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Joe Anderson, Jr. v. Gannett Co., Inc.

SC06-2174

THE NEXT CASE UNDER CALENDAR IS
ANDERSON VERSUS THE GANNETT
COMPANY.

>> MAY IT PLEASE THE COURT,
BRUCE ROGOW.

THERE ARE TEN REASONS WHY THE
COURT SHOULD ANSWER THE
CERTIFIED QUESTION BY SAYING
THAT THE FOUR YEAR STATUTE OF
LIMITATIONS APPLIES TO FALSE
LIGHT.

>> COULD YOU DO ME A FAVOR?
OBVIOUSLY OF THE QUESTIONS YOU
ARE HEARING IN THE PRIOR
ARGUMENT MEAN THE COURT IS NOT
GOING TO RECOGNIZE A FALSE LIGHT
STATUTE OF LIMITATIONS BECOMES
IRRELEVANT, YOU WOULD AGREE WITH
THAT.

>> NO, BECAUSE IF THE COURT DOES
AWAY WITH FALSE LIGHT IT COULD
NOT BE DONE AWAY WITH
RETROACTIVELY.

>> WHAT I WANTED TO ASK AND I
NEVER GOT TO ASK, IS THERE A
CASE, WE TALK ABOUT WHETHER
SOMETHING CRIES OUT FOR A TORT
OF FALSE LIGHT.

THE U.S. SUPREME COURT IN
CANTRELL ACKNOWLEDGED THE TORT
IN THE FIRST AMENDMENT
PARAMETER.

BUT CAN YOU TELL ME A CASE IN
THE COUNTRY THAT HAS UPHELD A
VERDICT FOR FALSE LIGHT, WHERE
IT WOULD, IF WE LOOK TO THOSE
FACTS AND SAY WE REALLY HAVE
PROBLEMS IN THAT MEETING
DEFAMATION, BUT IT IS A CLASSIC
WHAT WE THINK ABOUT -- WAS
WORRIED ABOUT THIS IDEA OF
SOMEONE -- SOMETHING BEING
HIGHLY OFFENSIVE.

IS THERE SUCH A CASE IN THE
COUNTRY?

>> THIS IS THE QUINTESSENTIAL FALSE LIGHT CASE FOR THE PUBLICATION OF TRUTHFUL FACTS, LATER TRUTH FACTS RESULT IN A PICTURE THAT CREATES A FALSE LIGHT AND MR. ANDERSON MURDERED HIS WIFE IN COLD BLOOD.

>> WHAT WAS THE BURDEN? WAS THE BURDEN TO PROVE ACTUAL MALICE?

>> THE BERGIN MUST APPROVE THE PUBLICATION WAS DONE WITH RECKLESS DISREGARD. I RECOGNIZE THE FIRST AMENDMENT ISSUE IN THE CASE SO WE TOOK THE POSITION THAT WE WOULD HAVE TO MEET THAT AND THE JURY FOUND THAT THIS PUBLICATION WAS WITH RECKLESS DISREGARD IN TERMS OF WHAT IT WOULD CREATE, THE FALSE IMPRESSION, THAT FALSE LIGHT THAT IT WOULD CREATE.

>> WHAT CONCERNS ME IS IS THERE ANY PART OF THE ARTICLE THAT YOU ARE CLAIMING IS UNTRUE?

>> NO.

>> SO THAT AS A REALLY CONCERNS ME.

THE PUBLICATION PUBLISHED AN ARTICLE WHERE NONE OF THE STATEMENTS WERE FALSE AND YET THEY ARE, THEY HAVE BEEN DEEMED LIABLE TO YOUR CLIENT FOR FALSE LIGHT INVASION OF PRIVACY.

I DON'T SEE HOW AN EDITOR, LOOKING AT THE ARTICLE BEFOREHAND, COULD HAVE THEN SAID, WHAT PART OF THIS ARTICLE, ALL OF WHICH IS TRUE, DO I HAVE TO TAKE OUT IN ORDER NOT TO BE SUED FOR FALSE LIGHT, AND I THINK THAT IS GOING TO REALLY STIFLE THE ABILITY OF NOT JUST NEWSPAPERS BUT ALL PUBLICATIONS TO PUBLIC TRUE STATEMENT.

>> AS I SAID EARLIER THE SUPREME COURT, AND LET'S OPEN THE QUESTION OF WHETHER OR NOT THERE CAN BE DAMAGE FOR TRUTHFUL STATEMENTS, IT WOULD'VE BEEN EASY ENOUGH TO TAKE OUT THE TEN OFFENDING PARAGRAPHS WHICH REALLY HAD NOTHING TO DO WITH WHAT THE ARTICLE WAS BASICALLY

ABOUT.

A 10-YEAR-OLD HUNTING ACCIDENT
PORTRAYED MR. ANDERSON SHOT AND
KILLED HIS WIFE DAYS AFTER
DISMISSING A DIVORCE PETITION
AGAINST HER.

>> AGAIN, IF ALL THOSE
STATEMENTS ARE TRUE WHY DOESN'T
THE PUBLIC HAVE THE RIGHT TO
KNOW THE STATEMENTS AND DRAW
SOME CONCLUSIONS, ESPECIALLY
WHEN YOU ARE NOT ALLEGING THAT
ANY OF THE STATEMENTS WERE
FALSE.

EVERYTHING IN THERE IS TRUE AND
IN FACT THEY EVEN INCLUDED HIS
DEFENSE OF WHY IT WAS AN
ACCIDENT AND NOT A MURDER.

>> IT IS TRUE BUT THE JURY FOUND
IT WAS PUBLISHED WITH RECKLESS
DISREGARD TO THE FALSE LIGHT IN
WHICH IT WAS MAKING.

THIS IS THE QUINTESSENTIAL CASE,
BASICALLY HAVING IT REFLECT
MURDER WHERE THERE WAS NO MURDER
AND THE ISSUE IN THIS CASE IS,
WHAT STATUTE OF LIMITATIONS --

>> DID IT SAY MURDER?

>> IT DID NOT THE MURDER BUT THE
ONLY IMPRESSION, AND I THINK
EVERYBODY LOOKED AT IT,
INCLUDING THE TRIAL JUDGE, ON
THE MOTION TO DISMISS CAME TO
THE CONCLUSION.

>> I THOUGHT YOU PLED THIS FIRST
AS A DEFAMATION ACTION.

AS PART OF THE DEFAMATION, THAT
WAS -- BECAUSE THE STATUTE OF
LIMITATIONS HAD EXPIRED.

>> IT WAS NOT DEFAMATION BECAUSE
IT WAS TRUE.

IT COULD NOT BE DEFAMATION.

>> THE RESTATEMENT, SECTION B OF
652E REQUIRES THAT THE ACTOR HAD
KNOWLEDGE AS TO THE FALSITY OF
THE PUBLICIZED MATTER AND A
FALSE LIGHT IN WHICH THE OTHER
WOULD BE PLACED SO IT SEEMS THAT
UNDER THE RESTATEMENT IT WOULD
REQUIRE THAT SOMETHING IN THE
ARTICLE BE FALSE.

>> WHAT WAS FALSE WAS THE FALSE
IMPRESSION IT WOULD CREATE.

>> IT TALKS ABOUT FALSITY OF THE

PUBLICIZED MATTER AND A FALSE LIGHT SO IT IS NOT ONLY SOMETHING THAT IS A FALSE LIGHT ISSUE, THERE HAS TO BE A FALSE STATEMENT ALSO ACCORDING TO THE RESTATEMENT.

>> BUT NOT ACCORDING TO THE SUPREME COURT.

WHETHER OR NOT A STATEMENT THAT IS TRUE AND STILL BE A CAUSE OF ACTION IN AN OBITUARY.

MR. ANDERSON'S OBITUARY.

THE NEWSPAPER HAD SAID THAT HE HAD BEEN CONVICTED OF THIS CRIME.

WOULD THAT BE THE CAUSE OF ACTION?

>> PROBABLY NOT BECAUSE HE WOULD NOT BE ABLE TO SUE IF IT WAS IN HIS OBITUARY.

>> I DON'T THINK THAT WOULD BE A CAUSE OF ACTION, A SURVIVAL ACTION.

UNDER YOUR THEORY, IT WOULD BE A CAUSE OF ACTION.

>> GIVEN YOUR HYPOTHETICAL OF COURSE, I UNDERSTAND WHERE YOU ARE GOING WITH IT.

