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COURT OF APPEALS  
STATE OF NEW YORK

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PEOPLE,

Appellant,

-against-

NO. 64

ALVIN KING,

Respondent.

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20 Eagle Street  
Albany, New York  
May 15, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Chrishanda Sassman-Reynolds  
Official Court Transcriber



1 CHIEF JUDGE WILSON: Last case on today's  
2 calendar is Number 64, People v. King.

3 MR. OASTLER: Good afternoon, Your Honors. Brett  
4 Oastler, on behalf of the People.

5 The rule, I think, that this court should come  
6 down with in this case - - - there could be a couple  
7 variations, but it could be as simple as this: the amended  
8 Section 30.30, subsection 5 of the CPL should not be  
9 applied to cases that were commenced and were trial ready,  
10 where the People declared readiness for trial prior to  
11 January 1st, 2020.

12 CHIEF JUDGE WILSON: Those are both necessary  
13 conditions, commenced and trial ready?

14 MR. OASTLER: I - - - I think - - - I think that  
15 is a rule that would make sense. I think you could - - - I  
16 would say you could also - - -

17 CHIEF JUDGE WILSON: I'm just - - - I was just  
18 trying to clear up your - - - your articulation.

19 MR. OASTLER: Absolutely.

20 CHIEF JUDGE WILSON: I was just trying to make  
21 sure you weren't saying if it's commenced that's enough or  
22 if it's trial ready, that's enough. It's both?

23 MR. OASTLER: I - - - I think it could be either  
24 one. However, if the court wanted to narrow it down as  
25 much as - - - as we could, I think it would be consistent

1 with the reading of the statute and - - - and all the ways  
2 in which we interpret - - -

3 CHIEF JUDGE WILSON: And by trial ready, there  
4 would have been a - - - a statement of readiness made  
5 either on the record or off record?

6 MR. OASTLER: Correct. Correct. And I say that  
7 because I - - - I think this is sort of the - - - the main  
8 crux of my argument is that when the People declared ready  
9 for trial in this case in April of 2019, that's a legal  
10 status. It's a effectively a legal document. And it could  
11 be, obviously, just an oral statement on the record. But  
12 it's a legal status that the - - - that the People set  
13 forth. And to apply the amended 30.30 and its connection  
14 to 245 to effectively nullify that - - -

15 JUDGE RIVERA: No, it doesn't nullify it.

16 MR. OASTLER: I - - -

17 JUDGE RIVERA: It - - - it's just imposing  
18 requirements starting Jan 1. It doesn't nullify the fact  
19 that you declared ready, and you were in that ready status  
20 at that time. Just saying now you've got these  
21 requirements, satisfy those requirements to continue your  
22 readiness status.

23 MR. OASTLER: Except that's not exactly what the  
24 statute said. The statute says to - - - to declare ready,  
25 you must, you know, follow 245 et cetera.

1 JUDGE RIVERA: Under the new regime.

2 MR. OASTLER: Under the new regime.

3 JUDGE RIVERA: Correct.

4 MR. OASTLER: But when the People declared ready  
5 there was not - - -

6 JUDGE RIVERA: The prior regime, you were ready.

7 MR. OASTLER: Right. Right. The statute didn't  
8 - - - did not - - - did not say that as of January 1st,  
9 prior statements would be invalidated.

10 JUDGE GARCIA: Counsel, you're not saying - - -  
11 I'm sorry. You're not saying that the new - - - new - - -  
12 the additional discovery obligations effective January 1  
13 wouldn't apply to your case? That - - - that's not how I  
14 take your argument.

15 MR. OASTLER: I don't think - - - I - - - I would  
16 say that I don't think they were to apply to this case.  
17 And part of the reason I would say that is because if we  
18 looked at the timelines laid out in 245, the - - - at this  
19 - - - at that time, fifteen days to comply. And then the  
20 defense getting a reciprocal thirty days to comply with our  
21 January 27th - - -

22 JUDGE GARCIA: It seems to me if you uncouple the  
23 discovery obligations from the 30.30 penalty or link, which  
24 we said was the radical new thing in Glendale, you're not  
25 upsetting any status. You're just saying you have to



1 provide them with this material before you go to trial.  
2 You haven't gone to trial yet. Why don't you have an  
3 obligation to provide them with it?

4 MR. OASTLER: So in - - - in - - - in that way, I  
5 would agree that we could - - - the People could be said to  
6 be obligated to provide that as long as, of course, though,  
7 that did not invalidate their prior statement of readiness.  
8 In this case, I - - - you know, the - - - the items that we  
9 hadn't turned over were the grand jury minutes, which there  
10 was no obligation to before 245.

11 JUDGE TROUTMAN: So are you arguing that the - -  
12 - the status of being ready should have stayed in place?  
13 But if the law changed and they asked for those things, are  
14 you saying you weren't obligated, or you should be given an  
15 opportunity to then satisfy the next part?

16 MR. OASTLER: I think it would be fair to permit  
17 the People an opportunity to satisfy, as - - - as we  
18 attempted to do here.

19 JUDGE TROUTMAN: And the reading here, did that  
20 allow for an opportunity to then satisfy as of the  
21 effective date?

22 MR. OASTLER: Well, the court - - - the trial  
23 court in this instance - - - I don't know if it's exactly  
24 clear, but I would say that it essentially did not apply  
25 245, or at least, the connection to speedy trial. The

1 court said please provide the grand jury minutes and the -  
2 - - you know, the electronic discovery that we - - - we  
3 also provided. But the court rejected any sort of  
4 challenge to the - - - to our prior statement of readiness.

5 JUDGE HALLIGAN: I'm a little - - -

6 JUDGE RIVERA: I'm a - - - I'm a little confused.

7 JUDGE HALLIGAN: Sorry, Judge.

8 JUDGE RIVERA: Did you ask for more time? Did  
9 you - - - say that there are extraordinary circumstances or  
10 the reason that we need more time, so that we're - - - we  
11 don't suffer the consequences under the new regime - - -

12 MR. OASTLER: We - - - we did not - - -

13 JUDGE RIVERA: - - - under 30.30?

14 MR. OASTLER: - - - but I - - - I don't know that  
15 we needed to because we - - - I - - - you know, I - - - we  
16 - - -

17 JUDGE HALLIGAN: Well, that's what I want to  
18 clarify, if I can. I'm not sure I understand your  
19 position. Is it that the 245 requirements applied to you,  
20 but you should have been given more time? And if you  
21 didn't comply within whatever that window would then have  
22 been, that then you - - - you could have had your case  
23 dismissed? Or are you arguing that 245 applied, but not  
24 the sanction of dismissal under 30.30?

