

>> THE FINAL CASE ON THE DOCKET  
IS INTERNET SOLUTIONS CORP. V.  
TABITHA MARSHALL.

-- YOU ASKED FOR IT NOW.

>> WITH THAT, LET ME ASK YOU A  
QUESTION.

IS THERE ANY DISPUTE AMONG THE  
PARTIES THAT THERE WAS AN INJURY  
THAT ACTUALLY OCCURRED IN  
FLORIDA?

>> I DO NOT BELIEVE THAT THERE IS.

>> OKAY.

>> I WANT TO GO TO WHAT THE  
11TH CIRCUIT IS ASKING US.

THEY ARE ASKING US.

WE ARE NOT LIMITED TO WHAT THEY  
ASK US.

THE 11TH CIRCUIT FOR THE LAST 20  
YEARS HAS ISSUED OPINION SAYING  
THAT INJURY IN FLORIDA IS ENOUGH.  
LOVELADY, WHICH WASN'T EVEN  
CITED, IN THE 11TH CIRCUIT IS ON  
POINT.

IN THIS CERTIFIED QUESTION IT ONLY  
ASKS, IT ASKS WHETHER POSTING  
ALONE ON AN INTERNET SITE, IT  
MENTIONS THAT, AND IT MENTIONS  
THAT IT IS NOT COMMERCIAL.

THEN IT MENTIONS THAT THE  
COMPANY HAS ITS PRINCIPAL PLACE  
OF BUSINESS IN FLORIDA.

YOU KNOW HOW WE ASK CHILDREN  
THE IMPORTANT WORDS IN A STORY.  
WHAT WOULD YOU SAY IN TERMS OF  
ANSWERING THAT QUESTION, WHAT,  
I MEAN, WHAT IS YOUR BOTTOM

LINE AS FAR AS HOW YOU WOULD ANSWER IT AND WHAT WOULD BE THE CONSIDERATION FOR MERE POSTING OF A NON-COMMERCIAL WEBSITE, NOTHING IN THIS THAT SAYS WHETHER IT IS INTERACTIVE OR NOT.

NOTHING TO SAY THAT THE DEFENDANT KNEW THAT THE CORPORATION DID BUSINESS IN FLORIDA WOULD BE ENOUGH TO SATISFY THE LONG ARM STATUTE AS FAR AS COMMITTING A TORTIOUS ACTS WITHIN THE STATE OR INTO THE STATE.

NOW INJURY IS A WHOLE DIFFERENT QUESTION.

WE CAN ALSO DISCUSS THAT.

WHAT IS YOUR ANSWER ON THIS QUESTION AND WHAT ELSE WE WOULD NEED TO ADD INTO IT TO MAKE THIS AN APPROPRIATE QUESTION TO ANSWER?

>> I THINK ONE OF THE MOST IMPORTANT IS THE STATEMENTS POSTED BY MS. MARSHALL.

WITH THE 11TH CIRCUIT ASKED, AS WELL.

SECONDLY, EXCUSE ME, THE RESPONDENT DID KNOW, IN FACT. SHE HAD POSTED ON THE WEBSITE. SHE COMMUNICATED BACK AND FORTH WITH INDIVIDUALS NOT ONLY FROM FLORIDA, BUT WHERE THE COMPANY IS HEADQUARTERED.

SHE AIMED IT AT A FLORIDA  
RESIDENT, AND SHE KNEW THEY  
WERE HEADQUARTERED IN FLORIDA.

>> WHAT DO WE DO?

I LOVE THE QUESTIONS FROM THE  
11TH CIRCUIT.

I AM WONDERING WHAT THEY'RE  
REALLY ASKING.

THEY ACTUALLY SAY THAT IT IS IN  
THERE.

MIGHT THAT HAVE JURISDICTION  
OVER MARSHALL SINCE HER  
STATEMENT APPEARED ON A  
GENERAL WEBSITE.

BUT WHAT YOU ARE SAYING IS THAT  
THEM ALLEGING THE PRINCIPAL  
PLACE OF BUSINESS IN FLORIDA THAT  
THEY DID TARGET FOR RESIDENTS.

SHOULD WE JUST SAY RESPECTFULLY  
YOU DIDN'T READ THE COMPLAINT?

>> I WOULDN'T SAY IT DIDN'T READ  
THE COMPLAINT.

PART OF THE EXHIBITS WITH THE  
COMPLAINT WERE PUT IN THE  
COMPLAINT.

>> AND THOSE WERE POSTINGS  
FROM OTHER PEOPLE IN FLORIDA.

>> NOT JUST FROM OTHER PEOPLE.

>> EMPLOYEES OF THE  
CORPORATION.

BUT YOU DON'T ALLEGE THAT IN  
YOUR COMPLAINT.

YOU DON'T ALLEGE THAT IT WAS  
POSTED AND ACCESSED IN FLORIDA.  
WOULDN'T YOU AT LEAST HAVE TO,  
ISSUE OF INJURY ASIDE.

MAYBE THE COURT WILL SAY NO  
INJURY.

THERE HAS TO BE POSTING.

IT HAS TO BE ACCESSIBLE IN FLORIDA  
AND ACCESS, EVEN ON THE MOST  
THE NARROWEST TEST THERE HAS TO  
BE ACCESS IN FLORIDA.

A PHONE CALL.

