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2006 Florida High School Appellate Competition

MARSHAL: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. YOU MAY BE SEATED.

CHIEF JUSTICE: GOOD MORNING ONCE AGAIN AND WELCOME TO THE FLORIDA SUPREME COURT. WE HAVE THIS MORNING, A SPECIAL CASE ON OUR DOCKET, AND FOR THOSE THAT WILL BE VIEWING THIS ORAL ARGUMENT AT A LATER DATE, THIS IS THE 2006 FLORIDA HIGH SCHOOL MOOT COURT APPELLATE COMPETITION, AND THIS CONSISTED OF TEAMS FROM AROUND THE STATE, AND WE HAVE, TODAY, THE TWO FINALISTS AND THIS IS PART OF THE SUPREME COURT'S LAW WEEK PROGRAM, SO WITH THAT I AM GOING TO CALL THE FIRST CASE ON THE COURT'S CALENDAR FOR THIS SPECIAL ORAL ARGUMENT, AND IT IS THE STATE OF FLORIDA PETITIONER, VERSUS JAMIE OLSEN, RESPONDENT. ARE THE PARTIES READY? ALL RIGHT. WELL, YOU MAY PROCEED. MS. WADE.

MAY IT PLEASE THE COURT. MY NAME IS KATHLEEN WADE, AND I, ALONG WITH MY CO-COUNSELOR, NICOLA MENCHETTI, HAVE TWO APPEALS BEFORE THE COURT. THE SECOND IS THE IMPOSITION OF A SENTENCE UNDER THE CRIMINAL ACT OF 2004, VIOLATED THE RESPONDENT'S FIFTH AMENDMENT RIGHTS. THE STATE ASKS YOU TO HOLD ON THE FIRST ISSUE AND REVERSE ON THE SECOND ISSUE.

JUSTICE: WOULD YOU GIVE US A THUMBNAIL SKETCH OF THE UNDERLYING CIRCUMSTANCES UNDER WHICH THIS CASE ARISES.

YES. JAMIE OLSEN IS CONVICTED OF MURDER AND WHILE INVESTIGATING, THE UNDERCOVER AGENT JUAN RODRIGUEZ WAS SHOT AND KILLED BY AN EMPLOYEE. ON THE DAY OF HIS MURDER, THE LOCAL UP IN, THE DEERFIELD GAZETTE -- THE LOCAL NEWSPAPER, THE DEERFIELD GAZETTE, PUBLISHED HIS PICTURE. DURING THE INVESTIGATION, THE PRINCIPAL AUTHOR SHOWED JAMIE OLSEN AS THE CONTRIBUTING WRITER. DURING SENTENCING THE JUDGE ADDED AN ADDITIONAL FIVE YEARS ON TO MR. OLSEN'S SENTENCE AS HE VIOLATED THE CRIMINAL ACT.

CHIEF JUSTICE: YOU ARE GOING TO ADDRESS THE FIRST AMENDMENT ISSUE?

YES, YOUR HONOR. UNDER FLORIDA STATUTE 90.5015, AND THE 3-PRONG TEST USED IN THE STATE VERSUS DAVIS, DETERMINES SITUATIONS, THREE SETS OF THIS TEST AS FOLLOWS. FIRST, THAT THE INFORMATION IS RELEVANT, SECOND THAT IT IS UNATTAINABLE FROM ALTERNATIVE SOURCES AND THIRD, A COMPELLING INTEREST WHICH REQUIRES DISCLOSURE. BECAUSE MR. OLSEN'S INFORMATION, THE IDENTITY IS A CONFIDENTIAL SOURCE, ALL THREE OF THESE REQUIREMENTS DOES NOT HAVE A QUALIFIED REPORTER AND THEREFORE HIS FIRST AMENDMENT RIGHTS WERE NOT VIOLATED.

CHIEF JUSTICE: WERE THERE TRIAL COURT FINDINGS AS TO THESE THREE PRONGS OF THE QUALIFIED PRIVILEGE REQUIREMENT?

THE TRIAL COURT FOUND THAT MR. OLSEN DID NOT APPLY THE 3-PRONG TEST OF SILENCE.

CHIEF JUSTICE: THE APPELLATE COURT, HOW DID THEY HANDLE THIS ISSUE? HOW DID THEY DIFFER FROM YOUR POSITION? ANOTHER APPELLATE COURT CONFIRMED THE CONVICTION. THEY

AG REED THAT MR . OLSENDID NOT HAVE PRIVILEGE.

CHIEF JUSTICE: SO YOU ARE REALLY, FROM THE PO INT OF VIEW OF THE STATE, YO U ARE ASKING FOR US TO UP HOLD THE FIFTH DISTRI CT COURT OF APPEAL OPIN ION.

YES, YOUR HON OR.

CHIEF JUSTICE: I GUESS I AM A LITTLE CONF USED. WHY ARE YOU THE PET ITIONER HERE THEN?

THIS IS THE WAY THE MOOT COURT SET IT UP .

JUSTICE: YOU ARE ASKING US TO REVERSE ON THE SECOND ISSUE, SO YOU ARE A PETITIONER APPEALING ON THE SECOND ISSUE, THE APPRENDI ISSUE , RIGHT?

YES , YOUR HONOR . NOW , AS TO HOW THE TEST APPLIES TO MR. OLSEN'S INFORMATION. THE INF ORMATION IS UNDENIABLY RELEVANT. THE GRAND JU RY WAS INVESTIGATING THE MURDER OF AN UNDERCOVER AGENT WHO HAD BEEN KILLED AND HIS I D ENTITY HAD BEEN REVEALED BY AN ARTICLE IN THE UP IN. IT -- IN THE NEWSPAPER. IT WAS IMPERATIVE THAT THEGRAND JURY K NOW THE ORIGINAL SOURCE OF THAT INFORMATION.

CHIEF JUSTICE: WHETHER HE WAS K ILLED BECAUSE OF THE REVELATION IN THE NEWSPAPER, THAT SOMETHING THAT HAD TO BE ALLEGED AND PROVED, OR ARE WE TO TAKE THAT AS BEING TRUE, BEFORE THAT INFORMATION , BEFORE THEGRAND JURY COULD HAVE OBTAINED THAT INFORMATION? IN OTHER WORDS, WHAT IF THE , WHAT IF THERE WAS EVIDENCE THAT THE PERSON WHO DID THE A CTUAL CR IME DID NOT OBTAIN THE INFORMATION FROM THE NEWSPAPER BUT OBTAINED IT FROM AN OTHER SOURCE?

IF THERE WAS DI RECT EVIDENCE PROVING THAT , THEN THERE MAY NOT NECESSARILY HAVE BEEN RELEVANT TO THIS CASE, BUT THERE WAS EVIDENCE FOUND AT THE CRIME SC ENE SUGGESTS ITS INVOLVEMENT IN THE CRIME.

CHIEF JUSTICE: S O YOU RELIED HEAVILY ON THE CONNECTION WITH THE NEWSPAPER , BECAUSE OF THE CRIME SCENE EVIDEN CE OF THE NEW SPAPER .

YES, YOUR HONOR . NOW , THIS INFORMATION WAS ALSO UNOBTAINABLE FROM ALTERNATIVE SOURCES. THE ONLY TWO PEOPLE THAT THIS INFORMATION WOULD HAVE BEEN AVAILABLE TO IS JAMIE O LSEN , THE TWO PEOPLE WHO WORKED ON THIS ARTICLE. MS. LANE WAS HELD IN CONTEMPT AND THEREFORE JAMIE OLSEN WAS THE ONLY REMAINING SOURCE.

JUSTICE: IF WE APPR OVE THIS HOLDING , ISN'T THERE A G GREAT DANGER THAT SUCH A RULE WOULD BE ABUSED IN THE FUTURE? THAT IS THAT IT WOULD BE EXTENDED TO ALL KINDS OF SITUATIONS?

IS YOUR HONOR REFERRING TO THE ABUSING A QUALIFIED REPORTER NOT BEING APPLICABLE AS OTHER?

YES .

