The Florida Bar v. Leonard Mark Dachs

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS THE FLORIDA BAR VERSUS DACHS.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS STEVE BRONIS. I REPRESENT LEONARD MARK DACHS, AND MR. DACHS IS PRESENT BEFORE THE COURT. YOUR HONORS, THE PETITIONER, MR. DACHS, VIOLATED A COURT ORDER, BY RECEIVING ATTORNEYS FEES FOR REPRESENTING A CLIENT IN A CRIMINAL CASE. THE FEE MR. DACHS RECEIVED WAS REASONABLE. THE LEGAL SERVICES HE PERFORMED WERE BONA FIDE.

THIS IS, SO THE 1.8 MILLION DOLLAR FEE, WHICH, OF COURSE, THEY ARE NOT QUESTIONING IT, THE AMOUNT, BUT THAT IS AN ATTORNEYS FEE FOR REPRESENTING ONE CLIENT?

YES YOUR HONOR. THIS IS PROBABLY BEEN WELL-REGARDED IN FEDERAL CL CASES AS, PROBABLY, ONE OF THE MOST COMPLEX CASES IN THE HISTORY OF THE UNITED STATES. THE INVESTIGATION CONDUCTED BY THE GOVERNMENT OF THE DEFENDANTS IN THIS CASE, COMMENCED IN THE LATE '80s, AND AN INDICTMENT WAS RETURNED IN 1991. THE PRETRIAL PREPARATION TOOK SOME FIVE YEARS. THE TRIAL OCCURRED IN 1996. THIS WAS A CASE WHERE THE GOVERNMENT INDICATED THAT THESE DEFENDANTS, YOUR HONOR, WERE THE LARGEST COCAINE SMUGGLING ORGANIZATION IN THE HISTORY OF THE UNITED STATES.

IF THAT IS NOT AT ISSUE, THEN WHAT IS THE RELEVANCY THAT THESE WERE FOR ATTORNEYS FEES. I MEAN, IT DOESN'T CHANGE THE NATURE OF THE CRIMINAL ACTOR THE VIOLATION, DOES IT?

I AM SORRY.

I GUESS I AM TRYING IT TO UNDERSTAND THE SIGNIFICANCE THAT THIS WAS RECEIVED AS AN ATTORNEYS FEE, WHAT DOES THAT HAVE TO DO WITH THE, WHAT HE WAS CHARGED WITH VIOLATING?

WELL, THE FACT THAT IT WAS THE ATTORNEYS FEE THAT WAS RECEIVED WAS THE BASIS OF THE RESTRAINING ORDER. THE RESTRAINING ORDER PROHIBITED THE DEFENDANTS IN THAT CASE OR THEIR AGENTS FROM TRANSFERRING CERTAIN ASSETS OR PROPERTIES, AND AS IT TURNED OUT, SOME 50 LAWYERS AND INVESTIGATORS ENDED UP RECEIVING $23 MILLION.

I GUESS THE PROBLEM HERE IS THAT DIDN'T YOUR CLIENT AGREE THAT HE KNEW THAT THESE WERE MONIES FROM DRUG TRAFFICKERS, AND THAT THIS WAS THE PROCEEDS OF THEIR BUSINESS? DIDN'T HE BASICALLY AGREE THAT HE KNEW?

AT THE TIME HE ENTERED HIS PLEA, YES, YOUE DID.

OKAY. AND SO HOW DOES THE FACT THAT IT WAS FOR ATTORNEYS FEES MAKE ANY DIFFERENCE, IF THE PROTECTIVE ORDERUT USE THESE KINDS OF FUNDS?

WELL, YOUR HONOR, THE FACT THAT IT WAS FOR ATTORNEYS FEES, I THINK, GOES TO THE HEART OF THE ISSUE, AS IT PERTAINS TO THE OBSTRUCTION OF JUSTICE CHARGE. OBSTRUCTION OF JUSTICE --

THAT IS NOT A REAL ISSUE HERE IS IT? HE PLED GUILTY TO THE OBSTRUCTION OF JUSTICE, RIGHT? AND HE DOES NOT CONTEST, IN THESE PROCEEDINGS, THAT WE COULD PROPERLY FIND THAT A VIOLATION OF THE RULES, CORRECT?

YES, YOUR HONOR. THAT'S CORRECT.

THERE IS NO QUESTION ABOUT THAT.

BUT THE STANDARDS FOR IMPOSING SANCTIONS SPEAK TO THE INJURY OR THE POTENTIAL OF SERIOUS INJURY TO THE UNDERLYING CRIMINAL PROCEEDINGS, AND --

OR TO THE LEGAL SYSTEM.

OR TO THE LEGAL SYSTEM.

