

>> ALL RISE. HEAR YE HEAR YE HEAR YE..THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, LET ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR. GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES,THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED

>> Chief Justice Carlos Muniz: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT.

OUR FIRST CASE TODAY IS IN RE AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.132 CASE NUMBER 2024-0883 JUDGE WINOKUR, WHENEVER YOU'RE READY, THANKS.

>> GOOD MORNING JUSTICES I AM THOMAS WINOKUR I WAS ASKED TO APPEAR HERE ON THE COMMITTEE'S BEHALF.

AS YOU KNOW, THIS COURT ASKED THE COMMITTEE TO CONSIDER SOME AMENDMENTS PROVISIONS TO RULE 3.131 IN LIGHT OF STATUTORY CHANGES EMINENCE TO SECTION 907.401.

THE COMMITTEE CONCLUDED THAT SUBSTANTIAL REVISION OF THE RULES WAS CALLED FOR AND WERE PROPOSING A REORGANIZATION OF THE RULE THAT INCORPORATES THE STATUTORY CHANGES AS WELL AS MAKING SOME OTHER CHANGES.

WE WERE ALSO CALLED FOR.

THE COMMITTEE'S REPORT AND OUR RESPONSE TO THE OTHER REPORTS ADDRESS EVERYTHING THE COMMITTEE THINKS THAT YOU NEED TO KNOW AND THE COMMITTEE WE ARE GOING TO RELY ALMOST EXCLUSIVELY ON THAT REPORT AND THE RESPONSES FOR THAT.

BUT FOR TODAY I'VE IDENTIFIED THREE AREAS OF THE PROVOKED.

A LOT OF DISCUSSION YOU MAY WISH TO FOCUS ON.

GIVEN OUR TIME CONSTRAINTS I WOULD LIKE TO JUST DESCRIBE US TO HEAR.

THEN RESERVE THE REST OF MY TIME AND LET THE OTHER SPEAKERS ADVOCATE FOR OR AGAINST THE PROPOSALS.

AND THEN I WOULD JUST TRY TO ADDRESS ANYTHING THAT COMES UP IN REBUTTAL.

THE THREE THINGS ARE FIRST, THE PROPOSED RULE SUGGEST THAT HEARSAY ALONE IS SUFFICIENT TO SUPPORT PRETRIAL DETENTION IN ANY CASE WHEREAS THE STATUTE SPECIFIES THAT HEARSAY ALONE IS SUFFICIENT TO SUPPORT PRETRIAL DETENTION AND THE MOST SERIOUS DANGEROUS CRIMES AND WE SAID HEARSAY IT SHOULD BE DEFICIENT ALONE TO SUPPORT ANY PRETRIAL DETENTION ORDER THE LEVEL OF PROOF NECESSARY TO SUPPORT A PRETRIAL DETENTION ORDER.

THIS IS A CHANGE PROPOSED AND WHAT THE STATUTE REQUIRES.

THE LAST THING IS WE PROPOSE A CHANGE IN ADDRESSING THE NECESSITY FOR THE STATES TO PROVE A CHANGE IN CIRCUMSTANCES WHEN IT CHOOSES TO SEEK PRETRIAL DETENTION NOT A FIRST TIME APPEARANCE BUT SOMETIMES AFTER THE

FIRST TIME APPEARANCE.

WE BELIEVE THAT DISPENSING THE REQUIREMENTS SET IN SOME DCA CASES IS CONSTITUENT WITH THE STATUTE.

>> IS AT YOUR ASSESSMENT THAT THE MATTER OF PRINCIPLES FOR THE GUIDING RULE HERE FOR THIS COURT SHOULD BE THAT THE RULE SHOULD SQUARE WITH THE STATUTE AND NOT ATTEMPT TO DO ANYTHING THAT THE STATUTE DOESN'T?

>> THAT IS AN INTERESTING QUESTION JUSTICE.

OBVIOUSLY YOU'VE GOT THESE PROCEDURAL DISTINCTIONS THE CORRECT ANSWER HAS POLLUTED THE SUPREME COURTS IN THE PAST AND HOW WE HANDLE THAT.

>> Justice: THIS TWO.

>> CERTAINLY, I WOULD NOT PRESUME IT IS A DIFFICULT ISSUE.

I WOULD NOT SEE THE COURT GET AROUND THAT ISSUE SUGGESTING THE AMOUNT OF COMEDY WHICH THIS COURT SHOULD ACCEPT.

>> Justice: COMEDY IS AN INTERESTING WORD HERE.

COMEDY IS A PRINCIPLE THAT PARALLEL SOVEREIGNS YIELD TO EACH OTHER.

NOT A PRINCIPAL FOR DEALING WITH THE RELATIONSHIP BETWEEN THE LEGISLATURE AND THE COURTS.

THAT IS A MATTER OF SEPARATION OF POWERS.

MY POINT IS THAT THERE ARE GOING TO BE DISPUTES ABOUT SUBSTANTIVE VERSUS PROCEDURAL IMPLICATIONS OF THE RULE IS IT BETTER TO LET ITSELF OUT AND MAKE IT SO THE STATUE AND THE RULES ARE AS CLOSELY ALIGNED AS POSSIBLE SO THERE IS A SECOND ORDER LITIGATION ABOUT WHICH GOVERNANCE.

WE KNOW WHAT THE STATUTE WOULD TRUMP ANYWAY.

SO WHY NOT JUST RESOLVE ALL DOUBTS IN FAVOR OF MAKING THE RULES SQUARE WITH THE STATUE AND LETTING THE CHIPS FALL WHERE THEY LAY ON THE INDIVIDUAL QUESTIONS?

>> I THINK THAT IS A PERFECTLY LEGITIMATE WAY OF APPROACHING IT AND I DO BELIEVE THE PROPOSAL THAT IS BEING SENT TO YOU DOES IN FACT MEET THAT GOAL.

SO, WITH THAT I WILL ADDRESS ANY OTHER CONCERNS THAT COME UP IN REBUTTAL. THANK YOU VERY MUCH.

>> Justice: THANK YOU.

>> GOOD MORNING MAY IT PLEASE THE COURT.

I AM ANDREW STANTON.

I AM HERE ON BEHALF OF CARLOS J MARTINEZ.

THE PUBLIC DEFENDER FOR THE 11TH JUDICIAL CIRCUIT.

I'M HERE TO ADDRESS IN PARTICULAR THE STEERING COMMITTEE'S PROPOSED AMENDMENT TO RULE 3.13 2F OR CREATION THEREOF.

WHICH WOULD PROHIBIT NON MONETARY CONDITIONS AT FIRST APPEARANCE. AND SO THE QUESTION BEFORE THIS COURT IS WHETHER THERE SHOULD BE A ONE-STEP PROCEDURE, ONE HEARING PROCEDURE FOR A TWO HEARING PROCEDURE.

THERE IS NO REASON GIVEN FOR THERE TO BE A NEED FOR A TWO HEARING

PROCEDURE.

THE STEERING COMMITTEE SAYS IN FACT, WELL, IT IS NOT CLEAR HOW IMPORTANT IT IS BECAUSE IT CAN EASILY BE CIRCUMVENTED BY GRANTING A LOW BOND.

AND I THINK THAT'S ALL THE COURT NEEDS TO KNOW.

A RULE THAT IS DESIGNED SUCH THAT IT SHOULD BE EASILY CIRCUMVENTED TO AVOID THE PROBLEM IS ONE THAT IS NOT FIXING A PROBLEM.

