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Jews for Jesus, Inc. V. Edith Rapp

SC06-2491

>> ALL RISE.

O YE, O YE, O YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL THOSE HAVING BUSINESS BEFORE
THIS COURT, DRAW NIGH, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA IN THIS
HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

YOU MAY BE SEATED.

>> GOOD MORNING FRIENDS, WELCOME
TO THE FLORIDA SUPREME COURT AND
THE ORAL ARGUMENT CALENDAR
THURSDAY, MARCH 6.

I WOULD LIKE TO TAKE THE
OPPORTUNITY TO RECOGNIZE AND
WELCOME A GROUP OF STUDENTS FROM
THE UNIVERSITY OF FLORIDA WHO
ARE INTERESTED IN THE WORK GOING
ON IN THE FIRST COUPLE OF CASES.

WOULD YOU PLEASE STAND UP, I AM
NOT SURE WHERE YOU ARE.

WELCOME TO THE COURT.

WE ARE GLAD YOU ARE HERE.

SO, WITH THAT LET US PROCEED
WITH OUR FIRST CASE, JEWS FOR
JESUS VERSUS EDITH RAPP.

>> MAY IT PLEASE THE COURT, MY
NAME IS MATT STAVER.

WE RESPECTFULLY REQUEST THIS
COURT TO ASK THIS CERTIFY
QUESTION BY PROJECTING THE
FALSIFIED INVASION OF PRIVACY IN
IN ANY EVENT THIS CASE IS NOT
APPROPRIATE FOR THE RECOGNITION
OF SUCH CLAIMS.

WHenever you add any kind of
issue to libel or in this case
false invasion of privacy taken
away from the -- I think the

ISSUE BEFORE THIS COURT IS TO WEIGH THE NEED FOR THE RECOGNITION OF THIS TORT VERSUS THE INDEPENDENT RISK IN ADOPTING THIS COURT.

THE FACTS IN THIS CASE BEGAN TO ILLUSTRATE THIS PARTICULAR SITUATION.

>> I HAVE A QUESTION.

IN THIS CASE, UNLIKE THE ANDERSON CASE, I GUESS IT IS A STATUTE OF LIMITATIONS.

>> THAT IS CORRECT YOUR HONOR.

>> THE PLAINTIFF PLED IN THE ALTERNATIVE.

SHE PLED DEFAMATION AS WELL.

>> YES IN THE ORIGINAL COMPLAINT DEFAMATION AND FALSIFIED WERE THE SAME THING.

AND THE SECOND AMENDED COMPLAINT, THAT COMPLAINT DID NOT HAVE THOSE TOO.

IT ADDED ADDITIONAL COMPLAINT.

>> THE DEFAMATION CLAIM WHICH IS I GUESS ON CAUSE APPEAL, WAS

THERE A REQUEST FOR A

RETRACTION, IN OTHER WORDS WAS

THERE COMPLIANCE WITH THE

PREREQUISITE FOR THE DEFAMATION

THAT WOULD HAVE ALSO THEN IN

THIS CASE SHOWN THAT THIS WAS

NOT AN END RUN AROUND DEFAMATION

TO BE ABLE TO PLEAD FALSE LIGHT.

>> THAT IS A GOOD QUESTION.

THAT IS NOT DETERMINED BELOW IN THE CASE.

THERE IS A LETTER AND THE

ADDITIONAL SAYS IT WAS CLAIMING

\$1 MILLION IN DAMAGES.

IT WAS SENT ON DECEMBER --

ACCORDING TO THE LETTER IT WAS

SENT DECEMBER 4, 2000.

>> YOU ARE AWARE THAT LETTER WAS NOT ON THE RECORD.

>> THAT'S CORRECT SO THAT ISSUE HAS NOT BEEN DEALT WITH IN TERMS OF WHETHER IT WAS TIMELY, FIVE DAYS NOTICE PRIOR TO FILING A DEFAMATION CASE.

>> SO WE DON'T KNOW WHETHER THE DEFAMATION FOR THE PREREQUISITE COMPLIED.

>> WE DON'T KNOW.

HOW WOULD YOU DEFINE THIS STORED

AND HOW WOULD YOU DISTINGUISH IT FROM THE TRADITIONAL LIBEL OR SLANDER, DEFAMATION.

>> THE TORT THAT WAS FIRST DISCUSSED IN THE LAW REVIEW ARTICLE .

>> WHAT I'M LOOKING FOR IS LESS OF A HISTORICAL REVIEW OF THE DEVELOPMENT OF THE TORT AND MORE OF A MEAT ON THE BONES DEFINITION FROM YOU, ESPECIALLY IN THE CONTEXT OF THIS PARTICULAR CASE.

>> IF YOU WOULD IN A COMMON-SENSE WAY, IF YOU COULD DO THAT FOR US.

TELL US HOW YOU WOULD DEFINE THE TORT AND HOW IT APPLIES IN THIS PARTICULAR CASE IN YOUR VIEW.

>> HOW I WOULD DEFINE THE TORT IS A NON-DEFAMATORY STATEMENT THAT WOULD CAUSE OF SENSE TO SOMEONE'S INDIVIDUAL EMOTIONS AS OPPOSED TO CAUSING ANY KIND OF DEFAMATORY DAMAGE TO THE REPUTATION.

>> DON'T WE GET INTO SOME POLICY DIFFICULTY AT THE OUTSET THEN WHEN WE START TALKING ABOUT NON-DEFAMATORY.

>> ABSOLUTELY.

>> IN SHAPING, SO GO A LITTLE FURTHER WITH HOW IT WOULD APPLY IN THIS PARTICULAR CASE, REALIZING THAT YOU HAVE A PARTISAN VIEW POINT REPRESENTING YOUR CLIENT OBVIOUSLY.

>> THAT PARTICULAR QUESTION REALLY GOES TO THE REST OF THIS PARTICULAR TOWARD.

I DON'T THINK THERE'S A NEED BECAUSE THERE TOWARDS THE COVERED INJURED PLAINTIFFS THAT PROTECT FREE SPEECH BUT THE RISK IS ITS VAGUENESS AND ITS NON-DEFINABILITY.

>> NOT TRUE OUT THERE IN THE REAL WORLD IF OFTEN YOU CAN DO MORE DAMAGE BY WHAT YOU IMPLY FROM STATEMENTS THAT YOU MAKE, THEN SOMETIMES THAT YOU DO IF YOU JUST SAY THINGS IN A STRAIGHTFORWARD WAY. ISN'T THERE THE POTENTIAL FOR A

GREAT DEAL OF HARM TO BE DONE TO THE INDIVIDUAL BY THE IMPLICATION OF THINGS THAT ARE CAREFULLY CRAFTED?

>> THERE IS BUT THE PROBLEM FROM A SPEECH STANDPOINT IS IT DOESN'T PUT THE EDITOR ON NOTICE AS TO THE FACT THAT THIS COULD BE A POSSIBLE TOWARDS BECAUSE THESE KINDS OF THINGS, ACCORDING TO EVEN THE HEEKIN CASE WHICH IS CONTRARY TO THE REST OF THE COUNTRY COULD ACTUALLY BE TRUE STATEMENTS AND CLEARLY THEY ARE NOT THE DEFAMATORY STATEMENTS, THEREFORE IF THEY WERE DEFAMATORY THEY WOULD GO UNDER SOME KIND OF DEFAMATION CLAIM.

>> IN TERMS OF THE FACTS, THE CLAIM OF WHAT WAS EITHER DEFAMATORY OR PUT MS. RAPP IN A FALSE LIGHT WAS THAT SHE WAS PORTRAYED, AT LEAST THIS IS THE ALLEGATION, AS A CONVERT TO JEWS FOR JESUS AND SHE ALLEGES THAT IN A TRADITIONAL JEWISH COMMUNITY, THAT THAT IDEA OF BEING A, ACCEPTING JESUS CHRIST IS HIGHLY OFFENSIVE TO A REASONABLE PURPOSE, SO IN TERMS OF THIS CASE, GOING BACK REALIZING YOU SAY THIS TORT SHOULD NOT EXIST.