WELL , THE THIRD AND FINAL S TEP ADDRESSES THAT. IT STATES THAT A COMPELLING INTEREST HA S TO BE ESTABLISHED , WHICH OVERCOMES ANOTHER COMPELLING INTEREST, AND THAT COMPELLING INTEREST IS THE FREE FLOW OF PRESS AND THAT IS IN F ACT WHY THE QUALIFIED RE PORTER STATUTE WAS CREATED , TO PROTECT A RELATIONSHIP BETW EEN A CONFIDENTIAL SOURCE AND A REPORTER WHO DISTRIBUTESTHAT INFORMATION TO THE PUBLIC.

CHIEF JUSTICE: HOW DO YOU DISTINGUISH THIS CASE FROMTHE CASE OF MORGAN VERSUS STATE

OF FLORIDA?

IN MO R G A N V E R S U S S T A T E , T H E R E W A S N O C R I M I N A L I N V E S T I G A T I O N G O I N G O N . T H E R E F O R E T H E C O M P E L L I N G I N T E R E S T W A S L E S S T H A N T H E S T A T E ' S I N T E R E S T . H O W E V E R , I N T H I S S I T U A T I O N , T H E R E W A S A C R I M I N A L I N V E S T I G A T I O N .

CHIEF JUSTICE: IS THIS , DO YOU RELY ON STATE VERSUS DAVIS OUT OF THIS COURT , IS THAT SUPPORT YOUR ARGUMENT?

STATE VERSUS DAVIS, I BELIEVE , STATED THAT THERE , IN STATE VERSUS DAVIS , THEY FAILED TO S H O W T H A T T H E I N F O R M A T I O N W A S U N O B T A I N A B L E F R O M A L T E R N A T I V E S O U R C E S , I B E L I E V E , A N D I N T H I S C A S E T H A T I S N O T W H A T H A P P E N E D .

JUSTICE: SO IS I T Y O U R P O S I T I O N T H A T , A N Y T I M E T H E R E I S A C R I M I N A L I N V E S T I G A T I O N , T H A T T H A T M E A N S T H A T T H E R E I S , W I T H O U T A N Y F U R T H E R E V A L U A T I O N , T H A T M E A N S T H E R E I S A Q U A L I F I E D P R I V I L E G E .

W E L L , T H A T D E C I S I O N D O E S N ' T R E A L L Y H A V E T O B E A D D R E S S E D T H I S T H I S C A S E , B E C A U S E T H E C R I M I N A L I N V E S T I G A T I O N T H A T W A S G O I N G O N , W A S I N V E S T I G A T I N G A C R I M E S O H E I N O U S , T H E M U R D E R O F A N U N D E R C O V E R A G E N T , T H A T I T I S S O F A R A B O V E T H E L I N E O F W H E T H E R C R I M I N A L I N V E S T I G A T I O N S A R E G O I N G O N O R N O T , T H A T I T W O U L D M O S T C E R T A I N L Y B E I N C L U D E D I N T H A T A R E A .

JUSTICE: OF WHAT IMPORT IS IT TO US THAT THE LE AD REPORTER JUST REFUSED TO TESTIFY AND WAS HELD IN CONTEMPT, SO APPARENTLY THERE MUST BE ANOTHER SOURCE OF INFORMATION AVAILABLE?

W E L L , T H E L E A D R E P O R T E R P R E T T Y M U C H D I S Q U A L I F I E D H E R S E L F A S A S O U R C E O F I N F O R M A T I O N , I F S H E W A S C O M P L E T I N G R E F U S I N G T O A N S W E R T H E G R A N D J U R Y S U B P O E N A A N D W A S B E I N G H E L D I N C O N T E M P T A T T H A T T I M E , S O M R . O L S E N W A S T H E O N L Y R E M A I N I N G S O U R C E , A N D H E D I D H A V E T H I S I N F O R M A T I O N F O R T H E G R A N D J U R Y . I B E L I E V E M Y T I M E I S U P .

CHIEF JUSTICE: THANK YOU VERY MUCH. MS. MENCHETTI.

MAY IT PLEASE THE COURT. MY NAME IS N I C O L A M E N C H E T T I , A N D I W I L L B E R E Q U E S T I N G F O R T H E E N H A N C E M E N T O F T H E S E N T E N C E U N D E R T H E C R I M I N A L A C T O F 2 0 0 4 V I O L A T E D T H E R E S P O N D E N T J A M I E O L S E N ' S S I X T H A M E N D M E N T R I G H T S . T O D A Y W E R E S P E C T F U L L Y R E Q U E S T T H A T U P H O L D T H E R U L I N G O F T H E T R I A L C O U R T A N D R E V E R S E T H E R U L I N G O F T H E F I F T H D I S T R I C T C O U R T T H A T T H I S E N H A N C E M E N T I S I N V A L I D . J A M I E O L S E N W A S C O N V I C T E D A S A P R I N C I P L E T O T H E M U R D E R O F J U A N R O D R I G U E Z , N O T B E C A U S E H E P U L L E D T H E T R I G G E R B U T B E C A U S E O F H I S G R O S S C A R E L E S S N E S S I N T H E H A N D L I N G O F C O N F I D E N T I A L I N F O R M A T I O N .

CHIEF JUSTICE: WELL , N O W , T H A T W O U L D H A V E T O B E , W A S T H A T A J U R Y F I N D I N G , A N D I S N ' T T H A T T H E I S S U E H E R E A S T O W H E T H E R T H E J U R Y A C T U A L L Y F O U N D T H A T H E W A S G R O S S L Y N E G L I G E N T ?

T H E R E C O R D I S S I L E N T A S T O E X A C T L Y W H A T T H E S P E C I F I C C H A R G E S W E R E A G A I N S T J A M I E O L S E N . T H E O N L Y T H I N G T H A T W E H A V E B E E N T O L D I N T H E R E C O R D I S T H A T H E W A S T H E P R I N C I P L E T O T H E M U R D E R , A N D W H A T T H A T E N C O M P A S S E S I T I S N O T C L E A R , B U T I N O R D E R T O M A K E T H E C O N V I C T I O N , T H E J U R Y H A D T O C O N C L U D E T H A T H E A B U S E D H I S P O S I T I O N A S A M E M B E R O F T H E M E D I A , I N O R D E R T O C O N V I C T H I M . O T H E R W I S E T H E R E W O U L D H A V E B E E N N O C O N V I C T I O N , B E C A U S E H E H I M S E L F , D I D N O T K I L L A G E N T J U A N R O D R I G U E Z , B U T I T W A S T H R O U G H T H E R E V E A L I N G O F J U A N R O D R I G U E Z I N T H E N E W S P A P E R A R T I C L E K E L -- A R T I C L E A N D P H O T O G R A P H , A S W E L L A S T H E I M P L I C A T I O N O F T H E S H O O T E R T H A T S U B S E Q U E N T L Y L E D T O T H E C R I M E .

CHIEF JUSTICE: BUT SHOULDN'T IT BE UPON THE STATE THAT ENHANCED SECURITY, WITH JURY FINDINGS ON THESE ISSUES, RATHER THAN LEAVING TO THE SUPERIOR POSITION AND ISN'T THAT THE WHOLE TENOR OF THE U.S. SUPREME COURT CASES?

YES. IN APPRENDI OUT OF NEW JERSEY, IT STATES THAT ANY ENHANCEMENT OF THE SENTENCE MUST BE CONCLUDED BEFORE THE FACTS PRESENTED BEFORE THE JURY. IN THIS CASE ALL OF THE FACTS NECESSARY TO CONCLUDE HIS ABUSE OF DISCRETION AS A REPORTER WERE BEFORE THE JURY AND THE JUDGE ONLY USED THE ENHANCEMENT AFTER HE CONSIDERED THE JURY'S FINDINGS AND NOT ON THE FACTS THAT WERE NOT PRESENTED BEFORE THE JURY. FURTHERMORE, IN BELL VERSUS STATE, 898 SO.2D 217 OF 2005, IT INTERPRETS THE APPRENDI RULING ON THE STATE LEVEL, IN ACCORDANCE WITH THE DUE PROCESS CLAUSE. NOW, IN BELL VERSUS STATE, THERE WERE TWO ISSUES AT HAND, JUST AS THERE ARE HERE, EXCEPT IN BELL, THE ISSUE THAT WAS IN QUESTION WAS ABOVE THE CHARGE THAT WAS THE INITIAL CHARGE AGAINST THE SEXUAL OFFENDER. IN THIS CASE, BOTH CARELESSNESS AND THE NEGLIGENCE ON BEHALF OF JAMIE OLSEN IS EMBODIED AND INHERENT IN THE JURY'S CONVICTION, AND THEREFORE IT DOES NOT APPLY. FURTHERMORE, BELL ESTABLISHES A TWO-ISSUE RULE THAT, WHEN APPLIED TO THIS CASE, SHOWS THAT BECAUSE JAMIE OLSEN AT THE TIME OF HIS INITIAL JURY TRIAL, DID NOT REQUEST A SPECIFIC FINDING IN ACCORDANCE TO HIS ACTIONS AS A REPORTER. HE WAIVED HIS RIGHT TO CONTEST THESE ISSUES AFTER THE SENTENCE HAS BEEN GIVEN.