AND YOU DON'T BELIEVE THAT THE VIOLATION OF A COURT ORDER THAT WAS SPECIFIC ABOUT THESE KINDS OF FUNDS, VIOLATES THE ADMINISTRATION OF JUSTICE?

IT ABSOLUTELY DOES VIOLATE THE ADMINISTRATION OF JUSTICE, BUT THAT KIND OF STATUTE OR THAT KIND OF RULE COVERS A BROAD RANGE OF CONDUCT. CONDUCT THAT CAN BE IN AND OF ITSELF, THE PERFORMING OF BONA FIDE LEGAL SERVICES, BUT DONE FOR AN IMPROPER MOTIVE. BUT THE STANDARDS FOR IMPOSING THE ULTIMATE PUNISHMENT OF DISBARMENT SORT OF WEED OUT CERTAIN CONDUCT FROM OTHER CONDUCT. I MEAN, IF WE WERE GOING TO HAVE AN AUTOMATIC DISBARMENT RULE FOR ANYONE WHO IS CONVICTED OF OBSTRUCTION OF JUSTICE, THEN --

DON'T WE START OUT -- I AM SORRY.

CHIEF JUSTICE: GO RIGHT AHEAD.

DON'T WE START OUT, HERE, WITH THE PRESUMPTION OF DISBAR DISBARMENT?

YES, WE DO.

WHY, IN THESE CIRCUMSTANCES, WOULD THAT PRESUMPTION NOT PREVAIL?

WELL, IT SHOULDN'T PREVAIL, BECAUSE IN THIS CIRCUMSTANCE, E RE APPLIED CERTAIN AGGRAVATING FACTORS THAT SHOULD NOT HAVE BEEN APPLIED, AND OVERLOOKED MANY MITIGATING FACTORS THAT SHOULD HAVE BEEN APPLIED, AND THE REFEREE, I BELIEVE, DID NOT ADEQUATELY CONSIDER THE UNDERLYING CONDUCT, ITSELF, IN ARRIVING AT AN APPROPRIATE RECOMMENDATION.

BUT WE GIVE GREAT DEFERENCE TO REFEREE'S FINDINGS OF FACTS, IN REGARD TO GUILT OR INNOCENCE AND AGGRAVATION OF MITIGATION, DON'T WE?

YES, JUSTICE HARDING. WE DO. BUT LET ME SAY THIS. WE ARE NOT TALKING ABOUT FINDINGS OF FACT THAT WE DISAGREE WITH THE REFEREE ON HERE. WE ARE TALKING ABOUT THE REFEREE'S LEGAL CONCLUSIONS.

TELL ME WHAT CASE THIS CLOSE, WHAT CASE YOU WOULD CITE TO US AS THE MOST CLOSELY ALIGNED FACTUALLY, THAT WOULD SUPPORT YOUR POSITION IN REGARD TO A SANCTION?

WELL, YOUR HONOR, I BELIEVE THAT THIS COURT, IN A NUMBER OF CASES, INDEED CASES WHERE ATTORNEYS HAVE BEEN CON ADDICTED -- CONVICTED OF SUCH OFFENSES AS CONSPIRACY TO IMPORT DRUGS, MONEY-LAUNDERING, MAIL FRAUD, TAX EVASION, HAVE SUSPENDED RATHER THAN DISBARRED THE OFFENDING ATTORNEY. AND I BELIEVE THAT THIS IS NOT ONE OF THOSE