STUDENTS THE STATE SAYS, WELL, IT IS IMPORTANT TO GIVE US ADDITIONAL TIME. BEYOND FIRST APPEARANCE.

TO INVESTIGATE AND PREPARE AN ARGUMENT AGAINST FIRST APPEARANCE.

OUTSIDE OF THE PRETRIAL DETENTION SETTING, I DON'T THINK THAT HOLDS ANY WATER, BUT ONE THING, WHAT DOES THAT HAVE TO DO WITH NON MONETARY CONDITIONS?

IF YOU NEED MORE INFORMATION TO KNOW WHAT THE RELEASE OF SOMEONE SHOULD BE, THAT APPLIES TO A BOND DECISION AS WELL.

THE ONLY THING THAT IS HAPPENING HERE IS A DELAY IN WHAT HAPPENS IN THESE CASES SOMEONE WHO HAD A FIRST APPEARANCE NOW HAS TO WAIT IN JAIL OFTEN OVER THE WEEKEND UNTIL SOMEBODY CAN FILE A MOTION TO GET THEM OUT AND THAT IS EXACTLY WHAT HAPPENED TO RAYMOND.

AND THAT'S WHAT HAPPENED IN A CASE THAT IS PENDING BEFORE THIS COURT RIGHT NOW.

ROMERO.

IN THAT CASE WE HAVE TWO WOMEN WERE ARRESTED FOR DOMESTIC VIOLENCE AND THEY WEREN'T RELEASED ON PRETRIAL DETENTION THEY WERE ACTUALLY OVER THE WEEKEND ABLE TO BOND OUT.

THUS, THERE WERE NO SORTS OF PRETRIAL SERVICES RELEASED CONDITIONS ON HIM, THEY JUST HAD A LOW BOND AND THAT WAS THE SOLUTION IN THE END.

BUT, THE RULE STAYS THE SAME IT IS YOU CANNOT BE ONE HEARING SOLUTION WHERE IT IS APPROPRIATE AND IF THE STATE THINKS IT IS NOT APPROPRIATE THEY HAVE PLENTY OF WAYS TO TELL THE COURT AND I THINK PART OF THE ISSUE HERE IS, DO YOU TRUST THESE FIRST APPEARANCE JUDGES AT ALL?

BECAUSE I THINK GIVING THEM A OPPORTUNITY TO SET A BOND AMOUNT EVEN A VERY LOW BOND MEANS THAT YOU TRUST THEM TO MAKE A DECISION THAT IS GOING TO DECIDE WHETHER OR NOT THAT PERSON IS GETTING OUT AND THERE IS NO DIFFERENCE IN DECIDING, WELL MY JUDGMENT UNDER THESE CIRCUMSTANCES, THERE SHOULD BE PRETRIAL SERVICES OR HOUSE ARREST, A GREATER RESTRICTION.

THEN ANY MONETARY BOND MIGHT BE.

I DON'T ALWAYS COME UP HERE AND SAY I DON'T TRUST THE JUDGES.

>> Justice: FROM MY PERSPECTIVE I DON'T THINK IT IS TRUSTING THE JUDGES.

THE TRUST IS WHAT THE SYSTEM IS BUILT ON.

I GUESS THE PERSPECTIVE FROM WHICH I APPROACH IS THAT BOND TENDS TO BE A FLUID DETERMINATION.

IT IS A CERTAIN AMOUNT OF CONTACT WITH THE JURISDICTION OR CERTAIN

PERSPECTIVE ON THE RISK OF LIGHT AND A DEFENDANT MAY NEED TIME TO MAKE A PROPER SHOWING.

INDEED, IT IS NOT UNUSUAL FOR BOND TO BE REVOKED OR RECALIBRATED, MANY TIMES BEFORE TRIAL SO I GUESS MY REACTION IS, I DON'T KNOW HOW EXERCISED I AM BY A TWO HEARING PROCESS BECAUSE AT LEAST IN MY EXPERIENCE BOND IS NEVER JUST A LONG SHOT.

A VERY RARELY IS A ONE-SHOT DEAL.

THERE ARE CLEAR CASES WHERE YOU KNOW YOU'RE GOING TO GET PRETRIAL DETENTION BECAUSE IT IS PRESUMED OR OBVIOUS.

AND BOND IS NEVER REVISITED.

BUT WHEN THERE ARE CONDITIONS IN NONMONETARY RELEASE OR MONETARY RELIEF THAT ARE ACCESSIBLE, IT CAN BE LEAD ASSESSMENT CHANGES BETWEEN THE DATE OF ARREST AND TO SUPPRESS TWO WEEKS LATER.

GIVEN THAT, WHAT IS THE TROUBLE WITH HAVING SECOND OR THIRD OR 1/4 OPPORTUNITY FOR BOND TO BE CONSIDERED OR RECONSIDERED?

>> ONE PROBLEM IS THE COURTS EFFICIENCY NECESSARILY OBVIOUSLY YOU ARE RIGHT, IT DOES GET READDRESSSED VERY OFTEN THE LEASE.

BUT YOU ARE TYING A JUDGES HAND SAYING YOU CAN'T DO IT, DON'T EVEN THINK ABOUT IT WE WILL JUST WAIT UNTIL THE DEFENDANT COMES BACK NEXT WEEK AND ASK YOU TO CONSIDER IT AGAIN.

IT ALSO AFFECTS PEOPLE WHO – IF THE COURT WOULD HAVE, AND THIS IS WITH HAPPENING.

WOULD HAVE ORDERED SOME FORM OF NONMONETARY RELEASE, RIGHT THERE AT THE FIRST APPEARANCE, THAT PERSON COULD HAVE GONE HOME.

IF THE COURT WOULD HAVE – BUT CANNOT UNDER THIS PROPOSAL THEN, THEY SIT IN JAIL AND THIS AFFECTS REAL PEOPLE WHO LOSE REAL JOBS FOR NOT SHOWING UP.

>> IS YOUR CONCERN PRIMARILY MISDEMEANOR CATEGORIES?

>> IT IS SOLELY THOSE CASES.

NOBODY IS GETTING NONMONETARY RELEASE FOR AIR PIRACY, IT WOULD VERY SELDOM BE INTEREST THERE AND IT WOULD MAKE SENSE IF THERE WERE SOME WAY TO SEPARATE OUT THE LAND OF MISDEMEANORS FROM THIS GROUP.

BUT I THINK THE SOLUTION IS TO ALLOW JUDGES TO MAKE THE DETERMINATION IN THE FIRST INSTANCE.

I THINK THAT IS ME COUNTING UP INSTEAD OF COUNTING DOWN.

I'M SORRY.

THANK YOU.

>> Jason Cromey: GOOD MORNING JUSTICES, CHIEF JUSTICE I AM JASON CROMEY HERE ON BEHALF OF THE CRIMINAL DEFENSE LAWYERS.

I WANTED TO ADDRESS THE PROPOSED AMENDMENT AS IT RELATES TO A CHANGE IN CIRCUMSTANCE PARTICULARLY CHILD DETENTION AT A LATER DATE AFTER THE FIRST APPEARANCE.

THE PRACTICAL MATTER I FIRST APPEARANCE THE STATE HAS SUFFICIENT EVIDENCE

TO ADD LEAST MAKE THE DETERMINATION AS TO WHETHER OR NOT IT IS GOING TO INTEND TO FILE A MOTION.

THEY HAVE THE ARREST REPORT, MANY TIMES A ADVOCATE HAS BILLED TO THE VICTIMS, THEY HAVE CRIMINAL HISTORY.

