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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 32

ROPER (NAIM),

Appellant

265 East 161st Street
Bronx, New York
March 11, 2026

Before:

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

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Last case on this morning
2 calendar is People v. Roper.

3 Whenever you're ready.

4 MS. HAMMOND-OAKLEY: Clara Hammond-Oakley on
5 behalf of appellant Naim Roper. I would request three
6 minutes for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MS. HAMMOND-OAKLEY: Thank you.

9 The CPL has a specific timing requirement for
10 misdemeanor speedy trial motions. They should be filed
11 prior to the commencement of trial.

12 After Mr. Roper's misdemeanor case was - - -

13 JUDGE GARCIA: Counsel - - -

14 MS. HAMMOND-OAKLEY: - - - delayed for over.

15 JUDGE GARCIA: I take that argument, and I think
16 you have a strong argument on the statutory language in
17 170.30 commencement of trial. I also find it particularly
18 compelling that a defense lawyer has an obligation to their
19 client to accumulate days, essentially.

20 Is there any check, in your view, on the ability
21 of a lawyer to come in? The jury is out in a felony trial.
22 They're ready to come in to be voir dired. Is there any
23 check on a lawyer's ability to file the motion at that
24 moment?

25 MS. HAMMOND-OAKLEY: If - - - if an attorney were

1 to decide to do that, which I think there are a lot of
2 institutional pressures and ethical obligations - - -

3 JUDGE GARCIA: Understood. But - - -

4 MS. HAMMOND-OAKLEY: If - - - if an attorney - -
5 -

6 JUDGE GARCIA: - - - the statute and your
7 reading, I think - - - and the statutory language supports
8 this would allow you to do that. But is there any ability
9 for a judge to say that motion is untimely?

10 MS. HAMMOND-OAKLEY: I do not believe there is,
11 Your Honor. However, the judge has flexibility with how to
12 then deal with that motion. Obviously, the judge could
13 grant an adjournment and set a motion schedule for deciding
14 that motion. But the judge also has the option - - -

15 JUDGE GARCIA: Short of an adjournment, yes.
16 Does the judge have any options?

17 MS. HAMMOND-OAKLEY: Yes. The judge has the
18 option of accepting the motion and starting the trial, and
19 deciding the motion during the trial, or deciding it after
20 the trial. There's absolutely nothing in the statute that
21 says that they cannot do that.

22 JUDGE GARCIA: And that could have been done here
23 if they accepted the motion? I understand they did.

24 MS. HAMMOND-OAKLEY: Yes. And I think that this
25 is actually a perfect example of when that would be

1 appropriate because this was a one-witness bench trial.
2 The prosecution sole witness took, I think, an afternoon.
3 And the court - - - it would have been eminently reasonable
4 for the court to accept that motion. You know, the witness
5 is in the hall, have him come in and testify, and then
6 decide that 30.30 motion after the fact.

7 JUDGE GARCIA: I'm a little - - - I don't know
8 much about this type of process, but could the original
9 judge, not in the trial part, have decided it as well?

10 MS. HAMMOND-OAKLEY: Absolutely. The calendar
11 court judge also could have decided the 30.30 motion.

12 JUDGE GARCIA: Uh-huh.

13 MS. HAMMOND-OAKLEY: However, the trial judge - -
14 - you know, can also - - - and also has an obligation to
15 decide motions that are properly filed before it.

16 JUDGE CANNATARO: Is there a standard practice
17 around that? Because I - - - I'm also not familiar.

18 When that motion is made, just as the case is
19 about to be sent out for trial and the - - - the calendar
20 part gets noticed that there is going to be a 30.30 motion,
21 would it normally stay in the calendar part for the motion,
22 or do judge - - - do those judges typically say, well, go
23 to the trial court and let the trial judge work it out?

24 MS. HAMMOND-OAKLEY: I don't think that - - - I'm
25 not sure if there's a standard practice. I never practiced

1 in the Bronx. I practiced in Manhattan. I think most of
2 the time, if - - - if this were to have happened in
3 Manhattan, the calendar court judge would have adjourned it
4 for motion practice.

5 JUDGE TROUTMAN: With respect to the two
6 different judges being involved - - -

7 MS. HAMMOND-OAKLEY: Yes.

8 JUDGE TROUTMAN: - - - do we treat it as the
9 court or as to the individual jurist and what they will or
10 will not accept?

11 MS. HAMMOND-OAKLEY: I certainly think the court,
12 because a judge is a judge is a judge, and they have an
13 obligation to hear motions that are before them. You know,
14 the - - - the speedy trial, right, has to have a remedy.
15 And the remedy in this case is the defendant filing that
16 motion.

17 JUDGE RIVERA: Is your position, then, that the
18 motions court judge accepted the motion and the trial court
19 judge - - - it was then pending before the trial court
20 judge?

21 MS. HAMMOND-OAKLEY: Yes. And I think the record
22 is clear about that. The motion court judge took the
23 motion and wrote down on the court action sheet defense
24 counsel filed - - -

25 JUDGE RIVERA: The trial court judge revisited

1 and refused to accept the motion?

2 MS. HAMMOND-OAKLEY: I don't think at that point
3 the trial court judge has the authority to un-accept the
4 motion. I think that the trial court judge also later
5 acknowledged that the calendar court judge had accepted the
6 motion, that it was properly pending before the court.

7 JUDGE RIVERA: Couldn't - - - couldn't the trial
8 court judge consider the timeliness of the motion?

9 MS. HAMMOND-OAKLEY: I think that if the motion
10 had actually been filed past the statutory deadline,
11 perhaps they could. Perhaps that could be some cause for
12 the prosecution to move for reargument or something like
13 that.

14 JUDGE TROUTMAN: What is the interplay between
15 timeliness of the motion and a fair opportunity for the
16 People to respond?

17 MS. HAMMOND-OAKLEY: So the CPL contains the
18 timing requirement for speedy trial motions. They must be
19 filed prior to the commencement of trial.

20 The provision that the prosecution respondent is
21 relying on in this case, the upon reasonable notice, is
22 part of what this court has coined a written notice
23 requirement. That goes to the making and determination of
24 the motions and requires motions to be filed both in
25 writing, which it was here, and also to include written

1 notice of the motion, laying out the grounds that the
2 defendant is moving for dismissal on, which in this case
3 was 30.30.

4 JUDGE HALLIGAN: So - - - so is your - - - is
5 your reading of that requirement that reasonable notice
6 incorporates no timeliness component for any motion at all?
7 Or simply for a speedy trial motion given - - - given the
8 separate statutory provision?

9 MS. HAMMOND-OAKLEY: My reading of it is that it
10 doesn't encompass any timing requirement at all. Because
11 all the motions that have to be upon reasonable notice have
12 their own separate timing requirements, right? Like a
13 motion to suppress also has to be upon reasonable notice,
14 and it has to be made within forty-five days of
15 arraignment.