RARE CASES WHERE REHABILITATION IS HIGHLY IMPROBABLE. LET ME, IF I MAY, TALK A LITTLE BIT, ABOUT THE AGGRAVATING FACTORS THAT I THINK THE REFEREE APPLIED, THAT LEGALLY SHOULDN'T HAVE BEEN APPLIED. THE REFEREE ERRONEOUSLY FOUND, AS AN AGGRAVATING FACTOR, THAT STANDARD 9.22-F APPLIED. THE SUBMISSION OF A FALSE STATEMENT. THIS FACTOR WAS DETERMINED TO EXIST, BECAUSE MRACHSTTNT IN P OPPOSITION TO THE BAR -- IN OPPOSITION TO THE BAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT, WHICH CONTAINED THE FOLLOWING PARAGRAPH. QUOTE, I, ALSO, ENGAGED IN DELIBERATE IGNORANCE WITH RESPECT TO CERTAIN FACTS WHICH CAUSED OR SHOULD HAVE CAUSED ME TO QUESTION WHETHER MY LEGAL FEES FELL WITHIN THE SCOPE OF THE PROTECTIVE ORDER, CLOSE QUOTE. MR. DACHS ACKNOWLEDGMENT OF DELIBERATE IGNORANCE IS AN ADMISSION OF GUILTY KNOWLEDGE, BECAUSE IN THIS CASE, HAD MR. DACHS GONE TO TRIAL, THE JURY, IN ACCORDANCE WITH ELEVENTH CIRCUIT STANDARD INSTRUCTION NUMBER EIGHT WOULD HAVE BEEN INSTRUCTED THAT IT SHOULD FIND HE ACTED KNOWINGLY, IF HE ENGAGED IN DELIBERATE IGNORANCE, AS TO WHAT HE HAD EVERY REASON TO BELIEVE WAS THE FACT. SOMEHOW THE REFEREE SEND THE BAR'S LEGALLY-INACCURATE CLAIM THAT THIS STATEMENT AMOUNTED TO THE SUBMISSION OF FALSE EVIDENCE OR A FALSE STATEMENT. IN ADDITION, THE REFEREE ERRONEOUSLY FOUND, AS AN AGGRAVATING FACTOR, THAT STANDARD 9.22 C SHOULD APPLY, A PATTERN OF MISCONDUCT. LIKE MOST FEES IN CRIMINAL CASES MR. DACHS'S FEE WAS A FLAT FEE, PAID IN INSTALLMENTS OVER THE SPAN OF THE CASE. THE FACT THAT THE FEE WAS PAID IN INCREMENTS, RATHER THAN IN ONE LUMP SUM, DOES NOT MAKE IT A PATTERN OF MISCONDUCT.

WELL, TO GO BACK TO THE STATEMENT THAT YOU WERE TALKING ABOUT BEFORE, I GUESS IN MY MIND THESE TWO KIND OF COME TOGETHER, BECAUSE HE SAYS THAT HET SOME POINT IN THAT STATEMENT, IT SEEMS TO SAY THAT HE HAD SOME REASON, AT SOME POINT, TO BELIEVE THAT , WT T? WAS IT AFTER THE FIRST INSTALLMENT PAYMENT WAS MADE ? WAS IT AFTER THE SECOND INSTALLMENT PAYMENT WAS MADE? WHEN DID HE HAVE REASON TO BELIEVE THAT THIS WAS DRUG MONEY?

I THINK THERE WAS A CONFLUENCE OF FACTORS. WHAT MR. DACHS AND WHAT THIS CASE SHOWED WAS THAT ALL OF THE ATTORNEYS PRETTY MUCH ALL OF THE ATTORNEYS, WERE PAID BY THIRD PARTY CHECKS. THESE WERE CHECKS DRAWN ON FOREIGN BANK ACCOUNTS. ISSUED BY DIFFERENT PEOPLE. ALL PAYABLE TO THE GIVEN ATTORNEY. THE CHECKS, AS THEY WERE COMING INTO THE VARIOUS ATTORNEYS, WERE COMING IN IN ENVELOPES, ALL BEARING THE SAME POST OFFICE BOX RETURN ADDRESS. THE CHECKS WERE ACCOMPANIED WITH LETTERS THAT, ALL, SAID SUBSTANTIALLY THE SAME THING AS TO THE BASIS FOR THE PAYMENT. SO AS THESE CHECKS WERE BEING RECEIVED BY MR. DACHS, AFTER HE RECEIVED SEVERAL OF THEM, HE BEGAN TO WONDER. THIS DOESN'T LOOK RIGHT. SOMETHING SMELLS.

WHAT DID HE DO, ONCE HE BEGAN TO WONDER ABOUT IT?

HE ENGAGED IN DELIBERATE IGNORANCE, INSTEAD OF DOING WHAT HE SHOULD HAVE DONE, AND THIS IS WHAT HE TESTIFIED TO. HE SHOULD HAVE GONE BACK TO THE CLIENT AND INSISTED ON AN EXPLANATION.

BUT HE PLED GUILTY TO THE INFORMATION WHICH CHARGED THAT, DURING THE PERIOD FROM OCTOBER 15, 1991, THROUGH MARCH 12, 1996 YOU DID KNOWINGLY AND WILLFULLY RECEIVING, WITHOUT PRIOR APPROVAL OF THE COURT, APPROXIMATELY $1.8 MILLION IN PROCEEDS, AND THOSE ARE THE VERY CHECKS. RIGHT.

NOW, HE PLED GUILTY TO HAVING WILLFULLY TAKEN THEIR MONEY.

HE DID, AND THERE IS NOTHING --

WHY ISN'T THAT A PATTERN OFSC? LR, BECAUSE A PATTERN OF MISCONDUCT IMPLIES THE

COMMISSION OF A NUMBER OF CRIMES OR OFFENCES -- OR OFFENSES. OVER HERE THERE WAS THE RECEIPT OF A FEE.

CHIEF JUSTICE: JUSTICE ANSTEAD.