>> I WOULD ARGUE THAT, NO, IT  
WOULD NOT NECESSARILY HAVE TO  
BE ACCESSED IN FLORIDA.

IT HAS TO BE AIMED.

HEADQUARTERED IN FLORIDA.

THE ISSUE OCCURS IN FLORIDA.

BECAUSE OF THE NATURE OF THE  
FACT IT IS THE PRINCIPAL PLACE OF  
BUSINESS, THE FACT DID NOT MEAN  
THERE IS AN INJURY THAT  
OCCURRED.

>> HOW CAN THERE BE AN INJURY  
FROM DEFAMATION IF NOBODY  
HEARS THE DEFAMATORY  
ASSERTION?

>> I AM NOT ARGUING.

>> LET ME ASK YOU THIS.

YOU KEEP SAYING THERE ARE  
EXHIBITS ATTACHED TO THE  
COMPLAINT.

IT WAS RECEIVED IN THE STATE OF  
FLORIDA.

ISN'T THE EXHIBIT PART OF THE  
COMPLAINT?

SO YOU ARE TALKING AS THOUGH  
THERE IS NOTHING HERE TO SAY IT  
WAS ACTUALLY RECEIVED.

IN FACT, THERE IS.

>> I AGREE.

BECAUSE OF THE FACT THAT THE INJURY OCCURRED IN FLORIDA AND IT IS A NON-COMMERCIAL WEBSITE AS WELL.

MADAM JUSTICE BROUGHT IT UP.

THE FACT THAT IT IS A NON-COMMERCIAL WEBSITE, THERE ARE NOT GOING TO BE SALES.

THERE ARE NOT GOING TO BE SALES.

IT IS A NON-COMMERCIAL WEBSITE.

THE CONTACT IS BETWEEN THE PERSON WHO RUNS THE BOARD AND HER ON BOARD.

THAT IS THE ISSUE WE A COMPLAINING ABOUT.

SHE HERSELF TOOK THIS DEFAMATORY MATERIAL, DIRECTED IT AT FLORIDA BY DIRECTING IT AT A RESIDENT.

>> SO THEN YOU WOULD SAY THAT WE HAVE TO CORRECT THE 11TH CIRCUIT IF WE WERE TO PROTECT YOUR VIEW THAT HER STATEMENTS DID SPECIFICALLY TARGET FLORIDA RESIDENTS.

IN OTHER WORDS, THEY ARE MISTAKEN WHEN THEY SAID THIS. AND BECAUSE THEY ARE MISTAKEN ON THAT THEN THE WHOLE CERTIFIED QUESTION IS NOT REALLY, HAS TO BE REWORDED.

THEIR QUESTION, AGAIN, ONLY HAS POSTING WHEN YOU SAID THAT YOUR COMPLAINT ACTUALLY SAYS OR THE ATTACHMENT SHOWS THAT

IT WAS ACCESSED, NOT JUST  
ACCESSIBLE.

I'M A LITTLE MYSTIFIED WITH HOW  
THEY CAME UP WITH THE CERTIFIED  
QUESTION.

WHY THEY IGNORED THE PRECEDENT  
AND LOVELADY.

I KNOW YOU DON'T KNOW THE  
ANSWER TO THAT.

IT IS CAUSING CONFUSION.  
AND THERE ON CASE LAW.

>> I WOULD AGREE WITH THAT.  
THEY ACTUALLY TALKED ABOUT  
THAT.

THERE ARE OTHER CASES TO  
CONSIDER.

I THINK A LOT OF IT, IT APPEARS AS  
THOUGH THE FLORIDA COURTS HAVE  
STRUGGLED.

>> DON'T YOU THINK THE PROBLEM  
WITH NON-COMMERCIAL, WHETHER  
THE THE ISSUE WITH THIS SELL OR  
NOT TO HAVE VERY SIGNIFICANT  
IMPLICATIONS FOR DUE PROCESS.

THE ISSUE OF COMMERCIAL VERSUS  
NON-COMMERCIAL IS NOT POSSIBLY  
INFLUENCING WHETHER THE FIRST  
PRONG IS MISSED.

SOMEONE COMMITTED A TORTIOUS  
ACTS ACT.

THE NON-COMMERCIAL ISSUE IS  
IRRELEVANT AS FAR AS I SEE TO  
ANSWER THE FIRST PRONG.

>> I WOULD AGREE WITH THAT,  
YOUR HONOR.

>> IT MAY BE VERY SIGNIFICANT AS TO SIMPLY POSTING ON THE WORLD WIDE WEB.

AND SOMEONE TRIED TO GET OUT LEGITIMATE INFORMATION, WHETHER THEY WILL BE HELD INTO COURT JUST MERELY BY POSTING INFORMATION ON THE WEBSITE.

>> IT'S REALLY MORE PERTINENT ON 1A, NOT 1B.

1A IS WHETHER THEY ARE CARRYING ON A BUSINESS VENTURE IN THE STATE.

>> IF IT IS COMMERCIAL WHICH IS HAVING SIGNIFICANT CONTACT TOUCHSTONES, I BELIEVE THAT IS WORKED OUT.

>> ARE YOU ARGUING AS AN ALTERNATIVE THAT IT IS, THAT CAUSING INJURY IN THIS STATE ALONE IS SUFFICIENT UNDER SUBSECTION B TO CONSTITUTE COMMITTING A TORTIOUS ACTS WITHIN THE STATE?