THE JUDGE IN HIS OPINION SEEMS TO FEEL THAT SHE MIGHT NOT BE ABLE TO SHOW DEFAMATION, BUT SHE SHOULD HAVE -- WELL SHE DID NOT QUESTION -- BUT IT FALLS INTO THE HIGHLY OFFENSIVE TO A REASONABLE PERSON.

IN THIS CASE WE DON'T HAVE IMPLICATION, IF IT IS EITHER FALSE OR TRUE THAN THAT IS A COMPLETE DEFENSE BUT ASSUMING IT IS FALSE ISN'T THERE A DIFFERENCE IN AT LEAST JUDGE GROSS'S OPINION THAT SHOWS SOMETHING THAT COULD BE A DAMAGE TO THE REPUTATION OR THE CONTENT OR RIDICULE AND SOMETHING THAT IS HIGHLY OFFENSIVE TO A REASONABLE PERSON WHICH IS THE FALSE LIGHT CLAIM ABOUT THE TWO DIFFERENT VALUES BEING LOOKED

AT.

>> IN OTHER JURISDICTIONS TRUTH IS NOT A DEFENSE.

SO THE FACT IS IT IS A COMPLETELY TRUE STATEMENT.

>> I DON'T AGREE WITH THAT.

I DON'T KNOW WHICH COURT YOU ARE TALKING ABOUT BECAUSE I'VE LOOKED IN EVERY STATE.

IF IT IS TRUE, NOW IF THE PHOTOGRAPH WAS PUT IN THE COLORADO CASE, PUT IN A CRIME FAMILY THAT IS HIS PICTURE BUT THE IMPLICATION IS HE IS PART OF THE FAMILY, THE DEFENSE WOULD BE AS PART OF THE CRIME FAMILY SO THE TRUTH IS IN DEFENSE, IF EDITH RAPP CONVERTED IN BECAME A MEMBER OF JEWS FOR JESUS, THAT IS A DEFENSE FOR THE CASE IS IN THAT?

>> IT IS NOT NECESSARILY A DEFENSE FOR THE CASE BUT THE ANDERSON CASE ACTUALLY DEALS WITH THAT ISSUE.

THE QUESTION IS NOT WHETHER THE STATEMENTS ARE TRUE BUT WHETHER THE IMPRESSION IS FALSE.

>> WE CAN APPRECIATE THE TORT HOWEVER WE SAY IT SHOULD BE GIVING DUE REGARD TO FIRST AMENDMENT.

>> YOU CAN CERTAINLY.

>> OBVIOUSLY WE CAN PULL ANYTHING OUT OF THE AIR.

BUT WHAT IS SOMEWHAT CONFUSING TO ME, KNOWING WHAT MR. RODA'S POSITION IS OVER THERE AND WHAT POSTURE WAS SAYING, THE ELEMENT IS WHERE IT SAYS THAT THE ACTOR HAD KNOWLEDGE OR ACTED IN RECKLESS DISREGARD AS TO THE FALSITY OF THE PUBLICIZED MATTER.

IS THE FALSITY THEN DEFINED AS AN UNTRUE STATEMENT, OR IS IT FALLS IN TERMS OF THE CONNOTATION THAT IT GIVES TO A REASONABLE PERSON?

>> IT COULD BE THE CONTEXT OF THE IMPLICATION BUT WE ARE TO HAVE TORT THAT COVERS THAT. WE HAVE THE APPROPRIATION TORT, WE HAVE THE JURORS AND TORT, WE

HAVE THE PUBLIC DISCLOSURE.

>> IF THIS WERE NOT TRUE THAT IT WOULD BE JUST A DUPLICATION OF SLANDER OR DEFAMATION.

>> THAT'S RIGHT BUT IN SOME CASES THERE REALLY DOES DUPLICATES LIBEL, SLANDER OR DEFAMATION BUT THE PROBLEM IS WITH THE VAGUENESS OF IT, ONE OF THE QUESTION IS DO WE REALLY NEED IT?

THE ANSWER TO THAT IS NO. SINCE 1984 THERE HAVE BEEN A NUMBER OF STATE SUPREME COURT SAID IT REJECTED, AND COLORADO REJECTED THIS TOWARD LOOKING AT THOSE TWO ISSUES.

>> A KIND OF BOILS DOWN TO THE FACT THAT YOU EITHER ARE GOING TO ACCEPT THAT IT IS DUPLICATES THIS OF THESE OTHER TORTS, OR THAT THERE IS A TOWARDS FOR PUBLISHING OR SPREADING SOMETHING THAT IS IN FACT TRUE. IS THAT KIND OF.

>> IT IS ESSENTIALLY THAT. IT IS DUPLICATIVE SO IT IS NOT NECESSARY.

THERE ARE OTHER TOWARDS THAT ACCOMPLISH WHAT IS NECESSARY TO PROTECT SPEECH AND PROTECT THE INDIVIDUAL WHO IS THE TARGET OF THE MESSAGE.

>> BY IMPLICATION?

SO WHERE A STATEMENT MAY BE LITERALLY TRUE BUT ITS IMPLICATIONS MAY BE FALSE, PERHAPS LIKE WHAT HAPPENED IN ANDERSON, WOULD THAT BE ACTIONABLE AS DEFAMATION BY CHARACTER?

>> YES IT WOULD AND THAT GOES BACK TO YOUR QUESTION. THE EXISTING TORT RECOGNIZE, THUS NOT NECESSARY TO RECOGNIZE THIS AND IT FALLS LIKE.

YOU NOT ONLY HAVE THE APPLICATION BUT YOU ALSO HAVE OTHER TOWARDS.

YOU HAVE LIBEL AND LIBEL BY IMPLICATION.

>> MAYBE I'M MISSING SOMETHING BECAUSE I KNOW THAT A LOT OF COURTS, AND IT MAY HAVE HAPPENED

IN ANDERSON, HAVE SAID THAT IT IS TRUE, BUT IN THE CONTEXT IT GIVES A FALSE IMPRESSION AND THAT IS ONE ASPECT BUT I WANT TO GO BACK, CONCENTRATING ON WHAT I SEE AS AID DIFFERENCE IN WHAT THE STANDARD WOULD BE FOR RECOVERY, AND I WOULD REFER YOU TO THE CANTRELL CASE THAT THE U.S. SUPREME COURT, WHICH RECOGNIZED THE TORT A FALSE LIGHT PLUS BUT A FIRST AMENDMENT RESTRICTION THAT IT HAD MADE IN RECKLESS DISREGARD.

IT IS IT NOT CORRECT THAT IN CANTRELL IN MANY OF THE CASES THAT ARE ACROSS THE COUNTRY, RECOGNIZE FALSE LIGHT THAT THE STATEMENTS THEMSELVES ARE UNTRUE BUT WHAT THEY ARE CONCERNED ABOUT IS THAT, AS I TRIED TO REFERRED TO EARLIER, THAT THE STANDARD IS DIFFERENT AS BEING HIGHLY OFFENSIVE TO A REASONABLE PERSON.

IT IS NOT NECESSARILY THE SAME AS HOLDING DAMAGE TO REPUTATION OR HOLDING SOMEONE UP TO CONTENT.

>> YOU ARE EXACTLY RIGHT.

>> THEREFORE EVEN IN FALSE LIGHT IT -- THE STATEMENT CAN BE FALSE.

>> IN FALSE LIGHT THIS STATEMENT SHOULD BE FALSE, IN FACT TIME VERSUS HILL SUGGESTS IN ALL FALSE LIGHT CASES THERE HAS TO BE FALSITY OR THERE HAS TO BE SOME KIND OF MALICE IN A CERTAIN CONTEXT.