WOULD YOU ADDRESS THE FINDINGS THAT ARE CONTAINED AND SUMMARIZED AT THE TOP OF PAGE 8 OF THE REFEREE'S REPORT? THAT IS INVOLVING THE PARALEGAL MARILYN BONNACCIA? ARE YOU FAMILIAR WITH THAT?

YES, YOUR HONOR. I BELIEVE THAT THAT COMES FROM THE PROFFER THAT HAD BEEN MADE BY ASSISTANT UNITED STATES ATTORNEY PAT SULLIVAN AT THE PLEA COLLOQUY.

CAN WE TAKE THAT AS FINDINGS OF THE REFEREE THAT THE REFEREE RELIED ON?

YOUR HONOR, THERE WAS NO EVIDENCE OF THAT, OTHER THAN THE PROFFER MADE BY THE ASSISTANT U.S. ATTORNEY, AT THE TIME OF THE PLEA, AND WE HAD DENIED THE ACCURACY OF THAT PORTION OF THE PROFFER.

I DON'T SEE ANY -- WELL, I AM HAVING DIFFICULTY, BECAUSE THAT CON NOTES TO ME, IN YOUR STATEMENT, THAT THERE IS NO -- CON NOTES TO ME IN YOUR STATEMENT, THAT THERE IS NO OTHER MISCONDUCT HERE DURING THIS SAME PERIOD OF TIME. IF THIS PROFFER IS CORRECT, IT WOULD DEMONSTRATE THAT YOUR CLIENT, HAS ACTUALLY BEEN INVOLVED IN THIS DRUG TRAFFICKING AND THE TRANSFER OF FUNDS TO FACILITATE THE DRUG TRAFFICKING. IT LOOKS LIKE, OBVIOUSLY,, OBVIOUSLY THE CHARGES ARE VERY, VERY SERIOUS, BUT THIS, REALLY, JUST LOOSE PATE ENTLY CRIMINAL.

WELL, YOUR HONOR,E --

WOULD YOU AGREE WITH THE CHARACTERIZATION OF THAT, THAT HE HAS EMPLOYED A PARALEGAL THAT HAS, THEN, ACTED AS A MIDDLE PERSON, TO HAVE ACCESS TO THESEORISD,ED DRUG TRAFFICKERS, AND THAT SHE, THEN, FACILITATED THE MOVEMENT OF FUNDS AND DRUGS, TO, REALLY, KEEP THIS OPERATION GOING DURING THIS SAME PERIOD OF TIME. AM I CHARACTERIZING THAT CORRECTLY?

THAT IS THE CHARACTERIZATION OF THE GOVERNMENT'S PROFFER, AND WE STEADFASTLY DENY THE ACCURACY OF THAT PORTION OF THE PROFFER AT THE PLEA.

WHAT ARE WE TO MAKE OF THAT BEING SET OUT IN THE REFEREE'S FINDINGS?

IT SHOULD NOT HAVE, WE DON'T BELIEVE IT WAS PROPERLY THERE, BECAUSE THERE WAS NO EVIDENCE TO SUPPORT IT. THERE WAS NO, NONE WHATSOEVER IN THE RECORD OF THIS CASE, SAVE AND EXCEPT FOR THE PROFFER.

WAS THAT PROFFER CHALLENGED AT THE TIME THAT IT WAS OFFERED?

YES, YES, YOUR HONOR. IT WAS.

CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL.

THANK YOU.

MAY IT PLEASE THE COURT. I AM RANDY LAZARUS ON BEHALF OF THE FLORIDA BAR.

MS. LAZARUS, WOULD YOU ADDRESS, I FOUND PARTICULARLY SERIOUS, THE PORTION THAT I HAVE JUST BEEN DISCUSSING WITH COUNSEL, AND -- COULD YOU ADDRESS TO US OUR APPROPRIATE CONSIDERATION OF THAT, OR OUR IGNORING THAT?

I CERTAINLY DON'T THINK YOU SHOULD IGNORES IT, YOUR HONOR. ON PAGE, I AM ASSUMING YOU -- YOU SHOULD IGNORE IT, YOUR HONOR. ON PAGE, I AM ASSUMING YOU ARE REFERRING TO THE REPORT OF THE REFEREE RIGHT ON THE TOP. ANOTHER THIRD PARAGRAPH.