>> I'M HAVING TROUBLE HEARING YOU.

>> Jason Cromey: MY FIRST APPEARANCE OF THE STATE TYPICALLY HAS ENOUGH INFORMATION TO MAKE A DETERMINATION ABOUT WHETHER OR NOT THEY ARE INTENDED TO FILE A MOTION FOR PRETRIAL DETENTION.

THEY THOUGHT THE ARREST REPORT WITH THE ALLEGATIONS THEY'VE GOT CRIMINAL HISTORY.

THIS IS A CASE THAT WE SHOULD LOOK AT RIGHT?

WE AGREE WITH THE LOGIC.

THE FIRST DISTRICT COURT OF APPEALS THAT A MOTION FOR PRETRIAL DETENTION FILED AFTER THE ENTRY OF A BOND ORDER IS A MODIFICATION OF BOND AND THEN SHOULD BE THAT CHANGE IN CIRCUMSTANCE REQUIRED ONE OF OUR CONCERNS IS THAT IF THE STATE HAS THE CAPACITY TO FILE A MOTION FOR PRETRIAL DETENTION AT ANY POINT IN THE CASE, THEN, THAT HAS THE POTENTIAL TO BECOME SORT OF A BARGAINING CHIP OR ENTERING A KIND OF PLEA NEGOTIATION AND DISCUSSIONS A DEFENDANT WHO IS OUT OF CUSTODY IS LESS LIKELY TO ENTER A PLEA TO A CASE MORE LIKELY TO A TRIAL AND JUST IN PROSPECT, I UNDERSTAND IF A DEFENDANT HAS BEEN ON BOND FOR 6 MONTHS BUT THE FACTORS OF THE COURT WOULD CONSIDER PRETRIAL DETENTION IF HE HASN'T BROKEN THE RULES.

BUT EVEN THAT PROSPECTS THE POTENTIAL INCARCERATION CAN BE CHILLING TO A DEFENDANT IN A CRIMINAL CASE.

>> UNCONSTITUTIONALLY CHILLING?

>> Jason Cromey: NO, JUST AS A PRACTICAL MATTER.

>> OKAY THAT'S PART OF THE WAY THE WORLD WORKS.

THE RULE ALLOWS A MOTION FOR PRETRIAL DETENTION ANYTIME.

I DON'T UNDERSTAND HOW YOUR ARGUMENT, IF YOUR ARGUMENT IS THAT IT IS UNCONSTITUTIONAL FOR THAT PRESSURE TO BE PART OF THE – PART OF THE CONSTELLATION FACING THE STATE AND DEFENDANT, SAY SO BUT IT SEEMS TO ME LIKE YOU ARE JUST SORT OF SAYING THIS IS THE WAY THE WORLD WORKS AND IT IS TOUGH.

>> NO I AM NOT MAKING A CONSTITUTIONAL CHALLENGE, I WANT TO MAKE THAT CLEAR.

THE WAY THE LAW CURRENTLY STANDS AS A MOTION OF A PRETRIAL DETENTION VIOLATOR IN A CASE IS CONSIDERED A MODIFICATION OF BOND WHICH REQUIRES A CHANGE IN CIRCUMSTANCES AT FIRST APPEARANCE.

AND WE BELIEVE THAT IS APPROPRIATE, THAT IS HOW THE WILL SHOULD STAY.

AS PROPOSED TO CHANGE THE CURRENT LAW BY AMENDING THE RULE TO MAKE IT CLEAR WALL OUTSIDE OF THE BOX.

IT IS OUR POSITION OF NECESSARY IF A DEFENDANT IS OUT ON BOND AND THEY HAVE THIS FEAR THAT ANYTIME THEY CAN BE BROUGHT BEFORE A JUDGE DESPITE

THEIR BEHAVIOR.

TO STATE REQUEST TO HOLD THEM PRETRIAL

SO YOU THINK THE CHANGE IN CIRCUMSTANCE SHOULD REMAIN?

>> Jason Cromey: ABSOLUTELY DO.

I THINK THAT IS THE MAIN POINT.

THE ONLY OTHER ISSUE IF I HAVE ANY TIME LEFT I WOULD LIKE TO URGE THE COURT TO CONTINUE TO ALLOW THE STATE TO HAVE DISCRETION IN DETERMINING WHETHER OR NOT PRETRIAL DETENTION AND SERIOUS CRIME CASES.

ACROSS THE STATE, THE NEW PROPOSAL IS NOT JUST A SETTING HERE THEY ARE NOT MOVING FORWARD ON PRETRIAL DETENTION.

THAT IS JUST WITH HAPPENING BUT THEY ARE IN VIOLATION OF THE RULE.

THE OTHER ALTERNATIVE IS, THEY CAN BE REASONABLE REASONS WHY THE STATE DECIDED NOT TO PURSUE THE TROUT ATTENTION WHETHER IT IS THE VICTIM'S REQUEST.

OR WHETHER IT IS JUST THE NATURE OF THE CHARGE OR LACK OF CRIMINAL HISTORY, IT DOESN'T BELIEVE IT'S NECESSARY.

BUT REMOVING THAT DISCUSSION AND MANDATING THE HEARING IN THOSE CASES TAKES TIME, IT TAKES EFFORT, IS JUST A FUTILE EFFORT NOTHING IS GOING TO HAPPEN WHEN YOU GET TO THE COURT DATE ANYWAYS.

A WEEK UNNECESSARILY WHEN A BOND COULD'VE BEEN SET.

THIS.

>> MAY IT PLEASE COURT. I AM THE DEPUTY CHIEF ASSISTANT TO THE STATE ATTORNEY IN THE 20TH CIRCUIT I AM HERE TODAY ON BEHALF OF THE FLORIDA PROSECUTING ATTORNEY ASSOCIATION TO EXPRESS OUR FULL SUPPORT FOR THE STEERING COMMITTEE PROPOSAL FOR THE AMENDMENTS TO 3.132.

>> MY GOAL IS TO FOCUS A SHORT TIME ON THE PRACTICAL IMPLICATIONS OF THE PROPOSED CHANGES.

AS OPPOSED TO TALKING ABOUT WHETHER THE COURT MUST DO IT OR WHETHER THEY MAY DO IT.

WHAT'S TALK ABOUT WHY THEY SHOULD MAKE THESE CHANGES AND ESSENTIALLY IT IS BECAUSE THEY ARE SOUND POLICY.

THE TWO MAIN AREAS REALLY ARE THE CHANGE IN THE BURDEN OF PROOF AND THE ABILITY FOR THE COURT TO RELY SOLELY ON HEARSAY AND MAKING THAT DETERMINATION ABOUT WHETHER PRETRIAL DETENTION IS APPROPRIATE.

IF I MAY, THE SAME PRACTICAL CONSIDERATIONS, I THINK TO JUSTICE, THE SAME ONES THE LEGISLATURE WAS CONSIDERING WHEN THEY WERE DEALING WITH THESE THINGS IN COMMITTEE AND ON THE FLOOR.

ARTICLE 1, SECTION 14 SPECIFICALLY THAT SECOND SENTENCE OF THAT SECTION. IT IS DOING TWO THINGS.

FIRST, IS CREATING A SUBSTANTIVE RIGHT FOR MOST CRIMINAL DEFENDANTS IN THE STATE OF FLORIDA.

AT THE SAME TIME, IT IS RECOGNIZING THAT THERE ARE COMPETING INTERESTS IN THE PUBLIC SAFETY AND IN THE ADMINISTRATION OF JUSTICE.

