASE. OTHER THAN THE REQUIREMENT TO APPEAR IN COURT AND OTHER MANDATORY REQUIREMENTS IMPOSED BY STATUTE WITHOUT EXCEPTION THE MOTION SHALL BE GRANTED UNLESS THE JUDGE FINDS THE STATE ESTABLISHED GOOD CAUSE FOR THE DELAY IN FILING A FORMAL CHARGE. THAT IS THE WAY THAT IT WAS JUST BEFORE THAT IS HOW THEY HANDLE THE PERIOD BETWEEN ARREST AND CHARGE IN CLOSING I WANT TO POINT OUT THAT THE PURPOSE OF THIS RULE AS HAS BEEN SAID MANY TIMES IS TO EFFECTUATE A CONSTITUTIONAL RIGHT AND RESPECTFULLY THE RULES AS CURRENTLY READS REALLY COMES VERY CLOSE TO THAT. IT'S AN OUTLIER COMPARED TO OTHER STATES IS AN OUTLIER COMPARED TO THE FEDERAL GOVERNMENT IT'S AN OUTLIER COMPARED TO THE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL ITSELF. I THINK THE AMENDMENTS THAT HAVE BEEN PROPOSED WOULD BE A GOOD START IN MAKING THOSE CHANGES THANK YOU VERY MUCH.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH THIS HAS BEEN VERY HELPFUL WE APPRECIATE EVERYONE'S TIME.