>> IN CASES.

>> ALL OF THE DISTRICT, IT ACTUALLY SEEMS LIKE IT COULD HAVE SOME DIFFERENT WAYS TO LOOK AT THAT. ALL WE ARE DOING IS TO STATUTORY CONSTRUCTION.

WE ARE NOT TAKING OUR VIEW OF WHAT THE BEST POLICY IS HERE.

WE KNOW THE LEGISLATURE HAS CONSIDERED THIS ISSUE SINCE THE ADVENT OF THE WORLD WIDE WEB.

WE HAVE TO BE EXTRAPOLATING  
WHAT WAS MEANT.

MY CONCERN ABOUT USING INJURY  
ALONE IS THAT SEEMS TO BE, THEY  
USE INJURY IN CONNECTION WITH  
SUBSECTION, I THINK, F.

AS JUDGE FARMER SAID WITH HIS  
OPINION, TO MAKE IT REDUNDANT,  
INJURY ALONE IS EQUIVALENT TO  
COMMITTING A TORTIOUS ACT INTO  
THE STATE.

>> WELL, I MAY RECEDE A BIT FROM  
WHAT I SAID EARLIER.

SOME OF THE OTHER LANGUAGE  
THAT MANY TO REMEMBER.

IT IS AIMED AT A FLORIDA RESIDENT.

WHEN YOU EXPLICITLY AIM  
SOMETHING THE INJURY IS GOING TO  
BE FELT IN THE STATE WITH THE  
RESIDENT, WHICH IN THIS CASE IS  
FLORIDA.

IN FACT IT COULD VERY WELL BE  
MUCH BROADER.

GIVEN THAT THE COMPANY IS  
LOCATED IN FLORIDA.

>> COULD YOU SAY, IT IS IN THEIR  
ANSWER BRIEF.

A BIG CORPORATION.

I DIDN'T AIM IT AT FLORIDA.

THEY'RE DOING BUSINESS IN THE  
ENTIRE COUNTRY.

WHERE WOULD THAT COME UP?

I WASN'T AIMING AT FLORIDA.

I WAS AIMING AT THE WHOLE  
UNITED STATES.

>> A NUMBER OF CASES, AND IT IS RAISED, I BELIEVE, IN ONE OF THE BRIEFS.

>> WELL, WHO RESOLVED THAT ISSUE?

IS THAT SOMETHING THAT THE TRIAL COURT WITH TWO AS PART OF THE VENETIAN SALAMI ANALYSIS?

>> YES, THEY WOULD.

THE TRIAL COURT RULED.

>> BUT SHE RULED BASED ON SAYING THERE WAS INJURY.

SO I AM ASSUMING.

NOW YOU ARE OUT.

THERE IS NO ANALYSIS OF WHETHER THE ARGUMENT IS SPECIFICALLY TARGETED IN FLORIDA.

I DON'T KNOW IF WE HAVE THE TRANSCRIPT OF THE COURT.

>> WELL, I HAVE THE RECORD IN FRONT OF ME.

>> BUT IF WE SAID THEY SPECIFICALLY TARGETED THAT FITS WITHIN THE ONE ON STATUTE.

LET YOU ALL DECIDE IN THIS CASE THERE WAS ENOUGH TO SHOW THAT THE CORPORATION WAS DURING BUSINESS IN FLORIDA AND TARGETING.

THERE FOR FLORIDA AS A RESULT. WOULD THAT BE A WAY.

WOULD THAT HAVE ANY FACTUAL FINDING?

>> YES, YOUR HONOR.

SHE HAD POSTED THE COMPANY ON MULTIPLE OCCASIONS.

IF YOU LOOK AT PAGE NINE OF THE EXHIBIT 1-2 THERE ARE SEVERAL REFERENCES WHERE SHE IS SAYING, HERE ARE THEIR ADDRESSES.

THOSE ARE THE ADDRESSES THAT SHOW UP.

SHE USES THE INFORMATION.

ITEMS THAT ARE POSTED BY HER, AND THAT COMES BACK.

PEOPLE WHO SAID THEY WERE EITHER CURRENT OR FORMER EMPLOYEES.

SHE OBVIOUSLY KNEW THAT ONLY WERE WE HEADQUARTERED IN FLORIDA, BUT THAT IS OUR PRINCIPAL PLACE OF BUSINESS.

>> JUDGE CONNALLY IN HER ORDER MAKES OF FINDING THAT THERE IS NO EVIDENCE THAT MARSHALL SPECIFICALLY TARGETED FLORIDA RESIDENTS.

THEN SHE GOES ON TO US SAY THAT MARSHALL'S WEBSITE WAS NOT ONLY MADE AVAILABLE TO FLORIDA RESIDENTS, BUT EQUALLY ACCESSIBLE TO PEOPLES AND ALL STATES.

>> I WOULD DISAGREE WITH HER STATEMENT THAT IT WASN'T TARGETED AT FLORIDA.

>> THAT IS AN ACTUAL FINDING, ISN'T IT?

>> ACTUAL FINDING BY THE TRIAL JUDGE.

THAT WAS INCORRECT.

THE RECORD AND PARTICULARLY THE EXHIBIT.

THIS IS A COMPANY THAT IS HEADQUARTERED IN THE STATE OF FLORIDA.