16 No court has ever read that a defendant filing
17 their motion on the forty-third day after arraignment has
18 somehow failed to comply with this secondary - - - not
19 secondary. The second coequal independent timing
20 requirement found - - -

21 JUDGE HALLIGAN: So timeliness, I take it is - -
22 - is in your view, an appropriate consideration. It almost
23 has to be. But - - - but it's - - - it's addressed by
24 separate motions, specific timing requirements across the
25 board, it's not part of 210.45?

1 MS. HAMMOND-OAKLEY: Exactly. And - - - and that
2 is - - -

3 JUDGE RIVERA: Do we have to actually decide that
4 to resolve this question? Do we have to decide whether or
5 not reasonable notice in 210.45(1) refers to written
6 notice? Don't we just have to - - - I thought you were
7 arguing in part - - - decide whether or not there's a more
8 specific statute about the timing and so that controls,
9 even assuming for the moment that 210.45(1) has a timing
10 requirement.

11 MS. HAMMOND-OAKLEY: I suppose Your Honors could
12 do that. I suppose there would be no harm in doing that,
13 because the - - - there's no case ever of my knowledge
14 where the prosecution has asserted that upon reasonable
15 notice is a timing requirement for other motions.

16 JUDGE RIVERA: Well, what I'm suggesting is in
17 line with our canons of construction, right?

18 MS. HAMMOND-OAKLEY: Yes. Yes, I think so. It
19 would be the specific timing requirement - - -

20 JUDGE RIVERA: So I guess I'm asking, why would
21 we - - - why would we diverge from the usual course in our
22 interpretive - - - interpretation of this statute?

23 MS. HAMMOND-OAKLEY: I guess for clarity. Upon
24 reasonable notice is a provision that applies to a wide,
25 wide range of statutes. I think almost all of the statutes

1 in the CPL - - -

2 JUDGE RIVERA: Well, why not wait for a case
3 where it matters?

4 MS. HAMMOND-OAKLEY: I think that this court has
5 also decided it already.

6 JUDGE RIVERA: Okay.

7 MS. HAMMOND-OAKLEY: They said in Singleton and
8 Jennings and Maizon, this is a written notice requirement.
9 And so I think that it would be helpful for the court to
10 clarify or reaffirm that.

11 JUDGE TROUTMAN: In this instance, if an
12 adjournment had been given, would the People have, in fact,
13 had a reasonable opportunity to respond?

14 MS. HAMMOND-OAKLEY: Of course. And that
15 reasonable opportunity to respond is required by the rest
16 of the procedural statute, which allows the prosecution to
17 respond; to respond in writing; to present documentary
18 proof to the court, for the court to grant a hearing. And
19 - - - and that's true with the other provisions as well
20 that require reasonable notice.

21 It's not reasonable notice that's doing the work
22 of giving the prosecution a chance to respond. It's the
23 other procedural requirements that lay out how these kinds
24 of motions proceed.

25 JUDGE GARCIA: Counsel, would it make a material

1 difference to your argument if the motion was accepted or
2 if the motion was refused?

3 MS. HAMMOND-OAKLEY: I think it - - - it would,
4 Your Honor, if it was refused because then we would be
5 arguing about why it was or was not refused. However, it
6 was - - -

7 JUDGE GARCIA: If you have a right to make that
8 motion under 170.30, why does it make a difference if it's
9 just not accepted, or if it's accepted and never ruled on?

10 MS. HAMMOND-OAKLEY: I'm sorry. I think I
11 misunderstood your question.

12 JUDGE GARCIA: It's probably because it's - - -

13 MS. HAMMOND-OAKLEY: It would not make a
14 difference with my argument. The - - - Mr. Roper complied
15 with the procedural requirements. He made it prior to the
16 statutory deadline. He did it in writing. He included
17 written notice. And so the court was obligated at that
18 point to accept the motion and decide it at some point.

19 JUDGE HALLIGAN: Can I go back to your - - - your
20 reading of 210.45? So it says in writing and upon
21 reasonable notice.

22 MS. HAMMOND-OAKLEY: Yes.

23 JUDGE HALLIGAN: And so if reasonable notice
24 means in writing, then how are we giving effect to two
25 distinct - - - what looks like two distinct requirements in

1 the statute?

2 MS. HAMMOND-OAKLEY: So reasonable notice doesn't
3 just refer to in writing. It - - - it requires what's on
4 the appendix at Appendix 51, which is basically this cover
5 sheet called "Notice of Motion to Dismiss", which lays out
6 a very concise statement about the grounds that the person
7 is moving for dismissal.

8 And this is a very important piece of paper. I -
9 - - I feel like I kind of take it for granted now because
10 we do attach it to all - - -

11 JUDGE HALLIGAN: So - - - so reasonable notice
12 has distinct meaning because it covers the - - - the
13 grounds, not simply the writing?

14 MS. HAMMOND-OAKLEY: Yes. Because you can easily
15 imagine a situation where somebody might file a lengthy
16 motion, you know, fifty pages, raising all these different
17 kinds of grounds. The prosecution might respond to that
18 motion, and they might come into court. And then it turns
19 out there's some ground that was, you know, mentioned on
20 page 34 that the prosecution didn't notice, didn't respond
21 to.

22 JUDGE HALLIGAN: Yeah.

23 MS. HAMMOND-OAKLEY: And then - - - and then they
24 didn't have fair notice of that claim that the judge is
25 ruling on. I think that the other kind of situation that

1 this is seeking to address is a situation where, say, a
2 defendant moves for dismissal under 30 - - - the speedy
3 trial - - - you know. Sorry. CPL 30, and the prosecution
4 prepares to respond to a statutory speedy trial argument.
5 And then they come into court and suddenly they're talking
6 about constitutional speedy trial.

7 This is a very important piece of paper. It's
8 not a requirement that existed prior to the enactment of
9 the CPL.

10 JUDGE RIVERA: But that would mean you didn't put
11 the constitutional argument in writing, right?

12 MS. HAMMOND-OAKLEY: If it wasn't - - -

13 JUDGE RIVERA: And that's still about the
14 writing?

15 MS. HAMMOND-OAKLEY: Yes. That - - - that, I
16 suppose, would have more to do with the writing. Or if it
17 was briefly mentioned at some point in the motion but not
18 emphasized, I think that that's what the written notice
19 takes care of. It provides the prosecution a fair notice.

20 And it also allows the prosecution, upon receipt
21 of a motion in court, to look and think about how much time
22 am I going to need to respond to this? Do I need an
23 adjournment before trial to respond to this? Does the
24 prosecution feel that maybe they are over their speedy
25 trial time, and it would be a waste of the court's

1 resources to try this case and then decide the motion
2 later.

3 JUDGE GARCIA: Counsel, remedy that you're asking
4 for is a hearing?

5 MS. HAMMOND-OAKLEY: Yes. Because the
6 prosecution never responded to this motion. And many of
7 the claims rely on - - - on the prosecution's response.