THERE IS NO REAL GUIDANCE BEYOND THAT TO THE COURT FOR LEGISLATURE ABOUT HOW TO IMPLEMENT THAT.

OR EVEN HOW LONG IS APPROPRIATE FOR SOMEONE WHO DOES QUALIFY FOR RELEASE TO BE HELD BEFORE THAT RELEASE IS GRANTED TO THEM.

AND I THINK THAT THE COURT AND THE LEGISLATURE HAVE DONE THAT JOB CORRECTLY AND FIRST AND FOREMOST DOING EVERYTHING THEY CAN TO MAKE THAT CREATIVE TIME AS SHORT AS POSSIBLE.

BECAUSE WE DON'T WANT TO BE HOLDING THOSE DEFENDANTS TO THE MAJORITY WHO ARE ENTITLED TO PRETRIAL RELEASE MORE THAN NECESSARY.

BUT THE FLIPSIDE OF THAT EXPEDIENCY GOING IS THAT THE PARTIES ARE NOT GOING TO HAVE THE ABILITY TO HAVE THE SAME QUANTUM OF EVIDENCE READY WITHIN THAT SHORT CREATIVE TIME AS THEY WOULD IN OTHER CIRCUMSTANCES.

AND I CAN TELL YOU, AS A PROSECUTOR AND AS A MEMBER OF THE FPAA THERE ARE A PERCENTAGE OF PRETRIAL DETENTION CASES THAT ARE COMING BEFORE THE COURT WHERE THERE IS SIMPLY NOT ENOUGH TIME IN THOSE FIVE DAYS OR EVEN IN THE 10 DAYS THAT WERE GRANTED WITH GOOD CAUSE TO BE ABLE TO DO ALL THE THINGS WE NEED TO DO.

TO LOCATE, TO ISSUE SUBPOENAS, TO GET THOSE PEOPLE SERVED, TO ARRANGE FOR TRANSPORTATION, TO AMASS WHATEVER PIECES OF EVIDENCE WE NEED TO MEET THAT BURDEN BEYOND A REASONABLE DOUBT.

SOMETIMES THAT IS TRUE WHEN THE ARREST FALLS IMMEDIATELY MAYBE THOSE WERE TALKED TO YESTERDAY BY LAW ENFORCEMENT.

IN MANY CASES THERE IS A BIG GAP BETWEEN THE LAST SUNDAY WHEN THIS IS INTERACTED WITH LAW ENFORCEMENT AND WHEN THE ARREST IS ULTIMATELY MADE AND MAYBE THERE IS A LONGER INVESTIGATION BUT WARRANTS ARE THE MOST COMMON TIME THAT IS IMPLICATED.

AS YOU ALL KNOW A WARRANT MIGHT BE ISSUED AND NOT SERVED FOR MONTHS OR YEARS BUT NEVERTHELESS THEY ARE AT FIRST APPEARANCE TOMORROW AND FIVE DAY OR EVEN 10 DAY CLOCK STARTS TICKING THE NEXT DAY.

I WOULD LIKE YOU TO ENROLL IN 3.12 AS IT STANDS TO 3.191 WHEN A DEFENDANT ALLOWS FOR A SPEEDY TRIAL ALL OF THE RULES OF EVIDENCE APPLY OBVIOUSLY THE BURDEN OF TRIAL BEYOND ALL REASONABLE DOUBT.

AND WHEN THE DEFENDANT DEMANDS THE STATE IS GIVEN 45 DAYS PLUS THE RECAPTURE.

TO DO ALL THOSE THINGS I JUST TALKED ABOUT.

TO BE ABLE TO HAVE THEIR CASE PREPARED.

AND THAT IS TRUE OF CASES THAT OF COURSE ON THAT POINT WE KNOW A LOT ABOUT.

THEY'VE BEEN PENDING ON SOMETIME.

THEY HAVE FILED INFORMATION OR SOUGHT INDICTMENT AND PRESENTED TO A GRAND JURY.

WHEN WE ARE TALKING ABOUT 31132, THESE CASES ARE PRIMARILY CASES THAT THE STATE LEARNED EVEN EXISTED THE VERY SAME DAY THE MOTION IS FILED.

THE VERY SAME DAY THAT FIVE DAY TIME.
STARTS.

AND THE STEERING COMMITTEE NOTED IN ITS RESPONSE TO THE COMMENTS THERE IS NO WAY OF KNOWING HOW MANY CASES ARE DENIED THE MOTION FOR PRETRIAL DETENTION BECAUSE THE STATE WAS UNABLE TO PRESENT NON HEARSAY TESTIMONY BECAUSE THEY WERE UNABLE TO MEET THAT HIGHER BURDEN OF PROOF IN THAT SHORT CREATIVE TIME AS A FPA REPRESENTATIVE I CAN TELL YOU WE DON'T HAVE A NUMERICAL FIGURE ON THAT AS WELL.
BUT I CAN TELL THIS COURT WITH CERTAINTY THAT THIS IS A REGULAR OCCURRENCE.

THAT IS NOT AN EXAGGERATION TO SAY THAT ON A WEEKLY OR EVEN DAILY BASIS ACROSS THE STATE OF FLORIDA THERE ARE INDIVIDUALS WHO SHOULD BE HELD IN PRETRIAL DETENTION BECAUSE THEY ARE A DANGER TO THE COMMUNITY OR A FLIGHT RISK ETC. THAT WE ARE SIMPLY UNABLE TO DO ALL OF THE THINGS THAT NEED TO BE DONE IN THAT SHORT WINDOW OF TIME.

TO MEET THAT BURDEN OF PROOF.
BY THAT EVIDENTIARY STANDARD.
AND IT IS A BALANCE.

WE GIVE THE STATE LESS TIME TO DO IT BECAUSE IT IS IMPORTANT FOR THOSE PEOPLE WHO DON'T QUALIFY TO BE RELEASED AS SOON AS POSSIBLE.
IT IS SIMPLY UNREALISTIC TO EXPECT THE STATE TO BE ABLE TO DO ALL THE THINGS THAT NEED TO BE DONE WITHIN THAT WINDOW.

FOUR MINUTES IS VERY SHORT AND I AM WAY OVER ALREADY.
LIKE THAT'S OKAY COULD YOU ADDRESS THE CHANGE IN CIRCUMSTANCES ISSUED?
>> SURE.

FIRST, I AM NOT ENTIRELY SURE THAT THE STEERING COMMITTEE'S PROPOSAL ILLUMINATES THE CHANGE IN CIRCUMSTANCES REQUIREMENT IN SUBSECTION M WHICH IS THE RECONSIDERATION.

BUT, LIKE I THINK THIS IS THE PRETRIAL DETENTION MOTION FILED AFTER FIRST APPEARANCE WHEN A DEFENDANT IS NOT IN CUSTODY.

SO A DEFENDANT IS ALREADY OUT, THE STATE DECIDES WE ARE GOING TO FILE IT NOW.

MOVIE THERE IS SOMETHING.

AND IT SAYS THERE IS SOMETHING WE DIDN'T KNOW.

NOT REALLY A CHANGE, THEY JUST WEREN'T AWARE OF IT, AS PREVIOUSLY DICTATED BY OUR CASE LAW.

IT IS BASICALLY LIKE REVOKING A BOND.

>> YES AND I THINK THAT GOES EXACTLY TO THE POINT THAT I WAS MAKING EARLIER WITH THE SPEED TO WHICH THESE THINGS NEED TO MOVE IN ORDER TO BALANCE THOSE INTERESTS TO THE DEFENDANTS.