IT WOULD BE A CAUSE OF ACTION IF YOU TAKE IT OUT OF THE OBITUARY SITUATION.

>> WHAT SUPREME COURT CASE LEFT OPEN WHETHER TRUE STATEMENTS COULD BE ACTIONABLE?

>> FLORIDA STAR VERSUS BJ ANSON. I CITED BOTH IN MY BRIEF.

>> LET ME GO BACK.

>> SO ARE YOU TELLING ME IN ANSWER TO MY OTHER QUESTION THAT, WHENEVER THESE TORTS STARTED TO POP UP, THAT THIS CASE IN THE ANDERSON VERSUS GANNETT CASE, THAT THE ONLY CASE IN THE COUNTRY -- OR A VERDICT HAD BEEN UPHELD FOR FALSE LIGHT SO SO FAR, AND HE SAID IT WAS THIS CASE.

NOW I AM ASKING YOU THIS CASE HAS NOT BEEN UPHELD YET, IN THE REST OF THE COUNTRY, IS THERE A CASE THAT WAS UPHELD FOR FALSE LIGHT WHICH WAS NOT -- WOULD NOT ALSO QUALIFY FOR DEFAMATION? SO THAT GOES BACK TO THIS ISSUE

THAT I THINK JUSTICE ANSTEAD WAS ASKING IN THE PRIOR ORAL ARGUMENT, IF IT IS FRAUGHT WITH THE POSSIBILITY OF CONFUSION AND I THINK YOU CAN SEE FROM A LOT OF THE QUESTIONING BACK-AND-FORTH THAT THERE IS CONFUSION, I WILL SAY JUST FOR ME THAT I HAD AFTER THIS MORNING AND I HAVE STUDIED IT LONG AND HARD, BECAUSE OF THAT, BECAUSE THERE IS ONLY A NARROW GROUP OF CASES THAT MIGHT QUALIFY, AND SINCE WE ARE LOOKING AT THE COMMON LAW AND WHETHER TO RECOGNIZE A CAUSE OF ACTION IN AN ACTUAL CASE IN CONTROVERSY, WHAT IS THE OVERRIDING POLICY REASON TO RECOGNIZE A TORT THAT IS FRAUGHT WITH THE POSSIBILITY OF CONFUSION OVERLAP AND DEPENDENT ON HOW ONE PERSON VIEWS THAT REVERSES ANOTHER?

>> I DON'T THINK IT IS SO FRAUGHT WITH THOSE DIFFICULTIES FOR A COUPLE OF REASONS. ONE LOOKS AT THE CASE AND MAKES THE DECISION BASED UPON THE FACT.

IF THERE IS A CAUSE OF ACTION AND WHETHER OR NOT THOSE FACTS ARE THE CAUSE OF ACTION AND IN THIS SITUATION THE FACTS DO FIT THE CAUSE OF ACTION.

THERE IS NO CONCERN ABOUT INTRUSION UPON FREEDOM OF THE PRESS.

ONE OBVIOUSLY RECOGNIZES "THE NEW YORK TIMES" VERSUS SULLIVAN HAS GIVEN GREAT COMFORT TO THE NEWSPAPERS AND THIS UNDER THE THEORY THAT WE HAVE TAKEN WITH IT WOULD GIVE THE SAME KIND OF PROTECTION, RECKLESS DISREGARD, SO THE NOTION HERE IS THAT WE ARE THREADING A NEEDLE.

THERE IS NO QUESTION WE ARE THREADING A NEEDLE AND AS I SAID EARLIER, THIS IS THE ULTIMATE KIND OF THING TO BE ACCUSED IN THE FACT OF MURDER BY STATING SOMETHING THAT IS LITERALLY TRUE.

>> DOES THE PLAINTIFF HAVE TO

PROVE THAT HE DID NOT MURDER HIS WIFE OR GANNETT NEWSPAPER PROVE THAT HE DID MURDER IN ORDER FOR IT TO BE A DEFENSE?

IT SEEMS LIKE THE TRIAL COURT DID NOT ALLOW EITHER OF THOSE.

>> THAT QUESTION IS LEFT OPEN BECAUSE WE NEVER REACHED THAT QUESTION.

OUR POSITION WAS HE DID NOT HAVE TO PROVE HE DID NOT MURDER HIS WIFE BECAUSE THE ARTICLE ITSELF SAID IT WAS A HUNTING ACCIDENT AND FOR THEM TO TRY TO FORCE THEM TO PROVE HE DID NOT MURDER HIS WIFE WOULD BASICALLY BE THEM SAYING, WHEN WE SAID IT WAS A HUNTING ACCIDENT WE DID NOT REALLY MEAN IT WAS A HUNTING ACCIDENT, AND THE INNUENDO IS THAT HE BOUGHT OFF THE SHERIFF AND THAT IS WHY IT WAS A HUNTING ACCIDENT.

>> POINTING OUT WHAT A COMPLICATED WEB WE END UP WITH IN THIS TORT, AS WE ARE VISITING ABOUT THIS, WHEN WE HAD ALL THOSE DETECTIVE MAGAZINES AND ANY TIME ANYBODY MAY HAVE BEEN KILLED OR THERE WAS A DEATH OR SOMETHING LIKE THAT, ALL OF THESE DETECTIVE MAGAZINES WOULD WRITE STORIES I AM SURE WITH THE PROMINENT POSITION CLIENT.

[INAUDIBLE]

THIS WOULD BE A GREAT SOURCE FOR THE DETECTIVE MAGAZINE TO TALK ABOUT, BUT MY GOODNESS, EVEN IF THERE IS A POLICE INVESTIGATION THAT ENDS UP CLEARING FOR INSTANCE YOUR CLIENT IN TERMS OF THE ACCIDENT AS FAR AS PAYING NO CRIMINAL CHARGES, HOW CAN YOU HELP JUST REPORTING ON SOMETHING LIKE THAT, OF NOT REALLY GIVING RISE TO OR THAT SOMEONE OUT THERE AND SAY AH AH, EVEN THOUGH THIS PERSON CLEARED, THERE'S SOMETHING ELSE GOING ON HERE OR WHATEVER.

STATUTE OF LIMITATIONS, RESPONSIBILITY THAT THEY HAVE IS NOT NECESSARILY LIMITED TO "THE

NEW YORK TIMES" VERSUS SULLIVAN, AND PURE LIBEL AND DEFAMATION IT WILL IS A POWERFUL WEAPON NEWSPAPERS HAVE IF THERE IS SOME ABUSE OF THAT, IF THERE IS NO REASON WHY THERE WOULDN'T BE A REMEDY FOR IT.

AND I THINK --

>> WHAT SHOULD THEY HAVE DONE?

WHAT COULD THEY HAVE TAKEN OUT OF THIS ARTICLE?

THAT WOULD HAVE MADE THIS NOT A FALSE LIGHT ARTICLE?

>> YOU KNOW I'M NOT HERE TO BE THEIR EDITOR THEY COULD HAVE SAID IN A HUNTING ARGUMENT MR. ANDERSON'S WIFE WAS KILLED IT COULD HAVE BEEN PORTRAYED A COMPLETELY DIFFERENT WAY.

>> YOU SEE BOTH OF THOSE THINGS WERE IN THERE THEY SAID THIS WAS A HUNTING ACCIDENT AND THEY SAID SHE WAS KILLED. AND JUSTICE BELL POINTED OUT THERE WAS NEVER A STATEMENT IN THERE THAT SHE WAS MURDERED, AND SO THIS -- THIS WHOLE THING JUST REALLY TO ME LOOKS LIKE YOU READ THESE FACTS, AND MAYBE -- THAT IS THE IMPLICATION THAT YOUR CLIENT READ INTO IT BUT THAT IS NOT NECESSARILY WHAT EVERYBODY IN THE PUBLIC IS READING INTO THAT ARTICLE SIMPLY BECAUSE SHE WAS KILLED IN A HUNTING ACCIDENT BY HIM, AND THE POLICE SAID IT WAS IN FACT A HUNTING ACCIDENT.

-- IT IS JUST REAL -- VERY DIFFICULT.