>> SO, IF IN THIS CASE YOU WERE -- AND THAT IS WHERE I THINK WE MISSED EACH OTHER AND THE I READ YOUR BRIEF AND IT IS VERY WELL DONE SO I KNOW YOU ARE FAMILIAR WITH THESE CASES, IT IS THAT WHERE IS THIS CASE WHEN FORWARD AND YOU WERE ABLE TO ESTABLISH, PUT MS. RAPP ON THE STAND AND SAID NO MY STEPMOTHER DID IN FACT RECITE THE SINNER'S PRAYER AND SHE TOLD ME SHE WAS -- WANTED TO BECOME A MEMBER OF THIS ORGANIZATION AND THE

JURY BELIEVED THAT, ARE YOU SAYING THAT WOULDN'T BE A COMPLETE DEFENSE TO YOUR CAUSE OF ACTION?

>> IT IS POSSIBLE IT WOULD NOT BE COMPLETE DEFENSE, BUT IT IS BECAUSE OF THE WAY IT WAS PORTRAYED.

>> WHAT ABOUT IT WOULD MEAN THAT, WHAT THEN WAS SHE SAYING WAS FALSE THAT WOULD PUT HER IN A FALSE LIGHT?

>> LET ME JUST CORRECT WHAT HAS BEEN STATED BY THE OTHER SIDE. THE NEWS LETTER FROM JEWS FOR JESUS TO ITS INDIVIDUAL MEMBERS DID NOT SAY, NEVER IMPLICATED, NEVER SUGGESTED SHE BECOME A MEMBER OF JEWS FOR JESUS. NEVER SUGGESTED THAT SHE WAS LEAVING JUDAISM, NEVER SUGGESTED THAT SHE WAS SUPPORTING JEWS FOR JESUS.

IT SIMPLY SAID BRUCE RAPP, WHO IS THE STEPSON OF THIS INDIVIDUAL AND THE SON OF MARTY, WHO LATER DIED FROM A DISEASE, IT SIMPLY SAID THAT HE WAS WITH HIS STEPMOTHER AND HE PRAYED WITH HER AND SHE RECITED THESE SINNER'S PRAYER.

THEN IT REQUESTED PRAYER FOR EDITH RAPP AND FOR MARTY WHICH IS HIS FATHER.

THAT WAS IT AND IT WAS IN THE CONTEXT OF THE REPORT, IN THE CONTEXT OF NOT SOMETHING THAT WAS DEROGATORY OR DEMEANING.

>> YOU ARE TALKING ABOUT THIS SPECIFIC CASE HERE BUT YOU ALSO SEEM TO BE SAYING THAT IN A TORT THAT WOULD BE DENOMINATED AS A SUBPART OF DEFAMATION AS FALSE LIGHT THAT IN FACT THERE IS NO REQUIREMENT TO PROVE FALSE.

>> NO, I AM NOT SUGGESTING THAT.

>> THAT SEEMS TO BE WHAT YOU ARE IMPLYING AND IN ANSWERING THE QUESTION.

>> I'M NOT SUGGESTING THAT IN IN THAT FALSE LIGHT IN CONCERT DEFINITION HAS TO BE SOMETHING THAT IS FALSE.

THE HEEKIN CASE GOT IT ALL WRONG

AND SAID TRUE STATEMENTS COULD BE A FALSE LIGHT BUT HEEKIN WAS GOING BACK TO CASON AND CASON WAS A PUBLIC DISCLOSURE OF PRIVATE FACTS.

WERE IN THAT TOWARD IT CAN BE TRUE, PRIVATE INTIMATE INFORMATION THAT IS NOT AVAILABLE TO THE PUBLIC THAT IS NOW REVEALED COULD BE TRUE AND HIGHLY EMBARRASSING.

HEEKIN WAS RELYING ON CASON AND CASON WAS IN A FALSE LIGHT.

>> JUSTICE PARIENTE, WHETHER NOT TRUTH WOULD BE A COMPLETE DEFENSE AND WHERE YOU ARE SAYING NO, THAT IT WOULD NOT BE A DEFENSE, YOU DO AGREE THAT THERE WOULD HAVE TO BE SOME FALSITY TO THE LIGHT THAT THE PLAINTIFF IS PUT IN THAT IS BEING ASSERTED.

>> ABSOLUTELY, THAT IS ACCORDING TO THE GENERAL WHITE CASE.

I WANT TO SAVE THE REST OF MY TIME FOR REBUTTAL BY JUST ONE MORE THING TO JUSTICE PARIENTE. IF THIS COURT OR TO RECOGNIZE FALSE LIGHT, WHICH I DON'T THINK IS NECESSARY BUT TO PROTECT FREE SPEECH IT HAS TO HAVE OTHER PROTECTIONS SUCH AS THE NOTICEABLY RETRACTION YOU HAVE AN DEFAMATION.

>> HOW CAN WE DO THAT OURSELVES?

>> I THINK IT IS A LEGISLATIVE MATTER AND THAT'S WHY I THINK IT IS GOING TO HAPPEN IT HAS TO BE A LEGISLATIVE MATTER BUT THE LITANY WOULD BE THE NOTICE IN RETRACTION, SINCE YOU DON'T HAVE A FALSE LIGHT.

YOU DON'T HAVE THAT FOR FALSE LIGHT, THE FALSITY, CLEARLY THE TIME VERSUS HILL MALICE WHICH WOULD BE KNOWLEDGE OR RECKLESS DISREGARD OF THE TRUTH WHICH ESSENTIALLY WOULD BE ENTERTAINING SERIOUS DOUBTS OR ACTING WITH A HIGH DEGREE OF AWARENESS OF THE PROBABLE FALSITY.

AT LEAST THAT IS THE EDITOR SOME KIND OF RED FLAG.

THE DEFAMATION PRIVILEGES SHOULD

APPLY IN MATTERS OF PUBLIC CONCERN SHOULD NOT BE ACTUAL AND FINALLY THE BURDEN SHOULD BE ON THE PLAINTIFF TO PROVE A FALSE NATURE AN OPINION IN A HYPERBOLE SHOULD NOT BE ACTIONABLE EITHER AND IF THOSE KINDS OF THINGS WERE PUT ON FALSE LIGHT AT LEAST THE MINIMIZES SOME OF THE FIRST AMENDMENT CONCERNS I THINK ARE CLEARLY INHERENT IN THE TORT THAT HAS BEEN DISCUSSED IN THE COUNTRY.

THANK YOU.

>> MAY IT PLEASE THE COURT.
BARRY SILVER DEFENDING EDITH RAPP.

>> RATHER THAN ENGAGE IN A DISSERTATION, WE ARE GOING OVER THE HISTORY OF THE TORT. I AM CONCERNED BECAUSE IT IS ALL WELL AND GOOD TO SAY TORT SHOULD EXIST BUT FOR ME, I HAVE TO UNDERSTAND HOW IT APPLIES IN REAL LIFE.

FIRST OF ALL YOU DID PLEAD BOTH DEFAMATION AND FALSE LIGHT, CORRECT?

SO YOUR BELIEF THAT WAS IT COULD BE EITHER OR IN THIS CASE?

>> YES YOUR HONOR.

>> IS THE RECORD NOT CLEAR WHETHER YOU COMPLIED WITH THE STATUTORY PREREQUISITES FOR DEFAMATION, DEMANDING A RETRACTION?

>> AS FAR AS I RECALL YOUR HONOR AND I DID NOT FOCUS IN ON THAT ISSUE BUT I BELIEVE WE DID.

>> WOULD YOU SPEAK TO IT, TO WHAT MR. STAVER WAS TALKING ABOUT.