CHIEF JUSTICE: NOW, WHEN WE REVISIT THAT IN THE CASE LAW, THAT IS THAT IT IS, THE BURDEN IS ON THE DEFENDANT WHO REQUESTS A SPECIAL JURY INSTRUCTION, AS OPPOSED TO -- AS OPPOSED TO ON THE STATE TO MAKE SURE THE REQUISITE FINDINGS ARE IN THE RECORD. ARE YOU SAYING THAT COMES FROM THE BELL DECISION?

THE BELL IS A TWO-ISSUE RULE, AND IT CAN BE CONCLUDED BETWEEN BELL AND THIS CASE, THAT BECAUSE THE TWO ISSUES IN THIS CASE WITH JAMIE OLSEN WERE INHERENT IN THE JURY'S FINDINGS, THAT IT WAS NOT OUTSIDE OF THE SCOPE. HOWEVER, IN BELL, ADDITIONAL FINDINGS WERE OUTSIDE OF THE SCOPE THAT WAS PRESENTED FOR THE JURY, AND THAT IS WHY IT WAS THE STATE'S RESPONSIBILITY, BUT IN THIS CASE THE STATE DID PROVE BEYOND A REASONABLE DOUBT THE NEGLIGENCE ON JAMES OLSEN'S CASE AND THAT IS WHY IT APPLIES HERE. FURTHERMORE, QUESTIONS ARE RAISED IN BLAKELY VERSUS WASHINGTON AND THE UNITED STATES VERSUS BOOKER, AS TO WHAT CONSTITUTES A STATUTORY MAXIMUM SENTENCE. THERE IS THREE CRITERIA WHICH MUST BE MET IN ORDER TO APPLY ADDITIONAL SENTENCING ABOVE THE MAXIMUM. ONE, FACTS PRESENTED FOR THE JURY. TWO, ADMISSIONS BY THE DEFENDANT, AND, THREE, THE DEFENDANT'S PRIOR CONVICTIONS. IF ANY ONE OR MORE OF THESE CRITERIA APPLY, THEN AN ENHANCED SENTENCE IS CONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE, EVEN ON THE STATE LEVEL. IN THIS CASE, FACTS PRESENTED BEFORE THE JURY WERE THAT JAMIE LEE OLSEN ABUSED HIS POSITION AS A MEMBER OF THE MEDIA, IN ORDER TO FURTHER HIS CLIENT AGAINST JUAN RODRIGUEZ. -- HIS CRIME AGAINST JUAN RODRIGUEZ.

JUSTICE: THE SPECIFIC CRIME THAT HE WAS CONVICTED HERE WAS MURDER?

PRINCIPLE TO THE MURDER. YES.

JUSTICE: IS THE FACTOR THAT WAS USED FOR ENHANCEMENT AN ELEMENT OF THE MURDER?

YES, YOUR HONOR. INHERENT IN THE JURY'S FINDINGS IS THE FACT THAT THERE WAS A VIOLATION, WELL, IT WAS THE FACT THAT JAMIE OLSEN ABUSED HIS POSITION AS A MEMBER OF THE MEDIA AND THEREFORE HE MADE AN OFFENSE TO THE CRIMINAL ACT OF 2004. THE JURY COULD NOT HAVE MADE THE CONVICTION OF GUILTY, UNLESS FINDING THIS VIOLATION OF THE CRIMINAL PRESS ACT, BECAUSE JAMIE OLSEN DID NOT KILL JUAN RODRIGUEZ, HIMSELF. IT WAS THROUGH HIS HANDLING OF THE INFORMATION AND OBTAINING HIS INFORMATION, THAT THIS CHARGE WAS MADE.

JUSTICE: BUT THE MURDER ITSELF, THE ELEMENTS OF MURDER ARE KILLING SOMEONE THROUGH SOME CRIMINAL ACTIVITY. THE DEATH OF A PERSON THROUGH CRIMINAL ACTIVITY. AND THIS MR. OLSEN WAS CONVICTED BECAUSE HE HAD AN ASSOCIATION WITH THE ACTUAL KILLER, CORRECT?

HE WAS CONVICTED AS A PRINCIPLE TO THE MURDER -- AS A PRINCIPLE TO THE MURDER, BASED ON FACTS PRESENTED BY THE PROSECUTION AT THAT TIME THAT INCLUDED HIS CONNECTION WITH THE MURDERER, AS WELL AS HIS HANDLING OF CONFIDENTIAL INFORMATION.

JUSTICE: SO IF THE JURY BELIEVED THAT THE KILLER ACTUALLY, THAT THE PERSON WE BELIEVE WAS THE KILLER ACTUALLY COMMITTED THIS MURDER AND THAT MR. OLSEN HAD A RELATIONSHIP WITH HIM, WOULDN'T THAT BE ENOUGH JUST TO SUPPORT THE MURDER CONVICTION, WITHOUT ANY REFERENCE TO WHETHER OR NOT HE USED THE FREE PRESS?

THAT WOULD HAVE BEEN ENOUGH, HAD MR. JAMIE OLSEN'S POSITION AS REPORTER NOT BEEN RELEVANT TO THE CASE, BUT BECAUSE HE HAD THE EXTRA DUTY AND RESPONSIBILITY AS REPORTER AND BECAUSE HE HAD PARTICIPATION, THIS UNDERLYING FACTOR IS IN THE CHARGE.

CHIEF JUSTICE: ARE YOU SAYING THAT THE STATE INTRODUCED AN ALTERNATIVE BASIS FOR HIS ASSOCIATION WITH THE KILLER, NOT ONLY THE FACT THAT THE RELATIONSHIP HAD ALSO, THE, THAT THE NEWSPAPER WAS FOUND CLOSE TO --

THAT WAS THE BASIS OF THE PROSECUTION'S CASE, AS REVEALED IN THE RECORD ON APPEAL.

JUSTICE: BUT IS AN ALTERNATIVE BASIS ENOUGH? DOESN'T APPENDI REQUIRE THAT THERE ACTUALLY HAS TO BE THAT CHARGE, AND THEN THAT CHARGE FOUND BY A JURY, IN ORDER FOR IT TO BE USED AS A BASIS TO ENHANCE THE SENTENCE? HAVING AS AN ALTERNATIVE BASIS, WHERE WE DON'T KNOW WHAT BASIS THE JURY RELYING ON IT IS NOT ENOUGH, IS IT?

IT IS ENOUGH IN THIS CASE, BECAUSE IT IS INHERENT IN THE JURY'S VERDICT. IF IT HAD NOT BEEN, IF IT HAD BEEN IN FACTS AFTERWARD PRESENTED TO THE JURY THAT THIS PERSON WAS ALSO A MEMBER OF THE MEDIA AND THAT IS WHAT IS COMING TO THE REALIZATION OF THE JUDGE AFTER THE INITIAL SENTENCE, THEN, YES, APPENDI WOULDN'T APPLY, BUT IN THIS CASE IT DOES, BUT I HAVE BEEN NOTIFIED THAT MY TIME IS UP. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. ALL RIGHT. WE WILL GO WITH THE RESPONDENT. WE HAVE TWO JESSICAS HERE, SO JESSICA BOUIS.