>> OF COURSE, THAT IS NOT THE WAY IT IS WRITTEN, JUSTICE, A JURY HAVING HEARD THE TESTIMONY, HAVING READ THE ARTICLE FOUND WITHOUT ANY DIFFICULTY, THAT THAT IT WAS

A FALSE LIGHT KIND OF CASE
SO WE HAD INSTRUCTIONS, THEY
WERE GUIDED BY AN INSTRUCTION
THE FACT THAT SOMETIMES WE
TAKE A LOOK AT SOMETHING, AS
COURTS OR LAWYERS AND SAY
GEE, YOU KNOW THERE IS --

>> WHO DRAFTED THE
INSTRUCTIONS?

>> PARDON ME?

>> WHO DRAFTED THE JURY
INSTRUCTIONS --

>> WE DRAFTED THE
INSTRUCTIONS OF COURSE THE
OTHER SIDE HAD
OPPORTUNITY TO COMMENT AND
CRITICIZE THE INSTRUCTIONS.
INSTRUCTIONS WERE GIVEN, THE
JURY CAME BACK WITH A
CONCLUSION, AND IN RELATION TO
WHAT YOU HAVE ASKED, SINCE
CASIN VERSUS BASKIN THERE
HAS NOT BEEN A PROBLEM, YOU
KNOW, ALL THIS IS KIND OF --
INTRUSION INTO THE FIRST
AMENDMENT RIGHTS, ALL OF
THAT, THE RECORD DOESN'T
SUPPORT THAT.

THE NEWSPAPERS
HAVE HAVE THRIVED, THEIR
REPORTING HAS BEEN VIGOROUS
THEY FIGURED OUT HOW TO DO
IT.

THAT IS A UNIQUE CASE NO
QUESTION ABOUT IT.

AND LET ME JUST IN THE FEW
MINUTES THAT I HAVE, TOO,
TALK ABOUT WHY THE STATUTE
OF LIMITATIONS DOESN'T WORK
WHY THERE IS NO LIBEL BY
IMPLICATION.

THAT IS A
SEPARATE DEFAMATORY KIND OF
ACTION HERE IN FLORIDA.

UNDER -- FIRST OF ALL, UNDER
95.114G, THE STATUTE OF
LIMITATIONS FOR TWO YEARS IS
AN ACTION FOR LIBEL OR
SLANDER.

LIBEL OR SLANDER, LIBEL
MEANS FALSE STATEMENTS.
PURE FALSE STATEMENTS.
AND I THINK EVERYBODY MUST
AGREE THAT LIBEL INVOLVES

PURE FALSE STATEMENTS, AND UNDER THE CASES OF THIS COURT, WHEN YOU ARE TALKING ABOUT A STATUTE OF LIMITATIONS IT IS STRICT CONSTRUCTION.

THE LEGISLATURE SAID TWO YEARS FOR LIBEL. THIS IS NOT LIBEL, IT IS NOT A FALSE STATEMENT.

I THINK WHAT REALLY HELPS --

>> IN ORDER FOR YOU TO WIN ON THE STATUTE OF LIMITATIONS ISSUE, WE WOULD HAVE TO AGREE WITH YOU, THAT NOT ONLY DOES A FALSE LIGHT CLAIM EXIST UNDER FLORIDA LAW, IT CAN BE BASED ON TRUE STATEMENTS.

>> YES, BUT LET ME SAY THIS IS -- NEED TO -- I MENTIONED THIS EARLIER, REMEMBER ONE OF MY POSITIONS HERE IS THAT IF YOU DO AWAY WITH FALSE LIGHT YOU CAN'T DO AWAY WITH RETROACTIVELY TO A CASE THAT HAS BEEN TRIED TO A JURY, BECAUSE THERE ARE SETTLED EXPECTATIONS HERE. THIS COURT IN AGENCY FOR HEALTH CARE AND GINSBURG SET OUT, IN THAT FACTOR FOUR, WHAT CAN BE A FALSE LIGHT CASE WE MET --

>> MY CONCERN FALSE LIKE INDICATED YOU HAVE TO AGREE THAT WHAT WE SAID IN AGENCY FOR HEALTH CARE, AND IN GINSBURG WAS DICTUM DIDN'T INVOLVE FALSE LIGHT INTO GINSBURG REPEATED.

>> GINSBURG DIDN'T HAVE ANYTHING TO DO WITH -- WITH THESE ALLEGATIONS.

>> I AGREE, BUT ALL I'M SAYING IS IS THAT IT THERE IS LOOKING AT THE -- IS THAT THE ECONOMY REPORT WHICH I HAVE ATTACHED AS APPENDIX I IN MY AMICUS BRIEF THEY RECOGNIZE THAT FALSE LIGHT IS IN FLORIDA THE FOUR FACTORS WHAT THERE IS I'M --

WHAT I'M SAYING SHOULDN'T BE APPLIED RETROACTIVELY. YOU SAID THE REASON IT CAN'T BE A TWO-YEAR STATUTE IS SINCE BY DEFINITION LIBEL IS A FALSE STATEMENT, BUT IF WE YOU KEEP YOU DON'T LIKE THIS IS DEFAMATION BY IMPLICATION, BUT THE MEDIA SEEMS TO LIKE IT, AS FAR AS SAYING LISTEN YOU CAN COVER THE SITUATION WHERE YOU HAVE GOT SOMETHING, THAT IS TRUE BUT IT PORTRAYS SOMEONE IN FALSE LIGHT DEFAMATION BY IMPLICATION, IF YOU ARE SAYING THAT IF THERE IS SUCH A CAUSE OF ACTION DEFAMATION BY IMPLICATION, THAT THAT WOULD NOT BE SUBJECT TO THE TWO-YEAR STATUTE OF LIMITATIONS EITHER?

>> I'M -- I'M NOT SAYING THAT BECAUSE I DON'T THINK THERE CAN BE A DEFAMATION BY IMPLICATION GIVEN FLORIDA'S STATUTE 770.0 AND 770.02 SAYS NOTICE THAT YOU HAVE TO GIVE THIS IS IN RESPONSE TO WHAT YOU RAISED BEFORE JUSTICE CANTERO YOU HAVE GOT TO SPECIFY THE SPECIFIC FALSE STATEMENTS, SO HOW WOULD YOU --

>> BUT THE ANSWER TO THAT IS IN A DEFAMATION BY IMPLICATION ACTION DON'T YOU HAVE TO FULFILL THE STATUTORY REQUIREMENTS DOESN'T MAINTAIN CAUSE OF ACTION DOESN'T EXIST.

>> SEEMS VERY DIFFICULT IF YOU DON'T, THEY WOULD MOVE TO DISMISS, SAYING THAT YOU HAVE NO FLORIDA -- SUPREME COURT CASES WOULD BE DEFAMATION BY IMPLICATION THEY WOULD MOVE TO DISMISS GANNETT ALREADY WON ONE CASE 3087 ND ON THAT POINT NO SPECIFICITY.

>> YOU SEEM TO BE SAYING YOU

KNOW -- DAMNED IF THEY DO, DAMNED IF THEY DON'T IN THE SENSE THAT LET'S ASSUME THAT YOU GAVE THIS NOTICE THEY PRINTED SOMETHING THAT SAID, LET US BE CLEAR, WE ARE NOT ACCUSING MR. ANDERSON OF HAVING MURDERED HIS WIFE. NOW, I ASSUME YOU WOULD SAY THAT IS NOT ENOUGH. THAT BECAUSE OF ALL THE OTHER STUFF YOU PUT IN THERE THERE IS STILL THIS TAINT THERE IS STILL THIS IMPLICATION. THERE IS STILL THIS FALSE LIGHT.

IS THAT TRUE.

>> 770.02 ONLY WOULD SAY IF THEY MADE CORRECTION WOULD LIMIT DAMAGES TO ACTUAL DAMAGES SO YOU COULD STILL BRING THE LAWSUIT.

>> WOULD YOU AGREE, THAT IF YOU PUT THEM ON NOTICE, AND SAID YOU HAVE CAST MY CLIENT IN A FALSE LIGHT BY SUGGESTING OR IMPLYING THAT HE MURDERED HIS WIFE, AND THAT THEN IF THEY PUBLISHED, A STATEMENT, THAT SAID WE NO WAY INTENDED TO SUGGEST MR. ANDERSON MURDERED HIS WIFE, THAT THAT WOULD BE SUFFICIENT?

>> THAT MIGHT HAVE SUFFICED THAT MIGHT HAVE.

>> I CAN'T SAY WHAT WE WOULD HAVE DONE HAD THEY DONE SOMETHING LIKE THIS, BUT THEY DIDN'T --

>> I'M SORT OF RESPONDING TO YOUR RHETORICAL QUESTION OR MAYBE OPEN QUESTION ABOUT WELL SINCE THERE IS NOTHING FALSE IN THERE WHAT WOULD WE DEMAND THAT THEY DO? LOGICALLY ISN'T THAT WHAT YOU DEMAND THEY DO?