AND THE REFEREE HAD SUBSTANTIAL SUPPORT FOR THAT FINDING. IN FACT, IF YOU GO TO THE PLEA AGREEMENT WHICH THE REFEREE AND ENDED TO HER REPORT, PAGES 25-TO-35 SET OUT EXACTLY WHAT IS SET FORTH IN THE REPORT OF REFEREE, AND MR. BRONIS REPRESENTED MR. DACHS AT THE, AT THAT PLEA COLLOQUY, DURING THAT PLEA, AND HE AGREED WITH THEROFFER, WITH THE EXCEPTION OF SOME OTHER MINOR ELEMENTS, WHICH THE REFEREE LEFT OUT OF THE REPORT, AND JUST PRIOR TO THAT STATEMENT, THE REFEREE SAID THAT ON PAGE, ON THE BOTTOM OF PAGE 7 WELL WHILE SOME OF THE MATTERS WERE DISAGREED WITH BY MR. BRONIS, REFERRING TO THE PROFFER BY THE UNITED STATES ATTORNEY, THE FOLLOWING WERE NOT CONTESTED AT THE TIME OF THE PLEA, AND THAT IS EXACTLY WHAT IS SET FORTH IN THE PLEA AGREEMENT, NOT IN THE PLEA AGREEMENT N THE PLEA COLLOQUY, SO THE REFEREE HAD SUBSTANTIAL EVIDENTIARY SUPPORT FOR THAT FINDING, AND THERE IS NO REASON TO SET IT ASIDE. IT IS SUPPORTED BY THE RECORD, AND UNDER THE CASE LAW, THERE IS A PRESUMPTION OF DISBARMENT FOR A FELONY CONVICTION, UNLESS THAT FELONY CONVICTION IS MITIGATED DOWN, AND THE FIRST POINT FOR THIS COURT TO LOOK AT, WHICH IT APPEARS THE COURT HAS RECOGNIZED IS THE SERIOUSNESS OF THIS OFFENSE. THIS IS AN OFFENSE WHERE MR. DACHS DID NOT SIMPLY VIOLATE A COURT ORDER. HE PLED GUILTY TO OBSTRUCTION OF JUSTICE. AND OVER A PERIOD OF FOUR AND-A-HALF YEARS, HE ACCEPTED $1.8 MILLION IN VIOLATION OF JUDGE MORENO'S RESTRAINING ORDER AND THAT WASN'T $1.8 MILLION IN ONE CHECK T WAS CHECK AFTER CHECK AFTER CHECK.

WHAT WAS THE RESTRAINING ORDER? WHAT WAS PROHIBITED?

THE PROHIBITION WAS SPECIFICALLY, AND I BELIEVE IT WAS ABOUT $2 BILLION WERE NOT SUPPOSED TO BE TOUCHED BY ATTORNEYS, FAMILY MEMBERS, OR USED IN ANY WAY. PARTICULARLY ATTORNEYS FEES WERE SET FORTH, BECAUSE THESE MONIES WERE MONIES THAT WERE DRUG PROCEEDS OF THE FALCONNE AND MAG GRUDER EMPIRE.

-- AND MAGRUDER EMPIRE.

WHAT DID THAT REPRESENT? THEIR ASSETS?

ITPRESENTED, YES, THEIR ASSETS AND THEIR PROCEEDS, AND I DON'T HAVE THE RESTRAINING ORDER RIGHT IN FRONT OF ME, BUT IT SPECIFICALLY PROHIBITED ATTORNEYS, ANDIETN SAID MONIES TO BE USED FOR ATTORNEYS FEES.

SO IN OTHER WORDS ASSETS WERE THAT WERE ESSENTIALLY SHOULD HAVE BEEN FROZEN, WERE LIQUIDATED TO PAY --

I DON'T KNOW HOW THAT EXACTLY WENT, BUT I KNOW THAT THE MONEY WAS NOT FROZEN. IT WAS, FOR SOME REASON, OUT THERE, AND THE DEFENDANTS, FALCONE AND MacGLUTIS, HAD ACCESS TO THOSE FUNDS SOMEHOW, BUT THE JUDGE SAID NO ONE IS SUPPOSED TO TOUCH THOSE FUNDS AND NO ONE IS SUPPOSED TO USE THOSE FUNDS.

SO I GUESS THERE WOULD BE ALWAYS, IF YOU ARE A DEFENSE LAWYER REPRESENT AGO DRUG TRAFFICKER, THE QUESTION AS TO WHETHER -- REPRESENTING A DRUG TRAFFICKER, THE QUESTION AS TO WHETHER THE MONIES THAT YOU ARE RECEIVING ARE COMING THROUGH THE PROCEEDS OF THE BUSINESS. THIS IS MORE THAN THAT THAT WAS ESTABLISHED, THAT IS BECAUSE OF THE SPECIFIC ORDER OF JUDGE MOREEEN-.

YES, AND WE DON'T REALLY HAVE TO GET TO THAT -- OF JUDGE MORENO.

