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The Florida Bar v. Alan Ira Karten

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

MAY IT PLEASE THE COURT. MY NAME IS RICHARD STRAFER AND I REPRESENT ALAN KARTEN, THE PETITIONER. I WOULD LIKE TO CONCENTRATE PRIMARILY ON THE SUFFICIENCY OF THE EVIDENCE FOUND IN THE CASE. THE DISPUTE IN THE CASE WAS WHETHER OR NOT MR. KARTEN MADE AN ORAL AGREEMENT IN SEPTEMBER 1997, TO BUY BACK FOUR CARS FROM THE U.S. GOVERNMENT, BEFORE HIS GUILTY PLEA TO DRUG CHARGES.

LET ME START BY ASKING YOU, MR. KARTEN ADVANCED \$30,000 ON THE BASIS FOR HIS CLIENT. IS THAT CORRECT?

THAT'S CORRECT.

TO THE FEDERAL GOVERNMENT?

THAT'S CORRECT, YOUR HONOR.

AND DID THAT HAVE ME PROBLEM WITH THE RULES, IN AND OF ITSELF? CAN A LAWYER JUST ADVANCE, JUST PAY FOR THOSE AMOUNTS ON BEHALF OF A CLIENT?

WELL, HE ENTERED A CONTRACT WITH THE CLIENT, AFTER THE CARS HAD ALREADY BEEN FORFEITED. THEY ALREADY, THE CARS ARE PROPERTY OF THE UNITED STATES GOVERNMENT AT THE TIME, SO THE AGREEMENT WITH THE CLIENT WAS I WILL ADVANCE \$30,000 --

HOW WAS THAT BOOKED ON THE, ON MR. KARTEN'S, THE \$30,000 HE PAID TO THE GOVERNMENT?

I AM NOT SURE THERE WAS ANY TESTIMONY IN THE RECORD AS TO THE BOOKING OF THE LOAN.

HE MADE A LOAN TO HIS CLIENT. IS THAT WHAT IT WAS?

NO. IT WAS A CONTRACT TO BUY THE CARS. THERE WAS NOTHING, THERE WAS NO TESTIMONY AND NO FINANCIAL ARRANGEMENTS THAT I AM AWARE OF THAT INDICATED HOW MR. KARTEN'S FINANCIAL RECORDS SHOWED THE \$30,000.

A CONTRACT TO BUY ALL OF THE CARS THAT THE GOVERNMENT HELD, AND THAT IS THAT YOUR CLIENT, THE LAWYER, CONTRACTED WITH HIS CLIENT TO BUY THE CARS FROM HIS CLIENT?

NO. BUY THE CARS FROM THE FEDERAL GOVERNMENT. THE FOUR CARS HAD ALREADY BEEN FORFEITED AS --

LET ME, IN OTHER WORDS, THE LAWYER WHO HAD A CLIENT THAT OWNED THESE CARS AND APPARENTLY WAS ENTITLED TO HAVE THEM RETURNED, THE ONES THAT ARE SUBCT HERE, THE LAWYER THAT RECEIPTS THAT PERSON -- THAT REPRESENTS THAT PERSON MADE A DEAL WITH THE GOMENT FOR THE LAWYER TO BUY THE CAR? ANOTHER CLIENT HAD NO RIGHT TO HAVE THE CARS BACK. THE CARS HAD BEEN FORFEITED AS PART OF THE PLEA AGREEMENT. THE CARS WOULD HAVE BEEN THE UNITED STATES PROPERTY. THE CARS WERE AT THAT TIME.

SO THE LAWYER WASN'T TRYING TO NEGOTIATE WITH THE GOVERNMENT ON BEHALF OF THE CLIENT, TO GET THE CARS BACK. HE WAS NOW JUST LOOKING OUT FOR HIMSELF.

WELL, I WOULDN'T SAY THAT I THINK BOTH THE CLIENT AND THE LAWYER SAW AN OPPORTUNITY TO POSSIBLY MAKE SOME MONEY BY AGREEING TO BUY BACK THE CARS FROM THE U.S. GOVERNMENT, AND THE CLIENT HAD --

HOW WAS THE CLIENT GOING TO MAKE SOME MONEY?

THE CLIENT WAS, ACCORDING TO THE ORAL AGREEMENT, ONCE MR. KARTEN SOLD THE \$30,000 WORTH OF CARS AND GOT BACK THE INVESTMENT, THE PROFIT WOULD BE SPLIT WITH THE CLIENT.

WHEN WAS THAT SAID?