8 If there are no questions from the court, I'll
9 reserve my remaining time for rebuttal.

10 Thank you.

11 CHIEF JUDGE WILSON: Thank you.

12 MR. GLASSER: May it please the court. Good
13 afternoon. Larry Glasser for the People.

14 CPL 30.30(4)(b) grants trial courts the
15 discretion to - - - whether or not to grant an adjournment
16 in a case. But it also limits it and states that an
17 adjournment may - - - may be granted only if the trial
18 court is satisfied that a postponement is in the interest
19 of justice, taking into account the public interest in the
20 prompt disposition - - -

21 JUDGE TROUTMAN: And here, why would the defense
22 not be entitled to an adjournment when the people are
23 claiming they - - - they exercise their right to have a
24 reasonable opportunity to respond?

25 MR. GLASSER: Well, for - - - for myriad reasons



1 and some of them Your Honors touched on.

2 JUDGE GARCIA: Why couldn't they just take the
3 motion and have the trial?

4 MR. GLASSER: Well, respectfully, Your Honor,
5 this court rejected that approach in People v. Lawrence
6 where the court - - -

7 JUDGE GARCIA: I don't read Lawrence that way. I
8 think Lawrence rejected you making the motion after trial.

9 MR. GLASSER: Well - - - or even deliberating and
10 deciding it. Because, Lawrence, if I may? This court in
11 Lawrence wrote, it makes little sense to squander the
12 resources of the courts and the time and efforts of
13 counsel, witnesses, and jurors on a fool's errand to
14 determine guilt when the verdict may be vacated at the - -
15 -

16 JUDGE TROUTMAN: But let's go back to this being
17 speedy trial we're talking about, and it says any time
18 before trial. Before there is a determination.

19 Why does the defendant's right to file that
20 motion get taken away?

21 MR. GLASSER: Well, because the statute, as
22 counsel pointed out - - - first of all, for misdemeanors
23 the statute says, "should be filed". But even if it says
24 "must", as it says for indictments, that is an outer limit
25 on the acceptability of a motion or the timing of a motion.

1 It is not a safe harbor that the court - - -

2 JUDGE TROUTMAN: So - - -

3 MR. GLASSER: - - - must consider a motion.

4 JUDGE TROUTMAN: - - - so the cut-off for the
5 defendant is whenever the court says; is that what you're
6 saying?

7 MR. GLASSER: Well, it is - - - it is committed
8 to the court's discretion, subject, of course, to appellate
9 review for an abuse of discretion, and to this court
10 whether it was an abuse of discretion as a matter of law.

11 CHIEF JUDGE WILSON: How would - - - how would -
12 - - how would a court - - - how would a court try to figure
13 out in its discretion what's reasonable, if it doesn't know
14 the reasons for the People's - - - the People would offer
15 for the delay?

16 MR. GLASSER: Well, the - - - the question of
17 reasonableness is the reasonableness of when defendant
18 brought the motion. And here - - -

19 CHIEF JUDGE WILSON: Yeah. But since the
20 defendant doesn't know what the People's explanation would
21 be for the various periods of delay, how do we know - - -
22 if - - - if then the question is subjectively what did this
23 counsel reasonably - - - or should have reasonably thought,
24 how is the Court supposed to figure that out?

25 MR. GLASSER: Right. Well, several reasons.

1 First of all, as the trial court here determined - - - I'll
2 put aside the calendar court for a minute. But as the
3 trial court determined, defense counsel had answered ready
4 two days in a row without mentioning they were going to
5 make a motion. They were sent to a trial part.

6 Your Honor asked about the standard practice. As
7 - - - as I believe this court's aware, here in Bronx
8 County, there are calendar parts that handle motions and
9 scheduling, and trial parts specifically dedicated to
10 trials as the trial judge mentioned.

11 JUDGE TROUTMAN: Does the criminal procedure law
12 make a difference between trial parts and motion parts?

13 MR. GLASSER: No. But again, as to the court's
14 discretion of whether an adjournment's appropriate and the
15 court also - - -

16 JUDGE TROUTMAN: What if - - - what - - - would
17 it be ineffective assistance of counsel to file a motion
18 for dismissal too early?

19 MR. GLASSER: Not if they had a good-faith basis.
20 It's certainly not ineffective assistance to file a motion
21 that you lose. The - - -

22 JUDGE RIVERA: So - - -

23 MR. GLASSER: - - - cases counsel cited - - -

24 JUDGE RIVERA: So then isn't the result of your
25 interpretation of the statutes and what you'd like us to

1 decide in this case - - -

2 MR. GLASSER: Well - - -

3 JUDGE RIVERA: - - - excuse me - - - premature
4 filing and excessive motion practice, doesn't that become
5 wasteful of our judicial resources and counsel's time?

6 MR. GLASSER: Well, a - - - a frivolous motion
7 might, but a premature motion where counsel in good faith
8 believes it's passed 30.30. And then you get a ruling that
9 less time passed. That's law of the case - - -

10 JUDGE RIVERA: Okay. And now you're going to do
11 it again before the days pass?

12 MR. GLASSER: Well, depending on the reason for
13 adjournments in the future, you have that ruling that's law
14 of the case.

15 JUDGE RIVERA: And you're going to have several
16 motions. And perhaps you end up on a - - - the day before
17 trial when you finally get the - - - you've hit the max
18 under the statute?

19 MR. GLASSER: And again, it's within the court's
20 discretion. And here the trial court made clear and asked
21 counsel how many days are you alleging? Because the court
22 - - -

23 JUDGE TROUTMAN: Well - - -

24 MR. GLASSER: - - - later said - - -

25 JUDGE TROUTMAN: - - - counsel can allege time -

1 - -

2 MR. GLASSER: Right.

3 JUDGE TROUTMAN: - - - but the prosecution, upon
4 reasonable notice, can come back and respond, oh, no, you
5 were wrong. By my calculation, the time has not expired.

6 So wouldn't it be a strategic consideration for
7 counsel as they're calculating - - - although they can't be
8 sure until the people respond - - - to wait until they're
9 sure or more reasonably sure that their motion would
10 prevail. Why - - - why should they have to give you a
11 chance to cure?

12 MR. GLASSER: Well, there's a balancing there,
13 and I'm not saying they have to file it on the day they
14 believe it becomes meritorious.

15 JUDGE HALLIGAN: So - - - so when would they have
16 to file it?

17 MR. GLASSER: Well, as 30.30 says, as Lawrence
18 says, it's fact-specific and it's - - - it's dependent on -
19 - -

20 JUDGE HALLIGAN: Okay. But - - - but - - -

21 MR. GLASSER: - - - circumstances. Here - - -
22 okay. Here - - -

23 JUDGE HALLIGAN: Given - - - given the volume of
24 cases we would probably want, if we accepted your reading,
25 to provide some guidance about what that means. So how - -



1 - how are we supposed to balance that? And what is defense
2 counsel supposed to do about this - - - you know, position
3 of am I filing too soon, or am I filing too late?

4 MR. GLASSER: Well, I - - - before I directly
5 answer. If I may, I'd like to point out that in Lawrence,
6 this court said that it's difficult to conceive of anything
7 that would change or alter the validity of a defendant's
8 claim after the district attorney announces readiness
9 because it is a counting statute - - -

10 JUDGE HALLIGAN: Okay. But perhaps you could
11 address - - -

12 JUDGE CANNATARO: And that's when the motion was
13 made, isn't it?

14 MR. GLASSER: I'm sorry?

15 JUDGE CANNATARO: That is when the motion was
16 made here. When the - - - when the People came to court
17 and declared ready.

