

trial unless that defendant has given just notice of intention to rely upon an alibi to the county attorney and file that with the court at least 30 days before the trial. Can you give me a circumstance where a defendant would not know that he or she was going to rely upon an alibi at least 30 days before the trial?

SPEAKER BAACK: Senator Beutler.

SENATOR BEUTLER: Well, the thought that occurred to me, Senator, was what if a defendant, in fact, had an alibi but the person who would be the one to testify with regard to the alibi was off in some unknown parts and the other party...some...they were unable to locate them, had gone off to Alaska, the Soviet Union or Timbuktu or wherever, but then a friend of a friend says, hey, I know where he is, but it's only 15 days before the trial by the time they locate him and are able to establish that he can come back and testify.

SENATOR HOHENSTEIN: So your concern is that even though a defendant may know that he or she is going to rely upon an alibi, because of maybe the evidence being unavailable or some other change in the circumstances, they would not give that notice thinking that maybe they couldn't use it because they couldn't prove it.

SENATOR BEUTLER: Right.

SENATOR HOHENSTEIN: And things might change within that 30-day period and, therefore, they would then say, wait a minute, facts have changed, I want to be able to rely upon that alibi.

SENATOR BEUTLER: Right.

SENATOR HOHENSTEIN: Okay. In those circumstances, would you think, for the record, would you think that in those cases where there was less than a 30-day notice, as a matter of fairness, that you would think that a court might offer and extend perhaps a trial date so the prosecution would also have a chance maybe to check out this fact, let's say, it came up in the circumstances you described in the last two days before trial, the court might feel, look, this is significant, I want to give the defendant an opportunity to prove an alibi but I also want to give the prosecution the opportunity to check it out. You would think that a court would probably be prudent by maybe extending the trial date, giving both sides a fair opportunity.