I KNOW MR.ROGOW'S POSITION IS THAT THIS DOES NOT HAVE TO BE A STATEMENT WHICH IS UNTRUE. IT DOES NOT HAVE TO BE.

WHAT MY CONCERN IS, IF YOU CAN SUE SOMEBODY FOR MAKING A TRUE STATEMENT, THEN IT SEEMS TO ME THAT THERE REALLY IS A GREAT IMPEDIMENT TO FREE SPEECH AND FREEDOM OF THE PRESS BECAUSE HOW ARE YOU GOING TO DETERMINE IN ADVANCE WHETHER WHAT YOU SAY,

WHICH IS TRUE, IS GOING TO OFFEND SOMEBODY?

>> THAT IS A VERY GOOD QUESTION YOUR HONOR AND I WOULD REVERT BACK TO WHAT TO JUSTICE ANSTEAD WAS SPEAKING ABOUT.

SOMETIMES YOU CAN SAY THE TRUTH AND YOU CAN CONVEY A FALSE IMPRESSION.

FOR INSTANCE AS SOMEBODY SAID THEY SAW ME APPEARING SOBER AT THE MEETING, AM I GIVING THE IMPRESSION OF USUALLY NOT? YOU CAN SAY CERTAIN THINGS THAT ARE TRUE AND THEY CAN HAVE A DEVASTATING EFFECT.

>> AND ISN'T THAT ONE OF THE PRICES WE PAY FOR HAVING A FREE AND OPEN SOCIETY?

WE ARE ALL GOING TO RECOGNIZE THAT WE HAVE, ARE SUBJECTED -- AS LONG AS IT IS TRUE AND NOT DONE WITH MALICE OR EVEN IF IT IS TRUE, EVEN IF IT IS JUST SIMPLY TRUTH, THAT WE HAVE A PROTECTION UNDER THE CONSTITUTION TO BE ABLE TO MAKE THOSE STATEMENTS.

>> YOUR HONOR I APPRECIATE YOUR CONCERN BUT I THINK THAT WOULD BE A CONCEPTUALLY HIGH PRICE TO PAY FOR FREE SPEECH.

[INAUDIBLE]

>> I DON'T KNOW IF WE ACTUALLY INVENTED IT OR IF IT WAS RECOGNIZED THAT PEOPLE SHOULD NOT BE ABLE TO SAY TRUE THINGS THAT CONVEY A FALSE IMPRESSION.

>> BUT WHY IS THIS THEN DIFFERENT FROM DEFAMATION BY IMPLICATION, BECAUSE IN THOSE SITUATIONS YOU MAY HAVE TRUE STATEMENTS, BUT PUTTING IT TOGETHER AND MAKING THE IMPRESSION, SO WHY DOES A FALSE LIGHT DIFFER FROM DEFAMATION BY IMPLICATION, SO WHY DO WE NEED BOTH OF THOSE KINDS OF TORTS?

>> THAT IS A GOOD QUESTION AND BY THE WAY TO DEFEND WHAT YOU ARE SAYING, IF PEOPLE COULD IMPLY FALSE THINGS WITH TRUE STATEMENTS AND DESTROY A PERSON'S REPUTATION, THE CLEVER

PEOPLE WOULD GO AROUND
DESTROYING PEOPLE AT WILL BY
SAYING TRUE THINGS IN A FALSE
WAY OR PUTTING A FALSE
IMPRESSION TOGETHER.

>> HAVE WE SEEN THAT IN FLORIDA
UP UNTIL NOW?

I DON'T THINK THERE'S A CASE IN
FLORIDA THAT IS DISCUSSED THE
JURY AWARD ON FALSE LIGHT CLAIMS
SO IT DOESN'T SEEM TO ME LIKE
THIS IS A PRESSING ISSUE IN THE
STATE WHERE PEOPLE ARE GOING
AROUND MAKING TRUE STATEMENTS
THAT IMPLY FALSITIES.

>> THAT IS TRUE YOUR HONOR, THAT
DOES REFUTE THE ALLEGATIONS AND
OPEN UP THE FLOODGATES BECAUSE
APPARENTLY THIS CAUSE OF ACTION
HAVING EXISTED FOR A WHILE
EITHER BY IMPLICATION OR THE
COURT HAS SAID IT HAS EXISTED.

>> SO WHY DON'T YOU NOW DISCUSS
HOW THIS IS DIFFERENT FROM
DEFAMATION BY IMPLICATION?

>> YOUR HONOR I'M NOT SURE THERE
IS ANY GREAT DISTINCTION BETWEEN
THEM HOWEVER, I DON'T THINK WE
SHOULD HAVE A CAUSE OF ACTION BY
IMPLICATION.

IN OTHER WORDS WHEN THEY TALK
ABOUT DEFAMATION OF IMPLICATION
USUALLY RIGHT AFTER THEY SAY THE
FALSE LIGHT EMISSION OF PRIVACY,
THE TWO ARE NOT EQUATED.

>> IF FLORIDA HAS RECOGNIZED A
DEFAMATION BY IMPLICATION THEN
WHY IS IT WE NEED TO TAKE A STEP
AND RECOGNIZE A FALSE LIGHT IF
WE HAVE SOMETHING THAT IS
EQUALLY APPLICABLE?

>> THE PROBLEM IS YOUR HONOR
THAT I AM NOT SURE THAT FLORIDA
HAS DEFAMATION BY IMPLICATION TO
ANY GREAT EXTENT AND THAT IS WHY
I THINK FALSE DEFAMATION BY
IMPLICATION REALLY IS FALSE,
LIKE INVASION OF PRIVACY.

>> THE PROBLEM IS IF WE ALLOW
FALSE LIGHT, THERE'S SO MANY
PARAMETERS THAT HAVE GROWN UP
AROUND DEFAMATION BY SOME
PROTECTION FOR FREE SPEECH BUT
IN FLORIDA IF WE RECOGNIZE

DEFAMATION BY IMPLICATION AND ALLOWED DAMAGES OTHER THAN TO REPUTATION, AS IN THE MIAMI HERALD CASE, OMISSIONS OF THE PROBLEM BECAUSE WE DON'T HAVE A PROBLEM WITH THE STATUTE OF LIMITATION ISSUES.

WHAT DOES NOT DEFAMATION BY IMPLICATION SOLVE?

>> IF YOU HAD A CLEARLY ESTABLISHED DEFAMATION OF THE PARAMETERS SET OUT AND THEY MATCHED IDENTICALLY FALSIFIED INVASION OF PRIVACY AS OPPOSED TO EVERYTHING ELSE EQUAL, IT WOULDN'T BE NECESSARY BUT THE POINT IS IN FLORIDA I DON'T THINK IT IS ALL THAT CLEAR-CUT IN THIS PARTICULAR CASE EXPLAINS WHY WE NEED FALLS LIKE INVASION, NOT DEFAMATION BY IMPLICATION. IN THIS PARTICULAR CASE, YOU HEARD THE ARGUMENT. NOBODY REALLY SAID SHE WAS A MEMBER.

>> THESE ARE POSITIVE STATEMENTS.

THIS CASE HIGHLIGHTS VERY STARKLY WHY WE NEED NOT A DEFAMATION BY IMPLICATION OR CAUSE OF -- WE NEED FALSE LIGHT TO ESTABLISH IN A SITUATION LIKE THIS WHERE SOMEONE SAYS THAT SOMEONE IS A NEW BELIEVER AND THAT SEEMS TO BE POSITIVE BUT YOU HAVE TO BE ABLE TO PUT IT INTO CONTEXT AND YOU HAVE TO BE ABLE TO KNOW THAT THIS IS GOING TO BE.