>> YES, YES, A RETRACTION OF SORT. I'VE GOT A MINUTE LEFT I WANT TO SAVE MY MINUTE.

>> GOOD MORNING YOUR HONOR.
MAY IT PLEASE THE COURT.
ROBERT BERNIOUS REPRESENTING
PENSACOLA

>> JOURNAL WITH DENNIS MY
COCOUNCIL THE ISSUE FOR
DETERMINATION I UNDERSTAND
AND I AM PERFECTLY HAPPY TO
ANSWER BROADER QUESTIONS BUT
I WANT TO EMPHASIZE THE FACT
THAT THE ISSUE IN THIS S
CASE -- ISSUE IN THIS
CASE IS VERY NARROW, THE
QUESTION IS WHETHER A
PLAINTIFF MAY END-RUN THE
STATUTE OF LIMITATIONS BY
RENAMING A LIBEL CASE
SOMETHING ELSE.
IN THIS CASE.

>> IF THAT IS THE ISSUE, I
DO HAVE SOME CONCERNS
BECAUSE IF THERE IS A FALSE
LIGHT CLAIM AND A POTENTIAL
PLAINTIFF IS LOOKING AT THE
STATUTE OF LIMITATIONS
SAYING WHAT IS THE TIME
LIMITATION FOR FILING AN
ACTION, AND HE SEES LIBEL OR
SLANDER TWO YEARS HE SAYS
WELL, I'M ALLEGING ALL
STATEMENTS ARE TRUE, I'M
JUST CLAIMING A FALSE SLIGHT
CAUSE OF ACTION DON'T HAVE
TO FULFILL TWO YEARS I CAN
WAIT HOW IS THE PLAINTIFF ON
NOTICE THAT THE TWO-YEAR
STATUTE OF LIMITATIONS THAT
APPLIES?

>> THIS -- ASSUMING THERE IS
A FALSE LIGHT ACTION YOUR
HONOR IS ASSUMING THAT THAT
IS A DIFFERENT QUESTION, AS
TO WHICH STATUTE OF
LIMITATIONS --

>> I THOUGHT THAT IS WHAT
YOU WANTED TO TALK ABOUT.

>> NO.
IN THIS CASE IN THIS
CASE THE PLAINTIFF BROUGHT A
LIBEL ACTION, HE SERVED IN
-- RETRACTION DEMANDS,
CLAIMING IT WAS FALSE AND
DEFAMATORY, A COMPLAINT WAS
FOR LIBEL AS AMENDED COMPLAINT

FOR LIBEL HE
ATTACHED RETRACTION DEMANDS,
AND THEN --

>> WAS HE ASKING FOR THE
ENTIRE PART THAT PORTION
OF THE ARTICLE --

>> THIS ARTICLE WAS THIS
ARTICLE WAS IN THE
RETRACTION.

>> IT IS AGAIN IT I WAS PART
OF A LARGER ARTICLE, THIS
PARTICULAR PART HADDA
OCCURRED TEN YEARS BEFORE
THE PART ABOUT THE WIFE;
CORRECT?

>> YES.

>> I MEAN JUST LIKE THE
STORY JUST DIDN'T COME OUT
OF NOWHERE I MEAN YOU READ
THE WHOLE ARTICLE IT SORT
OUT OF DOES SEEM THAT THIS
PARTICULAR PART IS KIND OF
PLACED IN THERE --

>> YEE PUT CONTEXT AROUND
THE EXTENSION OF PROBATION
-- BUT HE BROUGHT HE BROUGHT
A LIBEL COMPLAINT, AND
REPLEAD THIS FALSE LIGHT
THEREBY AVOIDED --

>> NOW MR. ROGOW IS SAYING
AGAIN MAYBE IS THAT HE COULD
NOT HAVE REALLY BROUGHT A
LIBEL CLAIM BECAUSE
EVERYTHING IN EACH SENTENCE
OF THE ARTICLE IS TRUE.

>> THERE ARE THREE REASONS I
DISAGREE WITH MR. ROGOW AND
THE PLAINTIFF.

FIRST OF ALL, IT -- DENIES
HISTORICAL FACT HE DID BRING
LIBEL MR. ANDERSON DID
BRING A LIBEL CLAIM.

>> SECONDLY.

>> IT WAS DISMISSED RIGHT
LET'S STOP A MINUTE THAT IT
WAS ONE WAS FILED AND IT WAS
DISMISSED FOR THE FAILURE TO
STATE A CAUSE OF ACTION.

>> WERE AMENDED.

>> A SERIES OF AMENDMENTS
THIS --

>> THE FIRST ONE THE FIRST
ONE.

>> YES.

>> IT WAS DISMISSED BECAUSE THE FAILURE TO STATE A CAUSE OF ACTION WITH LEAVE TO AMEND.

>> THAT IS WHERE WE ARE?

>> NO, IT WAS NOT IT WAS NOT DISMISSED YOUR HONOR THE FALSE LIGHT COUNT WAS ADDED TO THE SECOND AMENDED COMPLAINT I BELIEVE BEFORE -- SUMMARY JUDGMENT.

>> THE LIBEL CLAIM DISMISSED IT FAILED TO STATE CAUSE OF ACTION OR BECAUSE THE STATUTE OF LIMITATIONS --

>> THE LIBEL CLAIMS WERE DISMISSED BECAUSE OF THE STATUTE OF LIMITATIONS.

>> NOT THIS ONE, OTHER ONES THIS CLAIM WAS NEVER --

>> THE FIRST ONE

>> YES.

>> THE FIRST ONE.

>> OTHER IT WAS A SERIES OF ARTICLES 15 ARTICLES, AND THOSE MOST OF THOSE WERE DISMISSED BY REASON OF THE STATUTE OF LIMITATIONS.

THIS ARTICLE WAS NOT DISMISSED.

>> BEFORE YOU GO ON WHAT STATEMENTS IN THIS ARTICLE DID MR. ANDERSON CLAIM WERE FALSE IN THE LIBEL CLAIM?

>> IT WAS THE -- EITHER QUOTED THE SECTION HE ULTIMATELY SUED FOR FALSE LIGHT ON PART THE -- IN ISSUE LIBEL CLAIM THEN IT WAS REPLEADED AS, REPACKAGED AS A FALSE LIGHT CLAIM, NOW MR. ANDERSON, MR. ROGOW SAYS THAT YOU KNOW THERE IS NO LIBEL IF THE STATEMENTS ARE TRUE, WHAT HE IS ARGUING IS THAT THE COURT FOCUS ONLY ON THE TREES INSTEAD OF THE FOREST, THE STATEMENT THAT IS AN ISSUE IN THIS CASE IS THE MURDER ACCUSATION. THAT IS HIS THAT IS HIS CLAIM AND IT IS A ARGUABLY FALSE CLAIM ALTHOUGH HE NEVER PROVED IT THIRDLY IGNORES

LIBEL BY IMPLICATION, LIBEL BY IMPLICATION IS A DOCTRINE THAT HAS LONG BEEN RECOGNIZED AS --

>> THE WAY THE FIRST DISTRICT DEALT WITH THIS CASE THAT IS REALLY WHAT WE ARE HERE TO REVIEW, IS WHAT THE CASE THAT COMES TO US OUT OF OUR COURT OF APPEAL, AND IF -- IT SAID THE LIBEL AND TORTIOUS INTERFERENCE CLAIMS WERE DISMISSED THE CASE PROCEEDED TO TRIAL ON A SINGLE COUNT OF INVASION OF PRIVACY BASED ON THE FALSE LIGHT THEORY.

>> YES.

>> YOU DON'T DISPUTE THAT.

>> NO.

>> SO --

>> IT WAS A FAIRLY SUBSTANTIAL CASE THAT KEPT GETTING WHITTLED DOWN.

>> I'M SOMEWHAT CONFUSED THOUGH AS TO YOUR COME BACK AND SAYING THERE WERE ACTUALLY DEALING WITH A STATUTE OF LIMITATIONS HAVING TO DO WITH A LIBEL COUNT WHEREAS THE DISTRICT COURT WAS DEALING WITH IT ON THE BASIS OF WHAT HAD BEEN TERMED A COUNT BASED UPON FALSE LIGHT.