AND THERE ARE MANY THINGS THAT A PROSECUTOR CANNOT KNOW WHETHER A LAW ENFORCEMENT KNOWS THEM OR NOT OR VICTIMS OR WITNESSES KNOW THEM, THERE ARE MANY THINGS WE CANNOT KNOW IN THAT SHORT WRIT OF TIME

ESPECIALLY BETWEEN ARREST AND FIRST APPEARANCE.

AND WHILE THERE ARE A CATEGORY OF CASES THAT THE STATE MUST FILE A MOTION FOR PRETRIAL DETENTION AT FIRST APPEARANCE, THERE ARE ALSO A SIGNIFICANT CATEGORY OF CASES WHERE WE MAY FILE A MOTION AT PRETRIAL AT FIRST APPEARANCE AND WE DON'T HAVE SUFFICIENT BASIS TO FILE A MOTION AT THAT TIME, WE HAVE TO RELY ON SUBSECTION C OF 907.401 WHICH IS I THINK IS WHAT THAT SUBSECTION IS ADDRESSED.

I THINK IT IS APPROPRIATE WE NOT NEED TO SHOW GOOD CAUSE SIMPLY THAT WE HAVE INFORMATION THAT WE DID NOT PREVIOUSLY HAVE.

WITH THAT, I VERY MUCH APPRECIATE THE BOARD GIVING US TIME TO GIVE US A PRACTICAL PERSPECTIVE, THANK YOU VERY MUCH YOUR HONOR.

>> Darrick Monson: GOOD MORNING YOUR HONOR DEREK MONSON ON BEHALF OF THE ATTY. GEN.

I WANTED TO SUMMARIZE WHY WE THINK IT IS IMPORTANT TO HARMONIZE ITS RULES WITH THE STATUTE MORE BROADLY.

A LOT OF MY FELLOW COMMENTERS HAVE TAKEN THE VIEW THAT IF ONE OF THE PROVISIONS IN THE STATUTE IS PROCEDURAL, THIS COURT IS FREE TO EITHER REJECT IT, MODIFY IT THE LEGISLATION IS NOT BINDING ON THAT PORT.

AS A INITIAL MATTER I THINK A MOTION THAT WE AGREE WITH SOME OF THE COMMENTERS THAT IT IS NECESSARILY CLEAR IN ALL OF THESE CASES.

IT HELD THE SUBSTANCE PROCEDURE ANALYSIS SHAKES OUT WITH ANY OF THESE PROVISIONS.

BUT, IN ANY EVENT, WE WOULD NOTE THAT EVEN AS TO PROCEDURAL PROVISIONS THAT IS SOMETHING THE INQUIRY – BECAUSE THE COURT'S PRECEDENTS HAVE ALLOWED THE LEGISLATURE TO REGULARLY PROCEDURE WHEN THOSE REGULATIONS ARE IMPLEMENTING SOME SUBSEQUENT DIVISION.

THE COURT CAN REGULATE THE PROCEDURES INTENDED BECAUSE THE DEATH PENALTY ITSELF IS A SUBSTANTIVE REGULATION.

SIMILARLY WE THINK THAT PRETRIAL RELEASE, PRETRIAL DETENTION ONLY THINKS IT AFFECTS THE LIBERATE INTEREST OF CRIMINAL DEFENDANTS ARE SUBSTANTIVE INTEREST THAT THE LEGISLATION MAY – THEREFORE IT IS FREE TO REGULATE THE PROCEDURES THAT ARE ATTEMPTING TO ADJUDICATE THAT INTEREST.

AND THEN SECOND, EVEN REGARDLESS OF WHETHER THE LEGISLATION CONTROLS JUST AS – WAS REPRESENTING EARLIER.

THERE IS A LOT OF VALUE IN HARMONIZING THE RULE OF THE STATUTE IN THE EVENT BECAUSE IT PROVIDES CLARITY.

TWO LITIGANTS AND THE LITIGATION ABOUT WHICH RULES THEY HAVE TO FOLLOW. IF THE RULES CONTINUE TO BE THE RULES OF STATUTES WE – IN SOME INSTANCES THE RULES GOVERN, IN OTHERS THE COURT CAN CUT UP ALL OF THE LITIGATION AND PROVIDE CLARITY SIMPLY BY HARMONIZING THE RULES WITH THE STATUTE.

>> IF WE THOUGHT THE RULES CONSISTENT WITH THE STATUTE DO YOU THINK LITIGANTS WOULD BE PRECLUDED FROM RAISING SEPARATION OF POWERS ISSUES.

>> YES, I THINK IF THERE WAS A RULE ON POINT POWER VIOLATION BECAUSE THIS COURT THEN ONLY ADOPTED A RULE.

A STATUTE AND A RULE GUARANTEEING THAT RULE GOVERNS I THINK THAT IS THE APPROACH THE COURT HAS TAKEN WITH THE EVIDENCE CODE.

RULES OF EVIDENCE MIGHT BE PROCEDURAL DEPENDING ON THE RULE BEFORE AS A GENERAL MATTER HAS ADOPTED INTO ITS CODE JUST TO AVOID THE ISSUE.

AND THEN LASTLY, I WILL JUST POINT OUT THAT THIS COURT ALSO HISTORICALLY RECOGNIZES THE LEGISLATURES ROLE EVEN IN MATTERS OF PROCEDURE FOR EXAMPLE THE CONSTITUTION DOESN'T GIVE THE LEGISLATURE THE AUTHORITY TO REPEAL RULES OF PROCEDURE BY TWO THIRDS VOTE WHICH THAT THRESHOLD WAS MET IN THIS CASE OF THE STATUTE PASSED BY OVERWHELMING MAJORITIES IN BOTH PASSES.

ARGUE TO THE EXTENT THAT IT IS INCONSISTENT THE COURT RULES HAVE ACTUALLY BEEN REPEALED, THAT DOESN'T NECESSARILY GET THE LEGISLATURE TO REPLACE THE ROOF BUT, THE LEGISLATURE ADOPTED THE STATUTE OF CONCERNS FOR PUBLIC SAFETY, THINGS THAT GO BEYOND JUST GENERAL COURTROOM ADMINISTRATION.

IN THE LEGISLATURE REPRESENTS THE PEOPLE, SO WE THINK THE COURT SHOULD GIVE THEIR JUDGMENT CONSIDERABLE WEIGHT.

>> SO IS THERE A PRECEDENT THAT TREATS HER THIRDS ADOPTED LAW AS HAVING – IS COUNTING A REPEAL WHERE YOU ARE DISSING A MATTER OF PRINCIPLE.

>> I ASSUME YOU'RE TALKING ABOUT A STATUTE THAT DOES NOT EXPRESSLY REPEAL A RULE.

I THINK THE CLOSEST WE HAVE IS THE CASE V CRANE.

THE COURT WANTED TO ADOPT THE STANDARD.

THE COURT DECIDED THAT THE STATUTE IN THAT CASE WAS NOT A EXPRESS REPEAL DID NOT REPEAL THE COURTS RULE BUT IN ORDER TO GET THAT DETERMINATION THE COURT LOOKED AT THE VOTE COUNT.

AND DECIDED THAT THEY HAD MET THE THRESHOLD.

SO THE COURT DID NOT INDICATE AT ALL THAT THERE HAD TO BE SOME SORT OF MAGIC WORDS REQUIREMENT OR EXPRESS REPEAL AS LONG AS THE STATUE IS INCONSISTENT WITH THE RULES, IT MEETS THE THRESHOLD, WE THINK THAT IS SUFFICIENT TO CONSTITUTE A REPEAL.