>> CAN I JUST GO BACK TO WHERE -- THIS IS A REAL CASE AND EVERYBODY IS WONDERING, IS THERE EVER GOING TO BE A CASE WHERE IT CRIES OUT FOR FALSE LIGHT BUT IT DOES NOT QUITE IN FIT INTO DEFAMATION.

YOUR STAIN THAT STATEMENT CAN BE TRUE BUT YOU AGREE THE ESSENCE IS, IT STILL HAS TO CREATE A FALSE IMPRESSION.

>> CORRECT.

>> IF IT IS TRUE THAT YOUR CLIENT, YOU -- WITH BRUCE RAPP AND CITED THE SINNER'S PRAYER,

IF THAT IS TRUE, DO YOU HAVE A CASE?

>> YES.

>> SO WHAT IS THE ESSENCE OF WHAT YOU ARE SAYING IN YOUR CASE?

IS THIS STATEMENT THAT IS EITHER TRUE AND GIVES A FALSE IMPRESSION OR IS FALSE, THAT YOU CAN JUST GIVE ME ONE SENTENCE OR MORE, OR LESS, WHAT IT IS.

>> THE STATEMENT WHERE IT SAYS THAT SHE PRAYED THE SINNER'S PRAYER, THAT IS FALSE.

>> BUT YOU SEE, IN ANSWER TO JUSTICE WELLS SAID THAT YOU NEED THE TORT BECAUSE THE TRUTH IS NOT A DEFENSE AND AGAIN SO YOU ARE SAYING THAT THE STATEMENT THAT SHE PRAYED WITH BRUCE RAPP IS FALSE.

BUT IF THEY PROVE THAT SHE DID PRAY WITH BRUCE RAPP, WOULD YOU AGREE THAT IS A DEFENSE?

>> I WOULD SAY THE TRUTH IS EITHER.

>> SO NOW WE HAVE A FALSE STATEMENT.

NOW I'M GOING TO ASK YOU IF WE RECOGNIZE DEFAMATION, NOW WHY IS THAT THEN THEY CAUSE OF ACTION FOR DEFAMATION AND HOW YOU SAY THAT IN THIS CASE YOU WOULD MAYBE NOT BE ABLE TO RECOVER FOR DEFAMATION, BUT YOU COULD RECOVER UNDER FALSE LIGHT AND YOU HAVE JUST TALKED YOURSELF OUT OF THE CAUSE OF ACTION IF THAT IS THE CASE BUT ALSO, AND I'VE READ ALL THE EXAMPLES AND ALL THE CASES AROUND THE COUNTRY, THE DIFFERENCE IS, IT IS COMING FROM A DIFFERENT VALUE AND MS. RAPP DID NOT SEEK TO BE IN A PUBLIC NEWSLETTER ON THE INTERNET, AND THAT IN THE JEWISH COMMUNITY BEING, IF SHE DID NOT PRAY AND DID NOT BECOME A MEMBER OF JEWS FOR JESUS, THAT MIGHT BE CONSIDERED HIGHLY OFFENSIVE TO A REASONABLE PERSON.

THAT IS WHAT JUDGE WELLS SEEMS TO SAY.

ARE YOU SAYING YOU COULD RECOVER

EQUALLY IF DEFAMATION WERE ALLOWED, THEN WHY IS IT GOOD ENOUGH TO HAVE DEFAMATION? PLEASE RESPOND AS CLEARLY AS YOU CAN TO THAT.

>> YOU HONOR I BELIEVE THAT BOTH DEFAMATION AND FALSE LIGHT OF PRIVACY WOULD -- HOWEVER I BELIEVE THE FALSE LIGHT OF PRIVACY PERHAPS IS A STRONGER CASE AND IT COULD BE DETERMINED BY SOME COURTS THE DEFAMATION WOULD NOT APPLY.

IN MY OPINION THEY BOTH APPLY BUT I THINK FALSE LIGHT CLEARLY APPLIES.

>> THE OPINION OF THE FOURTH DISTRICT SAYS HE DID NOT HAVE DEFAMATION BY YOU HAVE FALSE LIGHT.

>> I TAKE ISSUE WITH THAT. LET ME JUST EXPLAIN.

THERE COULD BE SOME COURTS THAT ARE GOING TO SAY, SAYING THAT SOMEONE IS A CHRISTIAN IS NOT DEFAMATORY SO YOU LOSE UNDER DEFAMATION BUT UNDER FALSE LIGHT THEY COULD WIN BECAUSE IF YOU LOOK AT THE CONTEXT OF HOW WOULD OF FACTS THEM, AND THEY INVADED HER PRIVACY, THEY PUT THIS OUT TO THE PUBLIC.

THAT IS PART OF WHAT FALSE LIGHT INVASION OF PRIVACY IS.

SHE IS MINDING HER OWN BUSINESS, NOW IT IS ON THE INTERNET AND BY THE WAY IT IS NOT ONLY A DOCTRINE OF CHRISTIANITY.

>> WHO IS THE PUBLIC IN THIS SITUATION?

>> THE DIFFERENCE IS NOT IN THE CONDUCT BUT THE DIFFERENCE IS HOW YOU DESCRIBE THE DAMAGE. THAT IS WHAT YOU JUST SAID IT SEEMS.

THE SAME CONDUCT BUT YOU ARE SAYING IT MAY NOT LIVE UP TO OR MAY NOT MEET THE STANDARD FOR DAMAGES IN A DEFAMATION ACT, BUT YET AT THE SAME TIME IT WOULD IF YOU DESCRIBE IT, PERMIT DIFFERENT TYPE OF DAMAGE. IT SEEMS TO BE WHAT YOU ARE SAYING, THE ESSENCE IS THE TYPE

OF DAMAGE.

IT HAS THE SAME ELEMENTS UP TO THAT POINT AND REALLY ALL WE ARE TALKING ABOUT IS HOW IT IMPACTS SOMEONE.

ISN'T THAT REALLY WHAT THE DIFFERENCE IS?

>> I DO AGREE.

I WOULD AGREE THAT IT AFFECTS -- BUT IT ALSO AFFECTS LIABILITY.

>> HOW?

YOU JUST DESCRIBE IT AS EXACTLY THE SAME CONDUCT WITH THE IDENTICAL CONDUCT FOR EACH CAUSE OF ACTION.

>> BECAUSE YOUR HONOR I BELIEVE THAT ALTHOUGH THIS CASE AND DIPS INTO DEFAMATION FALSE LIGHT OF PRIVACY,.

[INAUDIBLE]

>> BECAUSE OF THE NATURE OF THE DAMAGE, NOT BECAUSE THE NATURE OF THE CONDUCT.

>> BECAUSE OF THE NATURE THE CONDUCT.

IT IS NOT SO MUCH THE CONDUCT OF WHAT WAS SAID, IT IS MORE HOW WAS THIS INTERPRETED THAT ESTABLISHES THE LIABILITY.

IN OTHER WORDS HOW IT IS INTERPRETED, IF SOMEBODY CALL SOMEBODY ELSE A CHRISTIAN THE WAY IT IS INTERPRETED IF SOMEBODY IS A CHRISTIAN THEN FINE, BUT IF IT IS INTERPRETED BY EDITH RAPP AND HOW IT IS INTERPRETED BECAUSE SHE IS NOT A CHRISTIAN.

>> HOW IT IS IMPACTING HER IS NOT AS GENERAL AS THE IMPACT THAT IS NECESSARY FOR DEFAMATION.

>> FOR DEFAMATION IT NEEDS TO BE OFFENSIVE FOR HER OTHERWISE YOU HAVE NO LIABILITY AT ALL.

>> ISN'T THAT A PROBLEM SO THAT WE HAVE IN TERMS OF THE LIABILITY ISSUE?

THAT IS, THE STANDARD OF HIGHLY OFFENSIVE TO A REASONABLE PERSON.