SHE WAS VERY WELL AWARE OF THAT.

I DIDN'T TRY THE ORIGINAL CASE. I KNOW FROM THE RECORD, AND THAT IS IN THE RECORD.

>> LET ME, LET ME, THEY UTTER A DEFAMATORY STATEMENT.

THAT IS NOT TRUE.

THEY SIT DOWN FOR THE NETWORK INTERVIEW IN NEW YORK.

DOES FLORIDA HAVE JURISDICTION OVER A COMPLAINT ARISING FROM THAT?

THEY HAVE TO KNOW IF THEY'RE SITTING DOWN AT CNN PEOPLE ARE GOING TO HEAR IT.

BUT IS THAT ENOUGH UNDER THE STATUTE TO ALLOW FLORIDA TO BRING THEM INTO FLORIDA COURT OF LAW?

>> YES, YOUR HONOR.

>> ARE THERE CASES WITH THAT KIND OF CIRCUMSTANCE?

>> WELL, NOT NECESSARILY. PHONE CALLS OR LETTERS.

>> THAT IS A LITTLE DIFFERENT. THOSE ARE A LITTLE DIFFERENT BECAUSE THERE THE PERSON ACTUALLY DOES SOMETHING TO PUT IT IN MOTION, THIS GOING IN, DIRECTLY GOING INTO THAT STATE.

IT SEEMS LIKE TO ME SOMEBODY WHO IS AT AN INTERVIEW IS MORE PASSIVE IN THAT REGARD IN THE SAME WAY THAT THE RESPONDENT, IF I'VE GOT THE PARTIES RIGHT HERE IN THIS CASE, JUST BY PUTTING IT UP THERE.

THAT IS WHY I WAS INTERESTED IF THERE WERE CASES THAT DEALT WITH THAT.

IT SEEMS TO ME IT IS KIND OF ANALOGOUS, THE CIRCUMSTANCE.

>> IN AN INTERNET TYPE OF CASE, BUT THE OBJECT OF THAT POSTING WAS A FLORIDA RESIDENT.

>> I THINK THE ANSWER, WE HAVE LOOKED AT THAT ISSUE.

DID YOU FIND ANY CASE INVOLVING BROADCAST?

SITUATIONS WHERE THEY ARE GIVING, MAKING A STATEMENT IN NEW YORK, BUT IT IS PICKED UP BY A FLORIDA CHANNEL, I GUESS BROADCAST, RECEIVED IN FLORIDA.

DO YOU KNOW OF ANY?

>> I DON'T KNOW.

>> I THINK THE REASON IS THERE ARE SOME STATES, NEW YORK AND CONNECTICUT THAT EXTEND DEFAMATION ACTIONS FOR THAT VERY REASON.

THESE THINGS CAN BE BROUGHT INTO OTHER STATES.

>> YOU ARE CORRECT.

BUT ONE THING I WOULD LIKE TO POINT OUT, THE PARTY THAT IS

BEING INJURED IS NOT THE PARTY  
THAT SHOULD HAVE.  
WE HAVE TO CHASE THEM.  
THE OPPOSITE OF YOUR  
STATEMENTS IF THERE WERE POSTED  
ON A BLOG OR A CHAT ROOM OR AN  
INTERNET THE PEOPLE IN DIFFERENT  
STATES.  
WE HAVE TO CHASE THEM AROUND  
AS OPPOSED TO LOOKING AT THIS  
THROUGH DUE PROCESS FOR A  
MOMENT IN FAIRNESS.  
IF YOU TARGETED SOMEONE IN A  
PARTICULAR STATE THAT YOU KNOW  
ARE IN THE STATE YOU SHOULD NOT  
BE SURPRISED WHEN YOU ARE  
BROUGHT TO COURT IN THE STATE.  
>> THANK YOU VERY MUCH.  
>> GOOD MORNING, YOUR HONORS.  
IN RESPONSE TO MY WORTHY  
ADVERSARY'S STATEMENT THERE  
SEEMS TO BE A LOT OF NEW FACTS  
INTO THE RECORD TODAY THAT ARE  
NOT PROPER.  
ALSO THERE SEEMED TO BE  
ASSUMPTIONS HERE THAT IT SHOULD  
NOT BE PROPERLY ASSUMED.  
FOR STARTERS WE DO NOT AGREE  
THAT THERE WAS INJURY AT ALL.  
>> ALLEGATIONS OF INJURY?  
>> THERE WAS AN ALLEGATION OF  
INJURY.  
>> IS THAT HOW EVERY CASE STARTS,  
WITH ALLEGATIONS?  
YOU START THE CASE.