>> WELL, IT WAS THIS -- THE LAWSUIT OVER THIS IS PARTICULAR ARTICLE WHICH WOULD SAY ONE OF MANY ARTICLES BEGAN AS A LIBEL CLAIM.

AND THEN THAT ARTICLE TRACED THROUGH THAT WAS THE ARTICLE THAT WENT TO TRIAL, THAT WAS CHANGED INTO A FALSE LIGHT CLAIM.

WHAT THE DISTRICT COURT BASICALLY MADE A BROAD RULING THAT SAYS THE LIBEL STATUTE OF LIMITATIONS APPLIES TO ALL FALSE LIGHT CLAIMS BUT AS TO THIS THERE IS AN ANCILLARY HOLDING THAT WHERE THREE

DISTRICT COURT PAGE 18 AND
THE CONCURRENCE AGREED SAID
THAT YOU CAN'T REPLEAD A
LIBEL CLAIM AS THE DID HERE
TO AVOID THE LIBEL STATUTE
OF LIMITATIONS THAT IS
PROPOSITION THAT THE
PLAINTIFF DOES NOT -- A
PROPOSITION OF LAW.

>> WHY NOT.

>> WHY NOT?

BECAUSE --

>> WE RECOGNIZE A TOTALLY
SEPARATE INDEPENDENT TORT
AND CAUSE OF ACTION, A FALSE
LIGHT.

AND DON'T WE HAVE TO
CONSIDER WHAT THE STATUTE OF
LIMITATIONS WOULD BE FOR
THAT TOTALLY INDEPENDENT
TORT AND CLAIM OF FALSE
LIGHT?

AS OPPOSED TO LOOKING AT THE
-- THE LIMITATIONS PERIOD
FOR LIBEL AND SLANDER?

>> WELL --

>> I'M TRYING TO -- IN OTHER
WORDS, THAT ISN'T THAT THE
ISSUE REALLY BEFORE US?

AND I UNDERSTAND IF I
UNDERSTAND AT LEAST PART OF
YOUR ARGUMENT IT IS THAT --
THAT IN EFFECT THAT THIS
FALSE LIGHT IS A SPECIES OF
LIBEL, IS THAT ONE OF YOUR
ARGUMENTS?

>> WELL, I THINK THAT -- I
MEAN --

>> WOULDN'T THAT HAVE TO BE
YOUR ARGUMENT.

>> GENERAL ISSUE IS THAT
LIBEL IS OR FALSE LIGHT
ESSENTIALLY DUPLICATES THE
TORT OF LIBEL.

>> HERE THOUGH WE ARE
TALKING ABOUT THE ONE AREA
THAT FLORIDA HAS RECOGNIZED
ALTHOUGH A LITTLE DIFFERENT
FACTS WE DO HAVE AN INVASION
OF PRIVACY CAUSE OF ACTION
IN FLORIDA.

WOULD YOU AGREE.

>> YES.

>> AND WHAT IS THE STATUTE

OF LIMITATIONS FOR THAT?
WELL, IT IF IT IS IF IT IS A
PRIVATE FACTS CASE THE CASE
I ASSUME IT WOULD BE FOUR
YEARS.

>> OKAY SO IF DISCUSS
ORDINARY INCLUDED WITHIN THE
RUBRIC OF INVASION OF
PRIVACY APPARENTLY WHAT WE
ARE DISCUSSING THIS IS
MORNING WHY WOULD IT NOT BE
MORE WITHIN THE FOUR YEAR
THAN THE VERY STRICT
ELEMENTS OF A LIBEL OR
SLANDER?

>> WELL, IT IS IN THIS IS
CASE IT IS CLEARLY A LIBEL
CASE.

IT IS THE CLAIM WAS THAT THE
THE ARTICLE WAS FALSE IN
TERMS OF FALSELY ACCUSING OF
THE PLAINTIFF OF MURDER,
THAT THE DAMAGES THAT WERE
SOUGHT WERE REPUTATION
INJURY WHICH IS A CLASSIC
DAMAGES IN THE LIBEL CASE,
AND.

>> THE CHIEF JUSTICE IS
ASKING YOU IF -- YOU BROUGHT
AN ACTION, FOR INVASION OF
PRIVACY, AND THE SUBSPECIES
BEING THE FALSE LIGHT, BUT
IF THEY TITLED IT INVASION
OF PRIVACY, AND THEN WENT ON
TO DESRI JUST BROUGHT THAT
AND THEIR CLAIM WAS THIS
WHAT WOULD THE STATUTE OF
LIMITATIONS --

>> IT WOULD BE FOUR YEARS.

>> I HAVE TO ANSWER IT THIS
WAY, THEORETICALLY AND I
PROSSER'S MIND ONLY I THINK,
THERE IS A DIFFERENCE
BETWEEN THE TWO.

>> SORT OF STARTING WITH
THAT, AND THEN SAYING IF WE
STARTED WITH THAT, THEN AND
NOW I WOULD UNDERSTAND, YOU
APPROACH, WHAT -- MAKES THAT
IT WE WOULD NOT APPLY THE
FOUR-YEAR LIMITATIONS HERE?

>> USE THEORETICALLY THERE
IS JUSTICE YOU ASKED ABOUT
IN REAL LIFE.

IN REAL LIFE THERE IS NO
DIFFERENCE AT ALL.
THEORETICALLY A LIBEL ACTION
SEEKS RECOVERY FOR
REPUTATION INJURY A FALSE
LIGHT ACTION THEORETICALLY
SUFFERS, SEEKS RECOVERY FOR,
BEING -- PROTECTS
PERSONAL INSULT INJURY TO
THE PSYCHE, THAT IS ONE
DIFFERENCE, BUT IN FLORIDA
UNDER THE MIAMI -- CASE YOU
CAN RECOVER IN LIBEL CASE
FOR EMOTIONAL INJURY
AS WELL AS REPUTATION INJURY.
>> FIRST YOU HAVE TO PROVE
ONE OF THOSE PREREQUISITIONS
WHICH IS DAMAGE TO
REPUTATION OR RIDICULE.
>> RIGHT.
>> -- BEFORE YOU GET TO THE
EMOTIONAL PART.
>> YES, I THINK IT OVERLAPS
IN TERMS OF DAMAGE
THERE IS NO REAL NEED FOR A
FALSE LIGHT, IN THAT
RESPECT, THE OTHER
DIFFERENCE, THEORETICALLY,
IS THAT FALSE LIGHT BEING
PROTECTS STATEMENT AGAINST
STATEMENTS THAT ARE HIGHLY
OFFENSIVE TO A REASONABLE
PERSON, BUT ARE NOT
DEFAMATORY SO WHAT WE
ARE TALKING ABOUT IS THIS
MIDDLE GROUND, WHERE A
PLAINTIFF THEORETICALLY CAN
PROVE HIGHLY OFFENSIVE NOT
DEFAMATORY.
>> HERE YOU HAVE GOT THE
FALSITY THE FALSE IMPRESSION
IS THAT HE WAS GUILTY OF
MURDER CERTAINLY THAT IS
DEFAMATORY.
>> NOW LET'S GET BACK TO THE
ISSUES, AND BECAUSE I
THINK AS A PUBLIC
POLICY YOU ARE CORRECT IF
THERE IS A -- TORT OF FALSE
LIGHT OUGHT TO BE GOVERNED
BY A TWO-YEAR STATUTE OF
LIMITATIONS MY PROBLEM IF IT
EMANATES FROM INVASION OF
PRIVACY THE CASE IN LINE OF

CASES, AS JUSTICE LEWIS WAS SAYING, YOU ARE REALLY DEALING THEN WITH A FOUR YEAR STATUTE OF LIMITATIONS, AND HOW DO WE SINCE WE ARE DEALING WITH THE LEGISLATIVE WILL NOT WHAT WE THINK IS A GOOD PUBLIC POLICY, HOW DO WE JUST SAY BUT, IT SHOULD BE TWO YEARS?

>> THAT IS BECAUSE THE BOTTOM LINE HERE YOUR HONOR IS THAT FALL LIGHT INVASION -- OF FALSE LIGHT INVASION OF MY PRIVACY TO MY MIND WITH DUE RESPECT DOESN'T HAVE ANYTHING TO DO WITH PRIVACY AT ALL, IT IS SOMETHING ELSE, IT IS LUMPED IN THESE FOR PRIVACY AS -- IF YOU COMPARE TO IT EXAMPLE FOR THE OTHER THREE BRANCHES, INTRUSION, WHICH IS SIMILAR TO TRESPASS, SOMEBODY INTRUDES INTO YOUR PRIVATE SPACE.