FALSE LIGHT IS THE ONLY AREA OF DEFAMATION LAW OR INVASION OF PRIVACY THAT HAS A STANDARD LIKE

THAT, IS THAT CORRECT?

>> RIGHT.

>> ISN'T THAT AN AWFULLY VAGUE STANDARD FOR COURTS OR JURIES TO BE ABLE TO APPLY WITH ANY PRECISION, ESPECIALLY FOR WERE GIVEN ON THE OTHER SIDE OF THE SCALE, ALL THESE CONCERNS ABOUT FREE SPEECH.

AND OTHER WORDS, GENERALLY SPEAKING WE HAVE BEEN A SOCIETY THAT IS SUPPOSED TO HAVE THICK SKIN OKAY?

AND THIS IS REALLY A THIN-SKINNED STANDARD, IS IT NOT?

>> HIGHLY OFFENSIVE WOULD NOT BE ALL THAT THIN-SKINNED AND THE FACT THAT IT IS VAGUE DOES NOT MEAN THAT CAN'T BE POSITIVE ACTION.

IN EVERY STANDARD THAT WE DEAL WITH IS VAGUE IN SOME WAY.

HIGHLY OFFENSIVE ACTUALLY IS MORE PROTECTION TO PEOPLE WHO WANT TO BE ABLE TO SPEAK SO EVERY STANDARD WE ESTABLISHED YOU COULD SAY.

>> THE STANDARD I AM INTERESTED IN IS, WHO WAS IT THAT THIS COMMITTEE THAT HAS TO BE, YOUR CLIENT HAS TO BE OFFENDED BY THIS IN HER COMMUNITY, CORRECT? AND WHICH COMMUNITY ARE WE TALKING ABOUT BECAUSE AS I UNDERSTAND YOUR OPPONENT'S ARGUMENT THEY SAY, THIS NEWSLETTER ONLY WENT OUT TO PEOPLE WHO WERE JEWS FOR JESUS AND NOT TO THE GENERAL JEWISH COMMUNITY, CORRECT? WHICH IS THE PLAINTIFFS COMMUNITY, CORRECT?

>> CORRECT.

>> SO WHAT COMMUNITY HAS TO BE AFFECTED BY THIS PUBLICATION? THAT IS WHAT I'M INTERESTED IN KNOWING.

HER COMMUNITY, OR WHAT COMMUNITY?

THE COMMUNITY AT LARGE.

>> IT IS MORE PARTICULARLY -- THAT IS WHAT MEANS THE MOST HER AND THE COURTS HAVE SAID THAT IF

IT IS JUST SOME LITTLE TINY
GROUP OF HIGHLY SENSITIVE PEOPLE
IT DOESN'T MATTER BUT IF IT IS A
GROUP LIKE A RELIGIOUS GROUP.
>> IN THIS SITUATION ARE THERE
TO COMMUNITIES, THE COMMUNITY OF
THE JEWS FOR JESUS WHO THE
PUBLICATION GOES TO AND THE
OVERALL JEWISH COMMUNITY FOR
WHICH SHE WAS A MEMBER.

>> RIGHT, BUT THE ALLEGATION OF
THE COMPLAINT YOUR HONOR WAS
THAT THIS WAS OUT ON THE
INTERNET AND IT WAS DISCOVERED
BY A MEMBER OF HER COMMUNITY AND
EVEN THOUGH THEY CLAIM IT WAS ON
THE INTERNET, IF YOU PLUG HER
NAME INTO THE COMPUTER SHE --
DEFINES SHE WAS A MEMBER OF JEWS
FOR JESUS.

I WANT TO CLEARLY ESTABLISH
BEFORE I SIT DOWN.

>> ALSO YOU ARE WELL PAST YOUR
TIME.

>> I DIDN'T REALIZE THAT.
THE ALLEGATIONS IS NOT THAT SHE
WAS CHRISTIAN BUT THAT SHE
JOINED THE RANKS OF A GROUP THAT
DESTROYED THE JEWISH COMMUNITY
BY FRAUD.

[INAUDIBLE]

>> JUSTICE ANSTEAD, HIGHLY
OFFENSIVE IS NOT -- I THINK
UNDER THE FALSE RIGHT CONCEPT
BOTH OF THOSE HAVE TO BE THERE,
WHICH I THINK CREATES THE TEST
THAT, AS YOU CAN SEE FROM OUR
QUESTION, WE ARE DEALING WITH
THIS FOR THE FIRST TIME IN THE
CONTEXT OF TWO REAL CASES THIS
MORNING, SO ONE OF THE IMPORTANT
QUESTIONS I THINK THAT IS OUT
THERE, AS WE DEVELOP COMMON LAW
IS WHERE IS THERE THE NEED TO
RECOGNIZE THIS PARTICULAR RATHER
CONTROVERSIAL SUBSPECIES OF
DEFAMATION OR PRIVACY?

WHERE'S THERE THAT NEED IN VIEW
OF THE FACT THAT WE HAVE ALL OF
THESE OTHER REMEDIES THAT SEEM
TO BE AVAILABLE, DEFAMATION BY
IMPLICATION THAT WE DISCUSSED
AND ALL THE OTHERS, SO HELP ME
WITH THAT BRIDGE, THAT IS WHERE

IS THERE A GAP IN TERMS OF A WRONGFUL OR HARMFUL CONDUCT GOING ON THAT THE LAW HAS NOT FILLED.

DO YOU UNDERSTAND MY QUESTION?

>> I DO AND LET ME SAY THIS, DEFAMATION BY IMPLICATION NOTION, WHICH WE WILL SEE IN THE SECOND CASE TO, WHEN ONE LOOKS AT THOSE CASES THERE ARE FALSE STATEMENTS IN THOSE CASES. THE BOYLE CASE, THE TALLAHASSEE DEMOCRAT CASE SO I AM NOT A BIG BELIEVER IN DEFAMATION BY IMPLICATION NOTION THAT HAS BEEN SUGGESTED AS BEING OF A PLACEMENT FOR FALSE LIGHT. THIS IS A QUINTESSENTIAL FALSE LIGHT CASE BECAUSE THIS IS NOT DEFAMATORY.

IT IS NOT DEFAMATORY BECAUSE WHAT WE ARE TALKING ABOUT HERE IS WHETHER OR NOT SHE HAS THE EMOTIONAL DISTRESS.

>> IT COMES BACK TO THE NATURE OF THE IMPACT.

>> THAT IS YOUR QUESTION AND THE DIFFERENCE HERE IS THIS IS THE EMOTIONAL DISTRESS AND I WILL REFER THE COURT TO THE KELSO ARTICLE, PAGE 833 BECAUSE IT REALLY SUMS IT UP AND HE QUOTES FROM A STATEMENT, COMMENT 652E. IT IS NOT NECESSARY FOR THE ACTION OF PRIVACY THAT THE PLAINTIFF BE DEFAMED.

TO BE DEFAMED WHAT HAS TO BE SPOKEN IS FALSE AND THIS GOES BACK TO YOUR QUESTION JUSTICE PARIENTE.

IT IS FALSE, BUT IT IS ENOUGH THAT IT IS UNREASONABLE AND HIGHLY OBJECTIONABLE CONTACTS OR BELIEVES THAT ARE FALSE AND SO PLACE BEFORE THE PUBLIC IN A FALSE POSITION, SO.

>> WHY IS THAT DEFAMATION BY IMPLICATION?

>> DEFAMATION BY IMPLICATION IF YOU LOOK AT BLACK'S LAW DEFINITION, DEFAMATION BY IMPLICATION, SEE FALSE LIGHT.

>> THEN, IF YOU AGREE THAT THE STATE OF FLORIDA ALREADY

RECOGNIZES DEFAMATION BY IMPLICATION, AND IF WE ALSO ACKNOWLEDGE THAT WHEN YOU FILE A DEFAMATION ACTION AS OPPOSED TO A FALSE LIGHT ACTION YOU ARE REQUIRED TO FULFILL ALL OF THE PREREQUISITES OF THE STATUTES AND ALL OF THESE PRIVILEGES APPLY.

