Replying to the two comments (from the chair of the CIDVC and retired judge Mundell) opposing my petition to Amend Rule 1(D)(4) regarding seizure of innocent defendants, both have a common thread. They both argue for capricious and arbitrary unlawful Fourth Amendment seizures of innocent people. Let's start with the chair's comment first.

If I understand the chair's argument correctly, the chair is inconsistent in that he first hints that the seizure of a defendant is a reasonable lawful Fourth Amendment seizure because of *Terry v. Ohio*. But then in the same breath he argues that "directing a defendant to remain in the courtroom" [against his will, implied in my petition] isn't a Fourth Amendment seizure.

So why quote *Terry* in the first place?

But since he did, I must respond. *Terry* is off point for two reasons. Let's take the easiest case first, the application of Rule 1(D)(4) after an Injunction Against Harassment.

Terry is about criminal activity. The court ruled that a law enforcement officer could detain a person if the officer has "a reasonable suspicion that the person has committed, is committing, or is about to commit a crime." Emphasis on the word "crime." As I have pointed out numerous times in another petition, an Injunction Against Harassment is not a Title 13 Criminal matter. It is purely civil. Therefore, *Terry* cannot apply in a civil Injunction.

Now, an Order of Protection is a Title 13 Criminal matter. But again, *Terry* does not apply. *Terry* allows for detention if there's the suspicion that a person has committed, is committing, or is about to commit a crime. But remember, I am arguing that a defendant cannot be detained after a court of law has just determined there's no evidence that the defendant has committed, is committing or is about to commit a crime.

Nevertheless, it appears the commentators might be arguing that they believe a defendant, despite being found innocent, may now be about to commit a crime (presumably attacking his false accuser in the courtroom), although the chair admits even then the defendant is "not being held as part of an investigative police stop." Which means that *Terry* could not be invoked to justify the unlawful Fourth Amendment seizure on the suspicion a crime is about to be committed. As the chair said, this isn't a police stop. Beside, it's inherently prejudicial and doesn't meet the standard for specific and articuable facts. To suggest that you're detaining an innocent defendant because he is a defendant. . . there must be more probable cause than that.

Terry aside, the chair then goes on to argue that detaining an innocent defendant is not really a Fourth Amendment seizure anyway. Specifically, he says "a judicial officer who asks the defendant to remain in the court while the plaintiff exists the building is not 'seizing' the defendant."

Well, that would be true if the judicial officer were really "asking." But we all know this is not a polite "request" from a judge asking for consent. It's an order. The chair is splitting hairs. This is an unlawful seizure by degree.

Certainly the defendant takes it as an order and is not going to try to exercise his Fourth Amendment right to leave. Regardless if the judge is asking or not, “A person is 'seized' within the meaning of the Fourth Amendment only when, in light of all the surrounding circumstances, a reasonable person would believe that he or she was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 100 S.Ct 1870, 64 Led. 2d 497 (1980); *State v. Young*, 135 Wn.2d 498, 509, 957 P.2d 681 (1998).

But let's say a defendant tests the chair's assertion, that the court is simply asking him to remain, and the defendant heads for the door. Will not the judicial officer immediately call the Bailiff to restrain / detain the defendant? So again, this is seizure by degree. If the seizure did not officially start when a judge tells a defendant to remain in the courtroom it will certainly start when the defendant invokes his Fourth Amendment right. (If I have it right, I believe I read that a seizure can occur verbally when accompanied by the show of force.)

In a bizarre twist, the chair invokes the Code of Judicial Conduct "requiring" judges to seize innocent defendants in the interest of potential pre-thought crime decorum. Aside from the questionable validity of trying to make the Code incumbent on a defendant, there is already A.R.S. § 13 -2810 A(1). "A person commits interfering with judicial proceedings if such person knowingly engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority."

So we already have a law to prevent innocent defendants from acting up. We do not this Rule.

The chair and retired judge Mundell seem to hint that there is some huge problem here bubbling below the surface, ready to explode at any moment, thus requiring a seizure of innocent defendants. But in *Michigan v. Sitz*, a landmark case allowing reasonable seizure for DUI checkpoints, the court cited the "grave and legitimate" interest of the State as it weighed against unreasonable seizure. There is no data to demonstrate a grave and legitimate interest here.

Sure, an innocent defendant, who has been falsely accused, and now found innocent, is going to be upset. That's no reason to detain him. After all, he did not initiate this action.

The chair insists the defendant is not being punished. May I respectfully submit that chair is overreaching and cannot say what a wrongfully detained defendant feels? May I suggest he query innocent defendants who have had to suffer through this indignity and ask them how they feel? The woman whose Injunction spawned this petition felt she was punished.

Likewise, retired judge Mundell makes similar arguments and cites various precedents allowing the tradition. But this in itself is flawed. The very nature of citing a precedent, as opposed to the foundational law itself, is that, unless a case of first impression, precedents almost always undermine and weaken, sometimes, ironically, by over extending, the foundational law. For example, contrary to A.R.S. § 13-2810, which limits her jurisdiction to court in session, she cites a ruling that purports to extends a judge's authority to anyone outside the courtroom. Clearly this

is specious.

This Rule is inherently prejudicial because the court is effectively telling the defendant that "Even though there's no evidence to 'convict' you, we still think you're a bad guy and may harm someone. Based merely on what we feel, we are going to hold you against your will. To add insult to your injury, we're going to give preferential treatment to your false accuser."

This is arbitrary and capricious. We don't do this to any other defendants in other matters where there may be even more animosity between parties. (As when they're in a dispute over a million bucks.) Further, we already have a criminal law regarding conduct in the courtroom. The purpose of this Rules forum is to challenge rules like this. We need to amend this Rule so as to not violate an innocent litigant's Fourth Amendment Right.