>> BUT NOW I THINK THE PROBLEM WITH IT IS, THE PARADIGM THAT WE'VE GOT TO ACCEPT, LEAST, OTHERWISE WE ARE JUST OFF IN OUR LAW REVIEW ARTICLE WORLD, IS THAT THE -- EMANATED FROM PROCTOR, BRANDEIS, ALL OF THAT AS TO EMANATING FROM INVASION OF PRIVACY, AND CERTAINLY ALTHOUGH WE HAVE MANY RESPONSIBLE PEOPLE IN MEDIA WITH THE INTERNET OUT THERE, THERE IS NO TELLING WHAT KINDS OF THINGS ARE BEING PUBLISHED OVER THE INTERNET.

SO IT IS A PRIVACY TORT AND I HAVEN'T HEARD ONE JURISDICTION OR SEEN ONE JURISDICTION THAT HAS TREATED IT OTHER THAN THAT.

>> WELL I UNDERSTAND, BUT MOST OF THE JURISDICTIONS AS WELL AS HAVE -- HAVE -- APPLIED THE SHORT OF LIBEL STATUTE OF LIMITATIONS I THINK THE

FOUR-YEAR LIMIT WOULD --
LIMITATIONS PERIOD IS
APPROPRIATE FOR PRIVACY
FACTS INTRUSION
COMMERCIALIZATION BUT
BECAUSE PRIVATE FALSE LIGHT
AS HAS IT PLAYS OUT WHERE A
PLAINTIFF ALLEGES A
STATEMENT IS DEFAMATORY
SEEKS REPRESENTATION INJURY
IS LIBEL CLAIM BECAUSE THEY
CALL IT SOMETHING ELSE DOES
NOT ALLOW AVOIDANCE --
>> THAT WOULD BE UNDER
FRIDOVICH AND THOSE LINE OF
CASES IN OTHER WORDS IF IT
IS THE SAME FALSE -- IF THE
SAME FALSE STATEMENT, YOU
CAN'T EVADE THE STATUTE OF
LIMITATIONS.
THAT IS WHAT FRIDOVICH SAYS
THAT WITH RESPECT TO THE
PRIVILEGE AND INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS YOU CAN'T DO IT BUT
HERE MR. ROGOW IS MAKING THE
ARGUMENT THAT IT IS NOT ONE
AND THE SAME AS DEFAMATION
THAT IS WHERE I'M --
>> MR. ROGOW DENIES THAT
REALLY THAT THE DOCTRINE OF
DEFAMATION -- AND I WAS
GOING TO GET INTO THAT THERE
IS IT IS IT IS IT IS A LONG
RECOGNIZED DOCTRINE OF THE
COMMON LAW.
AND IT HAPPENS IN TWO TYPES
OF CONTEXT, ONE WHERE THERE
IS AN ARTIFICIAL
JUXTAPOSITION OF UNRELATED
TRUE STATEMENTS TO SUGGEST
THAT THE DEFAMATORY
MEANING AND I THINK THE
CLASSIC IS COMES IN AND AN
1845 CASE, JAMES FENNAM MOORE
COOPER AGAINST HORACE
GREELEY GREELEY PUBLISHER OF
THE NETWORK TRIBUNE HE WAS
DOWN STATE IN NEW YORK CITY
END OF GOT INTO IT WITH
JAMES FENNAM OR COOPER
UPSTATE NEW YORK COOPER
THREATENED A LAWSUIT AGAINST
GREELEY, AND RESPONSE TO

THAT THREAT GREELEY WROTE
PUBLISHED IN THE PAPER THE
FOLLOWING.

WALKED IN MR. SHERIFF, THERE
IS ONE COMFORT TO SUSTAIN US
UNDER THIS TERRIBLE
DISPENSATION, MR. COOPER
WILL HAVE TO BRING HIS
ACTION TO TRIAL SOMEWHERE,
HE WILL NOT LIKE TO BRING IT
IN NEW YORK FOR WE ARE KNOWN
HERE, NOR IN OSEGO, FOR HE
IS KNOWN THERE.

TRUE ATTEMPTS JUXTAPOSED TO CONVEY
-- IN SUPREME COURT IN NEW
YORK 1845 SAID IMPUTATION
CONVEYED IN THAT FORM IS
ACTIONABLE

THE WORDS IMPUTATION ADDING
THEY CONVEY PLAINTIFF HAD
ODIOUS REPRESENTATION, IN
OSEGO COUNTY THAT IS THE
DEFAMATION BY IMPLICATION,
DOCTRINE THAT TRACES THROUGH
THE BROWN CASE, AND WITH ALL
DUE RESPECT I DISAGREE WITH
MR. ROGOW'S DESCRIPTION I
THINK HE REFERRED TO A SIMILAR
CASE BEFORE JUDGE --

JUXTAPOSITION, PICTURE IS
SLAPPED IN AN ARTICLE, THE
ARTICLE IN BROWN WAS A
REPORT OF A MURDER TRIAL,
THE ARTICLE ITSELF WAS
ENTIRELY TRUE.

THE PICTURE WAS THE
PLAINTIFF'S PATIENT, WASN'T
THE DEFENDANT IN THE
CRIMINAL TRIAL.

THE ARTICLE SAID NOTHING
ABOUT THE PICTURE THE
ARTICLE MENTIONED NOTHING
ABOUT THE PERSON IN THE
PICTURE.

BUT IT WAS THAT
JUXTAPOSITION OF AN ACCURATE
PHOTOGRAPH AN ACCURATE
ARTICLE THAT CONVEYED THE
DEFAMATION BY IMPLICATION
THAT IS THE ONE THAT IS THE
ONE TYPE OF DEFAMATION BY
IMPLICATION.

>> LET ME ASK ONE QUESTION
WITH REGARD TO THE STATUTE

OF LIMITATIONS ISSUE.

I BELIEVE, YOU STARTED
REFERRING TO THE MAJORITY OF
JURISDICTIONS IN THIS
COUNTRY.

LET'S WALK THROUGH THAT.

AM I CORRECT IN READING AGENCY

I READ THESE CASES, IT

APPEARS THAT THE MAJORITY OF
THE JURISDICTIONS STATE
JURISDICTIONS DO RECOGNIZE A
CLAIM FOR INVASION OF
PRIVACY FOR FALSE LIGHT.

>> IT IS A WELL REASONED
MINORITY.

>> SO A MAJORITY THAT WAY
INTO THE COUNT IS --

>> THAT IS WHAT WE ARE
TALKING ABOUT THE MAJORITY,
SO THEN WHAT IS THE NEXT
STEP TO THE MAJORITY OF
THOSE STATES HE TREATED THAT
IN THE NATURE OF A LIBEL TO
STATUTE OF LIMITATIONS
PURPOSES OR DO THEY TREAT IT
DIFFERENTLY?

>> I CAN'T ANSWER THAT I --
THERE IS A -- THERE IS A NUMBER
OF CASES, YOUR HONOR, THAT
AND JUSTICE -- REFERRED TO
THEM THERE IS A NUMBER OF
CASES THROUGHOUT THE COUNTRY
THAT APPLY TO A TWO-YEAR
STATUTE LIBEL STATUTE,
SIMILAR SITUATION SPECIFIC
LIBEL STATUTE -- UNDERSTOOD
THEY APPLY LIBEL STATUE
FALSE LIGHT.

IF I MIGHT THE SECOND AREA
OF LIBEL DEFAMATION BY
IMPLICATION, IS WHERE
SPECIFIC FACTS ARE OMITTED.
AND THAT -- THAT THE CLASSIC
CASE ON THAT IS MEMPHIS
PUBLISHING AGAINST NIXON,
WHERE A WOMAN WAS ARRESTED
FOR SHOOTING THE PLAINTIFF,
THE LIBEL PLAINTIFF AND THE
REPORT SAID THE INCIDENT
TOOK PLACE THURSDAY NIGHT
AFTER THE SUSPECT ARRIVED AT
THE PLAINTIFF'S HOME AND
FOUND HER HUSBAND WITH THE
PLAINTIFF.