18 MR. GLASSER: And that's what Lawrence faulted.
19 Because - - -

20 JUDGE GARCIA: Counsel, in this case - - -

21 MR. GLASSER: Yes.

22 JUDGE GARCIA: - - - the People are declaring
23 ready. Then there's an adjournment. And then - - - then
24 they're not ready. And then they go off calendar and they
25 say they're ready. They come back in - - -

1 MR. GLASSER: Right.

2 JUDGE GARCIA: - - - they're not ready. I think
3 it's reasonable to anticipate that the next time this ADA
4 shows up in court, it's going to be not ready.

5 MR. GLASSER: Well, but even if that's the case,
6 counsel answered, ready on I'll call it day one when no
7 parts were available. Gave no indication of making a
8 motion. Went back to their office at night. Drafted the
9 motion that's in the record. Came to court the next day.
10 Answered ready for trial again. And then mentioned filing
11 a motion.

12 JUDGE GARCIA: How do you get by the language in
13 Lawrence? And in Lawrence the trial date is October 27th.

14 MR. GLASSER: Sure.

15 JUDGE GARCIA: Of the majority that says
16 unquestionably defendant had an absolute right to make the
17 motion on October 27th, as the dissent notes, he also had
18 the responsibility to make it. So it seems to me Lawrence
19 is about you failed to make the motion.

20 How do you explain that language?

21 MR. GLASSER: Because in Lawrence, the facts that
22 gave rise to the motion first became known to counsel, I
23 believe eighteen days - - - I might be wrong on the exact
24 number - - - maybe fourteen days prior to the start of
25 trial. So again, as I said, counsel doesn't need to make a

1 motion the immediate moment it becomes ripe.

2 JUDGE GARCIA: Judge Simons here is saying they
3 had the absolute right to make it the day trial began
4 before it started.

5 MR. GLASSER: Well, I think the court meant that
6 counsel has the ability to make the motion. And on those -
7 - - again, on those - - -

8 JUDGE GARCIA: That's very different than
9 absolute right, right?

10 MR. GLASSER: But on those facts they may have.
11 Here, counsel themselves were alleging 210 additional days
12 had passed. And of course, the People get to respond to
13 that motion - - -

14 JUDGE GARCIA: That, to me, seems problematic if
15 you're saying, and I think this is in the record in a
16 number of places, 210 days had passed. But then, somewhat
17 later, the People say but we're only chargeable with fifty
18 of those. So obviously there is a great difficulty in
19 agreeing on how many days - - - and understandable - - -
20 are going to be charged to the People and the defendant.

21 So again, I come back to the point. Wouldn't a
22 responsible defense attorney want to accumulate as many
23 potential days, given the inevitable response by the
24 People, I believe, that's going to be that may be 3,000
25 days, but we're chargeable with 10.

1 MR. GLASSER: Well, I think a responsible defense
2 counsel would also balance that with, if they believe they
3 can, obtaining a dismissal as early as possible. So their
4 client is not still under the specter of charges, having to
5 come to court, perhaps having bail money tied up.

6 JUDGE GARCIA: I guess to get back to Judge
7 Halligan's question, where would this court strike that
8 balance?

9 MR. GLASSER: Well, where I think this court
10 should strike the balance is respectfully as 30.30(4)(b)
11 says, and as every Appellate Division has determined it is
12 subject to review for an abuse of discretion. It is
13 dependent on the facts and circumstances of every case.

14 Counsel cited in her brief - - -

15 JUDGE HALLIGAN: But then how - - - how is
16 defense counsel in any particular case supposed to
17 understand? There are significant consequences for getting
18 it wrong if you're defense counsel, right? How - - - how
19 are you - - - what are the guideposts that defense counsel
20 should follow?

21 MR. GLASSER: Well, this court has established -
22 - -

23 JUDGE HALLIGAN: And that the court should
24 follow?

25 MR. GLASSER: - - - that all counsel has to



1 allege is more than enough calendar time has passed.

2 JUDGE HALLIGAN: No. I mean in - - - to Judge
3 Garcia's point that there is a reason and I - - - I would
4 expect that you would agree that there is at least some
5 uncertainty when you look at whether particular days are
6 chargeable to - - - to one side or the other, right?

7 So in the face of that, and Judge Garcia's point
8 about a reason to accumulate as many days as possible
9 because you don't know how that calculus will come out - -
10 -

11 MR. GLASSER: Right.

12 JUDGE HALLIGAN: - - - what - - - what is - - -
13 how is defense counsel supposed to balance that, and how
14 are the courts reviewing those motions, supposed to balance
15 it?

16 MR. GLASSER: Well, defense counsel is supposed
17 to balance that with the number of adjournments and the
18 lengthy time, like in this case, that passed since they
19 believed the motion would be meritorious. Had - - -

20 JUDGE HALLIGAN: Is it just a simpler and more
21 administrable rule to follow what the court says in
22 Lawrence? The language that Judge Garcia read to you about
23 having - - - you know, the absolute right to file it up
24 until - - - you know, the time you start?

25 MR. GLASSER: The problem with applying that rule

1 as Lawrence as a blanket rule, first of all, besides
2 30.30(4)(b) granting judges the discretion whether or not
3 to give an adjournment, is that cases rarely come to trial
4 within that calendar ninety days or six months.

5 So a - - - a blanket rule that the court must
6 accept a motion on the eve of trial would completely
7 handcuff trial judges, because defense attorneys would
8 routinely walk into court when the People answer ready,
9 when jurors are walking into the courtroom, when our
10 witnesses are in our office - - -

11 JUDGE RIVERA: So they don't do that now?

12 MR. GLASSER: Well, now the judge has the
13 discretion. So for example - - -

14 JUDGE RIVERA: But I'm saying this is not a - - -
15 a common practice to either on the day of trial before it
16 starts, of course, or very close?

17 MR. GLASSER: It is a fair - - -

18 JUDGE RIVERA: It never happens?

19 MR. GLASSER: - - - it is a fairly common
20 practice. But right now judges have the discretion - - -

21 CHIEF JUDGE WILSON: But I also - - - I also
22 think you earlier said that a responsible defense attorney,
23 once that defense attorney believed that enough days had
24 accumulated, would make the motion right away to - - - to
25 get the defendant out?

1 MR. GLASSER: If they believe it's meritorious.
2 But to a - - -

3 CHIEF JUDGE WILSON: But so - - - so even if we
4 allow you to go all the way up to trial, if I'm a defense
5 attorney and I believe I've got to, why would I wait then?

6 MR. GLASSER: Because very - - -

7 CHIEF JUDGE WILSON: Because if I - - -

8 MR. GLASSER: - - - very often it could be used.
9 I'm not saying it's the case here, although it could be
10 used as a delay tactic. If the court's hands are tied and
11 defense counsel walks in with a motion and the court has no
12 choice but to adjourn the case.