>> THERE ARE NO FURTHER QUESTIONS.

THANK YOU.

>> MAY IT PLEASE THE COURT.

>> Robert Porter: MY NAME IS ROBERT PORTER, TOGETHER WE REPRESENT 1911 PUBLIC DEFENDERS AS WELL AS 19 SUPPORT STAFF.

AND WE RESPECTFULLY ASK THE COURT TO NOT ADOPT THE PROPOSED AMENDMENTS BECAUSE IT WILL HARM THE DEFENDANTS WHO ARE PROPOSED TO BE INNOCENT.

I'M USING MY TIME TODAY TO PROPOSE SECTIONS I AND L. AND EXPLICITLY STATES THERE IS NO RIGHT TO COMPETITION AND PRETRIAL HEARINGS.

WE FEEL THIS WOULD BE UNWISE FOR A NUMBER OF REASONS.

FIRST, RATHER THAN CLEARING OUT INCONSISTENCIES BETWEEN THE RULE AND THE STATUTE PROPOSE SUBSECTION H PROVIDES THE RIGHT TO CROSS-EXAMINE WITNESSES AND PRETRIAL DETENTION HEARINGS BUT IT WOULD EXPRESSLY STATE THERE IS NO RIGHT TO COMPETITION.

AT THE VERY LEAST IT WOULD SUBJECT TRIAL JUDGES TO LEGAL CHALLENGES THAT WERE INTENDED TO BE PREVENTED BY THESE PROPOSED AMENDMENTS.

>> BUT ISN'T IT JUST THE CASE THAT IF HEARSAY EVIDENCE IS ADMISSIBLE, ONE THING THAT IS BAKED INTO THAT STATEMENT IS THE ABSENCE OF CERTAIN COMPETITION PROTECTIONS?

HEARSAY IS BY DEFINITION TESTIMONY OR EVIDENCE THAT DOESN'T GET SUBJECT TO CROSS-EXAMINATION.

IF IT WERE TRULY SUBJECT TO CROSS-EXAMINATION THAT WOULD BE HEARSAY.

>> THAT IS CORRECT.

I'M JUST POINT OUT THE RULE DOES PROVIDE THIS RIGHT.

>> BUT THE SIXTH AMENDMENT RIGHT IS A TRIAL RIGHT.

IT IS NOT A RIGHT THAT ATTACHES FIRST APPEARANCE, IT DOESN'T ATTACH IN PRETRIAL PROCEEDINGS.

AND, YOU START OUT BY TALKING ABOUT THE PRESUMPTION OF INNOCENCE, THAT IS JUST NOT OUR LAW.

WE HAVE A PROOF EVIDENT PRESUMPTION GREAT PRISON VISION IN THE BOND STATUE AS WELL.

RULES THAT TELL US WHAT ATTACHES AT THIS POINT, THE DETERMINATION AT THIS POINT IS LOW THERE IS PROBABLE CAUSE TO SUPPORT THE CHARGES AND THEN RESPECT TO WHETHER A DEFENDANT SHOULD BE DETAINED WHETHER THERE COULD BE SHOWING ABOUT THE DANGER OF COMMUNITY OR RISK OF FLIGHT. I DON'T SEE THE CONSTITUTIONAL DIMENSION TO THIS THAT YOU SEEM TO BE SUGGESTING.

>> UNDER SPAWNING OUT THE INCONSISTENCY WITHIN THE RULE.

THERE IS A RIGHT TO CROSS-EXAMINATION.

>> IT DOESN'T INAPPROPRIATELY QUALIFY SO THERE IS NOT A CONFLICT IF IT LIMITS – IT DOESN'T LIMIT.

THAT THERE DEFENDANT IS ENTITLED TO CROSS-EXAMINE WITNESSES THAT TESTIFIED.

WIESENTHAL SUFFICIENTLY QUALIFIED IN SUBSECTION I, HEARSAY EVIDENCE INTRODUCED, THAT IS KIND OF A DIFFERENT CATEGORY.

>> IT IS BUT IF WE ALLOW A RIGHT TO CROSS EXAMINATION AT THE SAME TIME ALLOW A POLICE REPORT FOR THE STATE TO MEET THE BURDEN BASED ON JUST A STATE REAL POLICE REPORT IT IS A EMPTY RIGHT TO CROSS-EXAMINE WITNESSES IF THERE ARE NO WITNESSES IS WHAT I'M TRYING TO POINT OUT.

BUT, I ALSO WANT TO GET TO THE HEARSAY ASPECT OF THIS.

AND THE EXPANSION OF – BEYOND THE STATUTE.

IT ONLY ALLOWS OF – HEARSAY.

FOR THE MOST SERIOUS DANGEROUS CRIMES.
THOSE ARE BEING FEELINGS OF THE FIRST DEGREE.
WHERE THE RULE WILL CHANGE THAT TO ANY DANGEROUS CRIME.
AND THAT COULD EVEN INCLUDE MISDEMEANORS FOR EXAMPLE, STALKING IS WHAT
THE MISDEMEANOR AND DANGEROUS CRIME CHARGE OF MISDEMEANOR STALKING
BASED ON NOTHING MORE THAN A POLICE REPORT CONTAINING HEARSAY THAT IS
OFTEN MULTIPLE LAYERS OF HEARSAY, DOUBLE, EVEN TRIPLE HEARSAY WITHOUT
ANY OF THOSE WITNESSES BEING ACTUALLY PRESENTED.
AND, AS YOU MAY HAVE GATHERED THIS CREATES ANOTHER CONFLICT BETWEEN
THE RULE AND THE STATUTE.
SUBJECT US TO EVEN MORE LITIGATION IN THE FUTURE.
I SEE I'VE RUN OUT OF TIME.
THANK YOU FOR YOUR TIME.
THIS.

>> Hon.Laura Ward: HI EVERYBODY, GOOD MORNING.

MR. CHIEF JUSTICE, JUSTICE OF THE COURT MAY IT PLEASE THE COURT, MY NAME IS
LAURA WARD, I AM A CIRCUIT COURT JUDGE IN HILLSBOROUGH COUNTY, IT IS MY
HONOR TO BE HERE TODAY ON BEHALF OF THE CRIMINAL PROCEDURAL RULES
COMMITTEE.

ENDED ADDITION TO MY COMMITTEE WORK I'VE BEEN A FELONY DIVISION JUDGE
FOR NEARLY 7 YEARS DURING EXCLUSIVELY BONY CASES ALL DAY LONG EVERY DAY.
AND AFTER THAT I SERVED AS A PRESIDING JUDGE IN OUR PRETRIAL DETENTION
DIVISION WHICH IN OUR CIRCUIT IS COMBINED WITH FIRST APPEARANCE AND IT IS
WHERE NEARLY ALL OF THE PRETRIAL DETENTION MOTIONS FOR OUR CIRCUIT IN
THOSE CASES ARE HEARD.

SO HAVING FIRST-HAND EXPERIENCE IN NAVIGATING ITEM 7.041 FROM A JUDGES
PERSPECTIVE, I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY.