GOOD AFTERNOON. MY NAME IS JESSICA BOUIS. I WILL ADDRESS THE FIRST ISSUE, WHICH IS WHETHER OR NOT FIRST AMENDMENT, A FLORIDA RESPONDENT, DISCLOSED THE IDENTITY OF A CONFIDENTIAL SOURCE. IN SUM WE ASK THIS COURT TO REVERSE THE LOWER COURT'S DECISION. IT IS VITAL TO ACCEPT THAT A QUALIFIED REPORTER'S PRIVILEGE EXISTS. HOWEVER IT IS NOT ABSOLUTE. ONE CANNOT BLANKET THE JUSTICE SYSTEM, CLAIMING THAT REPORTERS SHOULD NEVER REVEAL THEIR SOURCES OR THAT THEY SHOULD ALWAYS REVEAL THEIR SOURCES, WHICH IS WHY BALANCING TESTS HAVE BEEN MADE THROUGH CASE LAW. THE BALANCING CASE WAS CODIFIED THROUGH FLORIDA STATUTE LEGISLATION. THE STATUTE SPECIFIES THAT THE PARTY SEEKING TO OVERCOME THE PRIVILEGE MUST MAKE A CLEAR AND OVERWHELMING CASE THAT IT IS RELEVANT AND MATERIAL TO THE CASE AT HAND AND, TWO, THE INFORMATION IS NOT OBTAINABLE THROUGH OTHER SOURCES AND THREE, THERE IS A COMPELLING NEED FOR THIS INFORMATION.

JUSTICE: WHY WAS THERE A COMPELLING NEED IN THIS CASE?

ACTUALLY I BELIEVE IN THIS CASE THERE WAS NOT A COMPELLING NEED FOR THIS INFORMATION. I CAN CONCEDE THAT THE FIRST PRONG IS RELEVANT BECAUSE THE SOURCE WAS RELEVANT TOWARDS THE INVESTIGATION. HOWEVER, THERE WAS NO SPECIFIC COMPELLING NEED AT THE TIME. ONE, THEY WERE ASKING JAMIE OLSEN TO DISCLOSE HIS CONFIDENTIAL SOURCE. THE THIRD PRONG, BASICALLY THE PETITIONERS ARGUED IN THEIR BRIEF THAT JAMIE OLSEN'S INFORMATION WAS REQUIRED FOR THE GRAND JURY TO COMPLETE THEIR GRAND JURY INVESTIGATION. HOWEVER, THAT WAS THE COMPELLING NEED, YET THEY ARE SPECULATING THAT JAMIE OLSEN WAS THE ONLY ANSWER. HOWEVER, ONLY IN THE GRAND JURY EARLY STAGES, THEY SHOULD HAVE BEEN ABLE TO USE ALL THEIR SOURCES. YET THERE WAS ONLY A FOCUSING IN COMPLETELY ON JAMIE OLSEN. IF JAMIE OLSEN HAD BEEN MADE AWARE THAT HE WAS THE PRIMARY TARGET, THEN HE SHOULD HAVE BEEN NOTIFIED THAT, AS HE SHOULD, HAVE BEEN GIVEN THE INFORMATION THAT HE WAS KNOWINGLY VIOLATING THE ACT AND HE WOULD HAVE BEEN ABLE TO PLEAD THE FIFTH AND HE WAS IN A WAY BACKED INTO A CORNER BY THE STATE, SINCE THEY NEVER TOLD HIM HE WAS A TARGET UNTIL AFTER THEY GOT THE INFORMATION THEY WANTED.

CHIEF JUSTICE: IT SOUNDS LIKE YOU ARE ALLEGING SOME TYPE OF LACK OF GOOD FAITH. WAS THAT RAISED BELOW, THAT IS THAT, THE FACT THAT THE STATE WAS NOT ACTING IN GOOD FAITH WHEN THEY, TRYING TO OBTAIN THIS INFORMATION?

ACTUALLY, YOUR HONOR, I BELIEVE THAT THE RECORD DOES NOT GIVE ANY CONSTITUTIONAL ANALYSIS ON BEHALF OF MY CLIENT THAT SHOWS THAT THE STATE WAS SEEKING INFORMATION NOT IN GOOD FAITH. FOR EXAMPLE NECESSARILY THE SECOND PRONG, WHICH IS ALSO NOT PROVEN, DOES NOT MEET THE STANDARDS OF THIS CASE, IS THAT THERE ARE PLENTY OF ALTERNATIVE SOURCES THAT THE STATE SHOULD HAVE LOOKED INTO, BEFORE ZONING IN ON MY CLIENT, ONCE AGAIN, AND FORCING HIM TO UNWILLINGLY REVEAL HIS SOURCE.

CHIEF JUSTICE: WHAT OTHER SOURCE, I AM NOT CLEAR THEN, WHAT ARE, WHAT ARE THE SOURCES THAT THEY COULD HAVE OBTAINED, THAT THE ALTERNATIVE SOURCES OF INFORMATION, OTHER THAN GETTING IT FROM THE REPORTER?

WELL, FIRST, YOUR HONOR, IT WAS OBVIOUS THAT OTHER REPORTERS HAD THE INFORMATION, SINCE THEY HAD ALREADY QUESTIONED TERRYLANE AND SHE WAS BEING HELD -- CHIEF SAYING THEY ARE ALL REPORTERS, THEY ALL HAVE THE SAME PRIVILEGE, SO I AM NOT SURE THAT HELPS YOU VERY MUCH. IT SEEMS TO ME IT WOULD HAVE TO BE A SOURCE OUTSIDE OF THE OTHER REPORTERS, BEFORE IT WOULD BE, MEET ONE OF THE PRONGS OR FAIL TO MEET ONE OF THE PRONGS.

THE EDITORIAL BOARD PASSED THROUGH ALLOWING THE PUBLICATION OF THE PHOTO -- PUBLICATION OF THE PHOTO, THE PHOTO AT HAND, AND THE STATE NEVER REALLY GOT A CHANCE TO LOOK INTO OTHER REPORTERS. SINCE JAMIE OLSEN --

CHIEF JUSTICE: YOU SEE WHAT I AM SAYING IS ONCE YOU START TO LOOK INTO OTHER REPORTERS, YOU STILL HAVE THE SAME ISSUE OF THE FIRST AMENDMENT, AND THE QUALIFIED PRIVILEGE. I INTERPRETED THAT PRONG AS MEANING THAT THEY COULD GET THE INFORMATION FROM OUTSIDE OF THE NEWSPAPER, BECAUSE EVERY TIME YOU ARE DEALING WITH THE NEWSPAPER, YOU HAVE GOT THE FIRST AMENDMENT ISSUE.

WELL, I SEE YOUR POINT BUT AT THE SAME TIME MAYBE THE OTHER REPORTERS DISCLOSED NO INFORMATION BECAUSE THEY HAD NO CONNECTIONS TO THIS CASE, WHEREAS JAMIE OLSEN, THEY FORCED HIM, WHEREAS OTHER REPORTERS MAY HAVE WILLINGLY, THERE HAVE BEEN CASES WHERE THE FIRST AMENDMENT, WHERE THE REPORTER PRIVILEGE WAS NOT BROUGHT UP AND THEREFORE THE REPORTER WILLINGLY DISCLOSED THEIR SOURCES, BUT AT THE SAME TIME JAMIE OLSEN WAS NEVER GRANTED THAT PRIVILEGE, BECAUSE THEY ONLY LOOKED AT HIM.

THEY DIDN'T LOOK AT ANYONE ELSE. BUT AT THE SAME TIME THERE WERE ALTERNATE SOURCES NOT FROM THE IN NEWS PAPER PUBLICATION THAT THEY COULD HAVE GOTTEN THE SOURCE FROM . IN HORNE , IT WAS FOUND THAT HORNE DID NOT LOOK CLOSE ENOUGH TO SEE IF THERE WERE ALTERNATIVE SOURCES AND BECAUSE HE DID NOT PROVE THAT THE INFORMATION HE WAS SEEKING FROM THE GADSDEN COUNTY EMPLOYEE WAS UNAVAILABLE , THE COURT FOUND IN FAVOR OF GADSDEN COUNTY. SINCE THAT COURT WAS BASICALLY IMPOSING THE RESPONSIBILITY ON A PRIVATE CITIZEN , HORNE , TO NOTIFY THAT THERE WERE NO ALTERNATIVE SOURCES, IT IS OBVIOUS THAT THE GOVERNMENT IN THIS CASE HAD THE SAME IF NOT GREATER OBLIGATION TO DO SO .