13 JUDGE TROUTMAN: But here, there were times the
14 People declared ready. Then they're unready. So making
15 the argument that it is not an abuse of discretion seems
16 difficult, because ultimately the time has to be
17 calculated.

18 MR. GLASSER: Right.

19 JUDGE TROUTMAN: Both sides present their - - -
20 their interpretation of who's responsible. And then the -
21 - - the court ultimately decides. But you're saying even
22 though there's statutory speedy trial, that the court - - -
23 this goes along with calendaring - - -

24 MR. GLASSER: Right.

25 JUDGE TROUTMAN: - - - the court can just take it

1 away.

2 MR. GLASSER: Again, subject to appellate review.
3 Like, the - - - the court in this case made sure and asked
4 counsel and explained very clearly on the record, asked
5 counsel whether it was the ninetieth or ninety-first day
6 because the court was well aware if the motion just became
7 ripe.

8 And I'm not talking ultimately on the merits, but
9 even by counsel's allegations, it would have accepted the
10 motion. But when counsel was saying the motion had been
11 ripe for 210 days, for about seven months, the court was
12 under no obligation - - -

13 JUDGE RIVERA: But then what - - -

14 MR. GLASSER: - - - to delay at a trial - - -

15 JUDGE RIVERA: - - - what if counsel - - -

16 MR. GLASSER: - - - that counsel entering running
17 for.

18 JUDGE RIVERA: - - - what if counsel had said its
19 93rd day?

20 MR. GLASSER: Well, that would be a tougher call.
21 As I said, the counsel doesn't need to make the motion the
22 instant it becomes ripe. But here - - -

23 JUDGE RIVERA: But why do - - - why do we want to
24 create more work for the judges when we can have a clear
25 rule that you have until the trial starts, which is what

1 the statute says?

2 MR. GLASSER: Because I think as much as a clear
3 rule would be nice, this court also needs - - -

4 JUDGE RIVERA: Well, it's a statutory rule that
5 we're bound by.

6 MR. GLASSER: It is a statutory - - -

7 JUDGE RIVERA: But I understand you have a
8 different view.

9 MR. GLASSER: - - - rule. And to benefit from
10 the statute, a defendant or the People have to abide by the
11 statute's requirements. And the court should also be
12 considered with the overall efficient administration of
13 cases, and as 30.30 says, promptly bringing cases to trial.
14 And the motion - - -

15 JUDGE TROUTMAN: And - - - and with respect to
16 judicial discretion, courts, of course, have broad
17 discretion. But there are certain things that the court
18 can't necessarily summarily deny with respect to a
19 defendant's rights. Would you agree that?

20 MR. GLASSER: I would agree. And to be clear,
21 putting aside the facts of this case for a minute, I would
22 just strongly argue to the court and urge the court that
23 there's currently discretion built into the statute, and I
24 think that's the appropriate standard.

25 The defendant's blanket or suggestion of a

1 blanket rule that every motion must be accepted would be
2 contrary to the statute and would really tie judges' hands.
3 So I agree that, again, the statute and this court's case
4 law provides trial courts with - - - with the discretion to
5 manage their calendar and decide an adjournment.

6 JUDGE TROUTMAN: What if there were a
7 constitutional speedy trial claim? Could the court decide,
8 well, the jury's waiting; I'm not hearing it?

9 MR. GLASSER: I mean, that might be different
10 because of the - - - you know, obviously different issues
11 that come up with a constitutional claim. But that was not
12 the issue here.

13 JUDGE TROUTMAN: Of course.

14 MR. GLASSER: Right.

15 JUDGE TROUTMAN: I'm quite aware of that. But I
16 ask you if it's a constitutional claim for speedy trial,
17 why - - - why would the rule be different? Couldn't the
18 court just exercise its discretion and deny an opportunity
19 for that to be decided?

20 MR. GLASSER: Well, I think the court could
21 exercise its discretion. Yes. Again, subject to appellate
22 review. But there may be circumstances, for example - - -

23 JUDGE TROUTMAN: And when you say subject to
24 appellate review, aren't you essentially saying, yes, you
25 can exercise your discretion, but you might be wrong. And

1 you're saying it's up - - - incumbent upon the defendant to
2 then raise it at the appellate court?

3 MR. GLASSER: I mean, that's always the case with
4 the court's ruling. But for example, if a defendant raises
5 a constitutional speedy trial claim on a case that's six
6 months old or eight months old, yes. The judge can
7 summarily say, I'm not even listening to this, let's pick
8 the jury. Even if they have a written motion and they want
9 it filed, and they want adjournment for the People to
10 respond on write - - - in writing.

11 The court could not necessarily decide it on the
12 merits and just say it's clearly inappropriate, I'm not
13 accepting the motion.

14 And I'd like to actually segue from that into an
15 important matter in this case which is, contrary to
16 counsel's claim, there was no properly filed motion in this
17 case. And that is very clear from the record, both in
18 front of the calendar part and the trial part. And I'll
19 start with the calendar part - - -

20 JUDGE TROUTMAN: What does "properly filed" mean?

21 MR. GLASSER: Well, a - - - a motion that was
22 served on the People and properly filed with the court.

23 JUDGE TROUTMAN: And statutorily?

24 MR. GLASSER: "Statutorily" means service on the
25 opposing party and then filed in the court.

1 Now, here in the Bronx, it's traditionally filed
2 in the clerk's office. I mean, it's now electronic, but
3 I'll acknowledge it wasn't at the time of this case.

4 But here the defense counsel answer - - - after
5 answering ready for trial the second day in a row, she said
6 to the trial judge that she had a motion she was going to
7 be filing. And the trial court said, no, you're sent out
8 to Part T13 for trial.

9 JUDGE TROUTMAN: So you disagree that at some
10 point the court accepted the motion - - -

11 MR. GLASSER: I do disagree.

12 JUDGE TROUTMAN: - - - regardless of the People
13 saying we're not taking it?

14 MR. GLASSER: Right. I'm going to put aside the
15 service on the People. Because regardless of whether that
16 was appropriate or not, it was never filed. And it was
17 clear it was never filed.

18 JUDGE TROUTMAN: You can't file it with the
19 court?

20 MR. GLASSER: Well, the court didn't accept it
21 for filing.

22 JUDGE RIVERA: It was - - - well - - -

23 MR. GLASSER: And that's clear from the record.

24 JUDGE RIVERA: - - - they did not accept it or
25 say, I'm not going to decide it, I'll let the trial judge

1 decide this. And if not, come back to me.

2 MR. GLASSER: Well, ultimately, at the end of
3 everything in the - - - in the trial part. So after going
4 to the calendar part and then after being sent in the trial
5 part, defense counsel - - - they discussed whether it had
6 been filed and was returnable before the trial part, and
7 counsel said no. She said she wanted to figure out a
8 return date with the court.

9 Ultimately, she asked on the record to file and
10 serve it now, and the judge said no. And then counsel
11 asked for an adjournment to file it in a timely and
12 effective manner. And that's on page A-70.