YOU HAVE TO ALLEGED OR YOU  
DON'T SEE ANY CAUSE OF ACTION.  
>> CORRECT, YOUR HONOR.  
THAT DOESN'T MEAN YOU DID  
ANYTHING.  
>> I DON'T THINK THAT'S GOING TO  
GET YOU VERY FAR.  
THAT IS THE WAY YOU START A CASE.  
IF THERE'S NO INJURY THERE IS NO  
CASE.  
TO SAY, WE UNDERSTAND THAT.  
HAS IT BEEN PLEAD?  
INJURY HAS BEEN PLEAD.  
>> WHAT IS NOT PLEAD.  
>> ARE THOSE ATTACHED?  
>> THEY DO NOT.  
>> THEY DO NOT.  
>> IF YOU LOOK AT THE  
ATTACHMENTS YOU WILL SEE THE  
ADDRESSES THAT THIS COMPANY  
ALLEGES IT HAS ARE IN MICHIGAN,  
LOS ANGELES, WASHINGTON D.C.,  
AND THEN WE COME TO FLORIDA.  
THESE ARE FOUR ADDRESSES THAT  
THIS COMPANY ALLEGEDLY HAS.  
IF YOU LOOK AT THE WEBSITE IT  
DOES NOT EVEN MENTION FLORIDA.  
IT MENTIONS MASSACHUSETTS TO  
WASHINGTON.  
>> SO THE FACTS ARE THE  
ATTACHMENTS.  
>> WHAT I WOULD SAY IS ALL THAT  
HAS BEEN POSTED HERE, THESE ARE  
NOT ESTABLISHED AS BANKS.  
>> THE PLEADINGS IS WHAT SHE IS  
ASKING.

SO YOU DISAGREE WITH THE RULE OF  
LAW THAT EXHIBITS ATTACHED TO IT  
COMPLIED BECOME PART OF THE  
COMBINED?

>> NO, YOUR HONOR.

>> THEN THEY ARE A PART.

>> ONE OF THESE COMMENTS SAY  
ORLANDO, FLORIDA.

THE WAY THAT THESE.

>> ORLANDO, FLORIDA.

>> CORRECT.

THESE ARE NOT PROVEN.

>> ISN'T IT TRUE THAT IT WAS  
PUBLISHED IN FLORIDA?

>> I DON'T TAKE IT DOES, YOUR  
HONOR.

YOU COULD PUT THE NORTH POLE.

>> LET ME ASK YOU.

THERE IS EITHER, IT SEEMS TO ME,  
WAYS TO BRINGS CHARGES UNDER  
SUBSECTION B.

ONE IS THAT THE WEBSITE WAS  
ACCESSIBLE AND ACCESS.

THE BROADEST TEST THAT WILL  
BRING IN THE MOST.

THAT WOULD BE AKIN TO E-MAIL IN  
TERMS OF THAT IT COMES INTO  
FLORIDA.

THAT IS ONE WAY TO INTERPRET  
SUBSECTION THE.

>> E-MAIL HAS ACTUALLY BEEN SENT.

>> I KNOW.

THE SECOND WOULD BE THAT IT IS  
SPECIFICALLY TARGETED AT FLORIDA  
THROUGH THE COMMUNICATIONS.  
THE TARGET WAS FLORIDA.

OTHERS SAW THE  
COMMUNICATIONS OR THE TARGET  
WAS A FLORIDA RESIDENT.  
SOMEBODY WHO IS MR. JOE CITIZEN  
RATHER THAN AN INTERNATIONAL  
CORPORATION SAID, YOU KNOW, JOE  
BLOW CITIZEN IS A CONVICTED CHILD  
RAPIST AND LIVES WITHIN A  
THOUSAND FEET OF THIS SCHOOL.  
THAT IS A STATEMENT.  
UNDER YOUR THEORY BECAUSE IT  
WAS NOT SENT INTO THE STATE BUT  
REMAINED IN THE STATE OF  
WASHINGTON YOU WOULD NOT  
GIVE JURISDICTION IN FLORIDA, IS  
THAT CORRECT?  
>> UNLESS WE COULD ALLEGE THAT  
AT LEAST ONE PERSON READ IT HERE  
AND WE LOOKED AT THE OTHER  
TERMS OF DEFAMATION.  
>> NOW WE ARE JUST LOOKING AT  
THE LONG ARM SECTION.  
YOU HAVE TO HAVE A PUBLICATION  
BY SHOWING THAT IT WAS READ IN  
FLORIDA, IS THAT CORRECT?  
BUT ON THE SECOND ONE WHERE IT  
IS DIRECTED TARGETED AT FLORIDA  
AND THERE IS EVIDENCE THAT  
FLORIDA IN THE PLEADINGS, FLORIDA  
RESIDENTS RECEIVED THIS  
INFORMATION IN FLORIDA, THAT  
WOULD BE ANOTHER WAY TO  
APPROACH THE LAW.  
IS THAT A SECOND WAY?  
NOT JUST ACCESSIBLE AND ACCESS,  
BUT DIRECTLY AIMED?

>> YOUR HONOR, WHAT I THINK YOU'RE TALKING ABOUT IS THE SAME.

I DON'T THINK IT CAN BE DIVIDED THAT WAY.

>> THE FIRST TEST WENT DEPEND ON WHETHER IT WAS A FLORIDA RESIDENT.

IT IS AN ACCESSIBLE, AND IT WAS ACCESSED.

>> I DON'T THINK THAT WOULD BE SUFFICIENT, YOUR HONOR, EVEN IF IT WAS ACCESSIBLE AND ACCESSED.

>> THE THIRD POSSIBILITY IS THAT THERE IS AN INJURY ALONE IN THE STATE, A TORTIOUS ACTS.

WHY IS IT, WHY IS IT THAT THEY HAVE DISREGARDED IN THIS OPINION THEIR PRECEDENT OVER SEVERAL DECADES THAT INJURY ALONE IS SUFFICIENT TO COME WITHIN SUBSECTION B?