25 MR. OASTLER: I think the latter would be the

1 more fair and consistent - - -

2 JUDGE HALLIGAN: And why is that consistent with  
3 the language of the statute, that latter interpretation?

4 MR. OASTLER: Because the statute is of such  
5 magnitude or breadth in terms of - - - of - - - of the  
6 demands upon one party here.

7 JUDGE HALLIGAN: So I mean, that - - - that, for  
8 me, raises a question I'm not sure I understood about the  
9 legal framework that we should apply here. So you cite  
10 Berkovitz and you argue that to apply 30.30 would make the  
11 prior statement of readiness a nullity, I think. And your  
12 adversary relies on Landgraf, which distinguishes between  
13 substantive and procedural rights. So what's the interplay  
14 between those two legal frameworks and how should we sort  
15 that out?

16 MR. OASTLER: I - - - I think - - - my  
17 interpretation of Landgraf or Berkovitz or any of the other  
18 cases that talk about retroactivity and - - -

19 JUDGE HALLIGAN: Yeah.

20 MR. OASTLER: - - - what makes a case or - - -  
21 excuse me - - - what makes a change in the law not so  
22 procedural and more substantive, all of those would support  
23 the idea here that this statute, this change, is much more  
24 than a simple procedural change. And I say that in light  
25 of - - -

1                   JUDGE HALLIGAN: Is what - - - they're simple or  
2                   procedural? Do we need to decide if it's substantive or  
3                   procedural, or is it the - - - the nature of the impact  
4                   that you're relying on?

5                   MR. OASTLER: Well, I think the nature of the  
6                   impact is - - - is an important part of - - - of how this  
7                   court would determine that. And I say that because the - -  
8                   - the instances in - - - in the case law that we have where  
9                   something was - - - was held to be purely procedural. And  
10                  I'll cite very quickly Clayton v. Clement, which just  
11                  amended the type of hearing that would be held at the end  
12                  of - - - of - - - of a particular petition. You know,  
13                  that's not something that affected any right of any party.  
14                  It's not something that affected a - - - a party's ability  
15                  to go forward or actually prosecute their case, in - - - in  
16                  this instance. The application of the amended 30.30, and -  
17                  - - and - - - and to that - - - and the connection to 245,  
18                  resulting in a - - - effectively, a dismissal now twenty-  
19                  seven days into January, after the law went into effect.  
20                  Where the People had declared ready for the previous eight  
21                  or nine months, that's - - - that's not a procedural  
22                  change. It just can't be said - - -

23                  JUDGE SINGAS: But can it - - - can it - - - can  
24                  it also be that we can look at this as pure statutory  
25                  interpretation? And we only get to Landgraf and

1 retroactivity, if we perceive or read this statute as  
2 saying the People's readiness is undone?

3 MR. OASTLER: I would agree with that as well.  
4 And - - - and we have here a - - - a just flat-out  
5 indisputable silence from the legislature as to whether  
6 this would apply to a case in - - - in the stance that our  
7 case had at that point in time.

8 JUDGE SINGAS: So because you had announced ready  
9 there's nothing in the statute to suggest - - - because it  
10 says - - - 245 says, I believe, 50, "the prosecution shall  
11 not be deemed ready." Your position is, I take it, you  
12 were already ready? So you don't have to be deemed ready?

13 MR. OASTLER: Correct. Correct.

14 JUDGE SINGAS: And is - - -

15 JUDGE RIVERA: Could you have - - -

16 JUDGE SINGAS: - - - that's your distinction  
17 between those cases where, coming into January 1, that  
18 where you've announced ready versus the cases where - - -  
19 that were in an unreadiness state?

20 MR. OASTLER: Right. I think that's - - - that's  
21 a - - - a - - - a distinction. If we had not declared  
22 ready, I don't think I could stand here and say, well, you  
23 can't really apply the law.

24 JUDGE RIVERA: Could you have fall on - - -  
25 fallen out of readiness?

1 MR. OASTLER: Could - - - could a case - - -

2 JUDGE RIVERA: Could you have ended up unready  
3 without - - - forget the amendment for one moment. Doesn't  
4 that happen?

5 MR. OASTLER: It - - - it does. But I - - -

6 JUDGE RIVERA: What's the difference here? The  
7 legislature passes requirements and says you must satisfy  
8 these requirements, including the certificate, in order to  
9 be deemed ready - - -

10 MR. OASTLER: I - - -

11 JUDGE RIVERA: - - - moving forward as of January  
12 1st?

13 MR. OASTLER: Sure. A - - - a case prior to that  
14 date, the - - - the - - - if - - - if it - - - for a case  
15 to be deemed unready or fall - - - you know, having - - -

16 JUDGE RIVERA: Yeah.

17 MR. OASTLER: - - - having the People's statement  
18 be deemed illusory - - -

19 JUDGE RIVERA: Yeah.

20 MR. OASTLER: - - - as - - - as we would term it,  
21 would - - - you - - - there would have to be some sort of  
22 finding of some sort.

23 JUDGE RIVERA: Or if you came in the day of trial  
24 and said, we - - - we can't proceed, Your Honor, we're not  
25 ready?

1 MR. OASTLER: If - - - if there was a - - - you  
2 know, if there was a factual circumstance - - -

3 JUDGE RIVERA: Yeah.

4 MR. OASTLER: - - - that supported - - -

5 JUDGE RIVERA: Yes.

6 MR. OASTLER: - - - an idea that we had - - -

7 JUDGE RIVERA: So it is possible - - -

8 MR. OASTLER: Sure.

9 JUDGE RIVERA: - - - even after declaring  
10 readiness, that you're no longer ready at a future time?

11 MR. OASTLER: Yes. That - - - that is possible.

12 It did happen - - -

13 JUDGE RIVERA: Yeah. I understand.

14 MR. OASTLER: - - - when there was some - - -

15 JUDGE CANNATARO: I'm sorry, did you say it did  
16 happen or it didn't happen?

17 MR. OASTLER: Not in this case, but I mean, it  
18 could have happened conceivably.

19 JUDGE CANNATARO: Did it happen in this case?  
20 Did - - - was there ever a time when the People came in and  
21 said - - - or - - - or especially after January 1st and  
22 said, we're not ready?