BY THE TIME THE PROFIT WAS REACHED, THE PROFIT WAS ATTAINED IF THERE WAS A PROFIT, ON MARCH 16, 1998. ON MARCH 8, THAT IS BEFORE THAT PROFIT WAS EVER REALIZED, THE CLIENT HAD ALREADY BEGUN MAKING ACCUSATIONS AGAINST MR. KARTEN.

AND IN THE FACE OF THAT, THE LAWYER, IF I UNDERSTAND IT CORRECTLY, AND YOU HELP ME WITH THE FACTS BECAUSE YOU ARE MORE FAMILIAR THAN I AM, THE LAWYER ENDED UP MAKING A PROFIT OF \$30,000?

NO. HE BUYS BACK THE CARS.

I THOUGHT THE THING WAS THE LAWYER, WITH HIS OWN MONEY, OKAY USED \$30,000 TO BUY THESE CARS OR GET THEM FROM THE GOVERNMENT.

THAT'S CORRECT.

OKAY. AND THEN EVENTUALLY, WHEN THE CARS WERE SOLD, THE LAWYER ENDED UP GETTING \$60,000 FROM THE SALE OF THE CARS. IS THAT --

HE, THE 60, IT IS 30 AND 24. HE GETS THE FIRST \$30,000 BACK. THE INITIAL INVESTMENT, HE GETS BACK SHORTLY THEREAFTER, SHORTLY AFTER --

ON THE SALE OF ONE CAR.

SALE OF, NO, OF THE FOUR CARS TO WOLTON. THEN THE, LATER, NOT UNTIL MARCH 18, 13-THROUGH-16, APPROXIMATELY 1998, IS WHEN THE OTHER CAR WAS SOLD BY WOLTON, AND THAT IS WHEN THE \$30,000 THAT WOULD HAVE BEEN THE SO-CALLED PROFIT --

IN OTHER WORDS, DID, I MEAN, MAYBE I AM NOT MAKING MY QUESTIONS CLEAR. YOU SAY HE GOT THE FOUR CARS WERE THE \$30,000. IS THAT CORRECT?

WOLTON --

NO. NO. YOUR CLIENT, THE LAWYER.

YES.

ALL RIGHT. HE PAID \$30,000 AND GOT FOUR CARS FROM THE GOVERNMENT.

CORRECT.

OKAY. AND THEN DID HE SIGN THOSE CARS OVER TO SOMEBODY ELSE?

YES. FOR \$30,000.

ALL RIGHT. NOW, AND WAS THAT THE END OF THE DEAL THEN?

NO. THEN THAT PERSON WAS TRYING TO SELL --

WHAT, IN OTHER WORDS DID YOUR CLIENT, THEN, IN ADDITION TO GETTING THE \$30,000, REIMBURSED, THAT HE HAD PAID, DID HE MAKE A SEPARATE DEAL, NOW, WITH WOLTON THAT I AM ENTITLED TO SO MUCH MONEY, IF YOU SELL ANY OF THESE CARS?

YES. HE WAS ENTITLED TO, UP TO ANOTHER \$30,000. 24 OF THAT, HE, THEN --

MR. STRAFER, AS I UNDERSTAND FROM YOUR BRIEF, IT WENT INTO LONG DETAIL ABOUT THE FACT THAT THE CLIENT DIDN'T ACTUALLY OWN THE CARS TO BEGIN WITH, THAT THEY WERE TITLED TO SOME THIRD PARTY THAT WAS SOME AUTO DEALERSHIP. IS THAT NOT CORRECT?

YES, THERE WAS A DISPUTE AS TO WHETHER HE WAS REALLY THE OWNER OF THE CARS.

AND THE FACT WAS, AS I UNDERSTAND WITH THE BRIEFS HERE, SAY, AND THE UNDERLYING RECORD, IS THAT THE WHAT THE -- IS THAT WHAT THE GOVERNMENT DEMAND, THE UNITED STATES GOVERNMENT, WAS THAT THIS CLIENT FORFEIT THE \$30,000. THAT IS THE \$30,000 WE ARE TALKING ABOUT, CORRECT?

IT BECAME \$30,000 AFTER THE DISAGREEMENT, BUT IT WAS INITIALLY FORFEIT ALL OF THOSE FOUR CARS.