AND I WILL HAVE READ THE CRIMINAL PROCEDURE RULES COMMITTEE COMMENTS
SO I WON'T REHASH EVERYTHING HERE IN DETAIL, BUT WHAT I REALLY WANT TO
HIGHLIGHT TODAY WAS OUR COMMITTEE'S DISCUSSION REGARDING THE NEED FOR
GUIDANCE RELATING TO THE MANDATORY SHALL BE FILE LANGUAGE IN 9074.1 05D.
THIS REVISION HAS CREATED SERIOUS PRACTICAL CHALLENGES FOR THOSE OF US
WHO HAVE TO WORK WITH THIS STATUE ON A DAILY BASIS, MANY STATE ATTORNEYS
TAKE THE POSITION NOW THAT THEY DO NOT HAVE THE DISCRETION TO REFRAIN
FROM FILING PRETRIAL DETENTION MOTIONS.

AS THINGS STAND RIGHT NOW, THERE ARE MANY, MANY UNNECESSARY PRETRIAL
DETENTION MOTIONS AND MANY UNNECESSARY HEARINGS BEING HELD.

AND SPECIFICALLY WHAT I'M REFERENCING HERE ARE CASES WHERE INDIVIDUALS
ARE ALREADY BEING HELD AT NOBODY.

EITHER BECAUSE THEY HAVE A PENDING VIOLATION OF PROBATION STATUS OR
BECAUSE THEY HAVE CHARGES WITH CHARGES PENDING AND HAVE ALREADY HAD
THEIR BOND REVOKED PURSUANT TO SECTION 903.04 STATUTES.

IN OTHER WORDS, THESE DEFENDANTS, AND THERE ARE MANY OF THEM CANNOT

GET OUT OF JAIL ANYWAY.

SO THERE IS NO PRACTICAL NEED FOR A PRETRIAL DETENTION HEARING PURSUANT TO THIS NEW STATUTE IN THESE SITUATIONS.

IT IS IMPORTANT TO NOTICE PRETRIAL DETENTION HEARINGS CAN BE LENGTHY AND SOMETIMES COMPLEX EVEN IN THE SIMPLEST PRETRIAL DETENTION CASE, TESTIMONY IS OFTEN REQUIRED FROM LAW ENFORCEMENT WHERE CRIMINAL DEFENDANTS POSE NO HARM OR RISK TO THE COMMUNITY.

>> AREN'T WE BOUND BY THE LEGISLATURE'S CHOICE HERE?

IT SOUNDS LIKE THEY BALANCE DISEASE EFFICIENCIES AND INEFFICIENCIES AND SPOKE PRETTY QUICKLY AND 90704 D ON WHAT AUTHORITY DO WE SAY THAT IS NOT REALLY WHAT IT MEANS?

>> ETHIC THE ISSUE THAT WE HAVE HERE IS THE CRIMINAL COURT STEERING COMMITTEE PROPOSAL IS NOW SILENT TO WHAT THE COURT SHALL DO AND WHAT THE STATE SHALL DO.

THE ISSUE WITH THAT IS, WE ARE LEFT WITH THE LANGUAGE IN THE STATUTE AND A LOT OF THESE THINGS REALLY DON'T GO TO THE AIM OF THE STATUTE WHICH IS PROTECTING THE AIMS OF THE STATUTE.

>> THAT SEEMS TO BE A LEGISLATIVE JUDGMENT.

>> Hon.Laura Ward: EITHER BY COMMENTING OR STATING IN THE RULE THAT THERE IS SOME JUDICIAL PERSPECTIVE.

SO MAYBE THE PRACTICAL THING TO DO IS TO SAY UNDER THE STATUTORY OF THE STATE HAVE TO FILE A MOTION OR FILE IT IN ALL THESE CASES.

AND MAYBE THE STEERING COMMITTEE DOES THIS AND 3.132 E AND THE PROVISION FOR CONTINUANCES WHERE A CASE CAN BE CONTINUED WHERE THE PARTY OTHERWISE AGREES.

I THINK TO START, THIS MAJOR ISSUE WHICH IS THESE CASES, THESE CATEGORY OF CASES, THEY ARE NOT GOING ANYWHERE.

IF THAT STATUS CHANGES, THEN WE CAN ADDRESS THE PRETRIAL DETENTION.

I THINK BY SIDE STEPPING AND SKIRTING THAT, WE ARE NOT GETTING THE PEOPLE IN THE WEEDS IN THE TRENCHES EVERY DAY, THE GUIDANCE THAT THEY NEED IN THE DISCRETION PARTICULARLY OUGHT TO BE ABLE TO EXERCISE WHICH IS LET'S MAKE THE STATE FILED A MOTION BECAUSE THAT'S WHAT THE STATUTE SAYS.

BUT THEN IN SOMEPLACE ELSE IN THE RULE, LET'S MAKE SOME JUDICIAL DISCRETION AS TO WHEN THE HEARING HAS TO BE HAD.

SO MAYBE THAT IS THE CONTINUANCE LANGUAGE, BUT ALSO, PRACTICALLY I THINK JUST SAYING SOMETHING LIKE TRIAL JUDGES CAN EXERCISE DISCRETION TO HOLD OFF ON THESE HEARINGS UNTIL LESS EMOTION IS ACTUALLY NECESSARY TO KEEP THE DEFENDANT – IN HILLSBOROUGH COUNTY IN 2024, WE HAD 900 PRETRIAL DETENTION HEARINGS.

AND THIS IS TAXPAYER MONEY, IT IS RESOURCES FROM ALL OF THE GOVERNMENTAL AGENCIES AND STATE ATTORNEY'S OFFICE.

THE PUBLIC DEFENDER'S OFFICE, LAW ENFORCEMENT AND OUR CIRCUIT THE STATE AND PDAS HAVE HAD TO HIRE NEW PERSONNEL JUST TO DEAL WITH THE PRETRIAL

DETENTION.

SO, THERE ARE – I THINK SOME GUIDANCE THAT IS NEEDED.

WHETHER IT BE IN THE COMMENT FROM THE RULE OR IN SOME OTHER FASHION AND THAT IS WHAT OUR –.

>> JUDGE, CAN ASK A QUESTION, JUST MAKE SURE YOU UNDERSTAND, SO ESSENTIALLY WHAT YOU'RE ASKING IS – IN A SITUATION WHERE THERE IS NO NEED TO CONSIDER PRETRIAL DETENTION BECAUSE FOR SOME OTHER REASON THEY ARE NOT GETTING OUT OF JAIL PRIOR TO TRIAL, THAT REALLY THE STATUTE DOESN'T EVEN – DOESN'T EVEN APPLY.

ESSENTIALLY, BECAUSE THEY ARE NOT EVEN SUBJECT TO BEING RELEASED.

>> RIGHT.

AND ABSOLUTELY NO RISK OF HARM TO THE COMMITTEE BECAUSE THEY ARE NOT GOING ANYWHERE.

THEY OUGHT TO BE ACCEPTED OUT IN SOME FASHION AND I THINK, WHEN WE INCORPORATE THE RULES AND ADOPT THE RULES OR CHANGE THE RULES, WE DO NEED TO MIRROR THE STATUTE BUT I THINK WE CAN ALSO DO THAT AND GIVE SOME GUIDANCE AND SOME HELP SO THESE TOTALLY UNNECESSARY CASES ARE REMOVED.

>> THAT WOULD BE BY AGREEMENT – IS THAT CORRECT?

>> SO WHAT IS WRONG WITH THAT?

>> AND MAYBE IT DOES,

>> IF YOU THINK IT DOESN'T, WHY DOESN'T IT?

>> IT ONLY DOES IF YOU HAVE REASONABLE AND RATIONAL PLAYERS ON ALL SIDE. THE LANGUAGE OF THAT CONTINUANCE,

>> OF WHO IS THE RATIONALE?