>> I THINK THEY REALIZED THEY GOT IT WRONG AND THIS COURT IS MORE COMPETENT TO RULE ON THAT ISSUE.

IT IS AN ISSUE OF STATE LAW, AND THEY ARE PAYING PROPER RESPECT BY ASKING YOU THE QUESTION.

>> LET ME ASK YOU THIS, DOES IT MATTER UNDER ANALYSIS UNDER THE LAW IN OUR STATUTES THAT MS. MARSHALL USED A DOT COM DOMAIN AS OPPOSED TO SOME OTHER KIND OF VEHICLE TO POST HER BLOG ON?

>> YOUR HONOR, I DON'T SEE THAT.  
I DON'T SEE THAT CHANGE.  
>> THERE WAS AN ALLEGATION THAT  
SHE WAS USING THAT AS AN  
ATTEMPT TO GET ADVERTISEMENTS  
ON HER SITE TO OBTAIN INCOME.  
>> IT WOULD IF THERE WAS  
ANYTHING MORE THAN THAT.  
I DON'T THINK THERE IS ANY REASON  
EVEN IF YOU'RE JUST TRYING TO  
ATTRACT ADVERTISING, EVEN IF  
YOU'RE TRYING TO DO THAT  
ANYMORE, YOUR HONOR.  
YOU NEED TO LOOK AT WHETHER  
THERE WAS AN ALLEGATION OF  
FARM.  
IN ANY SPECIFIC TARGETING OF  
FLORIDA.  
EVEN THE FIRST DC-8.  
IF YOU LOOK THE EQUITY PARTNERS  
CASE, IF YOU LOOK AT YOUR  
OPINION WE ARE LOOKING AT A  
COMMUNICATIVE ACTIVITY.  
YOU HAVE NOT DONE SOMETHING.  
THERE ARE VERY SIGNIFICANT  
CONSTITUTIONAL WAYS TO  
INTERPRET THIS STATUTE  
NARROWLY.  
>> WORKING AND OUR PRESIDENT  
WE SEEM TO TAKE THE VIEW THAT  
WE ARE GOING TO TAKE IN ALL  
CASES, WE DO PUT THEM BOTH  
TOGETHER.  
WE DON'T INTERPRET THE FIRST  
CONSISTENT WITH DUE PROCESS.

NOW WE WANT TO LOOK TO SEE WHETHER EXERCISING IN THIS PARTICULAR CASE IS CONSISTENT WITH THE FAIRNESS AND DUE PROCESS.

MY CONCERN WITH SAYING THAT WE SHOULD NARROWLY CONSTRUE THE STATUTE IS THAT WE MAY INCLUDE CASES THAT ARE VERY WELL WORTHY OF BEING INCLUDED.

TO ME IT IS BETTER OFF.

THE STATUTES BASED ON OUR PRECEDENT AND THEN TAKE YOUR ARGUMENT ABOUT FIRST AMENDMENT, FAIRNESS, WASHINGTON GIVING ACCURATE INFORMATION ABOUT CORPORATIONS ACROSS THE COUNTRY.

ALL OF THAT GOES INTO THE SECOND PRONG WHICH THE 11TH CIRCUIT SEEMS LIKE THEY COULD HAVE JUST IF THEY WANTED TO DECIDED IT ON A DUE PROCESS.

>> THEY ACTUALLY COULD HAVE, YOUR HONOR, BUT THEY DIDN'T.

>> EITHER WE DO IT FOR IT'S STILL OPEN.

THE COMPANY IS COVERED AND STILL REQUIRES THERE TO BE A SECOND PRONG ANALYSIS.

>> CORRECT, YOUR HONOR.

WE MAY NEED TO GO BACK AND TALK.

I THINK.

>> DID YOU TALK ABOUT IT LAST TIME?

>> I DID, YOUR HONOR.

THE ASSEMBLY HAVE YOU MAKE THE DECISION.

YOU ARE CORRECT.

YOU ARE FINISHED.

HOWEVER WE HAVE TO GO TALK TO THE 11TH AGAIN.

>> THE 11TH SAID POSTING ALONE.

THEY DID NOT DISCUSS THIS ISSUE.

THAT ISSUE BROUGHT UP, THERE HAS TO BE SOME PUBLISHED IN FLORIDA.

>> MY ADVERSARY IN THAT CASE STATED THAT HARM ALONE, JUST AS THEY ARGUE IN THEIR BRIEFING, HARM ALONE.

I DISAGREE.

ANY OF OUR CASES IN THE STATE COULDN'T SAY THAT HARM ALONE IS ENOUGH.

[INAUDIBLE]

>> JOE CITIZEN.

IT MAY NOT FIT OTHERS.

WHAT IS IT IN THE RECORD THAT SHOWS A CORPORATION IN FLORIDA, ORANGE COUNTY, FLORIDA FOR PURPOSES OF THE ALLEGATIONS, SUBJECT OF DEFAMATORY POSTINGS TARGETING FLORIDA RESIDENTS?

THE CORPORATION IS NOT THEREFORE A RESIDENT IF THEY ARE DOING BUSINESS IN FLORIDA.

>> YOUR HONOR, AT THAT IS THE CASE WE HAVE A LOT OF

CORPORATIONS SEEMINGLY ALSO CLAIMING IN MICHIGAN AND CALIFORNIA.