BUT THEN WHAT HAPPENED WITH THE DEAL WITH THE GOVERNMENT, WAS THE GOVERNMENT MADE A DEAL WITH THE CLIENT THAT SAID PAY THE GOVERNMENT \$30,000, AND WE WILL NOT CONTINUE WITH AN INTEREST IN THESE FOUR CARS. THAT WAS BASICALLY THE DEAL WITH THE GOVERNMENT. RIGHT?

I WOULDN'T CHARACTERIZE IT AS THAT, NO. I WOULD SAY THAT THE GOVERNMENT HAD TITLE TO THE CARS, BASED ON THE FORFEITURE T WAS THEIR PROPERTY, AND THEN BECAUSE THE CARS ARE WASTING ASSETS --

BUT WHAT TOTALLY CONFUSES ME ABOUT THE POSITION THAT MR. KARTEN IS TAKING, IS HOW DID EITHER THE LAWYER OR THE CLIENT HAVE AN INTEREST TO GIVE AWAY, IN THOSE AUTOMOBILES, IF THEY DIDN'T OWN THEM?

THE GOVERNMENT TOOK THE POSITION THAT THEY WERE HIS CARS AND THEREFORE THEY MADE HIM FORFEIT THEM TO THE U.S., AS PART OF HIS PLEA AGREEMENT, SO THEY TOOK THE POSITION THAT HE FORFEIT THE CARS, IN ORDER FOR THE PURCHASE AFTERWARD TO BE ACCOMPLISHED, BECAUSE HE HAD BEEN DECLARED BY THE GOVERNMENT THE OWNER OF THESE CARS. HE HAD TO BE PART OF THIS AGREEMENT, IN ORDER TO BUY THEM FROM THE GOVERNMENT.

THE GOVERNMENT GOT SOME CARS, IS THAT CORRECT?

TRUE. TRUE.

THEY HAVE GOT ONE SET OF CARS AND THERE WAS A SECOND SET OF CARS, IN WHICH HE LATER, I READ, WAS TRYING TO HIDE HIS INTEREST IN THE CARS, SO HE HAD THEM IN SOMEBODY ELSE'S NAME, BUT THE GOVERNMENT WAS NOT INTERESTED IN THOSE AND LET IT BE KNOWN. AREN'T THOSE THE FACTS?

THE FACT AS TO WHO OWNED THE CARS AND WHO SAID WHAT ABOUT WHOSE OWNERSHIP IS

VERY CONFUSED BECAUSE THE CLIENT TELLS THE FBI I DID NOT OWN THE CARS, BUT AT THE HEARING, HE SAID THAT HE OWNED THE CARS.

HE SAID HE HAD AN INTEREST IN IT.

NO, HE DIDN'T SAY THAT. THAT IS WHAT THE REFEREE SAID HE SAID. THE REFEREE FOUND HIM CREDIBLE, BECAUSE THE CLIENT TESTIFIED THAT I HID MY INTEREST IN THE CARS. THERE IS NO TESTIMONY BY THE CLIENT.

CHIEF JUSTICE: I THINK THERE WAS A QUESTION BY JUSTICE HARD HARDING.

YOU INDICATED YOU HAD THREE POINTS THAT YOU CAN'T WANTED TO ARGUE. WHAT ARE THOSE? NAME THEM OUT.

IN RAYMOND, BASED ON THE ORDER OF DISBARMENT, IS TESTIMONY CAN'T BE BASED ON THE CONCLUSIONS OF A WITNESS. AND I CAN POINT OUT EIGHT OBJECTIVE FACTS WHY HIS TESTIMONY SHOULD NOT BE ALLOWED. AND ON PAGE 87 OF THE RECORD --

YOU HAVE A LIMITED AMOUNT OF TIME, AND IF YOU WANT TO SPEND ALL YOUR TIME ON THIS ONE ISSUE THAT, IS FINE, BUT MY QUESTION IS YOU INDICATED YOU HAD THREE ISSUES.

THE SECOND ISSUE IS WHETHER THIS CASE SHOULD BE REMANDED FOR ADDITIONAL FACT FINDING, BASED ON EVIDENCE THAT FIRST REFEREE WOULD NOT CONSIDER THAT CAME OUT AT THE PENALTY PHASE AND THEN ADDITIONAL EVIDENCE THAT I ASKED THE COURT TO CONSIDER, TO REMAND FOR ADDITIONAL FACT FINDING THAT HAS HAPPENED SINCE, BASED ON A MIAMI HERALD ARTICLE THAT INDICATED THAT LOYNAS, IN FACT, CONCEALED FROM THE COURT TO GET CJA COUNSEL AND AT THE TIME OF THE FORFEIT YUFERMENT THE MIAMI HERALD INDICATED IN A PUBLISHED ARTICLE THAT MR. LOYNAS OWNED A BODY SHOP WITH 70 CARS FROM MANY YEARS, AND IF THAT IS TRUE WAS NOT ENTITLED TO CJA COUNSEL AND DEFRAUDED THE U.S. GOVERNMENT WHEN HE ENTERED INTO HIS PLEA AGREEMENT, SO WE ASKED FOR A REMAND BECAUSE THE MAN IS NOT CREDIBLE AND THE REFEREE'S FINDINGS SHOULD NOT BE ACCEPTABLE.