23 MR. OASTLER: No.

24 CHIEF JUDGE WILSON: So - - - I'm sorry. Go  
25 ahead.

1 JUDGE CANNATARO: No, no, no. It's okay.

2 JUDGE RIVERA: You were not ready as a matter of  
3 law, because you didn't turn over the grand jury minutes?

4 MR. OASTLER: Well, that's what the - - -

5 JUDGE RIVERA: And you didn't ask for more time?

6 MR. OASTLER: Well, the - - - I mean, the Fourth  
7 Department, I think, is effectively saying you - - - you  
8 failed to declare ready at any point in time in - - - in  
9 the month of January, and therefore those twenty-seven days  
10 are - - -

11 JUDGE RIVERA: Or otherwise act within what would  
12 have been appropriate under the law; to seek an extension  
13 or an opportunity to respond, or to be somehow not burdened  
14 - - - let me put it that way - - -

15 MR. OASTLER: Correct.

16 JUDGE RIVERA: - - - with the obligations without  
17 the risk of the 30.30?

18 MR. OASTLER: Right. And we - - - we did not do  
19 that, but that - - - my - - - again, I would - - - I would  
20 - - - my - - - my rebuttal to that is simply that we were  
21 ready and that I - - - I think it is effectively a  
22 retroactive application to undo something that - - - a  
23 status that we - - - that we previously had.

24 JUDGE HALLIGAN: But there was no date on which  
25 you came in after having declared ready and said, today we

1 are unready because a witness is unavailable, or the  
2 prosecutor, you know, is - - - is in another courtroom or  
3 something like that - - -

4 MR. OASTLER: Correct.

5 JUDGE HALLIGAN: - - - is that correct?

6 MR. OASTLER: Yes.

7 CHIEF JUDGE WILSON: Were there items of  
8 discovery required by the new law that you hadn't produced  
9 as of January 1st?

10 MR. OASTLER: My reading of it, I believe, would  
11 just be the grand jury minutes that would not have  
12 otherwise been discoverable.

13 JUDGE GARCIA: When did you disclose those?

14 MR. OASTLER: So those were turned over, I  
15 believe it was on January 17th, ten days prior to trial.  
16 And the ultimate challenge by the defense was brought up  
17 shortly before trial, and then - - - and then the argument  
18 continued on the first date of trial.

19 JUDGE RIVERA: So the 911 tape, just to clarify,  
20 that had been turned over?

21 MR. OASTLER: The - - - the grand jury minutes?

22 JUDGE RIVERA: The 911 tape.

23 MR. OASTLER: Oh. I'm sorry. The - - - I  
24 believe the 911 call was not. But it would have not been  
25 attainable by the point - - - well, by the start of January

1 2020, because they're simply not retained beyond a - - - a  
2 - - - a short period of time, given that the case was in  
3 September of 2018.

4 JUDGE RIVERA: Oh, but I thought pre-Jan 1 the  
5 prosecutor's representation was that indeed these were  
6 within the control of the People and would be turned over  
7 at the first practicable - - - at an - - - an appropriate  
8 time.

9 MR. OASTLER: So we had - - -

10 JUDGE RIVERA: I'm trying to remember the exact  
11 quote, "practicable moment".

12 MR. OASTLER: We had certain information in our  
13 file. There were photographs. I believe some other  
14 electronic - - - electronic evidence. There was, I believe  
15 - - - yeah, perhaps a recorded interview of the defendant.  
16 So those were in our file and were - - - were - - - you  
17 know, offered to be viewed at any point in time. I - - - I  
18 guess, I don't want to promise without reviewing the  
19 record, whether or not 911 was included. But that wasn't  
20 really - - - you know, that wasn't really the bulk of the -  
21 - - the argument in any way at the time of trial.

22 JUDGE TROUTMAN: So are you arguing that upon the  
23 effective date of the new obligations, there was no  
24 opportunity given for the People to be in compliance with  
25 the additional requirements?

1 MR. OASTLER: I - - - well, I think there's  
2 certainly an - - - there was a - - - practically speaking,  
3 an opportunity. There were twenty-seven days, I suppose,  
4 where the People could have submitted a - - - a certificate  
5 of compliance. But my position would be that it was not  
6 necessary, given our - - - our - - - our previous  
7 readiness.

8 JUDGE CANNATARO: But it's a - - - it's - - -  
9 it's a little more than that, isn't it? Because there was  
10 also a period between when the statute was enacted and when  
11 it became effective? So - - -

12 MR. OASTLER: So except that - - - that lead-in  
13 time does not suggest that the People were expected to,  
14 going forward, comply with that.

15 JUDGE HALLIGAN: But it might suggest they could  
16 have?

17 MR. OASTLER: It could suggest that they could  
18 have.

19 JUDGE RIVERA: Might have been a prudent course.  
20 You wouldn't be here.

21 MR. OASTLER: Well, it - - - that's - - - that's  
22 certainly true. Except that that then goes against how we  
23 typically interpret statutes, and whether they're going to  
24 apply prospectively or retroactively.

25 JUDGE RIVERA: You took the high-risk venture.

1 JUDGE HALLIGAN: You could have accounted - - -

2 JUDGE SINGAS: Yeah, but your office filed their  
3 COCs with - - - in regard to other cases prior to January  
4 1st, or on January 1st?

5 MR. OASTLER: I - - - I - - -

6 JUDGE SINGAS: What was the - - -

7 MR. OASTLER: - - - I guess - - -

8 JUDGE SINGAS: - - - policy?

9 MR. OASTLER: - - - I don't necessarily know what  
10 the individual - - - what the practice of individual ADAs  
11 were.

12 JUDGE SINGAS: Is there a policy for the office  
13 that you're aware of?

14 MR. OASTLER: Not in - - - not in our - - - not  
15 on the record here, in any event.

16 JUDGE SINGAS: Yeah.

17 MR. OASTLER: I mean, I think the - - - as you  
18 just mentioned, Justice Rivera - - - or Judge Rivera, it  
19 would be the prudent course of action to attempt to comply.  
20 But therein runs - - - and I - - - I don't want to strongly  
21 rely on this, but therein - - - therein we run into a real  
22 practical problem of how on earth do you do this on all the  
23 pending cases, all the newly arrested cases going forward?

24 JUDGE RIVERA: Can I - - - can I - - -

25 MR. OASTLER: It's really not possible.



1 JUDGE RIVERA: - - - clarify, because you said  
2 something, and I thought - - - I may have misread the  
3 record, so please help me here. I thought that the  
4 prosecutor had - - - had indeed tried to serve the  
5 certificate, and defense counsel refused to accept it?

6 MR. OASTLER: So - - - correct. We - - - he did.

7 JUDGE RIVERA: So I don't know how you do that,  
8 but okay.

9 MR. OASTLER: Well, and that's where I - - - I  
10 think - - - you know, in this, the first - - - we're in the  
11 first four weeks of January, there's obviously no court  
12 guidance and there's going to be differing opinions on - -  
13 - on whether - - - whether the People did or could comply  
14 or how we go about doing that. So yes, the defense  
15 attorney at trial stated that he rejected it. I - - - I'm  
16 not really sure what effect that has. I'm also not sure  
17 that it really impacts the decision here, because the court  
18 - - - the trial court didn't really - - - it - - - it  
19 essentially, didn't hold that the People needed to or - - -

20 JUDGE RIVERA: Well, it is an - - -

21 MR. OASTLER: - - - filed - - -

22 JUDGE RIVERA: - - - example of an effort to  
23 comply with the statute?

24 MR. OASTLER: Sure. It - - - it was. But, you  
25 know, it - - - it was not considered strongly in the

1 moment, I don't think.