ARE WE REALLY GOING TO EXPECT CITIZENS IN ALL 49 OTHER STATES TO UNDERSTAND --

>> THAT IS A WHOLE OTHER -- NOW YOU'RE REALLY SAYING.

I THOUGHT THERE WERE ONLY FOR DIVERSITY PURPOSES THERE IS OTHER INCORPORATED.

HAS THAT CHANGED?

>> THE ALLEGATION IS CORRECT, THE PRINCIPAL PLACE OF BUSINESS.

>> HAS IT BEEN REFUTED?

IT DOES NOT MAKE IT, IS IT NOT THEN, IS IT NOT BEEN DOING BUSINESS IN FLORIDA FOR PURPOSES OF ONE OF?

>> IT IS STILL IN BUSINESS.

>> AGAIN, I'M JUST TRYING TO UNDERSTAND HOW THAT DOES NOT TARGETED FLORIDA RESIDENT.

SHE MAY NOT HAVE PIVOTED MAKE, AND THE DUE PROCESS ANALYSIS THAT SHE DID NOT INTEND IT TO GO INTO FLORIDA OR SPECIFICALLY ENTER FLORIDA.

THAT MAY BE A DUE PROCESS ISSUE. ON THE FIRST PRONG HOW THAT WOULD, HOW THAT COULD MEAN THEY ARE TARGETING A FLORIDA RESIDENT.

>> TO TARGET SOMETHING YOU NEED TO AIM AT IT.

I DON'T SEE HOW MS. MARSHALL UNDER THE FACTS OF THIS CASE COULD BE SEEN AS AIMING AT FLORIDA WITH ANY GREATER ACCURACY THAN SHE WAS AIMING AT MICHIGAN OR HER OWN STATE OF WASHINGTON OR CALIFORNIA FOR THAT MATTER.

WHAT WE HAVE HERE IS A NEVADA ENTITY.

FOR HER TO TAKE AIM SHE WOULD HAVE TO KNOW THIS IS THE PRINCIPAL PLACE.

OTHERWISE SHE MAY HAVE NEARLY FORTUITOUSLY HIT THIS PLACE.

YOU ALSO NEED TO HAVE HARM HERE.

FOR THERE TO BE HARM HERE THE REPUTATION HAS TO CHANGE.

PERHAPS PEOPLE READ THIS WEBSITE IN NORTH DAKOTA.

THAT DOESN'T MEAN THAT THERE WAS HARM HERE.

[INAUDIBLE]

>> WHETHER OR NOT SOMEONE WAS HARMED IS AN EVIDENTIARY MATTER.

>> CORRECT, YOUR HONOR.

THERE IS NO UP-FRONT TEST.

THERE NEEDS TO BE SOME UP-FRONT TEST TO SHOW THAT THERE WAS A TORTIOUS ACT.

>> YOU PROVE A CASE BEFORE YOU HAVE AN OPPORTUNITY TO PROVE A CASE.

YOU HAVE TO PROVE THE CASE.

>> WHAT I AM SAYING IS THAT THE TRIAL COURT SHOULD TEST THE CASE TO SEE IF THERE IS SUFFICIENT MATTERS TO GET THE VERDICT.

>> SO YOU WANT AN EVIDENTIARY HEARING ON THE LONG ARM STATUTE.

>> YOUR HONOR, IF YOU WOULD LIKE TO GO THAT FAR, I WOULD. I DON'T NEED TO GO THAT FAR IN THIS CASE.

OTHERWISE ALL YOU NEED TO DO IS FIND EVERY CRITIC AND DIRECT EVERYONE OF THEM DOWN TO MIAMI-DADE.

EVERY SINGLE PERSON HAS ANYTHING BAD TO SAY IS GOING TO HAVE TO GO TO ST. PETERSBURG, FLORIDA.

>> THAT'S NOT TRUE.

ONLY IF THEY SEND THAT INTO FLORIDA.

>> WELL, THAT'S NOT WHAT THE PLAINTIFF IS ACCUSED.

>> I THOUGHT THAT IS.

YOU REFUSE THAT.

THAT'S FINE.

YOU CAN ARGUE AGAINST THAT.

WE CAN LOOK AT THE DOCUMENTS AND SEE.

>> THE PROBLEM IS WHEN YOU ARE SAYING IT THAT WAY, BURGER KING, SOME CITIZEN IN WASHINGTON TARGETS BURGER KING.

LET'S TAKE THE FLIP SIDE OF IT.

SAY IF THE NATIONAL RIFLE ASSOCIATION, A FORCE TO BE RECKONED WITH.

THEY TAKE AIM AT A FLORIDA RESIDENT AND DEFAME THE FLORIDA RESIDENT.

WOULD YOU SAY THAT THAT ENTITY WHO POSTED SOMETHING ABOUT THE FLORIDA RESIDENT ON ITS WEBSITE AND SENT IT INTO FLORIDA, THE RESIDENT OF FLORIDA HAS TO GO TO WHEREVER THE HEADQUARTERS ARE OF THE NRA OR SOME SIMILAR POLITICAL LOBBYING GROUP?

>> WITH ONLY THE HYPOTHETICAL FACTS, YES.

HOWEVER, IF THERE WAS MORE, IF THIS WAS AN INCIDENT THAT TOOK PLACE IN FLORIDA, THE REPORTING WAS ABOUT AN INCIDENT, THE PERSON IS IN FLORIDA, WHAT I AM SEEING HERE IS THAT YOU NEED MORE.