LET'S ASSUME THAT THE FACTS SHOULD NOT SUPPORT THE REFEREE'S FINDINGS. WOULD YOU TELL US WHY THIS IS NOT A CASE FOR DISBARMENT.

YES. IT SHOULDN'T BE A CASE FOR DISBARMENT, FIRST OF ALL, BECAUSE MR. KARTEN HAS A VERY GOOD RECORD AS A LAWYER. HE DOES A LOT OF PRO BONO WORK. HE HAS ONE MINOR PRIOR INCIDENT THAT HAPPENED AFTER THIS CASE, AND THAT IS NUMBER ONE. NUMBER TWO, IS MOST OF THE AGGRAVATING FACTORS, REALLY, WERE NOT PROPER FACTORS. THE REFEREE FOUND THAT HE SHOULD BE AGGRAVATED BECAUSE HE DEFENDED THE CHARGES AND DID NOT SHOW THE PROPER, DIDN'T WANT TO PAY BACK RESTITUTION, ET CETERA, AND THOSE ARE DECLARED BY THIS COURT IN MOGUL AND OTHER DECISIONS, TO BE AN IMPROPER BASIS TO AGGRAVATE. THE FINAL FACTOR WAS THAT THE LOYNAS WAS A VULNERABLE VICTIM, AND I SUBMIT THAT, EVEN THOUGH HE WAS INCARCERATED, HIS ACTIVITIES IN THIS CASE SHOW THAT HE WAS TRULY NOT A VULNERABLE VICTIM, AND THAT ESPECIALLYLY IF THE COURT WERE TO GO INTO A REMAND, WHILE HE WAS TESTIFYING AND WHILE THE CJ WAS APPOINTED PUBLIC DEFENDER, IT WOULD SHOW --

WHAT WOULD BE A PROPER PUNISHMENT?

I WOULD SUGGEST A SUSPENSION AT THIS TIME.

WHY WOULDN'T THIS BE A CASE OF SERIOUSNESS WHERE LAWYERS HAVE MISAPPROPRIATED A CLIENT'S FUNDS?

BECAUSE IT IS NOT THE CLIENT'S FUNDS AT THIS POINT.

DID THESE CARS ACTUALLY BELONG TO THE CLIENT HERE?

LET'S ASSUME, FOR THE SAKE -- --.

WHEN THE GOVERNMENT TURNED THE CARS BACK OVER, HE WAS, THE GOVERNMENT WAS RETURNING THEM TO THE DEFENDANT.

THAT IS WHAT THE AGREEMENT SAYS. AND THE, HOWEVER, THE DEFENDANT WAS IN JAIL, SO OBVIOUSLY HE COULD NOT BE TO THE DEFENDANT. NUMBER ONE. NUMBER TWO, UNDER THE FORFEITURE LAWS, REALLY THE DEFENDANT COULD NOT GET BACK THE CARS, BECAUSE BY STATUTE, THE GOVERNMENT IS PRECLUDED FROM SELLING BACK THE CARS TO THE DEFENDANT.

SO YOU ARE SAYING THAT THIS IS AN IMPROPER AGREEMENT.

WELL, IF IT WAS DIRECTLY TO THE DEFENDANT. I THINK WHAT HAPPENED HERE IS THAT THE PROSECUTORS SAW AN OPPORTUNITY TO MAKE SURE THE GOVERNMENT GOT SOME MONEY OUT OF THESE CARS THAT WERE DETERIORATED AND WAS -- DETERIORATING AND WAS WILLING TO SELL THEM TO MR. KARTEN.

WHY COULDN'T THE DEFENDANT GET THE CARS BECAUSE HE WAS IN JAIL? IN OTHER WORDS, I ASSUME THAT LET'S SAY A MARRIED MAN IS IN JAIL AND HE GETS CARS BACK. WHY CAN'T HE GET THE CARS --

IT COULD HAVE SAID THAT, AND THE REASON I POINT THAT OUT IS BECAUSE THE WIFE GETS BACK A MERCEDES IN THE SAME AGREEMENT, BUT THE AGREEMENT DOESN'T SAY THAT THESE FOUR CARS, ALSO, ARE GOING BACK OR TO BE KEPT BY THE WIFE.