2 JUDGE TROUTMAN: And then part of the problem  
3 here was the fact that even before the People declared  
4 ready initially, they had used up so much of their speedy  
5 trial time, correct?

6 MR. OASTLER: Correct. Correct. And as we just  
7 discussed a moment ago, in terms of the amount of time that  
8 we could use for planning. Well, while it's - - - I will  
9 admit, probably not advisable to use 175 days of your  
10 speedy trial time before you indict a case and declare  
11 ready, that was not really a risk in April of 2019, the way  
12 it might be now where there are - - - you know - - -

13 JUDGE TROUTMAN: But it still was pretty risky to  
14 eat up as much time that was taken up here. Although, the  
15 complexity of the nature of the offense was such that  
16 sometimes you can't proceed as expeditiously as you would  
17 want.

18 MR. OASTLER: Yes. But it would also be, I  
19 think, fair to say, quite unwise to use the bulk of your  
20 six months now where you have very onerous discovery  
21 obligations, including grand jury minutes, which you won't  
22 have until you - - - you actually indict the case.

23 JUDGE TROUTMAN: And - - - and was compliance  
24 impacted by having resources available to go through the  
25 files to get the information to turn it over?

1 MR. OASTLER: I - - - there - - - there's - - -  
2 there's a practical aspect of the - - - the - - - the - - -  
3 the hours it takes for the - - - the staff in our office to  
4 actually go through each file, upload it as we do now, and  
5 disclose it digitally. We were also limited on the number  
6 of grand - - - grand jury stenographers that we had by  
7 statute, which was then amended because - - - I'm not sure,  
8 frankly, many of us were aware of that fact. But it - - -  
9 suddenly we had these time limits to comply with, and the  
10 number that we were legally permitted was just flatly  
11 insufficient.

12 So there - - - there were a lot of aspects to  
13 this law that not only were impossible to foresee in - - -  
14 in early 2019, but I think applying them in 2020, months  
15 and months later, where we were - - - we had declared ready  
16 and were validly relying on that for a long period of time.  
17 That makes it quite unjust, I would say.

18 So I - - - it - - - consistent with the way we  
19 interpret laws in terms of what makes them retroactive or  
20 prospective, I think the application of this regime and - - -  
21 - and - - - and really the - - - the speedy trial  
22 connection, this would be a retroactive application.  
23 Which, absent any indication on the record or from the  
24 legislature, I - - - I don't think it was appropriate here.

25 CHIEF JUDGE WILSON: Thank you.

1 MR. OASTLER: Thank you.

2 MR. ROTHSCHILD: Good afternoon, Your Honors.  
3 May it please the court? Philip Rothschild from the Frank  
4 H. Hiscock Legal Aid Society, on behalf of respondent Alvin  
5 King.

6 JUDGE TROUTMAN: Counsel, how is it that this  
7 wasn't a retroactive application here?

8 MR. ROTHSCHILD: Well, first of all, the - - - it  
9 had no effect on any prior announcements. Those were still  
10 valid, as Judge Rivera pointed out. It only prospectively  
11 applied as of January 1st. In Majewski, this court said,  
12 "While retroactive - - - retroactivity is generally  
13 disfavored, statutes governing procedural matters - - - "

14 JUDGE TROUTMAN: So as of January 1st - - -

15 MR. ROTHSCHILD: Yes.

16 JUDGE TROUTMAN: - - - there were new obligations  
17 that the People had that they did not have earlier; is that  
18 correct?

19 MR. ROTHSCHILD: Yes. And they had - - -

20 JUDGE TROUTMAN: And - - - and how were they - -  
21 - were they given an opportunity? Were demands made or  
22 were they just supposed to sua sponte deliver up these new  
23 things in order to be ready?

24 MR. ROTHSCHILD: Well, under the statute, they  
25 were required to disclose all these items under 245.

1 JUDGE TROUTMAN: As of midnight?

2 MR. ROTHSCHILD: As of - - - no, as of January  
3 1st. Well, I mean, as - - - as of the applicable time - -  
4 -

5 JUDGE TROUTMAN: Yes. And - - -

6 MR. OASTLER: - - - time period of which they had  
7 nine months of lead time.

8 JUDGE SINGAS: Yeah. But in Galindo, we said the  
9 lead time spoke more to prospectiveness than retroactivity,  
10 right?

11 MR. ROTHSCHILD: True. But I believe that - - -  
12 the legislature makes the laws - - -

13 JUDGE SINGAS: Correct.

14 MR. ROTHSCHILD: - - - the People follow them.

15 JUDGE SINGAS: And the legislature here said, "in  
16 order to be deemed ready." It didn't say, from this point  
17 forward the only way to be ready, or all prior readiness  
18 statements are null and void until X, Y, and Z.

19 I mean, it said, "deemed ready" and the People  
20 were ready. Like, where can you point to me - - - forget  
21 retroactivity for a minute. Where can you point to any  
22 language that suggests, either in 245 or 30.30, that the  
23 legislature meant to undo readiness?

24 MR. ROTHSCHILD: I would submit that under 245.50  
25 subdivision 3. Because we look at the language of the

1 statute when we're interpreting them.

2 JUDGE SINGAS: Right.

3 MR. ROTHSCHILD: That's the first thing we look  
4 at. The legislature said, "Notwithstanding any other  
5 provision - - - provision of any other law, absent any  
6 individualized finding of special circumstances, the People  
7 shall not be deemed ready for trial until they have  
8 provided both discovery and a proper certificate."

9 JUDGE CANNATARO: But the problem with that  
10 language is, if the People have already announced ready  
11 prior to the effective date of the statute, technically  
12 they're not asking any court to deem them ready for trial  
13 because they've already announced ready.

14 MR. ROTHSCHILD: As of - - - for the prior ones,  
15 correct. But this - - - the use of the term  
16 "notwithstanding", as this court recently said in Aaron  
17 Manor, "means superseding any inconsistent provisions of  
18 state law." The legislature didn't hide this. They made  
19 it quite clear. They wanted - - - and it wasn't put in  
20 that section by mistake. And by the way, they didn't put  
21 it anywhere else in this whole comprehensive statutory  
22 scheme. They said, "notwithstanding", and they - - - and  
23 what they - - - what they meant by that was, look, we are -  
24 - - we have this big stick here. If you don't comply with  
25 the - - - this discovery - - -

1 JUDGE TROUTMAN: So are you saying that that  
2 effectively says that even if they were ready prior to  
3 January 1st, the effective date of the new statute, they  
4 were no longer ready?