THE QUESTION HERE IS HOW MUCH MORE THE NEED.

THAT REALLY GOOD TO YOU.

>> MORE IS THE PROCESS NOT FOR THE FIRST PRONG.

>> THAT MAY BE THE CASE NOW THAT WE ARE HERE, BUT THAT IS NOT THE CASE FOR THE 3RD CIRCUIT. YOU NEED SOMETHING MORE.

LETTERS INTO ENVELOPES.

TRANSMITTING IT TO FLORIDA.

WE CAN SEE THAT THE 3RD CIRCUIT  
LOOKED AT THAT CASE AND SAID DID  
SOMEBODY IN FLORIDA ACTUALLY?  
THERE IS MORE.

>> THAT IS WHAT I DON'T  
UNDERSTAND.

THE PARADIGM WE HAVE SET UP FOR  
OTHER CASES.

MAYBE THAT IT WILL SWEEP TOO  
BROAD AND IT NEEDS TO BE  
NARROWED UNDER THE DUE  
PROCESS PRONG.

BUT IT SEEMS MOST CONSISTENT.  
IN YOUR VIEW IF YOU POSTED IN  
WASHINGTON IT JUST STAYS IN  
WASHINGTON AS OPPOSED TO  
BEING INSTANTLY ACCESSIBLE  
AROUND THE WORLD IS, A DANK, I  
MEAN, TAKING YOUR ARGUMENT TO  
ITS LOGICAL CONCLUSION,  
EVERYBODY WOULD HAVE TO GET TO  
THE STATE OF WASHINGTON.

>> COULD CREATE JURISDICTION IN  
MULTIPLE STATES.

SOMEBODY IN ILLINOIS TARGETED  
ILLINOIS SPECIFICALLY AIMED AT  
ILLINOIS.

BUT DON'T THINK THEIR STATUTE IS  
IDENTICAL.

I DON'T THINK WE HAD JUST GOING  
TO LOOK AT THIS WHEN IT COMES TO  
DUE PROCESS CONSIDERATIONS.

WHEN WE TALK ABOUT THE  
CONSTITUTIONAL ISSUE, THE FREE-  
SPEECH ISSUE, I DON'T THINK THAT  
SHOULD BE PROPERLY BUT THAT

ONLY UNDER THE DUE PROCESS

PRAWN.

IN FACT, IN KEETON V. HUSTLER AND  
OTHER SUPREME COURT CASES YOU  
DON'T NEED TO DO THAT.

THE SUBSTITUTE DEFINITION CASE  
TAKES CARE OF THAT.

BUT I AM SAYING IS THAT YOU NEED  
TO OVERLAY THE CONSTITUTIONAL.

>> WHAT ABOUT CALDER.

>> CALDER DOES SAY THAT THE FIRST  
AMENDMENT COLLAPSES INTO DUE  
PROCESS.

I THINK WE SHOULD LOOK AT THE  
LONG ARM STATUTE AND THE  
FLORIDA CONSTITUTION.

IF WE DON'T DO THAT THERE IS NO A  
PROJECT ON THE CASE.

ALL YOU HAVE TO DO IS FIND SOME  
OFFENSE WITH SOMETHING SAID BY  
ANYBODY NATIONWIDE.

BY THE TIME THEY'RE DONE  
PREPARED CASE THEY HAVE ALREADY  
LOST.

WE NEED AN UP-FRONT CHECK.

I'M NOT ASKING YOU TO TRY THE  
WHOLE CASE IN ADVANCE.

WE SHOULD AT LEAST REQUIRE THE  
COURT TO REQUIRE MORE, MORE  
THAN BEGUN IN THIS CASE.

>> THANK YOU VERY MUCH FOR  
YOUR ARGUMENT.

YOU HAVE ALSO USED YOUR TIME.

I WILL GIVE YOU ONE MINUTE IF YOU  
HAVE SOMETHING ADDITIONAL THAT

YOU WOULD LIKE TO ASK THE COURT.

>> TWO ITEMS QUICKLY.

THERE IS SOMETHING ELSE THAT HAS TO BE DONE.

IN THIS CASE THE AFFIDAVITS TO REBUT.

IN THIS CASE THEY DON'T ADEQUATELY.

JURISDICTION.

SO WHAT MY ESTEEMED OPPONENTS IS ASKING FOR.

>> AND INJURY.

HE SAID IT WAS COMMITTED IN FLORIDA AND THE INJURY OCCURRED IN FLORIDA.

HOW WAS IT COMMITTED IN FLORIDA?

>> THE INJURY OCCURRED IN FLORIDA.

ONCE YOU NAME IT AND FLORIDA OR IN IT AND A RESIDENT IT IS COMMITTED IN FLORIDA.

THE OTHER ITEM IS FREE SPEECH.

WE ARE NOT TALKING, WE ARE TALKING ABOUT ACCUSING PEOPLE OF CRIMINAL BEHAVIOR.

THERE IS NO FREE SPEECH RIGHT TO DEFAME OF THE PEOPLE.

>> THANK YOU VERY MUCH, BOTH OF YOU, FOR YOUR ARGUMENTS TODAY. THE COURT WILL NOW BE IN RECESS UNTIL TOMORROW MORNING.