JUSTICE: IS YOUR INTERPRETATION OF THE U.S. SUPREME COURT'S HOLDING IN BRANSBERG , AS FAR AS WHAT PARAMETERS THE U.S. SUPREME COURT SET OUT IN THAT CASE , THE IMPORTANT PRINCIPLES THAT APPLY HERE?

WELL , THE IMPORTANT PRINCIPLES THAT APPLY IS THAT A REPORTER'S PRIVILEGE IS NOT ABSOLUTE. HOWEVER , IT DOES EXIST , AND IT IS OBVIOUS THAT IT EXISTS, BECAUSE WHILE THE FIRST THREE CASES IN BRANSBERG WERE AFFIRMED, THE LAST ONE , CALDWELL, WAS REVERSED BECAUSE CALDWELL HAD MORE SPECIFIC EYEWITNESS TESTIMONY OR SPECIFIC KNOWLEDGE OF A CERTAIN CRIME , WHEREAS THE OTHER THREE CASES , BASICALLY IT JUST CODIFIES THE FACT THAT A CONSTITUTIONAL ANALYSIS MUST BE MADE IN EVERY SINGLE CASE BEFORE COMPELLING THE REPORTER TO DISCLOSE HIS SOURCE. I AM BASICALLY MOVING BACK TO MY SECOND PRONG , I JUST FOUND THAT THE GOVERNMENT DID NOT SEEK , TRY AT LEAST TO INVESTIGATE ANY OTHER LEADS , BEFORE GOING BACK TO JIM WILLS -- JAMIE OLSEN . EVENTUALLY WITH A THOROUGH -- EVENTUALLY WITH A THOROUGH POLICE INVESTIGATION , THEY COULD HAVE FOUND THAT THE SOURCE ITSELF WAS CORRELATED TO THE CASE. THE SOURCE OF THE ARTICLE, THE ARTICLE WASN'T EVEN BASED UPON RODRIGUEZ , THE UNFORTUNATE PERSON WHO WAS MURDERED. IT WAS BASED UPON THE LIFE AFTER SENATOR AND MOST OF THE INFORMATION WASN'T EVEN ON THE FACT THAT HE WAS ON AN UNDERCOVER AGENT. IT WAS ON THE WIFE. SO TO GET INFORMATION ON THE WIFE, THE POLICE COULD HAVE UNDERSTOOD THAT THE REPORTERS MOST LIKELY HAD TO ASK FAMILY MEMBERS. OTHERWISE , EVEN THE OPPOSING SENATOR , AND MAYBE HIS SENATOR , IF HIS STAFF , WHETHER THEY WOULD HAVE GIVEN INFORMATION AND CAROL LIMBAUGH , THE ACTUAL SOURCE, ACTUALLY ENDED UP BEING THE PERSON WHO WAS ON THE OPPOSING SENATOR'S STAFF, SO IT WASN'T AS IF THE SOURCE WAS FROM NOWHERE. THE SOURCE WAS ACTUALLY CLOSELY CORRELATED , SO THE POLICE, IF THEY WOULD HAVE TAKEN TIME TO COMPLETE A THOROUGH INVESTIGATION , COULD HAVE COME UPON IT THEMSELVES AND WOULD NOT HAVE TO HAVE CORNERED JAMIE OLSEN AND COMPELLED THE INFORMATION FROM HIM .

JUSTICE: WHAT IS THE CRITERIA THAT YOU WOULD HAVE TO SUPPLY TO DETERMINE WHETHER THIS ELEMENT THAT YOU ARE REFERRING TO HAVE TOO EARLY IN THE INVESTIGATION , HOW DOES A COURT MAKE THAT DETERMINATION? WHAT ARE THE ELEMENTS , AND WHAT WOULD YOU HAVE US DO?

WELL , BASICALLY THE ELEMENTS I WOULD ASK FOR IS THAT THERE ARE ACTUAL FACTS SUPPORTED IN THE CASE THAT SHOW THAT THIS COURT AND THE STATE MADE A FINDING TO AT LEAST MAKE SOME EFFORT TO PROVE THAT JAMIE OLSEN WAS THE ONLY SOURCE OF INFORMATION. HOWEVER , THEY DID NOT , BECAUSE ONCE TERRY LANE WAS HELD IN CONTEMPT , THEY WENT STRAIGHT TO JAMIE OLSEN , AND ONCE JAMIE OLSEN FAILED , THEY DIDN'T MOVE TO ANYONE ELSE. THEY STARTED TO COMPEL THE INFORMATION FROM HIM . CHIEF IF WE RULE IN YOUR FAVOR ON THE ISSUE, HOW DOES THAT HELP YOUR CLIENT'S MURDER CONVICTION? AS YOU SAY , THERE ARE ALTERNATIVE WAYS THAT THE STATE CAN FIND OUT ABOUT THE RELATIONSHIP BETWEEN YOUR CLIENT AND THE VICTIM.

WELL , YOUR HONOR , BASICALLY MY CLIENT WOULD MOST LIKELY BE ASKING FOR AN

ENTIRELY NEW CASE, BECAUSE ONCE HE GAVE UP HIS SOURCE, IMMEDIATELY THEREAFTER, THAT IS WHEN THE STATE INDICTED HIM, SO IF HE WOULD HAVE NEVER BEEN ABLE TO COMPEL THE SOURCE, THE STATE WOULD HAVE HAD TO LOOK FOR ALTERNATIVE WAYS TO CONNECT HIM WITH THE MURDER OF JUAN RODRIGUEZ, AND THEREFORE WE ARE ASKING FOR A WHOLE NEW TRIAL, WHERE THE ONLY FACTS AND ELEMENTS THAT MAKE IT FAIR IS THAT, THE ONLY FACTS AND ELEMENTS THAT THEY APPLY ARE ONES THAT WERE FAIR AND JUST TOWARDS MY CLIENT. HE WAS NOT INDICTED BASED ON BEING COMPELLED AND TAKEN AWAY HIS FIRST AMENDMENT RIGHTS.

CHIEF JUSTICE: SO YOU WOULD HAVE AN OTHER TRIAL, WITHOUT ANY OF THE INFORMATION THAT WAS GAINED THROUGH THIS SUBPOENA?

YES.

CHIEF JUSTICE: BUT HAS THAT EVER BEEN DONE AS REMEDY FOR A VIOLATION OF A QUALIFIED PRIVILEGE, THAT IS REVERSING A CONVICTION?

ACTUALLY, YOUR HONOR, I AM NOT AWARE. IT IS, MY TIME IS ALMOST UP. I WOULD LIKE TO BRIEFLY ASK THIS COURT TO REVERSE THE LOWER COURT'S DECISION, AND THANK YOU AND I WILL TURN THE PODIUM OVER.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. GOOD AFTERNOON. MY NAME IS JESSICA BOUIS. I WILL BE ADDRESSING THE ISSUE OF THE UNCONSTITUTIONAL ENHANCEMENT OF JAIME OLSEN'S SENTENCE. THE APPELLATE COURT RECOGNIZED THE UNCONSTITUTIONALITY OF THE SENTENCE AND REVERSED IT. IT DOES NOT INFERENCE THAT THE JURY'S GUILTY VERDICT IMPLIES THE NEGLIGENT USE OF THE PRESS. HOWEVER, THE NEGLIGENT USE OF THE PRESS IS NOT A PROOF OF MURDER AND THEREFORE NOT REQUESTED IN THE JURY VERDICT. TO CONTINUE TO ARGUE TO INCREASE THE RESPONDENT'S SENTENCE DOES NOT NEED TO BE EXPLICITLY STATED BEFORE THE COURT. HOWEVER, THE U.S. SUPREME COURT DECIDED IN APPRENDI VERSUS NEW JERSEY THAT ANY FACTS THAT INCREASE THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT.