WHY DON'T WE JUST SAY THAT WELL, ON A FALSE LIGHT IS REALLY A DEFAMATION BY IMPLICATION CLAIM AND YOU HAVE TO ALLEGE IT AS SUCH.

WHY DOESN'T THAT TAKE CARE OF FALSE LIKE?

>> TWO ANSWERS, FIRST OF ALL YOU HAVE TO CHANGE THE FLORIDA STATUTE, WHICH TALKS ABOUT THE NOTICE THAT HAS TO BE GIVEN IN THE NOTICE IS SPECIFIC FALSE STATEMENT, SO YOU CAN'T DO THAT HERE IF YOU ARE TALKING ABOUT DEFAMATION BY IMPLICATION WHICH THEY SUGGEST HIM BEING IT DOES NOT HAVE TO BE FALSE.

IT CAN STILL BE DEFAMATION. IT STILL HAS TO BE A FALSE STATEMENT BECAUSE THE TWO CASES ACTUALLY THREE, BROWN VERSUS TALLAHASSEE DEMOCRAT WAS A FALSE PICTURE.

BROWN WAS PICTURED WHEN IT REALLY WAS JOHNSON SO THERE IS FALSITY THERE.

AND BOYLE, TAUNTING THE RETARDED.

THESE ARE THE CASES THAT JUSTICE PANAUTO CITED IN THE ANDERSON CASE AND THESE ARE THE CASES CITED IN THE QUINTESSENTIAL IMPLICATION CASES BUT ALL OF THEM HAVE FALSE STATEMENT.

>> THE KEY DIFFERENCE YOU ARE LOOKING FOR IS THAT YOU CAN HAVE A CAUSE OF ACTION FOR SOMETHING THAT'S THE FACTUAL STATEMENT IS IN FACT TRUE?

>> THAT IS RIGHT IN THAT HAS NEVER BEEN DECIDED BY THE U.S. SUPREME COURT WHICH IS SPECIFICALLY LEFT OPEN THE QUESTION OF WHETHER OR NOT THERE CAN BE.

>> IT IS NEVER BEEN RECOGNIZED
IN THAT WAY IN FLORIDA.

>> IT HAS IN THE FOURTH FACTOR
UNDER AGENCY FOR HEALTH CARE IN
GINSBURG.

>> BUT THAT WAS NOT DEALING,
NONE OF THOSE CASES WERE DEALING
WITH THE ISSUE OF WHETHER THERE
WAS A CAUSE OF ACTION IN
FLORIDA.

THERE WAS A RECOGNITION IN
GINSBURG IN THE AGENCY, WHAT HAS
BEEN SET FORTH AS A RIGHT TO
PRIVACY INCLUDED THESE SPECIES
AS THE FIGHTING BY PROCESS.

>> THAT IS CORRECT JUSTICE WELLS
AND THE FOURTH FACTOR THAT SAID
NON-DEFAMATORY.

>> WHEN -- ERASED THE
DISTINCTION VERSUS THE PERSONAL
INTEREST AND NOTED THE INTERESTS
PROTECTED IS "CLEARLY THAT OUR
REPUTATION WITH THE SAME
OVERTONES OF KNOWN DISTRESS AS
AN DEFAMATION."

>> KELSO SAYS SOMETHING A LITTLE
DIFFERENT AND KELSO SAYS THAT
OTHER HARM AND MORE PARTICULARLY
EMOTIONAL DISTRESS STANDING
ALONE IS --

>> YOUR POSITION AS WE SHOULD
ACCEPT THE FOUR CATEGORIES
CREATED, BUT NOT ACCEPT HIS
RECOGNITION THAT THE TRUE
INTERESTS BE PROTECTED IS IN
REPUTATION.

>> I WOULD NOT SAY YOU HAVE TO
REJECT THAT BUT THERE'S NO
QUESTION THIS AREA, WHICH IS A
LIGHT AREA FOR PROFESSORS TO
WRITE ABOUT, IT IS AN OPEN
QUESTION BUT I THINK IN RESPONSE
TO WHAT USE THIS LEWIS SAID THE
DIFFERENCE IS EMOTIONAL
DISTRESS.

IT MAY NOT HARM YOUR REPUTATION
BUT IT HARMS YOU, SO.

>> EVEN MR. SILVER SAID THE HARM
WAS THE HIGH OFFENCE CAUSE
BECAUSE OF THE IMPACT WHEN YOU
GO INTO THE COMMUNITY.

>> HE DID SAY THAT BUT I DON'T
THINK IT HAS TO BE THAT AT ALL.
IT IS SUFFICIENT WITH YOUR OWN

EMOTIONAL STRESS IS CAUSED.

>> REBUTTAL?

>> MAY IT PLEASE THE COURT.

>> THE DEFAMATION DAMAGES, THAT SOMEONE IS, BECOMES THE OPTION OF RIDICULE OR CONTEMPT, NOT JUST REPUTATION, CORRECT?

I MIGHT ARGUE THAT HIGHLY OFFENSIVE TO A REASONABLE PERSON IS NOT MUCH MORE, EITHER VAGUE OR THE OBJECT OF RIDICULE OR CONTEMPT, HAS ANY COURT SUGGESTED THAT PERHAPS THE WAY THE COURTS OF THIS WOULD BE TO ADD IN OR HIGHLY OFFENSIVE TO A REASONABLE PERSON AS PART OF DEFAMATION OR IS THAT SOMETHING SET BY STATUTE THAT WE ARE NOT ABLE TO CHANGE?

>> I DON'T KNOW JUSTICE PARIENTE, I HAVE NOT SEEN ANY THAT HAS RESULTED THAT WAY BUT I WOULD THINK THAT WOULD BE STATUTORY FIXED.

>> ACTUALLY IT WOULDN'T BECAUSE FROM WHAT I JUST SAID COMES FROM OUR COMMON LAW.

>> I THINK THE COMMON LAW AND STATUTES ALREADY HAVE SUFFICIENT TOWARDS THAT PROTECT INDIVIDUALS AND NOT INFRINGE ON FREE SPEECH.

>> WE HAVE A CONSTITUTIONAL PROVISION IN OUR STATE CONSTITUTION IN.

IT SETS OUT WHAT HAS TO BE -- DEFAMATION IS WHAT THE DEFENSE IS.

>> EXACTLY, SO YOU HAVE A LOT OF THESE PROTECTIONS BUT YOU DON'T HAVE THIS INDIVIDUAL DEFENSE. WHEN YOU ARE LOOKING AT IT FROM EDITORS PERSPECTIVE IT IS DIFFICULT FOR SOMEONE, ESPECIALLY NEWSPAPER, LOOKING AT FACTS THAT WOULD BE ESSENTIALLY TRUE, BUT NOT BEING ABLE TO DETERMINE THE DEFAMATION NATURE BECAUSE IT IS NOT DEFAMATORY AND LOOKING AT IT, DOES THAT OFFEND SOMEBODY?

THAT REALLY CENSORS SPEECH. IT IS A SELF CENSORING SPEECH. IN THIS CASE ONE OF THE THINGS YOU MENTIONED ABOUT THE

DEFAMATION, THEY FILED A
DEFAMATION.

THEY DID NOT ALLEGE, AS JUSTICE
QUINCY YOU MENTIONED THAT IT WAS
HIGHLY OFFENSIVE TO A SPECIFIC
DISCRETE COMMUNITY.

THEY IN FACT GOT THEIR CASE
DISMISSED WITH PREJUDICE.

THE DISMISSAL OF THE DEFAMATION
WAS UPHELD.

THEY HAVE NOT CROSS APPEALED
THAT.