CHIEF JUSTICE: YOU ARE INTO YOUR REBUTTAL TIME.

I THINK I WOULD LIKE TO SAVE MY REBUTTAL TIME. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: MS. LAZARUS.

GOOD MORNING, YOUR HONORS. I AM RANDI LAST RUSS ON BEHALF OF -- I AM RANDI LAST REDUCE ON BEHALF OF THE FLORIDA BAR, AND IT IS AN HONOR TO APPEAR PERSONALLY AND NOT JUST ON THE PAGES OF THE TRANSCRIPT. JUDGE BAGLEY LISTENED VERY CAREFULLY TO THIS CASE. THE TESTIMONY AND EVIDENCE ENCOMPASSED NEARLY 600 PAGES OF TRANSCRIPT. AND WHAT JUDGE BAGLEY FOUND AND WHAT THIS COURT SEEMS TO UNDERSTAND IS THAT MR. KARTEN, EMBARKED ON A PATHO DEFRAUD THE CLIENT, MR. LOYNAS FROM THE GET-GO. THERE WAS NO DEAL WITH MR. KARTEN. THE ARRANGEMENT AND THE STIPULATION THAT THE GOVERNMENT ENTERED INTO WAS WITH MR. LOYNAS. MR. KARTEN WAS THE LAWYER, PRESUMABLY THERE TO PROTECT THE CLIENT'S INTEREST, BUT IT DOESN'T SEEM TO BE THE CASE, BECAUSE IT SEEMED FROM THE BEGINNING, THAT WASN'T MEANT TO BE. THE DEAL WAS THAT THE FOUR CARS WERE TO BE RETURNED TO THE DEFENDANT. THE STIPULATION SAID TO THE DEFENDANT. THEY WERE ACKNOWLEDGED BY THE GOVERNMENT AS THE DEFENDANT'S ASSETS. THE ISSUE OF OWNERSHIP WAS NOT AN ISSUE. THE GOVERNMENT ARRANGED WITH MR. KARTEN, THAT A, WITH MR. KARTEN AND MR. LOYNAS THAT A CHECK VIA MR. KARTEN SHOULD BE PAID TO THE GOVERNMENT, IN THE AMOUNT OF \$30,000, FOR RETURN OF THESE FOUR VEHICLES. THERE WAS A FIFTH VEHICLE TT WAS TO BE RETURNED TO MR. LOYNAS'S WIFE, AND SHE DID GO BACK UP THAT CAR.

YOUR OPPOSING COUNSEL SEEMS TO JR. ON -- CENTER ON THAT -- SEEMS TO CENTER ON THAT THESE FOUR CARS, BUT ISN'T THERE A LETTER IN THE RECORD OF THE LAWYER TRYING TO GET

SOME DOCUMENT, POWER OF ATTORNEY SIGNED?

THAT'S CORRECT, AND THAT IS PART OF MR. KARTEN'S EMBARKATION OF HIS PATH TO DEFRAUD MR. LOYNAS. FIRST HE SENT MR. LOYNAS A RETAINER AGREEMENT, IN WHICH HE TRIED TO GET HIM TO SIGN AND BASICALLY SAY I AM GOING TO COLLECT SOME MONEY OUTSIDE OF THIS CJA, AND MR. LOYNAS CONTACTED MR. KARTEN'S OFFICE ON NUMEROUS OCCASIONS, AND HE WAS STONEWALLED. HE NEVER COULD GET THROUGH TO THE LAWYER. THE ONLY TIME HE GOT THROUGH TO THE LAWYER WAS MR. KARTEN, WAS WHEN THE LAWYER SAID, WE ARE WAITING FOR A RELEASE FROM THE MARSHAL'S OFFICE. WE ARE WAITING FOR A RELEASE FROM THE GOVERNMENT, BECAUSE THE CLIENT WANTED TO GET BACK THE CARS, AND AS THE COURT POINTED OUT, JUST BECAUSE THE CLIENT WAS IN JAIL, THAT DOESN'T MEAN HE COULDN'T MAKE AN ARRANGEMENT WITH HIS WIFE OR WITH HIS FRIEND WITH SOMEONE TO GO BACK UP -- PICK UP THE CARS, SO THE SENDING OF THE RETAINER AGREEMENT WAS ONE OF THE FIRST INSTANCES, AND THEN THE LAWYER SAID TO MR. LOYNAS IN JAIL -- THE LAWYER SENT TO MR. LOYNAS IN JAIL THE FOUR POWERS OF ATTORNEY, AND IT IS INTERESTING THAT HE TOOK THE POSITION THAT HE COULD NOT GET THE CAR BECAUSE HE IS NOT A LAWYER, BUT IN THOSE FOUR POWERS OF ATTORNEY, MR. KARTEN TYPED IN MR. LOYNAS AS THE OWNER. THIS PATTERN OF FRAUD WAS ALREADY BEGUN, WHEN THE STIPULATION WAS ENTERED INTO.