5 MR. ROTHSCHILD: Yes. And that's what the Fourth  
6 - - -

7 JUDGE GARCIA: Counsel, I want to just ask you  
8 about the big stick. We said in Bay that this is an  
9 incentive, and it certainly is, right? It's an incentive  
10 to comply. And the idea was that government is - - - the  
11 People are taking their time producing this material and  
12 then declaring ready and that. So we're going to clarify  
13 that, and if you step back and you look at the mechanism  
14 which was - - - we've described, quite new, that you were  
15 tying the 245 to - - - new discovery obligations to a 30.30  
16 (5) provision. I don't see how that fits with on January  
17 1, the People have done what they needed to do up to that  
18 point. They've declared ready months and months before.  
19 There's one day left on the clock. January 1 comes, they  
20 have one day, twelve hours to provide you with all the new  
21 discovery. How is that an incentive?

22 MR. ROTHSCHILD: Well, because of the  
23 comprehensive statutory scheme, it's not like you have this  
24 - - - they also had opportunities under 245.70 for an - - -  
25 for additional time. They had opportunities under 245.50

1 subdivision 3, to make an individualized statement saying,  
2 hey, this item is lost - - -

3 JUDGE GARCIA: No. But I'm just thinking when I  
4 step back and I look at the way the legislature structured  
5 this and what they were trying to do with this very new  
6 incentive stick, why would it ever apply as of January 1 to  
7 a case where they have been ready for nine months and they  
8 have one day left on the clock?

9 MR. ROTHSCHILD: Because they've redefined  
10 readiness. Because this is what the legislature wanted.  
11 They wanted to make sure that everyone, everyone, everyone  
12 was on the same page regarding this and that no one would  
13 be deprived - - -

14 JUDGE GARCIA: That's - - - that's - - -

15 MR. ROTHSCHILD: - - - of that discovery.

16 JUDGE GARCIA: - - - your result. But what in  
17 this statute tells me that that was the intent? That on  
18 January 1, if I had one day left on the speedy trial clock,  
19 I am now unready? I was ready. I've been ready for nine  
20 months. I've been ready to go. But on January 1, I'm not  
21 ready. And now I need the incentive of having the case  
22 dismissed under 30.30, which the new provision says when I  
23 declare readiness, I have to have done this. I've already  
24 declared readiness. Now, I have to re-declare readiness  
25 with this obligation, and I have twelve hours to do it.

1 MR. ROTHSCHILD: Well, under that situation, you  
2 can - - - obviously, you can move under 245.50 subdivision  
3 3 for more time. Or you can ask for the court to say, hey,  
4 we want - - -

5 JUDGE RIVERA: No, I don't think Judge Garcia is  
6 asking about how they - - - how a - - - a prosecutor in  
7 that position might mitigate the - - - the demands in a  
8 very short period. If I'm understanding him correctly - -  
9 - he'll correct me if I'm wrong. I think his question is,  
10 if the legislature is intending to incentivize prosecutors,  
11 but they have this - - - in this case, prosecutor already,  
12 right, has announced readiness, ready to go to trial, where  
13 is the incentive to apply this law to those cases?

14 MR. ROTHSCHILD: The incentive is if they don't,  
15 they get their case - - -

16 JUDGE RIVERA: No, no, but they've already  
17 declared readiness. That's his point.

18 MR. ROTHSCHILD: So - - -

19 JUDGE RIVERA: What's the incentive to get to  
20 readiness? I thought you were going to say because the law  
21 is not only about readiness - - -

22 MR. ROTHSCHILD: Right.

23 JUDGE RIVERA: - - - it's about discovery.

24 MR. ROTHSCHILD: Absolutely.

25 JUDGE RIVERA: And that's what you're trying to

1 get.

2 JUDGE GARCIA: Can they - - -

3 JUDGE RIVERA: So I'm just trying to understand  
4 what - - -

5 JUDGE GARCIA: - - - discovery obligations  
6 without the incentive? I mean, you still have - - - you  
7 still have remedies for failure to produce discovery, which  
8 I think include dismissing the case. So you have these new  
9 discovery obligations, but in - - - under your view, if I  
10 don't ask for more time on January 1, right? Or let's say  
11 January 2. If I don't ask for more time and I come in the  
12 next day, I'm done because clock's run?

13 MR. ROTHSCHILD: Well, I mean, as far as the  
14 first fifteen days, I believe the Fourth Department said,  
15 okay - - -

16 JUDGE GARCIA: Yeah, but they made that up.

17 MR. ROTHSCHILD: Well, I mean - - -

18 JUDGE GARCIA: I mean, that's nowhere in the  
19 statute. They made that up. That's fifteen days from  
20 arraignment or something. We'd have to judicially make up  
21 a fifteen-day grace period for that.

22 MR. ROTHSCHILD: So I started off by saying the  
23 legislature makes the laws, the People follow them.  
24 Interpretation, that's open to debate, the wisdom of the  
25 law is not. What they're claiming here is this was too



1 much. This was absolutely too much for the - - - for the  
2 People to have to comply with.

3 JUDGE HALLIGAN: To try - - -

4 JUDGE GARCIA: Do you still think it's wise? I'm  
5 sorry.

6 JUDGE HALLIGAN: - - - to try to come at this a  
7 little bit differently. Doesn't your argument about  
8 incentives have a whole lot more force with respect to  
9 cases that are commenced, but where there is no statement  
10 of readiness that has been filed? In other words, that's  
11 where the - - - that's the window in which I think those -  
12 - - those incentives, in any case, going forward, would  
13 have particular application and in the legislature's view,  
14 importance.

15 MR. ROTHSCHILD: So if we look at - - - you know,  
16 I - - - if we look at the purpose of the old law, the  
17 reliance - - - or the purpose of the new law, the reliance  
18 upon the old law and the effect upon the impact - - - or  
19 the impact upon the administration of justice. In this  
20 case, the legislature made it quite clear this is - - -  
21 this is going to apply as of January 1st. And they  
22 specifically and deliberately linked it to 30.30, because  
23 they said, look, you know, they use this "notwithstanding"  
24 - - - you know, language. And that's very powerful.