JUSTICE: WHY WASN'T IT OBVIOUS IN THIS CASE THAT THIS IS WHAT THE STATE WAS CLAIMING, THAT THE, OBVIOUSLY THAT THE REPORTER WAS ACTING IN HIS CAPACITY, AND THAT THE WHOLE INVOLVEMENT IN THE CASE IS PREDICATED ON ACTING AS A JOURNALIST, AND SO WHY ISN'T IT JUST SORT OF A COMMON SENSE THING THAT IT IS OBVIOUS IN THIS CASE, THAT THAT IS JUST WHAT THESE CIRCUMSTANCES PRESENT?

WELL, JUSTICE QUINCE STATED EARLIER, THERE WAS OTHER EVIDENCE POINTING ON JAMIE OLSEN TO BEGIN WITH. ALSO HE WAS NEVER TRIED UNDER THE CRIMINAL PRESS ACT, AND YOU CAN'T BE SENTENCED FOR AN ACT YOU WERE NOT TRIED UNDER, BECAUSE WE DON'T KNOW HOW MUCH WEIGHT THE JURY GAVE TO THE NEWSPAPER IN CONSIDERING THE EVIDENCE DURING SENTENCING. ALSO IT IS NOT ENOUGH TO SENTENCE SOMEONE BASED ON ASSUMPTION IN OUR COUNTRY. EVERYONE IS ENTITLED TO A FAIR JURY TRIAL, WHERE ALL OF THE EVIDENCE IS PROVED BEYOND A REASONABLE DOUBT, AND IF THERE IS ANY QUESTION THAT THIS EVIDENCE WASN'T PROVED BEYOND A REASONABLE DOUBT IT IS NOT FAIR TO VIOLATE - -

JUSTICE: WHAT COULD THE STATE HAVE DONE TO ALLOW THE APPLICATION OF THIS ENHANCEMENT OF THE SENTENCE IN THIS CASE? WHAT WOULD YOU, HOW WOULD YOU HAVE HAD THEM PROCEED?

IF THE STATE HAD ADDRESSED THE JURY AND TOLD THEM TO MAKE A DETERMINATION OF

WHETHER OLSEN USED THE NEW SPAPER TO FURTHER HIS CRIME AND ADDRESS THE CRIMINAL PRESS ACT AT TRIAL, THEN, YES, HE SHOULD HAVE BEEN SENTENCED ACCORDING TO THE CRIMINAL PRESS ACT. IT WAS NEVER BROUGHT UP UNTIL SENTENCING BY THE JUDGE. THE FACT ENHANCEMENTS WERE NEVER SUBMITTED TO A JURY AND NEVER PROVEN BEYOND REASONABLE DOUBT. THIS RESPONDENT WAS NEVER CONVICTED UNDER THE ACT AND IT SHOULD NOT HAVE BEEN CONSIDERED IN SENTENCING. ADDITIONALLY THE SENTENCER CONTENDS THAT IT DOES NOT UPHOLD THE LEVEL OF THE LAW. I DO NOT FEEL THIS IS POSSIBLE WHEN THIS IS CLEARLY AN ABOMINATION OF THE SIXTH AMENDMENT RIGHTS. PETITIONER ALSO ARGUE A POINT IN THEIR BRIEF. PETITIONER ARGUES THAT BOOKER SUPPORTS THEIR CASE FOR FEDERAL SENTENCING GUIDELINES. HOWEVER, THE SENTENCING GUIDELINES ARE NEITHER MANDATORY NOR RELEVANT IN THIS CASE. THE U.S. SUPREME COURT IN BLAKELY SAYS THAT THE REASON THAT A JURY TRIAL IS GUARANTEED IN THE CONSTITUTION IS THAT THEY WERE UNWILLING TO TRUST THE GOVERNMENT TO PLAY THE ROLE OF THE JURY. IN THIS CASE SENTENCING DISCRETION SO LONG AS IT IS NOT IMPOSING UPON THE JURY TO FIND FACTS NOT --

JUSTICE: DID THE TRIAL JUDGE RELY ON ANY ADDITIONAL EVIDENCE THAT DIDN'T GO BEFORE THE JURY IN HAVING THIS SENTENCE ENHANCEMENT? DIDN'T THE TRIAL JUDGE RELY ENTIRELY ON THE PROOF THAT WAS PRESENTED AT THE TRIAL? ANOTHER TRIAL JUDGE DID RELY 'THE EVIDENCE, BUT HE OR SHE WAS AWARE OF DURING TRIAL BUT --

JUSTICE: THE JUDGE DIDN'T GO OUTSIDE OF THAT, SO WHY WOULDN'T THAT BE APPROPRIATE, THEN, IF THE JUDGE LIMITED HIMSELF TO JUST WHAT EVIDENCE WENT BEFORE THE JURY?

THAT WOULDN'T BE APPROPRIATE, BECAUSE THE CRIMINAL PRESS ACT WAS OUTSIDE OF THE SCOPE OF THE TRIAL. THE JURY WAS NEVER AWARE OF THE CRIMINAL PRESS ACT, AS FAR AS WE KNOW IN THE RECORD, AND THE JUDGE SENTENCED JAMIE OLSEN ACCORDING TO THE CRIMINAL PRESS ACT, AT HIS OWN DISCRETION. IN THIS CASE, THE RESPONDENT'S SENTENCE WAS INSTEAD ENHANCED UNLAWFULLY, AS THE OWN DISCRETION OF THE JUDGE. IN BELL VERSUS FLORIDA, A SIMILAR INSTANCE OCCURRED, AND THE DEFENDANT WAS SENTENCED BASED ON THE FACTS UNNECESSARY TO GAIN HIS CONVICTION. IN THIS CASE, PETITIONERS OFFERED IN THEIR BRIEF THAT HE WAS CONVICTED OF ONE COUNT OF SEXUAL BATTERY BY A CRIMINAL AUTHORITY, TWO COUNTS OF THAT AND ONE COUNT OF SEXUAL BATTERY ON A MINOR. THE SUPREME COURT REVERSED THE ENHANCED SENTENCE BECAUSE PUNISHMENT WAS NOT NECESSARILY A FINDING UNDER BOTH COUNTS.

CHIEF JUSTICE: THAT IS WHERE I AM HAVING TROUBLE, AND I JUST WANT TO MAKE SURE I UNDERSTAND YOUR ARGUMENT ON, FROM THE STATE'S POINT OF VIEW. THEY ARE SAYING THAT THERE WERE TWO POSSIBLE BASIS TO CONVICT HIM OF MURDER, SINCE HE WASN'T THE ACTUAL MURDERER. IT EITHER HAD TO BE BECAUSE OF HIS CONNECTION WITH THE VICTIM OR BECAUSE OF THE PUBLICATION OF THE NEWSPAPER ARTICLE. WERE BOTH OF THOSE ARGUED BY THE STATE AS BASIS TO, REASONS TO CONVICT YOUR CLIENT?

IN THE RECORD, WE DON'T KNOW EXACTLY WHAT THE STATE ARGUED, OTHER THAN WE KNOW THAT THEY RELIED HEAVILY ON THE NEWSPAPER IN THE RECORD, BUT IN THIS CASE, MURDER, IN ORDER TO CONVICT SOMEONE OF MURDER, THERE HAS TO BE INTENT, AND TO CONVICT SOMEONE OF THE CRIMINAL PRESS ACT, WHICH IS WHAT HE WAS SENTENCED ACCORDING TO, YOU HAVE TO FIND NEGLIGENT USE OF THE PRESS AND NEGLIGENT USE OF THE PRESS CANNOT BE EVIDENT IF THERE IS ALSO INTENT TO COMMIT MURDER, SO SINCE JAMIE OLSEN DID NOT USE, THERE WAS A FINDING OF INTENT, SO HE COULDN'T HAVE ACTED WITH NEGLIGENCE TO COMMIT A CRIME PERTAINING TO THE NEGLIGENT USE OF THE PRESS AND INSIGHT SOMEONE ELSE TO COMMIT CRIME, IF HE WAS FOUND GUILTY OF MURDER. CHIEF I GUESS WHAT THEY ARE SAYING IS THAT, IF --

CHIEF JUSTICE: I GUESS WHAT THEY ARE SAYING IS THAT, IF YOU INTENTIONALLY DO

SOMETHING , WITHIN THAT YOU AT LEAST WERE ALSO NEGLIGENT, SO THAT ONE FINDING INCLUDES THE OTHER. HOW DO YOU, YOU DON'T, YOU SEE THEM AS BEING MUTUALLY EXCLUSIVE?