13 So counsel would not have asked for that if she
14 believed it was filed. Counsel was trying to file. The
15 Court accepted - - - exercised its discretion not to accept
16 it because of the posture of the case after an appropriate
17 inquiry.

18 CHIEF JUDGE WILSON: What about - - - what about
19 the statement that Judge Rivera just referred to where the
20 calendar part judge said, if the trial court doesn't decide
21 this, I'll decide it.

22 MR. GLASSER: Right. And the court said, I'm
23 making - - - first of all, the - - - the calendar judge
24 said something - - -

25 CHIEF JUDGE WILSON: Isn't the fair implication

1 that - - -

2 MR. GLASSER: - - - to the effect that - - -

3 CHIEF JUDGE WILSON: Isn't the fair implication
4 that if the calendar court has the motion, has accepted the
5 motion?

6 MR. GLASSER: Well, no. Because if the - - -

7 CHIEF JUDGE WILSON: He just says, look, I'm
8 figuring this out to the trial part. Trial part doesn't
9 decide it. Bring it back to me.

10 MR. GLASSER: I'd say for two - - - it's not - -
11 - for two reasons, Your Honor. First of all, if the
12 calendar judge accepted the motion, it should have
13 addressed the People's response. That is a calendar part.
14 The case would not have been sent out to trial. If there's
15 an actual pending dispositive motion. The calendar court
16 would have said something like, okay, People's response is
17 due in three weeks, come back in three weeks.

18 CHIEF JUDGE WILSON: The calendar judge can't
19 send that decision - - - can't refer that question to the
20 trial part?

21 MR. GLASSER: Jurisdictionally or - - - or - - -

22 CHIEF JUDGE WILSON: Yeah.

23 MR. GLASSER: - - - appropriately the court
24 could.

25 CHIEF JUDGE WILSON: Let's start with - - - let's



1 start with jurisdictionally.

2 MR. GLASSER: But again, the - - - the practice
3 in Bronx County would not be to send a pending motion to a
4 trial part to be considered when it's accepted in a
5 calendar part.

6 CHIEF JUDGE WILSON: But isn't that clear that
7 that's what this judge did?

8 MR. GLASSER: Well, I would say it's not. And I
9 would say even defense counsel knew it's not. Because when
10 the trial part wouldn't accept the motion, counsel never
11 asked to go back to the calendar part. Counsel asked - - -

12 JUDGE RIVERA: Let - - - let - - - let's stay
13 with your - - -

14 MR. GLASSER: - - - for an adjournment to file -
15 - -

16 JUDGE RIVERA: - - - your - - - your practice.
17 Wouldn't that explain why the calendar judge says if they
18 don't decide it, then bring it back and I'll decide it?
19 We're going to get to it.

20 MR. GLASSER: But again, if that's what the
21 calendar judge said, then counsel waived that opportunity.
22 Because counsel never asked the trial judge to send the
23 case back. Counsel wanted the trial judge to accept - - -
24 which, again, counsel wanted the trial judge to accept the
25 motion. Counsel first brought it up early - - -

1 JUDGE RIVERA: The trial judge disposed of the
2 motion. However, the trial judge disposed of the motion.
3 So counsel moved on, figuring - - -

4 MR. GLASSER: No. But before that.

5 JUDGE RIVERA: - - - maybe there's an appellate
6 issue here.

7 MR. GLASSER: But if you look at the record,
8 counsel didn't ask the trial court to consider - - - didn't
9 say a motion was filed, I'd like you to consider it.
10 Counsel tried to file the motion in the trial part.

11 JUDGE TROUTMAN: You keep referring to trial
12 court versus motion court. Are they one and the same? Are
13 they jurisdictionally distinct?

14 MR. GLASSER: No. They're one and the same. But
15 - - - but it goes to everybody's understanding of what
16 happened. Because counsel didn't go to the trial part and
17 say trial judge a motion's filed, it's been pending, let's
18 address.

19 JUDGE TROUTMAN: But it seems there was a - - -

20 MR. GLASSER: Counsel said I'd like to file it.

21 JUDGE TROUTMAN: Even based on what you're
22 suggesting, because of the system set up, there's
23 misunderstandings. It's - - - it's not everybody
24 understood.

25 MR. GLASSER: Well, what I'm saying is everyone

1 understood it was - - - had not been filed in the calendar
2 part. The calendar judge - - -

3 JUDGE TROUTMAN: Even when - - -

4 MR. GLASSER: - - - did not take it.

5 JUDGE TROUTMAN: - - - as was pointed out by
6 Judge Rivera, the trial court said I'll accept it, and the
7 - - - the other part - - - I'm sorry. The motion part said
8 if the trial court judge won't take it, I'll decide it?

9 MR. GLASSER: Well, because when the parties got
10 sent to the trial part, counsel asked, I believe, if an
11 intern or a junior lawyer could second seat the trial,
12 there was discussion over a plea. And then counsel raised
13 a 30.30 claim orally, not even noting that there was any
14 sort of written motion.

15 And if counsel thought a dispositive motion had
16 been filed and accepted by the calendar part - - -

17 JUDGE TROUTMAN: And there was some difficulty in
18 the trial part with respect to the manner in which the
19 trial court initially responded?

20 MR. GLASSER: Well, when you - - -

21 JUDGE TROUTMAN: The court responded in a curt
22 fashion, and there were issues that were raised, arguably,
23 with respect to the manner in which the court responded.

24 MR. GLASSER: Right.

25 JUDGE TROUTMAN: In other words, the court was

1 not pleased at getting a motion in the trial part.

2 MR. GLASSER: Correct.

3 JUDGE TROUTMAN: It expected the case to be ready
4 for trial?

5 MR. GLASSER: Right. And again, as I said, this
6 court can review the trial court's actions and demeanor and
7 words to determine if it was an abuse of discretion as a
8 matter of law. That's at the threshold.

9 The question I submit before this court is
10 whether that court - - -

11 JUDGE RIVERA: But - - -

12 MR. GLASSER: - - - abused its discretion as a
13 matter of law.

14 JUDGE RIVERA: But counsel, before the trial
15 judge, says they have a 30.30 motion. The court says it's
16 an oral - - - oral application is denied. Counsel says I
17 have a written motion. Court says when was it served? I
18 gave it to Judge Dawson. I've given it to the court.

19 MR. GLASSER: Right.

20 JUDGE RIVERA: And then the court says, was it
21 served on the People? And counsel says they refused to
22 accept it. I've been trying to serve it.

23 MR. GLASSER: Right. Right.

24 JUDGE RIVERA: I mean, why isn't that enough?

25 MR. GLASSER: Because, again, at this stage,

1 being in a trial part after counsel answered ready two days
2 in a row, said they were not ready at 9:30 in the morning,
3 asked for the - - - the case to be called later. Getting
4 sent out to the trial part. I mean, the - - - the judge
5 did eventually make the record he knew the People - - -

6 JUDGE TROUTMAN: But why could the - - - why
7 could the People say ready, and then they're not ready?
8 And this motion that clearly impacted the defendant's
9 rights, they can't - - - they can't have it considered?
10 Because, as you say, well, they said they were ready two
11 days in a row. But the People can be ready and unready,
12 and that's okay. Is that what you're suggesting?