25 JUDGE SINGAS: Right. But how - - - how does

1 that not connect back to the People's rights pre-January 1,  
2 right? Because now they're saying, look we're now tying  
3 this to your readiness, which was never the case. So  
4 suppose there's a - - - there's a case that the People had  
5 prior to January 1st. There's a police officer who  
6 retires. He goes to Florida. The People make a - - - a -  
7 - - a decision, we can't find him. We're not going to  
8 Florida. We're not getting sheriffs there to get us his  
9 memo book. They wouldn't have needed that, right? Unless  
10 that person was testifying. Now, suddenly come January 1,  
11 that would be discoverable. So what might have been  
12 before, a preclusion of that witness, some kind of  
13 instruction to the jury, an adverse inference charge, now  
14 suddenly becomes a dismissal of your indictment. How does  
15 that not impact your status and your rights, pre-January 1,  
16 2020? That's what I - - - I can't get. I - - - I hear  
17 what you're saying. It's sort of moving forward, you have  
18 discovery rights. But the penalty brings you right back to  
19 the decisions that you were making all along during the  
20 pendency of this case.

21 MR. ROTHSCHILD: Two things regarding that.  
22 First of all, I think that the People are conflating - - -  
23 you're calling it the right to readiness. It's actually a  
24 continuing obligation for readiness. And that obligation,  
25 as Judge Rivera pointed out, continues even after they've

1 announced ready. And they could be made unready by any  
2 number of things. In this case, the legislature - - -

3 JUDGE TROUTMAN: So then do you agree that their  
4 legal status was, as he said, nullified by the change of  
5 the statute?

6 MR. ROTHSCHILD: No. That prior announcement was  
7 still valid. But going forward - - - nine months forward  
8 in this case, they have an opportunity - - - an obligation  
9 to - - - to comply with this. They had ample notice of  
10 this.

11 JUDGE TROUTMAN: And you dispute that it - - -  
12 the application does, in fact, cause that status to be  
13 nullified because now the People are unready, because  
14 they're required to give up what they weren't supposed to  
15 before they declared ready?

16 MR. ROTHSCHILD: But is that readiness is depend  
17 - - - as I said, it could be changed by any number of  
18 things. And in this case, the legislature made - - -

19 JUDGE TROUTMAN: Right. It's - - -

20 MR. ROTHSCHILD: - - - a conscious decision - - -

21 JUDGE TROUTMAN: - - - different, though, from  
22 the old law where - - - illusory - - - you declared ready,  
23 but you weren't really ready in the first place. The  
24 difficulty that I'm having in this particular instance is,  
25 the People followed the law as it existed up until the date

1 that it changed. And then the question is, what's the  
2 effect going forward? The effect going forward here is,  
3 you're no longer ready, even though the statute doesn't say  
4 we're going to take away your readiness, it says you can't  
5 declare ready until you provide these things. But the  
6 effect here did that. It took away their status.

7 MR. ROTHSCHILD: To an extent, yes. But in  
8 continuation of my earlier answer to Judge Singas, there is  
9 available remedies under the comprehensive statutory  
10 scheme. In that situation, they wouldn't necessarily have  
11 to dismiss this, because they wouldn't necessarily knock  
12 out the statement of readiness. Where you have the sheriff  
13 who went down to Florida, they could always ask the court,  
14 say, hey, we - - - we're - - - we're asking for basically  
15 an exception from this under 2 - - -

16 JUDGE TROUTMAN: So is that opportunity available  
17 here, for them to take those steps to not be unready?

18 MR. ROTHSCHILD: Absolutely, these were  
19 available. And there's no indication on the record that  
20 they even attempted to do this.

21 CHIEF JUDGE WILSON: Counsel - - -

22 JUDGE CANNATARO: But for them to take advantage  
23 of those opportunities, they would have to share in your  
24 view that their ready status changed on January 1st?  
25 Because you know, you - - - you don't go to court and ask

1 for relief, if you - - - if you - - - if you still think  
2 you're ready only to find out later that you weren't.

3 MR. ROTHSCHILD: Well, I - - - I don't think - -  
4 - I think it's the legislature's view. I don't think it's  
5 my view. Because the legislature specifically tied - - -

6 JUDGE CANNATARO: Well, no, it - - - it - - -

7 CHIEF JUDGE WILSON: Can I just try to find out -  
8 - - go ahead.

9 JUDGE CANNATARO: No, I was just going to say  
10 it's your reading of the statute. I - - - I - - - I mean,  
11 unless I'm missing some very clear language where the  
12 legislature said, if you're not in compliance on the  
13 effective date of this statute - - -

14 MR. ROTHSCHILD: You shall not be deemed ready -  
15 - -

16 JUDGE CANNATARO: - - - you - - - you are not  
17 ready, even if you previously declared readiness.

18 MR. ROTHSCHILD: Well - - -

19 JUDGE CANNATARO: I don't see that.

20 MR. ROTHSCHILD: In terms of statutory  
21 interpretation, appellant says, well, this is bad drafting.  
22 I think that first of all, they - - - they say that you  
23 should be - - - they should have specifically listed the  
24 cases included or those cases already pending. First of  
25 all, that language is superfluous. Second of all, that

1 introduces the risk of exclusio unius, which means when you  
2 start listing people, you may inadvertently omit others.  
3 And I think if they wanted to say these people are  
4 specifically excepted, they knew how to do it.

5 CHIEF JUDGE WILSON: I just want to try and walk  
6 through, so I understand what happened, what your position  
7 is what happened with readiness. So December 31st, 11:59  
8 p.m., People are ready?

9 MR. ROTHSCHILD: Yes.

10 CHIEF JUDGE WILSON: Okay. Clock switches over.  
11 We're now on January 1st, are they now unready?

12 MR. ROTHSCHILD: Yes.

13 CHIEF JUDGE WILSON: And that's true, even if  
14 they have previously produced all of the discovery that's  
15 required by the new legislation?

16 MR. ROTHSCHILD: Here - - - okay. In this case  
17 here, they didn't, they clearly - - - it was - - - it was -  
18 - -

19 CHIEF JUDGE WILSON: I'm asking you a question -  
20 - -

21 MR. ROTHSCHILD: Yes.

22 CHIEF JUDGE WILSON: - - - that is maybe not true  
23 here, but I want to know your answer, so I understand what  
24 your view is about readiness.

25 MR. ROTHSCHILD: Yes.



1 CHIEF JUDGE WILSON: They've produced everything  
2 under the sun that's required in the new legislation. The  
3 clock switches over. They are now ready or unready?