AND SHE SHOT THEM BOTH THE IMPLICATION THERE WAS THAT THE SHOOTERS THE PLAINTIFF WAS HAVING AN AFFAIR WITH THE SHOOTER'S HUSBAND, WHAT THE ARTICLE OMITTED WAS THE FACT THAT THE -- THAT THE PLAINTIFF'S HUSBAND WAS THERE ALSO AND NEIGHBORS SITTING AROUND AS WELL THE OMISSION OF THOSE MATERIAL FACTS BY IMPLICATION WAS DEFAMATORY THAT IS WHAT THE PLAINTIFF'S CLAIM IN THIS IS CASE WAS, JUXTAPOSITION OF VARIOUS TRUTHFUL FACTS TO CONVEY A DEFAMATORY IMPLICATION THERE WAS A LIBEL CASE AND --

>> MR. ROGOW IS SAYING THAT IF IT IS ALL TRUE, EACH SENTENCE, THAT YOU CAN'T THEN EVEN HAVE THE RETRACTION STATUTE APPLY BECAUSE THERE IS NO FALSE FACT.

>> THAT IS I THINK THAT IS A LITTLE BIT -- THAT IS NOT SO.

I MEAN, A RETRACTION DEMAND WOULD SAY THAT THE -- THIS ARTICLE WOULD SET OUT THE FACTS IN THIS CASE IN THE ARTICLE AT ISSUE AND SAY THAT THE IMPLICATION IS THAT YOU ACCUSED ME OF A MURDER I DEMAND RETRACTION YOU SPECIFY THE STATEMENTS YOU SPECIFY THE IMPLICATION THAT YOU ARE ALLEGING THAT WAS -- CONVEYED, AND YOU DEMAND A RETRACTION I THINK THAT IS NOT A COMPELLING ARGUMENT FRANKLY.

I SEE MY TIME IS ALMOST UP.

>> IT IS UP IF YOU BRING YOUR ARGUMENT TO CONCLUSION YOU CAN HAVE YOUR CONCLUSION REMARKS.

>> I WILL, YOUR HONOR, THERE IS IF --

>> LET ME ASK YOU --

>> SURE.

>> HAVE YOU CONSIDERED THE FLORIDA CONSTITUTION PROVISION AND -- IT SAYS IN ALL CRIMINAL PROSECUTIONS CIVIL ACTIONS FOR DEFAMATION THE TRUTH MAY BE GIVEN IN EVIDENCE.

IT DOESN'T SAY JUST IT DOESN'T LIMIT IT TO DEFAMATION THAT WOULDN'T BE DEFAMATION BY IMPLICATION.

>> YOUR HONOR, AND IF I MAY, THE ISSUE OF FALSITY AND THIS WAS THE MAIN ISSUE IN OUR ARGUMENT ON APPEAL. THE FLORIDA CONSTITUTION SAYS THE TRUTH MAY BE OFFERED INTO EVIDENCE BUT UNDER THE FIRST AMENDMENT AND THAT IS TRUE, AND BUT UNDER THE FIRST AMENDMENT NOW THIS HAS ALWAYS CHANGED, WHEN YOU HAVE A MATTER OF PUBLIC INTEREST LIKE THIS NEWSPAPER ARTICLE WAS IT IS NO LONGER THE OBLIGATION OF THE DEFENDANT TO OFFER THE TRUTH IT IS THE OBLIGATION OF THE PLAINTIFF TO PROVE FALSITY.

>> I UNDERSTAND THAT BUT -- I'M REACTING TO THIS IDEA THERE CAN BE DEFINITION BY IMPLICATION CAUSE OF ACTION BASED UPON A TRUE STATEMENT.

I DON'T THERE IS NO FLORIDA CASE THAT I'M AWARE OF.

>> THERE ARE CONSTITUTIONAL LIMITS, THAT IS THE THAT IS THE COMMON LAW DOCTRINE BUT THERE ARE CONTINUATION INSTITUTIONAL LIMITS ON IT JUSTICE WELLS, FOR -- THERE HAS TO BE PROOF THAT NOW, THAT THE AUTHOR INTENDED THAT IMPLICATION, OTHERWISE, AS JUSTICE ANSTEAD YOU WERE CONCERNED, THAT UNLESS THERE IS THE INTENT TO STATE THAT IMPLICATION IT IS NOT TO TELL YOU, ALSO, THE FALSE RESTRICTIONS UNDER FIRST

AMENDMENT ACTUAL KNOWLEDGE
OF THE FALSITY OF THE
IMPLICATION IS REQUIRED
UNDER CERTAINLY UNDER
CANTRELL AND HILL IN THE
FALSE LIGHT CASE NOT ONLY DOES
THE IMPLICATION HAVE TO BE
PROVED FALSE IT HAS TO BE
INTENTIONAL, KNOWINGLY FALSE.

>> I GUESS ONE OF THE THINGS
THAT KEEPS ON GETTING ME NOW
JUST BEYOND THE STATUTE OF
LIMITATIONS THAT IF SOMEBODY
IS -- I GUESS, STATEMENT
WHEN DID YOU STOP BEATING
YOUR WIFE, HOW DOES WHERE OR
YOUR HIS, GENDER NEUTRAL,
WHEN SOMEBODY WHEN THAT IS
SAID AND THERE IS NO BASIS
BECAUSE THE PERSON WAS NEVER
PROSECUTED WHATEVER, HOW
DOES SOMEBODY PROVE THEY ARE
NOT GUILTY OF SOMETHING THAT
GIVES AN AWFUL LOT OF
LATITUDE TO MEDIA TO MAKE
ALL KINDS OF IMPLICATIONS
ABOUT PEOPLE, THAT WITHOUT
ANY OF THE PROTECTION, AND
CAN YOU -- THAT IS TO ME IN
TERMS OF TRYING TO BALANCE
FREEDOM OF PRESS, AND AGAIN
WE HAVE A LOT OF RESPONSIBLE
MEDIA WE HAVE A LOT OF
IRRESPONSIBLE PUBLICATIONS
THAT ARE NOT PART OF THE
MAINSTREAM.

HOW DOES THAT HAPPEN?

>> IF THE IMPLICATION IS
INTENTIONAL AND THE FIRST
AMENDMENT HURDLES ARE
OVERCOME, THEN THERE IS IN
FACT INJURY, AND REPUTATION
INJURY IS THE ESSENTIAL
CONCERN THAT WE HAVE HERE IT
IS ACTIONABLE BUT IN ANSWER
TO YOUR QUESTION, JUSTICE,
TURN IT AROUND A BIT, IT WAS
ALLUDED TO BEFORE,
EDITORS.

IN GOOD FAITH WHO ARE
PREPARING NEWSPAPER ARTICLES I
HAVE HELPED REVIEW NEWSPAPER
ARTICLES OVER 30 YEARS NOW
WHEN YOU ARE PREPARING AND

EDITING A NEWSPAPER ARTICLE,
OBVIOUSLY YOU WANT IT TO BE
TRUE.

AND BUT THERE ARE CERTAIN
THINGS THAT -- LEAST THERE
IS A FROM A LEGAL
PERSPECTIVE YOU LOOK AT, YOU
LOOK AT WHY DID WHAT ARE
THOSE THINGS THAT ARE SAID
THAT WOULD LOWER WOULD RUIN
SOMEBODY'S -- DEFAMATORY
WOULD AFFECT SOMEBODY'S
REPUTATION?

THOSE ARE THE THINGS YOU
REALLY, REALLY HONE IN ON
BECAUSE YOU WANT TO MAKE
SURE THAT WHAT IS PUBLISHED
IN THAT RESPECT IS
ABSOLUTELY TRUE.

AND YOU CAN FOCUS ON IT.
BUT IF YOU ARE FACED WITH
A FALSE LIGHT TORT
STANDARD BASIS FOR A CIVIL
ACTION IS SOMEBODY BEING
OFFENDED BY WHAT YOU
PUBLISH, IT IS IMPOSSIBLE.
AND IT IS IMPOSSIBLE TO GO
THROUGH AND SEE WHAT WOULD
OFFEND JUSTICE CANTERO, AND
NOT JUSTICE WELLS, OR VICE
VERSA.

THERE IS A
SUBJECTIVE ELEMENT
TO FALSE LIGHT TORT IS VERY,
VERY DANGEROUS, AND IF YOU
LOOK AT IT HERE, WHERE -- IN
A COMPREHENSIVE
INVESTIGATIVE SERIES WHERE
THIS ARTICLE TRUTHFULLY
AND ACCURATELY PUBLISHED
THE PLAINTIFF SHOT HIS WIFE
AROUND THE TIME THAT THE
DIVORCE WAS DISCONTINUED,
KILLED HER, AND WHAT
AUTHORITIES SAID WAS
AUTHORITIES SAID WAS A
HUNTING ACCIDENT, THAT WAS
THAT WAS REPORTED.