YES, AND WE DON'T HAVE TO GET TO THAT POINT, BECAUSE MR. DACHS PLED GUILTY TO OBSTRUCTION OF JUSTICE FOR VIOLATING THE COURT ORDER, SO WE DON'T NEED, TODAY, TO GET BEHIND THAT FELONY CONVICTION. WHAT WE ARE REALLY HERE, TODAY, IS ON THE ISSUE OF DISCIPLINE, AND INTERESTINGLY, JUDGE POOLER, THE REFEREE IN THIS CASE, WAS LOOKING TO THE STATES OF THE SENTENCING JUDGE, WHICH WAS JUDGE SIKES, WHO WAS A FORMER PRESIDENT OF THE FLORIDA BAR, AS WELL AS A MEMBER OF THE BOARD OF GOVERNORS, AND JUDGE SIKES'S STATEMENTS ARE VERY INSTRUCTIVE, AND THEY WERE INSTRUCTIVE TO THE REFEREE, AND SHE STATED THEM IN HER REPORT. JUDGE SIKES SAID THAT WHAT MR. DACHS DID WAS SUCH A FUNDAMENTAL VIOLATION OF ONE'S OATH AS AN OFFICER OF THE COURT. SHE, ALSO, SAID IT WAS DIFFICULT VER TRUST MR. DACHS AGAIN OR THAT ANYONE ELSE SHOULD TRUST HIM, IF HE WAS WILLING TO POISON THE SYSTEM THAT HE TOOK AN OATH TO UPHOLD.

WASTSE SENTENCING JUDGE?

SHE WAS THE JUDGE FOR THE ENTIRE PROCEEDING AS WELL AS THE SENTENCING JUDGE.

IN OTHER WORDS SHE PRESIDED OVER THE TRIAL OF THE ORIGINAL DEFENDANTS. IS THAT BECAUSE ARE SAY SOMETHING.

SHE WAS THE SENTENCING JUDGE OF MR. DACHS. I THINK, I AM NOT EXACTLY SURE WHEN THE TRIAL TOOK PLACE OF THE DEFENDANTS, BUT I DO KNOW THAT CHICAGO SENTENCED MR. DACHS, AND SHE WAS -- I DO KNOW THAT SHE SENTENCED MR. DACHS AND SHE WAS THE ONE THAT PRESIDED OVER HIS MATTERS.

WAS THERE A CODEFENDANT FOR THIS CHARGE, ANOTHER ATTORNEY?

THERE IS RICHARD MARTINEZ, WHO WAS, ALSO PLED GUILTY TO OBSTRUCTION OF JUSTICE, AND A REFEREE DID RECOMMEND DISBARMENT FOR MR. MARTINEZ, WHO HAD EVEN MORE MITIGATING CIRCUMSTANCES THAN WHAT, THAN WHAT WAS SET OUT IN THIS CASE.

WHAT IS THE STATUS OF THAT CASE?

THE STATUS OF THAT IS THAT THERE IS THE RECOMMEND DALTION OF -- THE RECOMMENDATION OF DISBARMENT BY THE REFEREE, AND THE BRIEFS ARE UP BEFORE THIS COURT. AS FAR AS I KNOW, ORAL ARGUMENT HAS NOT BEEN SET ON THAT PARTICULAR CASE. BUT TO GET FURTHER INTO WHY THE REFEREE DID WHAT SHE DID IN THIS CASE, WE CAN LOOK AT ALL OF THE AGGRAVATING FACTORS THAT WERE FOUND BY HER, WHICH OUTWEIGHED THE MITIGATING FACTORS, AND THERE WERE FIVE. SHE FOUND THAT THERE WAS A DISHONEST AND SELFISH MOTIVE, THAT --

WASN'T THAT ONE OF THE AGGRAVATING CIRCUMSTANCES THAT MR. DACHS TAKES EXCEPTION TO.

I THINK HE TAKES EXCEPTION TO ALL OF THEM, BUT AS FAR AS THERE BEING A DISHONEST --

AS I RECALL, HE SAYS, BASICALLY, THAT THIS WAS FOR AN ATTORNEYS FEE, SO THAT DOESN'T DEMONSTRATE DISHONEST, I MEAN, DISHONEST OR SELFISH MOTIVE.

I JUST, I DON'T SEE HOW THAT, REALLY, HAS ANYTHING TO DO WITH ANYTHING, SINCE WHAT HE DID WAS HE VIOLATED A COURT ORDER BICEP BICEPING ATTORNEYS FEES THAT WERE IN VIOLATION OF THE COURT ORDER, WHICH ULTIMATELY CONSTITUTED A CRIME.