THEY COULD HAVE AS YOU HEARD
THEM SAY, THEY COULD HAVE
PURSUED WITH DEFAMATION.

NOW THEY DISAGREE WITH THE
FOURTH CIRCUIT DECISION ON
DEFAMATION BUT THEY HAVE NOT
APPEALED IT.

THAT CASE IS OVER, HER DAY IN
COURT HAS ALREADY BEEN HAD AND
THEY DID NOT BRING THIS BEFORE
THE COURT.

OTHER THINGS THAT WERE SAID.

>> IT IS SIX AND A HALF PAGES OF
RULES.

>> I AM CONCERNED BECAUSE IT
SEEMS THE FOURTH DISTRICT'S
OPINION ON THAT ISSUE, IT IS
WELL RECOGNIZED IN THE
STATEMENTS AND NO ACCORD IS
EXACTLY TALKED ABOUT A
RESPECTABLE MINORITY OF THE
COMMUNITY.

IT IS WELL KNOWN THAT THAT WOULD
BE DEFAMATION IF IT IS A
RESPECTABLE GROUP OF THE
COMMUNITY, SO I'M A LITTLE
CONCERNED WITH THE FOURTH
DISTRICT.

>> THE FACT IS THEY DIDN'T TALK
ABOUT THAT IN THE CONTEXT OF
DEFAMATION.

THEY TALKED ABOUT IT IN THE
CONTEXT OF FALSE LIGHT.

>> THEY SAID HER CLAIM FOR
DEFAMATION WOULD NOT STAND.

>> IN FACT YOU HAVE THE
RESTATEMENT WHICH TALKS ABOUT
GENERALLY LARGER DISCREET
COMMUNITY, WHEN HE COULD BRING
THAT CAUSE OF ACTION.

>> YOU AGREE THAT MIGHT, AT SOME
POINT.

>> THAT'S GOOD BECAUSE THE PLAINTIFFS COULD HAVE PURSUED BUT THEY DIDN'T AND THEY DIDN'T APPEAL THE DENIAL AND THE DISMISSAL OF THE DEFAMATION ACTION.

>> I HAVE ONE CONCERN AND I THINK YOUR HELPFUL ON THE UNDERLYING PREMISE THAT THE PREDICATE FOR YOUR ENTIRE ARGUMENT, AND THAT GOES BACK TO IT IF IT IS TRUE THERE CAN BE NO CAUSE OF ACTION, AND THAT TO ME SEEMS TO REALLY GO INTO THE FACE OF AT LEAST THE ONE INVASION OF PRIVACY CASE THAT WE WELL ARTICULATED AND THAT IS IN CONNECTION WITH THE COMMERCIAL USE, SO THAT IS VERY CLEAR THAT EVEN IF IT IS TRUE IT MAY WELL BE ACTIONABLE CORRECT?

>> SURE.

>> WE HAVE ALREADY CROSSED THAT BRIDGE SO THAT IS WHY I AM A LITTLE PUZZLED AND I DON'T KNOW IF WE GO TO THE NEXT STEP NECESSARILY BUT FLORIDA LAW HAS RECOGNIZED NO DAMAGE ULTIMATELY. THE CAUSE OF ACTION FOR TRUE STATEMENTS CASTING SOMEONE IN THE PUBLIC LIGHT, INVADING THE PRIVACY RIGHTS, PROTECTED BY OUR CONSTITUTION EXPRESSLY THAT THERE IS SOME INTEREST TO BE PROTECTED.

>> CHIEF JUSTICE LEWIS I KNOW MY TIME HAS EXPIRED.

YOU ARE RIGHT, IT IS AN INTEREST THAT CAN BE PROTECTED BUT IT IS AN INTEREST THAT ALREADY IS PROTECTED AND THAT I THINK IS ONE OF THE ISSUES HERE. IS THERE NEED FOR THE RECOGNITION OF A NEW FALSE LIGHT WHICH A LOT OF DISAGREEMENT IS OVER, IF ITSELF COULD SWALLOW UP ALL OF THE OTHER TORTS, IS THERE A NEED?

I THINK THE ANSWER TO THAT IS NO, THERE ARE OTHER TOWARDS ALREADY IN EXISTENCE THAT PROTECT THESE KINDS OF THINGS, EVEN THE CONCERNS THAT PLAINTIFFS HAVE IN THIS CASE.

>> THAT AGAIN, YOU SAID THE
DEFAMATION REQUIRES FALSITY.

>> IT DOES.

>> SO IT MAY NOT.

>> IN THE IMPLICATION DEFAMATION
BY IMPLICATION WOULD BE THE
IMPLICATION OF THE CONTEXT OR
HOW IT IS PRESENTED EVEN THOUGH
MAYBE IN FACT THOSE WORDS ARE
ACTUALLY TRUE.

THAT IS I THINK AS JUSTICE
CANTERO SAID WE RECOGNIZE THAT
AND IT IS HERE.

>> DO WE CLEARLY RECOGNIZE THAT?

HAVE WE ESTABLISHED THE
PARAMETERS OF THAT?

ARE WE HERE TALKING ABOUT NAMES?

>> JUSTICE LEWIS I THINK WE HAVE
ESTABLISHED IT SUFFICIENTLY
ENOUGH THAT THIS IS THE CAUSE OF
ACTION IN THE STATE OF FLORIDA.

>> AND THEN WE DEVELOPED THE
PARAMETERS SUFFICIENTLY?

>> SO IF IT IS ONE IN THE SAME
WE ARE TALKING TO OURSELVES.

>> I THINK SO AND THAT IS WHY
THINK IT IS NOT NECESSARY FOR
THE FALSE LIGHT.

AS FAR AS IMPLICATION, I DON'T
HAVE THE CASE IN FRONT OF ME.
WE HAVE NOT RECOGNIZED
DEFAMATION FOR IMPLICATION IN
THE CONTEXT OF A FALSE LIGHT
BECAUSE FALSE LIGHT --

>> THIS COURT HAS NEVER
DISCUSSED DEFAMATION BY
IMPLICATION IN THIS COURT.

>> NO, THIS COURT HAS NOT AS FAR
AS I RECALL.

>> THAT IS WHAT I WAS ASKING.
YOU SAID IT WAS WELL
ESTABLISHED.

HOW CAN THAT ANSWER THIS
QUESTION?

>> AT THINK IT IS ESTABLISHED
AND SOME OF THE OTHER LOWER
COURTS THAT ONCE YOU ALREADY
HAVE THE DEFAMATION OF CERTAIN
PARAMETERS OF PROTECTION.
YET THE STATUTORY PARAMETERS,
THE CONSTITUTIONAL PARAMETERS AS
WELL AND I THINK THE PROBLEM
WITH THIS FALSE LIGHT IS IT ADDS
SOMETHING ENTIRELY DIFFERENT

THAN EVEN THE LOWER COURTS HAVE
SUGGESTED IN IMPLICATION AND
THAT IS THIS NOTION OF HIGHLY
OFFENSIVE TO A REASONABLE
PERSON.

WHAT YOU HAVE HERE IS DEFAMATION
THAT LOOKS A RESULTS OF THOSE
CAN EASILY BE OBJECTIVELY
DETERMINED VERSUS LIGHT LOOKS AT
INDIVIDUALS' SUBJECTIVE
PERCEPTIONS AND EMOTIONS AND I
THINK THAT IS WHERE IT IS NOT
ONLY NOT NECESSARY BUT
IMPLICATES FREE SPEECH TO A
SIGNIFICANT DEGREE.

>> THANK YOU VERY MUCH.

I THANK BOTH OF YOU FOR WELL
DONE ARGUMENTS AND BRIEFINGS IN
THIS CASE AND WE WILL TAKE THIS
CASE UNDER ADVISEMENT.
THANK YOU VERY MUCH.