AND IF THIS -- IF THAT KIND
OF PUBLICATION ABSOLUTELY
TRUE IN WHICH THEY INCLUDED
THE NOTION OF AN ACCIDENT
HAD BEEN DETERMINED, IF THAT
IS ACTIONABLE, AND RESULTS

IN \$18 MILLION IN DAMAGE, AS AN \$18 MILLION JUDGMENT AS IT DID HERE IT WILL PARALYZE THE PRESS AND IT HAS HAD IMPACT IT WILL HAVE IMPACT UNLESS THE COURT HELPS RESOLVE THIS ISSUE.

>> WITH THAT YOU HAVE MORE THAN EXHAUSTED YOUR TIME.

>> THANK YOU VERY MUCH.

>> REBUTTAL.

>> I'VE BEEN READING PAPERS FOR MORE THAN 60 YEARS, TWICE AS LONG AS HE HAS BEEN LOOKING AT PAPERS. AND NOTHING HAS EVER CAUGHT MY EYE LIKE THIS.

IN 1988

WHILE STILL ON PROBATION, AND BEFORE CONVICTION WAS REVERSED ANDERSON SHOT AND KILLED HIS WIFE IRA ANDERSON WITH A .12 GAUGE SHOTGUN, THE DEATH OCCURRED IN DIXIE COUNTY JUST NORTH OF SUWANNEE WHERE DAYS BEFORE THE SHOOTING JOE ANDERSON HAD FILED FOR DIVORCE THEN HAD THE CASE DISMISSED.

>> --

>> -- I THINK THAT WOULD BE OUTRAGEOUS IF FALSE WAS TRUE YOU ARE CONCEDING IT IS TRUE IN FACT YOUR ORIGINAL COMPLAINT YOU FILED JUST READING FROM THE FIRST DCA OPINION I DON'T HAVE THE COMPLAINT BUT IT L APPEARS THAT THE COMPLAINT HE ALLEGED THE ARTICLE FALSELY IMPLIED HE MURDERED HIS WAY, HE GOT AWAY WITH IT, SEEMS A CLASSIC CASE OF DEFAMATION IMPLICATION THE ONLY REASON THAT COUNT WAS DISMISSED, WAS BECAUSE IT WAS BECAUSE OF THE STATUTE OF LIMITATIONS ISSUE.

OTHER THAN THAT, IT SEEMS LIKE THAT COUNT WOULD HAVE BEEN A VIABLE COUNT, SO WHY WEREN'T YOU PROTECTED IN WHAT YOU BELIEVE WAS A FALSE

IMPLICATION BY THE TORT OF
DEFAMATION BY IMPLICATION?

>> WE -- WHY WERE WE NOT
PROTECTED INTO OTHER THAN
STATUTE OF LIMITATIONS
PROBLEM WHY WOULDN'T THE
TORT OF DEFAMATION BY
IMPLICATION COVER THESE
FACTS.

>> BECAUSE DEFAMATION BY
IMPLICATION CANNOT REST UPON
TRUTHFUL STATEMENTS.

>> BUT THAT IS WHAT IS YOUR
COMPLAINT SAID YOUR
COMPLAINT SEEM TO ARGUE THAT
CERTAINLY CAN, BECAUSE IF
YOU FALSELY IMPLY THAT HE
MURDERED HIS WIFE, THAT IS
DEFAMATION BY IMPLICATION.

>> AND THAT IS WHAT WAS
WITHDRAWN THAT IS WHY WE
WOULDN'T GO TO TRIAL ON A FALSE
LIGHT CLAIM -- I --

>> IT WAS DISMISSED BECAUSE
OF THE STATUTE OF
LIMITATIONS, NOT BECAUSE IT
FAILED TO STATE A CAUSE
OF ACTION.

>> IT WAS BUT I RECOGNIZE
THAT IT WAS A WRONG
STATEMENT, OF THE CAUSE OF
ACTION IN THE CLAIM BECAUSE
DEFAMATION, REQUIRES A FALSE
STATEMENT ARTICLE ONE 14KS
OF THE FLORIDA CONSTITUTION,
TALKS ABOUT TRUTH BEING A
DEFENSE, 770, 01 AND 02 TALKS
ABOUT SPECIFIC THE FALSE
STATEMENTS, AND SO THERE
WERE NO FALSE STATEMENTS
THERE, IT WAS A MISTAKE WHEN
IT WAS PLED LIKE THAT, WHEN
I SAW THAT, I CHANGED THE
PLEADING AND WE WITHDREW
EVERYTHING EXCEPT THIS.

>> LET ME ASK ONE QUESTION,
AT THE TIME OF THE INCIDENT,
OF THE DEATH OF HIS WIFE,
WAS IT PUBLISHED IN THE
DIXIE NEWSPAPER.

>> IT WAS.

>> THIS WAS ALL
PUBLIC RECORDS NOT ONLY IN
THE -- SINCE THERE WAS A POLICE

REPORT, BUT THAT THE SAME INFORMATION HAD BEEN IN PUBLIC NEWSPAPERS.

>> TEN YEARS BEFORE, IT HAD BEEN AND I THINK THAT MAKES THE POINT, TEN YEARS BEFORE.

>> ANSWER YOUR OPPONENT'S QUESTION THEN HOW IS A LAWYER WHEN LOOKING AT INFORMATION IN AN ARTICLE THAT IS NOT ONLY THE PUBLIC BUT HAS PREVIOUSLY BEEN PUBLISHED AND THERE HAS BEEN NO CAUSE OF ACTION NO LITIGATION OR ANYTHING INVOLVED, HOW DOES ONE AN EDITOR OR A LAWYER ADVISING AN EDITOR, KNOW WE -- WE CAN'T PUBLISH THIS.

YOU READ THIS ARTICLE AND ANYBODY WITH ANY SENSE WOULD SAY, WHAT IS THIS DOING IN HERE?

AND THIS JURY HAD THE SENSE TO SAY, THAT IT HAD NO BASIS.

>> IF WORRIED ABOUT INVASION OF PRIVACY THAT IS WHAT THIS IS ALL BUBBLING UP FROM I THINK JUSTICE ANSTEAD HIT IT A LITTLE BIT EARLIER, WORRY BEING INVASION OF PRIVACY WE'RE NOT TALKING ABOUT THE PUBLICATION OF SOMETHING THAT WAS NOT ALREADY A PUBLIC FACT.

CORRECT?

>> THAT IS TRUE, BUT WE ARE BUT TO PUT THE PHRASE INVASION OF PRIVACY ON IT.

>> WHAT IT DOES IN REALITY IS THE CONCERN IS NOT THE FALSITY BUT IT IS IMPACTING HIS REPUTATION.

>> AND EMOTIONAL DISTRESS THAT IT WOULD CAUSE TO READ THESE TWO PARAGRAPHS IN AN ARTICLE, THAT HAD NOTHING TO DO WITH ANYTHING LIKE THAT, THAT STARTED OFF WITH W.D. CHILDERS PICTURES ABOUT CONTRIBUTIONS TO DIFFERENT POLITICAL --

>> MY POINT IS ISN'T THE

UNDERLYING CONCERN HERE THE
IMPACT ON THIS MAN'S
REPUTATION BECAUSE THE
NEWSPAPER PLACED HIM IN A
LIGHT THAT WAS
INAPPROPRIATE?

AND THEREBY AFFECTED HIS
REPUTATION NOT ONLY
OFFENDING HIM WHICH IS PART
OF THE DAMAGES BUT ALSO
IMPACTS HIS REPUTATION.

>> AND HIS EMOTIONAL
DISTRESS OF SEEING HIMSELF
PORTRAYED, AS HAVING KILLED
HIS WIFE.

>> IF YOU COULD BRING YOUR
REMARKS TO A CONCLUSION?

>> THAT IS IT.

>> THAT IS THE CONCLUSION,
OKAY, THANK YOU VERY MUCH
WE'LL TAKE BOTH CASES UNDER
ADVISEMENT.

THE COURT IS
GOING TO TAKE A SHORT RECESS
THIS MORNING.

>> ALL RISE.

COURT STANDS IN RECESS.