HE, ALSO, MADE SOME STATEMENT THAT HE, ALSO, THAT HE COULDN'T BE A DISHONEST MOTIVEUSE HAVNG MORE MONEY ON SOME OTHER CASE, AND I WASN'T QUITE SURE WHAT WAS

MEANT BY THAT.

WELL, THERE WAS, THAT WAS SE SAID AT HEARING, AT THE FINAL HEARING, BUT THERE WAS NO EVIDENCE PUT FORTH ON BEHALF OF MR. DACHS, WHO SHOW THAT THERE WAS SOME OTHER CLIENTS OUT THERE WILLING TO PAY HIM $1.8 MILLION. OBVIOUSLY HE CHOSE THE FALL CONE AND -- THE FALCONE AND MacGLUTIS CLIENTS. I DON'T KNOW WHETHER THIS COURT HAS TO DETERMINE WHETHER HIS ATTORNEYS FEES WERE EARNED OR NOT. IT IS IRRELY RANT TO THE FACT THAT HE PLED -- IT IS IRRELEVANT TO THE FACT THAT HE PLED GUILTY TO VIOLATIONS AND ACCEPTED CHECKS OVER AND OVER AGAIN OVER A PERIOD OF YEARS, AND THE PATTERN OF MISCONDUCT, THAT WAS THE ARGUMENT THAT I MADE THAT IT WAS THE RECEIPT, TIME AND TIME AGAIN OF THESE LEGAL FEES, IN VIOLATION OF THE COURT ORDER. THE THIRD --

DO YOU CONTEND THAT THERE WAS ANY, THAT HE, FROM THE BEGINNING KNEW THAT HE WAS VIOLATING THE PROTECTIVE ORDER, OR DID THERE COME SOME POINT IN TIME WHETHER HE HAD THE REALIZATION THAT THIS MAY BE IN VIOLATION OR WAS IN VIOLATION OF THE COURT ORDER.

WELL, YOU SEE, THERE IS A DIFFERENCE BETWEEN WHAT MR. DACHS SAYS IN THE BAR PROCEEDING AND WHAT HE SAID DURING THE FEDERAL COURT PROCEEDING, AND IN THE FEDERAL COURT PROCEEDING, AT THE TIME OF THE PLEA COLLOQUY, HE BASICALLY, AFTER THE PLEA COLLOQUY, HE BASICALLY SAID I AM GUILTY. I KNEW I DID THIS. DURING THE REFEREE TRIAL, HE, DURING THE TRIAL IN THE BAR PROCEEDING, HE TOOK A DIFFERENT POSITION, WHICH WAS I REALLY DIDN'T KNOW, BUT THERE WAS SOME POINT WHERE SOMETHING CAUGHT MYTENTION, AND I WAS CONCERNED ABOUT IT, AND HE DOESN'T REALLY IDENTIFY AT WHAT POINTT. HE SAYS IT WAS ALL OF THESE DIFFERENT FACTORS THAT CONCERNED HIM, THAT CAUSED HIM TO, AT SOME POINT, REALIZE HE WAS ENGAGING IN SOMETHING HE SHOULDN'T HAVE, BUT WHAT IS INTERESTING ABOUT THAT IS LET'S TAKE THAT AS TRUE. I DON'T AGREE WITH THAT, BUT LET'S TAKE THAT AS TRUE. HE CONTINUED TO VIOLATE THE COURT ORDER. EVEN IF THAT WAS SO, WHATEVER AT WHATEVER -- AT WHATEVER POINT IN TIME HE DID THAT, HE CONTINUED TO ACCEPT FUNDS DURING THIS PERIOD OF TIME, WHICH IS IN VIOLATION OF THE COURT ORDER, SO WE ARE BACK TO THE PATTERN OF MISCONDUCT, AND THEN WE HAVE THE MULTIPLE OFFENSES, WHICH IS THE THIRD AGGRAVATING FACTOR. WE HAVE THIS PARTICULAR CRIME THAT HE PLED GUILTY TO, AS WELL AS SOME TESTIMONY THAT CAME OUT DURING A DEPOSITION, WHICH WAS THAT MR. DACHS ENGAGED IN TAKING DRUGS WITH HIS CLIENTS, FOR AT SOME POINTS IN TIME DURING HIS REPRESENTDATION OF THEM.

THESE PARTICULAR CLIENTS?