13 MR. GLASSER: Well, first of all, if the People
14 continue to do that, then we will run up against our speedy
15 trial clock. But this court has repeatedly said that it's
16 not an abuse of a court's discretion to deny an adjournment
17 if counsel asks for an adjournment, but also says they're
18 ready for trial if the adjournment's rejected.

19 And I - - - I - - - to be - - - I did not put
20 those cases in my brief, but I do have some cites here in
21 different contexts. But for example, in People v. O'Daniel
22 24 NY 3d 134, counsel asked for more time to prepare for
23 trial, but said to the court, I acknowledge the case is
24 scheduled for trial today and you have to manage your
25 calendar. I'd like more time to prepare, but I'm ready to

1 go if that request is denied.

2 And this court held it was not an abuse of
3 discretion to deny the adjournment request because counsel
4 had noted concomitant - - - concomitantly with the
5 adjournment request - - -

6 JUDGE TROUTMAN: So context - - -

7 MR. GLASSER: - - - that they were nonetheless
8 ready.

9 JUDGE TROUTMAN: - - - context matters?

10 MR. GLASSER: Context matters.

11 And if defense counsel - - - you know, before - -
12 - I haven't even addressed the in writing or on reasonable
13 notice. But certainly if counsel came in before answering
14 ready in the calendar part, which is set up for that in
15 Bronx County and said, Judge, I'm not ready for trial, I
16 believe this case is past 30.30. I would like a motion
17 schedule, or I have a motion here, or I'd like a motion
18 schedule, that would have provided everybody with notice
19 that the defendant was about to make a - - - a 30.30 claim.

20 CHIEF JUDGE WILSON: Your time is up, but if you
21 want to spend not more than a minute on the in writing
22 reasonable notice - - -

23 MR. GLASSER: Yes.

24 CHIEF JUDGE WILSON: - - - point?

25 MR. GLASSER: Thank you, Your Honor.

1 Well, as - - - as Your Honor said, Judge
2 Halligan, the - - - these are two different phrases: in
3 writing and on reasonable notice. And reasonable notice
4 cannot be a substantive requirement as - - - as counsel
5 asserts. It is not simply the notice of - - - of motion,
6 as counsel mentioned. The statute doesn't say a notice of
7 motion is required. It says in writing and on reasonable
8 notice.

9 Moreover, not only must it be in writing, all of
10 the provisions of - - - of law that have this phrase 710,
11 330, 440, provide grounds that a motion can be denied if
12 the factual or legal claims are insufficient to support the
13 claim.

14 So that is how substantively, a motion that's
15 lacking merit gets dealt with. So on reasonable notice
16 cannot be a substantive requirement to give the People
17 notice of the claims that are being made like being in
18 writing. It's a procedural requirement akin to a timing
19 requirement. But again, depending on the facts and
20 circumstances of the case.

21 Just like an oral motion here. I don't - - -
22 respectfully, I don't think the court has any problem with
23 - - - with the trial court rejecting defendant's oral
24 motion because it clearly contravened the statute's
25 requirement to be in writing. There's a separate

1 requirement that it be on reasonable notice.

2 And when counsel came in two days in a row - - -

3 JUDGE RIVERA: They're not relying on the oral
4 motion, right? They're relying on a written motion?

5 MR. GLASSER: Right. But I - - - I was saying
6 that by - - - by analogy - - -

7 JUDGE RIVERA: Yes.

8 MR. GLASSER: - - - that would allow a court,
9 despite the language that a file - - - a motion must or
10 should be filed prior to trial, for example. Just like an
11 oral motion before trial could be summarily rejected by the
12 court or not accepted, a motion not on reasonable notice
13 can procedurally not be accepted by the court prior to
14 trial. That's different from the merits decisions that are
15 based on the content of the motion.

16 JUDGE RIVERA: You're saying the reasonable
17 notice is the timing requirement?

18 MR. GLASSER: Yes.

19 JUDGE RIVERA: Okay. So again, I'll ask you what
20 I asked your adversary. Why isn't that superseded by the
21 specificity of 30.30's require - - - well, provision that
22 you may file all the way up to the day of trial - - - until
23 the trial starts. Excuse me.

24 MR. GLASSER: Well, because I think, again,
25 that's the outer limit. So I think, for example, a 30.30

1 motion between verdict and sentencing would just summarily
2 be rejected, right? That's untimely.

3 But just because it is timely, a motion before
4 trial still has to comply with 30.30(4)(b), which gives the
5 judge the discretion whether to grant an adjournment.
6 Because, as counsel acknowledged - - -

7 JUDGE RIVERA: Well, why - - - why - - -

8 MR. GLASSER: - - - an adjournment's necessary -
9 - -

10 JUDGE RIVERA: - - - why wouldn't it be
11 reasonable if I'm at the outer limit and haven't crossed
12 that Rubicon?

13 MR. GLASSER: Well, because that would be a rule
14 of law, that the motion is timely as long as it's before
15 trial. That's not - - -

16 JUDGE RIVERA: Well, that - - - that's the
17 statutory language.

18 MR. GLASSER: Right. Well, the statutory
19 language says either should or must be filed prior to
20 trial. But there's separate language as to whether the
21 judge can or should grant an adjournment for the People to
22 respond, knowing it will delay the proceedings, delay the
23 trial - - -

24 JUDGE RIVERA: Seems to create a lot of chaos, is
25 all I'm going to say.

1 MR. GLASSER: If I may, Your Honor, I'll - - -
2 I'll finish with this point. Every court in the Appellate
3 Division has applied the 30.30(4)(b) abuse of discretion
4 standard. Counsel cited a number of cases in - - - in her
5 brief where courts have overturned the rejection of day of
6 trial speedy trial motions as not being appropriate use of
7 discretion.

8 I cited a fair number of cases in my brief where
9 courts have affirmed day of trial speedy trial motions as
10 being untimely and not on reasonable notice. That comports
11 with 30.30(4)(b). It comports with the court's ability to
12 move its own calendar, and for the efficient, orderly
13 procedure of cases to trial. Protecting the scarce trial
14 resources that this court wanted to do and said it wanted
15 to do in Lawrence.

16 JUDGE RIVERA: But they've also held that filing
17 on the day of - - - before trial, but on the day of trial
18 is - - - is timely.

19 MR. GLASSER: Again, cases have gone both ways.
20 And that goes back to sort of my high-level argument to
21 this court, which is the 30.30(4)(b) abuse of discretion
22 standard is the appropriate test. And that's very
23 workable. And that's what's in existence now.

24 And I just - - - I - - - at the first instance, I
25 would urge the court not to accept the blanket rule of law

1 that counsel proposes. I submit that contravenes
2 30.30(4)(b). But then I would say applying the abuse of
3 discretion as a matter of law standard, this Court did not
4 do so. But I would differentiate those two points that I
5 urge this court to consider.

6 CHIEF JUDGE WILSON: Thank you.

7 MR. GLASSER: Thank you.

8 JUDGE RIVERA: So are you asking us to set a per
9 se rule that's a radical departure, both from the practice
10 and the way the Appellate Division has interpreted the
11 statutes?