YES, YOUR HONOR, AND, ALSO , HE WAS NEVER CONVICTED UNDER THE CRIMINAL PRESS ACT TO BEGIN WITH. THE WHOLE ISSUE IS THAT HE WAS NOT TRIED UNDER THE ACT AND HE WAS STILL A DEFENDANT ACCORDING TO, VIOLATING HIS SIXTH AMENDMENT RIGHT TO DUE PROCESS AND A FAIR TRIAL.

CHIEF JUSTICE: SO HE HAD NO NOTICE , WHEN WAS THE FIRST TIME THAT HE HAD NOTICE OF THE FACT THEY WERE GOING TO TRY TO SEEK PROSECUTION UNDER THE CRIMINAL PRESS ACT?

I DON'T KNOW EXACTLY WHEN HE WAS MADE AWARE OF IT , BUT THE JUDGE DECIDED TO ENHANCE HIS SENTENCE AFTER HIS TRIAL , DURING SENTENCING . I AM SORRY . THAT WAS THE FIRST TIME THAT ON THE RECORD JAMIE OLSEN WAS MADE AWARE OF IT .

JUSTICE: SO IS IT CLEAR FROM THIS RECORD THAT MR . OLSEN WAS NEVER CHARGED WITH ANY OFFENSE UNDER THE , THIS ACT THAT THEY USE FOR ENHANCEMENT ?

IT WAS CLEAR ON THE RECORD THAT JAMIE OLSEN WAS NOT AWARE OF ANY CHARGES MADE AGAINST HIM UNDER THE CRIMINAL PRESS ACT .

JUSTICE: BUT I THINK JUSTICE QUINCE'S QUESTION WAS , WAS IT IN THE CHARGING INSTRUMENT? WAS IT IN THE INDICTMENT?

THERE IS NO RECORD OF THE CRIMINAL PRESS ACT IN THE CHARGING DOCUMENT. IN THIS CASE. ON BEHALF OF THE RESPONDENT JAMIE OLSEN, MY CO-COUNSEL AND I REQUEST THAT THIS COURT AFFIRM THE LOWER COURT'S REVERSAL OF THE ENHANCEMENT OF THE SENTENCE AND REVERSE THE LOWER COURT'S DECISION FOR SENTENCE PERTAINING TO THE QUALIFIED REPORTER PRIVILEGE. THANK YOU. CHIEF THANK YOU VERY MUCH. DO WE HAVE --

CHIEF JUSTICE: THANK YOU VERY MUCH. DO WE HAVE REBUTTAL ?

MAY IT PLEASE THE COURT . JAMIE OLSEN IS ATTEMPTING TO SHIELD HIS CULPABILITY FOR HIS ACTIONS , BY CLAIMING A PRIVILEGE THAT EXISTS NOT TO PROTECT THE INDIVIDUAL MEMBER OF THE MEDIA BUT TO PROTECT THE FLOW OF IDEAS. HIS INTEREST IN USING THIS PRIVILEGE IS MERELY TO ESCAPE CRIMINAL PROSECUTION. FURTHERMORE , JAMIE OLSEN IS SIMULTANEOUSLY --

JUSTICE: IS IT A MERE TECHNICALITY THAT SOMEONE MAY HAVE A CONSTITUTIONAL PROTECTION ON SOMETHING AND THAT IS USED TO ESCAPE? IS THAT REALLY OUR CRITERIA?

I AM SORRY. CAN YOU REPHRASE YOUR QUESTION.

JUSTICE: YOU SEEM TO BE SAYING HE IS TRYING TO ESCAPE RESPONSIBILITY . IS ONE WHO ASSERTS A VALID CONSTITUTIONAL PROTECTION , IS THAT HOW WE CHARACTERIZE WHAT THEY ARE TRYING TO DO?

YES , YOUR HONOR , JAMIE OLSEN, BY INVOKING HIS PRIVILEGE, WAS MERELY AFTER HE HAD ALREADY REVEALED HIS SOURCES , AND THIS WAS ONLY TO TRY TO NOT BE HELD IN CONTEMPT AS WAS TERRY LANE. THE SOURCE LATER CAME FORWARD , THEMSELVES , CAREY LIMBAUGH TESTIFIED AT THE TRIAL , SO AT THAT POINT IT IS NOT NECESSARILY BE HARM THEN TO JAMIE OLSEN, BUT IT DOES EXIST IN THIS CASE. FURTHERMORE --

CHIEF JUSTICE: CAN YOU ADDRESS THE POINT THAT THEY SEEM TO RELY ON , THAT IS THAT THE

STATE, BEFORE THEY WERE TRYING TO GET THE REPORTER SOURCE , SHOULD HAVE GONE STRAIGHT TO THE MOST OBVIOUS ENTITY , WHICH WAS THE SENATOR WHO WAS OPPOSING THE CAMPAIGN OF THE VICTIM'S WIFE . IN OTHER WORDS THEY SHOULD HAVE LOOKED FOR ALTERNATIVE SOURCES , BEFORE THEY WENT TO THE PRESS .

ALTERNATIVE SOURCES AS TO WHO REVEALED THE IDENTITY ?

CHIEF JUSTICE: CORRECT , THAT THAT IS A PRONG THAT YOU HAVE TO MEET, CORRECT?

YES, IT IS.

CHIEF JUSTICE: WHY ISN'T IT THAT THEY DIDN'T, THEY WENT STRAIGHT TO THE PRESS AS OPPOSED TO WENT TO ALTERNATIVE SOURCES?

BECAUSE AT THE SCENE OF THE CRIME , A COPY OF THE NEWSPAPER WAS FOUND THAT REVEALED JUAN RODRIGUEZ , AND ON THIS PHOTOCOPY OR THE PHOTO AND THE PICTURE IN THE PAPER , THERE WAS THE FINGERPRINTS OF THE SHOOTER , LINKING HIM -- OF THE SHOOTER , LINKING HIM WITH THE PAPER , AND THEN ONCE THEY WERE INVESTIGATING , IT LED THEM TO THE SOURCE, THE ARTICLE , WHICH WOULD BE THE ONLY TWO PEOPLE WHO KNEW THE SOURCE WOULD BE TERRYLANE, WHO WAS HELD IN CONTEMPT SO SHE WOULD NOT TESTIFY, AND THEN THAT ONLY LEFT JAMES OLSEN.

CHIEF JUSTICE: WHY IS IT THAT THEY COULD FIND OUT WHO THE SOURCE WAS BY FIGURING OUT WHO HAD A MOTIVE TO REVEAL THIS INFORMATION ?

WHO HAD A MOTIVE?

CHIEF JUSTICE: WHO HAD, I MEAN, ISN'T IT THAT THE SENATOR'S OPPONENT WAS, REALLY, THE SOURCE OF THIS INFORMATION?

THIS WAS AFTER THE CAMPAIGN HAD ALREADY TRANSPIRED . NO LONGER WAS , CAREY LIMBAUGH WAS NO LONGER AN OPEN -- CAREY LIMBAUGH WAS NO LONGER AN OPPONENT, AND AT THE TIME OF THE INFORMATION AND CAREY LIMBAUGH , THE INFORMATION THAT WAS GIVEN TO JAMIE OLSEN WAS NOT AS A PURPOSE TO, AS A CAMPAIGN OPPONENT . IT WAS NOT TO MAKE SENATOR RODRIGUEZ TO MAKE HER LOOK BAD IN THE PUBLIC'S EYE IN ANY WAY , IN CAREY LIMBAUGH 'S -- IN CAREY LIMBAUGH 'S OUTLOOK.

JUSTICE: THE POLICE WOULD HAVE CONDUCTED AN INVESTIGATION INTO THE CIRCUMSTANCES OF THIS CRIME , CORRECT? AND DEVELOPED INFORMATION ABOUT THE VICTIM AND THE VICTIM'S RELATIONSHIP , SO WHY SHOULDN'T THE STATE HAVE HAD TO HAVE GONE FURTHER IN ITS ORDINARY INVESTIGATION OF THIS CRIME , BEFORE TURNING TO THE PRESS AS A SOURCE OF INFORMATION?