THESE CLIENTS, WITH THESE PARTICULAR CLIENTS, DURING THE '78 0S, HE -- DURING THE '80s, HE SAID AT DIFFERENT POINTS IN HIS LIFE, HE DID DO COCAINE WITH THEM, AND THAT CAME OUT IN HIS DEPOSITION TESTIMONY, AND THAT WAS AN AGGRAVATING FACTOR FOUND BY THE REFEREE, WHICH GOES INTO THE MULTIPLE OFFENSES. THE NEXT AGGRAVATING FACTOR WAS THAT HE HAD A SUBSTANTIAL EXPERIENCE IN THE PRACTICE OF LAW. HE WAS A MEMBER, HE BECAME A MEMBER OF THE BAR IN 1978. THIS ACTIVITY BEGAN IN 1991. HE WAS ALREADY A MEMBER OF THE BAR FOR 13 YEARS. THEN THE LAST AGGRAVATING FACTOR WAS THE SUBSTANTIAL EXPERIENCE IN THE PRACTICE OF LAW. EXCUSE ME. THE SUBMISSIONS OF FALSE STATEMENTS, WHICH THE REFEREE FOUND, BECAUSE IN THE AFFIDAVIT OF, IN OPPOSITION TO OUR MOTION FOR SUMMARY JUDGMENT, MR. DACHS CLAIMED, AS I MENTIONED EARLIER --

. DACHS, DOES THE RECORD REFLECT THAT HIS, WHETHER HIS PRACTICE WAS SOLELY AS A CRIMINAL DEFENSE LAWYER OR WHAT WAS, WHAT DOES TCORDT AS HAD DURING THOSE 13 YEARS?

THE RECORD REFLECTED THAT A GOOD PART OF HIS PRACTICE WAS BEFORE THE FEDERAL COURTS IN CRIMINAL DEFENSE, AND IN FACT, HE REPRESENTED THESE PARTICULAR DEFENDANTS,

FALCONE AND MacGLUTA IN THE '80, SO HE HAD EXPERIENCE IN CRIMINAL LAW IN THE COURTS, AND I ASKED HIM, DURING MY CROSS-EXAMINATION, WHEN YOU DID LITIGATION, WEREN'T THERE COURT ORDERS, AND DIDN'T YOU KNOW YOU ARE SUPPOSED TO OBEY COURT ORDERS, AND HE AGREED THAT HE WAS AWARE OF THAT, SO HE DID HAVE EXPERIENCE IN THESE AREAS. IN CONCLUSION, I WOULD JUST ASK THE COURT TO LOOK AT THE FINAL STATEMENT THAT THE REFEREE MAKES ON, WHICH IS QUITE INTERESTING ON PAGE 8 OF HER REPORT, WHERE SHE SAYS TO TAKE THE REPEATED VIOLATION OF A COURT ORDER DONE IN A KNOWING AND WILLFUL MANNER, FOR SELFISH MOTIVES, AND SEEK A PENALTY LESS THAN DISBARMENT, WOULD GIVE THE PUBLIC A VIEW OF THE FLORIDA BAR AS AN AGENCY WHICH DOES NOTPLICITIES MEMBERS. PUBLIC CONFIDENCE IN THE FLORIDA BAR WOULD DECREASE. AND WITH THAT, WE WOULD ASK YOU TO UPHOLD THE REFEREE'S FINDINGS OF DISBARMENT IN THIS CASE. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. REBUTTAL.

WITH REGARD TO THE ISSUE OF MULTIPLE OFFENSES, THE REFEREE CAME TO THIS CONCLUSION, BECAUSE DURING HIS DEPOSITION AND THE DISCIPLINARY PROCEEDING, MR. DACHS CANDIDLY ADMITTED THAT, APPROXIMATELY 20 YEARS AGO, HE HAD USED COCAINE. THAT WAS IN THE EARLY '80s. EVEN IF SUCH REMOTE EVENT COULD PROPERLY BE CONSIDERED AN AGGRAVATING FACTOR, ITD HAVE BEEN BUT WAS NOT OFFSET BY THE REFEREE APPLYING STANDARD 9.32-M, WHICH STATES THAT THE REMOTENESS OFR SS A MITIGATING FACTOR. THE REFEREE'S FINDING, REGARDING THE SUBSTANTIAL EXPERIENCE --

DOES THAT REALLY APPLY TO, WHEN THE CHARGED OFFENSE THAT HE HAD BEEN CHARGED WITH USING COCAINE IN THE '80s, AS FAR AS IN THE DISCIPLINARY PROCEEDING, BUT HERE IT IS BEING USED AS AN AGGRAVATING FACTOR, ISN'T THAT DIFFERENT?

NO, NO, YOUR HONOR. I DISAGREE WITH THAT, BECAUSE WHEN YOU LOOK AT THE STANDARD -- IF IT WAS THAT REMOTE, IT WOULDN'T APPLY, EITHER WAY, NOT WHETHER IN AND OF ITSELF IT WAS MITIGATING.

CHIEF JUSTICE: THANK YOU. THE COURT WILL NOW TAKE ITS RECESS. THE COURT WILL BE IN RECESS FOR TEN MINUTES.