WHOSE IRRATIONALITY DO YOU EXPECT WOULD INTERFERE WITH THAT WORKING?

>> I THINK IT DEPENDS ON THE JURISDICTION, THE STATE ATTORNEY, THE PUBLIC DEFENDER AND IT DEPENDS ON THE REASONABLENESS OF ALL INVOLVED.

>> IS RANDOMLY DISTRIBUTED.

>> APPARENTLY THERE IS NO TEST FOR IT.

IF YOU COULD JUST SAY OKAY, WE AGREE, EVERYBODY AGREES THAT WE ARE GOING TO CONTINUE THIS MATTER BECAUSE THE DEFENDANT IS IN ON NO BOND. AND WHEN THAT STATUS CHANGES WE WILL REVISIT IT.

MAYBE THAT CONTINUANCE IS THERE BUT I'M JUST WORRIED THAT IT MIGHT NOT IN ALL CASES.

I AM AWARE OF MY TIME.

YOU ALL HAVE BEEN WONDERFUL, THANK YOU SO MUCH.

>> THANK YOU I JUST HAVE ONE OR TWO OBSERVATIONS.

>> COULD YOU START WITH THE LAST ISSUE?

>> I MEAN THE COMMITTEE ESSENTIALLY BELIEVED THAT IT WOULD BE BEST TO JUST SIMPLY HEAR THE REQUIREMENTS OF THE STATUTE AND THAT IS WHAT WE'VE DONE. THE STATUTE DOES REQUIRE THE HEARING AND THAT IS OUR PRIMARY REASON FOR KEEPING THAT.

I DON'T KNOW IF I HAVE ANY OTHER COMMENT TO JUDGE WARDS CONCERNS OTHER THAN WHAT WE'VE ALREADY WRITTEN, THE STATUTE REQUIRES THE FILING OF THE MOTION AND THE HEARING?

OR JUST THE FILING IN THE MOTION?

>> IT REQUIRES THE FILING AND THE MOTION AND WE DO THE RULE EXPLICITLY STATES THE HEARING IS REQUIRED.

IT DOESN'T SAY ANYTHING ABOUT FILING A MOTION BECAUSE OF SOME CONCERNS WE HAD WITHIN THE COMMITTEE.

>> AND I UNDERSTAND THOSE CONCERNS BUT OUR SOLUTION WAS TO SIMPLY PUT IN THE RULES REQUIRED BY THE STATUTE.

>> AND IS THERE ANYTHING BEYOND JUST HAVING THE CONTINUANCE OPTION IN THEIR THE WAY IT IS PROPOSED TO BE IN THERE?

I AM SORT OF A COMMENTARY SKEPTIC,

>> I AGREE.

I DON'T THINK THAT ANY OTHER CHANGES WOULD BE REQUIRED TO ADDRESS THAT?

>> CAN I ASK YOU ABOUT THE GOOD CAUSE WE.

>> I THINK THAT IS BASED ON K. WRIGHT, THE DIVISION K IN THE STATUTE.

THAT A PARTY MAY MOTION FOR PRETRIAL DETENTION TO BE RECONSIDERED BEFORE A DEFENDANT'S TRIAL IF THERE IS INFORMATION THAT DOESN'T EXIST.

IS THAT WHAT THE STATE DOESN'T HAVE TO SHOW GOOD CAUSE?

OR IS THAT A DIFFERENT – LIKE THAT IS A DIFFERENT PROVISION JUSTICE.

WHAT WE ARE TALKING ABOUT – THIS IS PRIMARILY A CASE CALLED BUSH IN THE FIRST DISTRICT COURT OF APPEAL.

THE REASON WE NEED TO HAVE THIS PROVISION, WHAT HAPPENED TO THAT CASE IS THE PROSECUTOR MADE A MISTAKE AT FIRST APPEARANCE.

AND FAILING TO SEEK PRETRIAL DETENTION AND ANOTHER POLICY CAN BE RELATED THE SAME DAY, FILED A MOTION FOR PRETRIAL DETENTION.

THE DEFENDANT SAID WAIT A MINUTE, THAT CONSTITUTES A MODIFICATION OF BOND AND UNDER A DIFFERENT RULE, 3.131, THE STATE IS REQUIRED TO DEMONSTRATE A CHANGE IN CIRCUMSTANCES UNDER ORDER TO HAVE A MODIFICATION.

THE FIRST ORDER OF APPEAL AGREE WITH THE DEFENDANT AND SAID, IT'S IN THAT CIRCUMSTANCE THERE HAS TO BE A CHANGE, A CHANGE IN CIRCUMSTANCE TO SUPPORT PRETRIAL DETENTION.

THERE WAS IN THAT CASE, THE COMMITTEE WAS CONVINCED BY JUDGE RAY'S DEFENSE THAT THE STATUTE DOES REQUIRE ANY KIND OF A SHOWING THAT THERE WOULD BE A CHANGE IN CIRCUMSTANCES WHEN SEEKING PRETRIAL DETENTION, AT THE FIRST INSTANCE.

BUT AFTER FIRST APPEARANCE, THE STATUTE DOESN'T REQUIRE IN THE RULE DOESN'T REQUIRE IT BECAUSE, WHAT IT DID IS, USE THE REQUIREMENTS OF A DIFFERENT RULE.

THERE IS A QUALITATIVE DIFFERENCE BETWEEN BAIL AND PRETRIAL DETENTION SO WE BELIEVE USING RULE 3.131 WAS NOT APPROPRIATE SO WE DISPENSE WITH THE REQUIREMENT THAT NEEDS TO BE A CHANGE IN CIRCUMSTANCES WITH US

CONSISTENT WITH THE STATUTE.

AS FAR AS THE CONTENTION THAT HEARSAY ALONE, I WILL JUST NOTE THAT, THE COURT STATES THAT THE STATE CAN MEET ITS BURDEN WITH AFFIDAVITS AND TRANSCRIPTS.

AND IN OUR THIRD HEARING IT SUGGESTS THAT HEARSAY ALONE IS SUFFICIENT. MOREOVER, IN A VIOLATION OF RELEASE CONDITIONS AND REVOCATION OF BAIL, TYPICALLY HEARSAY ALONE IS GOING TO BE SUFFICIENT TO SUPPORT PRETRIAL DETENTION.

SO ESSENTIALLY, YOU JUST GOT THIS NARROW LANE WHERE HEARSAY IS NOT SUFFICIENT TO SUPPORT PRETRIAL DETENTION.

WE DID NOT SEE ANY PARTICULAR REASON FOR IT, THE POINT OF THOSE OTHER CASES, THERE IS NOTHING INHERENTLY WRONG WITH BASING A PRETRIAL DETENTION ORDER SOLELY ON HEARSAY.

AND THAT IS WHY WE SAY THAT IS REQUIRED.

AND THE LAST THING I WILL SAY IS THAT, THE RIGHT TO CROSS EXAMINATION MEANS THE RIGHT TO CROSS-EXAMINE THE WITNESSES THAT MAY APPEAR AT A HEARING. IT DOESN'T MEAN THAT THEY HAVE A RIGHT TO COMPEL WITNESSES SO THEY MAY BE CROSS-EXAMINED.

I DON'T THINK THAT IS INSUFFICIENT AND WITH THAT IF YOU HAVE ANY OTHER QUESTIONS, I WILL ASK THAT YOU APPROVE OUR PROPOSAL.

THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH FOR ALL OF THE COMMENTERS AND COMMITTEES HARD WORK ON THIS.

WE APPRECIATE IT.