4 MR. ROTHSCHILD: If they have not filed the  
5 certificate - - -

6 CHIEF JUDGE WILSON: Right. They've not filed  
7 the certificate of compliance.

8 MR. ROTHSCHILD: They're not ready.

9 CHIEF JUDGE WILSON: They're not ready?

10 MR. ROTHSCHILD: Pure and - - -

11 CHIEF JUDGE WILSON: Okay.

12 MR. ROTHSCHILD: - - - they're - - - they're not  
13 ready, because that's what the statute says. If they want  
14 to have an exception from that, they certainly were capable  
15 - - - capable of doing so. I assume they read the statute.  
16 I assume they knew that the - - - of the remedies and  
17 rights available to them. They didn't take advantage of  
18 them. And as far as retroactivity - - - you know, this is  
19 - - - I believe, this is a no - - - no new substantive  
20 right was created here. This case is clearly  
21 distinguishable from Galindo. In Galindo, they had no idea  
22 because those people weren't even subject to - - - didn't -  
23 - - didn't even have speedy trial rights, those traffic  
24 infraction people. Here, it's - - - it's - - - this case  
25 was not on appeal. This case was pending.

1 JUDGE GARCIA: Wasn't there an eight-month time  
2 lag though for Galindo too?

3 MR. ROTHSCHILD: Yeah.

4 JUDGE GARCIA: - - - was there? So why didn't  
5 they have notice they should have done it in the amount of  
6 time under your theory?

7 MR. ROTHSCHILD: Well, I think under Galindo, I  
8 believe that - - - you know, that the - - - the law had  
9 been the same way for forty years or so.

10 JUDGE GARCIA: So the eight months didn't matter  
11 because it was there for forty years?

12 MR. ROTHSCHILD: And here the nine - - - but here  
13 the eight or nine months, I think the intent of it was  
14 basically to give the prosecution the opportunity just to  
15 get up to speed with this. And they're - - - getting back  
16 to what I originally said was - - - you know, the appellant  
17 is saying, oh, this is too much, this is unworkable - - -

18 CHIEF JUDGE WILSON: Well, I guess that that's a  
19 question of what it was they were trying to get given time  
20 to get up to speed for. Because I assume that just  
21 complying with the new discovery requirements in a timely  
22 manner on a prospective basis would require changes to the  
23 offices, ramping up personnel, all sorts of things like  
24 that. So they were given more time for something, but it's  
25 not clear to me, unless, you have something you can point

1 to in the legislative history, what that something was.

2 MR. ROTHSCHILD: I think it was given time to  
3 comply with the statute.

4 CHIEF JUDGE WILSON: What - - - well, that begs  
5 the question.

6 MR. ROTHSCHILD: I - - -

7 CHIEF JUDGE WILSON: That - - - that doesn't - -  
8 -

9 MR. ROTHSCHILD: Well, I don't know what  
10 specifically it was.

11 CHIEF JUDGE WILSON: Yeah.

12 MR. ROTHSCHILD: I mean, they did talk about  
13 having to get more court reporters or things of that  
14 nature. But they - - - they had - - - they - - - they were  
15 on notice of it. They knew this was coming down the pike,  
16 yet they failed to act.

17 JUDGE RIVERA: Do you - - - do you have a sense -  
18 - - you may not. I know it's not in the record. But do  
19 you have a sense, given the practice - - - I'll ask that  
20 also to the prosecutor. Do you have a sense of how many  
21 offices took the same position, that it was not going to  
22 apply to them until a case was filed after January 1st?

23 MR. ROTHSCHILD: I - - - I do not, Your Honor.  
24 One more thing. As far as the items that were missing, I  
25 would ask this court to look at page - - - I think it's

1 page 73 of defense counsel's motion made on the day of  
2 trial. It's more than just the grand jury minutes. It's -  
3 - - it's a number of things: recordings, other - - - other  
4 items which were just not provided. And some of the items  
5 - - -

6 JUDGE TROUTMAN: But again those items were the  
7 items that were required after the effective date of the  
8 statute to be turned over, correct?

9 MR. ROTHSCHILD: Yes.

10 JUDGE TROUTMAN: Thank you.

11 MR. ROTHSCHILD: And included among them, I  
12 believe, was - - - I lose my - - - losing track here. But  
13 these items included matters which were just absolutely - -  
14 - they - - - they turned them over to the judge instead.  
15 And they said, well, that's sufficient to have the judge  
16 review it, and that doesn't comply with the law.

17 JUDGE RIVERA: Well, then, why - - - why - - -  
18 unless you take a different position. Why were they trying  
19 to serve a certificate?

20 MR. ROTHSCHILD: Well, they did that after the  
21 speedy trial motion was made. And they figured, well, we  
22 can maybe get in here late, and - - - you know, by that  
23 time they were - - -

24 JUDGE RIVERA: Yeah. The certificate is a  
25 representation that they're in compliance.

1 MR. ROTHSCHILD: Well, I believe it shows that  
2 they were trying to be in compliance, but I think that they  
3 just missed the dates.

4 Thank you. If there's nothing further, we would  
5 ask that the lower court decision be affirmed.

6 CHIEF JUDGE WILSON: Thank you.

7 MR. OASTLER: Your Honors, I don't really have  
8 anything to add other than to note that I - - - I - - - I  
9 think two quick points. The Fourth Department dissenting  
10 justice pointed to the idea that the People were reverted  
11 to a state of unreadiness. And - - - and that's the - - -  
12 that's the issue, I think, I have with the majority's  
13 interpretation of - - -

14 JUDGE RIVERA: Yeah. But the problem is that's  
15 not accurate. At least, I don't see it that way. The  
16 regime in place that you declared readiness under, is no  
17 longer in place. That remains. No - - - no one was saying  
18 that you weren't ready under the old regime. There's now a  
19 new regime. And you've got to comply with the requirements  
20 of that regime.

21 MR. OASTLER: Right. But I think, I mean - - -

22 JUDGE RIVERA: Readiness has a different - - -  
23 all I'm suggesting is readiness has a different meaning - -  
24 -

25 MR. OASTLER: It - - - it - - -



1 JUDGE RIVERA: Come Jan 1.

2 MR. OASTLER: - - - I - - - I - - -

3 JUDGE RIVERA: Right?

4 MR. OASTLER: - - - certainly understand and I  
5 would agree with that, except to the extent that, as - - -  
6 as I think we've been bouncing back and forth - - -

7 JUDGE RIVERA: It can't be you're unready because  
8 it's not the same regime. That's the point.

9 MR. OASTLER: But I - - - I - - - that's - - -

10 JUDGE RIVERA: It's a different regime.

11 MR. OASTLER: - - - that is what I would say has  
12 happened, though. Is that the - - - that interpretation  
13 has forced the People into a state of unreadiness, which -  
14 - -

15 JUDGE RIVERA: Well, it's forced the People to  
16 comply with the law. And if they needed more time, they  
17 could have sought to get more time, but they did not. But  
18 can you try and answer my other question? Do you know how  
19 many offices took this same position - - -

20 MR. OASTLER: I - - - I don't - - -

21 JUDGE RIVERA: - - - in terms of their statutory  
22 - - -

23 MR. OASTLER: - - - I - - - I don't.

24 JUDGE RIVERA: - - - interpretation?

25 MR. OASTLER: I - - - I couldn't answer.

1 JUDGE GARCIA: Counsel - - - Counsel, I do see  
2 cases with the same remedy - - - the same incentive being  
3 applied from Queen - - - in Queens and Manhattan.