12 MS. HAMMOND-OAKLEY: No.

13 JUDGE RIVERA: Okay.

14 MS. HAMMOND-OAKLEY: I'm asking Your Honors to
15 enforce the clear language of the statute. I think
16 everybody understands that a deadline is both a requirement
17 that you do something by the deadline and permission to do
18 something up until the deadline. Contrary to what my
19 opposing counsel is saying, I think it is a safe harbor.

20 You know, if you have a deadline of turning in a
21 paper by Friday at 5 p.m. If you turn it in Friday at 12
22 p.m. or 2 p.m., or even 4:30, you turned in that paper on
23 time. You followed the rule. And that is the common
24 understanding of deadlines. That is how people read this
25 statute.

1 I also think - - -

2 JUDGE RIVERA: It's a legislative determination
3 of what constitutes reasonable notice?

4 MS. HAMMOND-OAKLEY: Sorry?

5 JUDGE RIVERA: It's a - - - it's a legislative
6 determination of what constitutes reasonable notice, that
7 outer limit?

8 MS. HAMMOND-OAKLEY: I would say it's that. And
9 it also takes into account the overall statutory scheme
10 where this is a prosecutorial readiness statute. This
11 statute is interested in making sure that prosecutors are
12 actually ready for trial within the statutory period.

13 And they can stop the clock by doing things like
14 filing off calendars - - -

15 JUDGE RIVERA: What work would the one - - - the
16 out - - - what he's calling that outer boundary of before
17 trial? Up to but before trial do if CPL - - - what was it?
18 270(d) whatever it was. I'm sorry. I've forgotten - - -
19 is the timing requirement is an unknown timing requirement?
20 Is an unknown timing requirement because there's no number
21 and if there's no date, there's no amount of time.

22 MS. HAMMOND-OAKLEY: That the "upon" read - - -
23 what word the "upon" - - -

24 JUDGE RIVERA: Yeah. What would be the point of
25 it?

1 MS. HAMMOND-OAKLEY: I - - - I - - - my - - -
 2 what I seem to think respondent is saying that it's - - -
 3 that it's some sort of backstop. Which is obviously
 4 confusing, especially in the case of the misdemeanor rule
 5 where it simply says "should", which is more permissive
 6 than "must", and leaves open the possibility of people
 7 filing these motions even after that sort of soft deadline
 8 has passed.

9 And I think it would also be a - - - a seismic
 10 change in the interpretation of the CPL, which is rife with
 11 deadlines and upon reasonable notice. And suddenly every
 12 deadline is becoming not a deadline, but the backstop for
 13 some sort of reasonableness determination that the judge is
 14 making based on a myriad of factors.

15 And I think the respondent's brief perfectly
 16 illustrates the issues with any of the factors that they
 17 apply. They try to use ripeness as a factor. However,
 18 they say that my client both should have filed earlier at a
 19 time when his case had merit, and also that at the time he
 20 filed, only fifty-four days were passed.

21 They can't have it both ways. They can't say
 22 that he both filed too late and filed too early and waived
 23 his speedy trial right at some point in the seven months
 24 prior to this case actually being taken to trial.

25 On the filing points, I would direct Your Honors'

1 attention to A-50 of the appendix. That is the court
2 action sheet where the calendar court judge wrote defense
3 counsel files 30.30 motion. The record is clear that the
4 court did take that motion. Did put it in the court file.

5 The trial court found that motion in the court
6 file and then later after trial was over, and they were
7 discussing the 30.30 motion again. At A-251 of the record,
8 the trial court judge said that he had spoken to the
9 calendar court judge, and he did accept the motion. So
10 this court did accept the motion.

11 I would also note that the Appellate Division did
12 not deny this claim on the basis that this motion was never
13 properly before the court or that it was only an oral
14 motion or anything like that. It was denied on the grounds
15 that the written motion, after it was filed, was untimely
16 and not upon reasonable notice. That is a factual
17 determination. It's not a determination that's adverse to
18 my client. And so I think it is actually technically
19 unreviewable by this court.

20 This was a filed motion. It was properly before
21 the court. The only issue is whether or not this, upon-
22 reasonable-notice statute is going to be interpreted the
23 way that respondent wants it to be applied.

24 Respondent also tries to paint my argument as
25 asking for some sort of blanket crazy rule that's going to

1 result in - - - in tons of delay and last-minute chaos.
2 And I think that that's belied by the record for several
3 reasons.

4 First of all, there's a long legislative history
5 of this particular deadline for speedy trial motions. When
6 the CPL was first enacted, they made all - - - all pre-
7 trial motions due prior to the commencement of trial. And
8 then two years after, in 1972, they took the motions to
9 dismiss and moved them up earlier. And they did that with
10 the express purpose of preventing delay, reducing court
11 congestion, preventing last-minute motions being filed.
12 They made an exception for speedy trial motions. They left
13 speedy trial motions. You can file them prior to the
14 commencement of trial.

15 So the legislature knew at that point that these
16 motions could, would, are being filed at the last minute
17 and chose to leave the deadline there. They did the same
18 thing in 1974, when they moved more pre-trial motions up to
19 the beginning, and retained this exception for speedy trial
20 motions.

21 And they even did it as recently as last year, in
22 2025, when the legislature went in and carved out a
23 specific ground for making speedy trial motions challenges
24 to a certificate of compliance. They said those challenges
25 should be made earlier on. We don't want those kinds of

1 motions being made at the last minute, potentially delaying
2 trial, things like that. And said in the statute, we in no
3 way want to change anything about how other 30.30 motions
4 are made. We're not trying to abridge the defendant's
5 rights in any other ways. The legislature is aware these
6 motions can be filed at the last minute and has maintained
7 that rule for the last fifty-five years.

8 I also think that this is obviously a
9 prosecutorial readiness statute. We are interested in
10 seeing the prosecutor actually be ready for trial. Any
11 rule like the one the respondent proposes, where defense
12 counsel is supposed to anticipate a prosecutor's readiness.
13 Not only anticipate their current readiness and what
14 exclusions they may or may not claim for certain periods
15 but also anticipate which trial date they're going to be
16 ready at in the future. You know, in Mr. Roper's case,
17 that was the seventh trial date. In the amici brief, they
18 talk about it being, you know, twelfth trial date. And I'm
19 sure some of them are the second trial date or the third
20 trial date.

21 We can't have a rule where defense counsel is
22 required to predict that, and we shouldn't have a rule.
23 Because this is not a defense readiness statute or a
24 defense predicting prosecution readiness. It's the
25 prosecutor being ready, and it makes sense to follow the

1 CPL and encourage defense counsel to file one motion
2 towards the end of the case, or at the end of the case,
3 when it becomes clear that the prosecutor is actually going
4 to be ready so we can look back at all those days and
5 interrogate them.

6 CHIEF JUDGE WILSON: Thank you.

7 MS. HAMMOND-OAKLEY: Thank you.

8 (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. Roper (Naim), No. 32 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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