YES , YOUR HONOR. I AM SORRY . I WAS NOT CLEAR ON THIS BEFORE. AN INVESTIGATION SUCH AS YOU JUST DESCRIBED , WOULD HAVE STILL LED TO JAMIE OLSEN. JAMIE OLSEN IS NOT ONLY -- DOES NOT ONLY OWN STOCK IN THE COMPANY OF THE SHOOTER , WHICH IS THE COMPANY THAT JUAN RODRIGUEZ WAS ON ASSIGNMENT TO TRY TO DECIDE WHETHER OR NOT THEY WERE TRAFFICKING DRUGS IN FLORIDA , SO REGARDLESS OF HOW THEY DID THE INVESTIGATION , THERE WOULD HAVE STILL BEEN CONNECTION TO SAY JAMIE OLSEN. IN ADDITION , APPRENDI VERSUS NEW JERSEY , THE , ANY POSSIBLE ERROR THAT COULD HAVE OCCURRED IN A JUDGE ENHANCING THE SENTENCE FOR THAT, DOES NOT EXCEED THE STATUTORY MINIMUM. THE DEFINITION , THE DEFENDANT WAS SENTENCED TO 25 YEARS , AND THE JUDGE ENHANCED THE FIVE YEARS , FOR A TOTAL OF 30 YEARS , WHICH FOR A MURDER OF THIS FIRST-DEGREE KIND , IS AT LEAST LIGHT IN FLORIDA. AS SEEN IN STATUTE 775.082, WHICH CAN BE REASONABLY INFERRED FROM THE INFORMATION IN THE PACKET. THEREFORE THE STATE HUMBLY ASKS

THAT YOU UPHOLD THE R ULING OF THE FI FTH DISTRICT COURT ON THE FIRST ISSUE AND REVERSE ITS R ULING THAT THE SIXTH AMENDMENT RIGHTS OF THE RESPONDENT WERE VIOLATED. THANK YOU. CHIEF THANK YOU VERY MUCH. THE COURT WILL T AKE THIS M ATTER UNDER ADVISEMENT AND BE IN A SHORT RECESS .

MARSHAL: ALL RISE. „CHIEF I DON'T WANT YOU TO THINK THAT THE S PEED O F OUR DELIBERATIONS MEANS THAT WE DIDN'T CONSIDER THIS MA TTER SERIOUSLY. WHEN I FIRST SAW THE PROBLEMPUT TOGETHER, I THOUGHT HOW IN THE WORLD WILL HIGH SCHOOL ST UDENT KNOW ABOUTTHIS AREA OF THE LAW THAT I CAN PROBABLY TELL YOU 99 PERCENT OF LAW YERS IN FLORIDA WOULD NOT BE CONVERSEENT IN. THIS WAS A VERY DIFFICULT FACTUAL AND LEGAL QUESTION. I MUST TELL YOU, BECAUSE WE WILL BE ANNOUNCING THE WINNERS TOMORROW, BUT YOU SHOULD KNOW THAT THE DECISION WAS A 4-3 DECISION, WHICH MEANS THAT IT CA N'T BE ANY CL OSER AS TO OTHER THAN MAKING IT A DEAD TIE , WHEN YOU CAN'T HAVE A TIE AS YOUKNOW , WITH SEVEN JUSTICES . I WANT TO THANK THE PARTICIPANTS , THE FINALIST S , AND TOMORROW I WILL HAVE A CHANCE TO T ALK TO ALL OF THE MEMBERS OF THE VARIOUS TEAMS, AS WELL AS THE TEACHERS. IF I COULD , WE HAVE THE TEACHERS FOR THESE TWO TEAMS STAND UP AND BE RECOGNIZED . [APPLAUSE] MAYBE NO W WE CAN REVE AL, BECAUSE WE DON'T KNOW THE TEACHERS. WHAT SCHOOL ARE YOU WITH ? TWO PARTS OF THE STATE. THE RESPONDENT? I THI NK THAT ALL OF YOUFOLLOWED THE REQUIREMENTS THAT IS OF BEING CONVERSANT WITH THE FAC TUAL CIRCUMSTANCES OF THE CASE , BEING CONVERSANT WITH THE LEGAL ANALYSIS. I KNOW AT LEAST ONE OF YOU ACTUALLY REF ERENCE ED , ONE OF YOU ACTUALLY REFERENCED WHAT ANOTHER JUSTICE HAD SA ID IN YOUR ARGUMENT. THESE WERE , AND I THINK THAT WAS TERRIFIC. I KNOW THAT IT CAN'T HE LP BUT FEEL NERV OUS TO BE HERE , AND TO BE IN FRONT OF THE SEVEN MEMBERS OF THE COURT. WE COMMEND YOU FOR YOUR PREPATION.I ALSO WANT TO ACKNOWLEDGE THE OTHER TEAC HERS THAT AREIN THE COURTROOM TO DAY WITH THE TEAMS. IF YOU COULD PLEASE STA NDAND BE RECOGNIZED . [APPLAUSE] IT IS REALLY WONDERFUL FOR US, BECAUSE W E SEE SEVERAL FORMER JTI TEACHERS , AND SO WE KNOW THAT OUR WORK I S BEING WELL DONE. WE HOPE THAT, T H ROUGH THIS EXERCISE, THAT YOU WILL LEARN MORE ABOUT WHAT THE APPELLATE COURTS DO , AND A BOUT CONSTITUTIONAL ISSUES THAT WE FACE EACH AND EVERYDAY, AND KNOW THAT THERE ARE NO E A SY ANSWERS . I THINK THAT , A GAIN , YOU WERE ALL VERY PO ISED . I CAN'T HELP , AS A FE MALE , BUT POINT OUT THAT THE FOUR FINALISTS WERE ALL WO MEN, SO THAT MAKES ME EVEN JUST THRILLED, BECAUSE I CAN TELL YOU 30 YEARS A GO , THERE WERE SO FEW WOM EN THAT WERE ATTORNEYS , AND I , A LSO , I GUESS , LAST BUT NOT LEAST , REALLY NEED TO ACKNOWLEDGE THE P ERSON WITHOUT WHOM THIS WOULD NOT BE POSSIBLE . SOMEBODY WHO IS JUST , SH E IS EVERYWHERE, DOES EVERYTHING AND DOES IT JUST VERY BEST, AND THAT IS ANN ETTE P ITTS OF THE LAW-RELATED EDUCATION ASSOCIATION. [APPLAUSE] THE COURT IS GOING TO BE IN RECESS. JUSTICE ANSTEAD AND JUSTICE WELLS HAVE TO HI T THE ROAD FOR SOME OTHER ENGAGEMENTS THAT THEY HAVE. BUT WE WILL , THE OTHER JUS TICES WILL BE ABLE TO COME OUT AND SPEAK TO YOU IN THE ROTU ND A FOR THE REC EPTION. A GAIN , THANK YOU TO ALL OF THE TEAMS THAT ARE FINALIST S. TRULY YOU ARE ALL WI NNERS , AND THE LEGAL SYSTEM, THE JUSTICE SYST EM IS A WINNER BY YOUR PARTICIPATION IN THIS WAY , ESPECIALLY AT THE AGES THAT EACH OF YOU ARE , AGAIN, I R E MIND THOSE VIEWING THAT YOU ARE WATCHING HIGH SCHOOL STUDENTS . I THINK AT SOME POINT W E PRO BABLY WERE STARTING TO THINK YOU WERE ACTUALLY LAWYERS PRACTICING BEFORE US , SINCE YOU SEE YOU GOT SOME OF THE HARD QUESTIONS THAT THE LAWYERS GET. WE COMMEND YOU ON YOUR PROFESSIONISM AND FOR YOUR WILLINGNESS TO DO THIS, BECAUSE WE KNOW THIS IS AN EXTRACURRICULAR ACTIVITY . CONGRATULATIONS TO THE FIN ALIST S AND TO ALL OF THETEAMS THAT COMP ETED , AND WITH THAT THE COURT WILL BEIN RECE SS. [APPLAUSE]