4 MR. OASTLER: A - - - there has been, I believe,  
5 a mix of lower court authority in terms of whether this  
6 would be applied, as I would say, retroactively, or at  
7 least in terms of - - - of finding the People unready as of  
8 January 1st.

9 JUDGE GARCIA: I mean, I think the fact that they  
10 were considering cases in Queens and the New York DA, the  
11 Manhattan DAs, and dismissing indictments seems to indicate  
12 that, at least, some of the prosecutors in those offices  
13 weren't filing certificates.

14 MR. OASTLER: Oh, I - - - I mean, I - - - I would  
15 assume because otherwise there wouldn't be dismissals, you  
16 know, sort of shortly after January 1st. The only other  
17 brief thing I would like to mention is with respect to that  
18 "notwithstanding" language.

19 I - - - I think it would be more reasonable to  
20 see that word inserted sort of in the middle of a  
21 paragraph, kind of buried in the statute in terms of how we  
22 analyze the People's readiness inasmuch as you, it seems,  
23 accept it now. We look at 245.50 first, as in, have the  
24 People actually complied, filed a valid certificate of  
25 compliance? And then, if so, then we move to 245.80 where

1 we would look at if there's any prejudice to the defense  
2 for any sort of delayed disclosure or something like that,  
3 whether there would be a remedy. I think that that  
4 "notwithstanding" might signal that sort of two-step  
5 process. I don't think it's fair to say that the insertion  
6 of that one word there is meant to signify the application  
7 of the - - - of the whole new regime, and to tie the speedy  
8 trial to all those cases that had been declared ready prior  
9 to that point.

10 JUDGE RIVERA: So is it your position that  
11 without the mandatory consequences, if you're not in  
12 compliance and you're not ready within the time frame under  
13 the new regime, that then requires a dismissal if you've  
14 gone over your time frame, that a court nevertheless would  
15 have had the discretion to dismiss?

16 MR. OASTLER: It's - - - if - - - if we had not  
17 declared ready, I - - - I think the - - - I - - - I don't  
18 think I could come up here and make the same arguments as I  
19 am. Because you - - - if we're declaring ready in January,  
20 we - - - we have to comply with the law in effect at that  
21 point.

22 JUDGE RIVERA: No, I get that. But let - - - let  
23 - - - let me try it a different way. Let's decouple the  
24 penalty from the - - - from the requirements. Would the  
25 judge still have had available the discretion to dismiss,

1 even if not mandated under the new regime?

2 MR. OASTLER: It - - - it would have - - - I  
3 think it would have come about.

4 JUDGE RIVERA: If the judge had decided, well,  
5 you're still subject to these - - - to these discovery  
6 requirements?

7 MR. OASTLER: I - - - I think what would have had  
8 to have happened there, would be a finding that the initial  
9 statement was illusory, i.e., the People - - - I - - - I  
10 think, somewhat mirroring the current - - - the current - -  
11 -

12 JUDGE RIVERA: So that would be the only basis -  
13 - -

14 MR. OASTLER: I - - - I - - - that - - - that's  
15 the way that remedy - - -

16 JUDGE RIVERA: - - - under the law at the time?

17 MR. OASTLER: - - - would come about, I think.  
18 Yes.

19 JUDGE GARCIA: Before - - - before this became  
20 effective, if the People didn't fulfill their discovery  
21 obligations, wasn't - - - wasn't one remedy a judge could  
22 impose - - - forget the new legislation, was the dismissal  
23 of your case?

24 MR. OASTLER: I - - - I - - - I mean, I think,  
25 it, broadly speaking, would - - - would fall within the

1 discretion of the judge. In my experience, though, I mean,  
2 I - - - I think that's coming about where there's - - -

3 JUDGE GARCIA: Hopefully, you don't have a lot of  
4 experience.

5 MR. OASTLER: No, no. I'm an appellate attorney  
6 - - -

7 JUDGE RIVERA: You're a bold lawyer, you're - - -

8 MR. OASTLER: - - - so I can always shift the  
9 blame. But it's where there was a - - - a - - - such a  
10 significant failing, you know, we've - - - we declare ready  
11 but we've really - - -

12 JUDGE GARCIA: There were a wide range of options  
13 available to - - -

14 MR. OASTLER: There were - - - there were. It  
15 was - - -

16 JUDGE CANNATARO: Under the new statutory regime,  
17 when the People made their 30.30 motion that they made  
18 here, was it within the judge's discretion to provide an  
19 opportunity to - - - you know, if the judge said, yes, it's  
20 after January 1st, you have to be in compliance. You're  
21 not in compliance. I'm giving you ten days to do it. Or  
22 was there, in your view, no option, no discretion on the  
23 part of the court other than to dismiss pursuant to 30.30?

24 MR. OASTLER: I - - - I think given the  
25 extensions that were - - - have have been built into the

1 law, the judge could have allowed the People time to comply  
2 or correct some sort of oversight or error, just as we do  
3 now with supplemental certificates, if that is the scenario  
4 that the case is in. So sure, I think the court could have  
5 given the People some leeway without - - - without  
6 resorting to a finding that their prior statement was - - -  
7 was invalid.

8 JUDGE RIVERA: Well, given what you said before  
9 about the - - - the stenographers, that might have been  
10 that argument that you're short-staffed for that purpose,  
11 for the grand jury minutes. And perhaps that's an  
12 exceptional circumstance and you need more time to be able  
13 to put resources to that because of the budget issue.

14 MR. OASTLER: Sure. I - - - I mean, it's - - -  
15 again, I mean, this is - - - I don't want to speak  
16 anecdotally because obviously I don't really have anything  
17 in the record to support this. But I think it's - - - it -  
18 - - it could be accepted. I don't think it's really a  
19 disputed statement to - - - to say that district attorney's  
20 offices were going to be hard-pressed to comply with this.

21 JUDGE RIVERA: Yes.

22 MR. OASTLER: Even now, even with all the lead  
23 time, just because of the - - - the demands that it  
24 requires. But - - -

25 JUDGE RIVERA: Fair enough.

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MR. OASTLER: - - - you know that we are subject  
to, and so I recognize that.

CHIEF JUDGE WILSON: Thank you.

MR. OASTLER: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Alvin King, No. 64 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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