IS THERE ANY EVIDENCE HERE THAT ABOUT KARTEN HAD SOMEBODY GO AND APPRAISE THE VALUE OF THE CARS IN ADVANCE, SO THAT HE KNEW IF HE GOT THEM FOR \$30,000, FOR INSTANCE, THAT HE WOULD BE IN A POSITION TO MAKE A SUBSTANTIAL PROFIT BY RESELLING THE CARS? IS THERE ANY EVIDENCE OF THAT KIND?

THERE IS TWO THINGS. THERE IS NOT ANY PARTICULAR EVIDENCE THAT THERE WAS AN APPRAISAL DONE, BUT THE TESTIMONY OF ROBERT WALTON, WHO IS THE BUSINESS PARTNER THAT HE LILT SOLD THE CARS TO, WAS THAT WALTON HAD SOME EXPERIENCE IN -- THAT HE ULTIMATELY SOLD THE CARS TO, MR. WALTON HAD SOME EXPERIENCE IN, AS TO THE CARS. THAT WAS MY MEMORY OF THE CONVERSATION, BUT THERE WAS NOTHING IN PARTICULAR. THE OTHER THING WAS THERE WAS SOMETHING IN NELSON LOYNAS'S TESTIMONY, AND I DON'T KNOW IF YOU CAN TELL THIS FROM A TRANSCRIPT, BUT HE DID SAY THAT MR. KARTEN WAS VERY INTERESTED IN MY CARS. THAT IS ALL WE DO KNOW ABOUT IT. WE DO KNOW THAT THERE WERE FOUR CLASSIC CARS. THERE WERE TWO SHELBY MUSTANGS, '66 AND '67, AND TWO CORVETTES, I THINK THEY WERE '66, '67, AND MR. DUNCAN SAID THAT THE CORVETTE THAT HE PURCHASED, IT WAS NOT IN PERFECT CONDITION BUT IT WAS IN GOOD CONDITION. THAT IS REALLY ALL WE KNOW.

WHAT IS THE EVIDENCE, AGAIN, TRYING TO UNDERSTAND WHAT WAS GOING ON HERE, IT SOUNDS LIKE THE GOVERNMENT ENVISIONED THAT THEY WOULD GET A CHECK FOR \$30,000. THEY WOULD GIVE THE VEHICLES BABB TO THE DEFENDANT -- BACK TO THE DEFENDANT, I GUESS, VIA HIS ATTORNEY.

WELL, NO, YOUR HONOR, IF I MAY CORRECT YOU, THE ONLY THING THAT SAID VIA, WAS THE PAYMENT OF THE CHECK. IT NEVER, THE AGREEMENT NEVER SAID THAT THE CARS SHOULD BE RELEASED TO THE LAWYER.

OKAY. WHAT HAPPENED. THE GOVERNMENT GETS THE CHECK. WHO ACTUALLY, THEY DELIVER PHYSICAL CUSTODY TO WHO?

WELL, THEY DON'T DELIVER CUSTODY. A PERSON HAS TO GO AND PICK UP THE CARS.

WHO PICKED UP THE VEHICLES?

MR. KARTEN PICKED UP THE VEHICLES WITH DOUG WALTON.

AND DID HE HAVE TO SIGN SOMETHING SAYING I AM DOING THIS ON BEHALF OF MY CLIENT, MR.

LOYNAS?

ALL HE HAD TO PRESENT, AS FAR AS THE TESTIMONY SHOWED, WAS A DRIVERS LICENSE. NOW, THAT IS A QUESTION. WHY WOULD THE CARS BE RELEASED TO THE LAWYER BUT, YOU KNOW, THAT IS AN ISSUE FOR, WELL, IT JUST --

IT MAKES THIS WHOLE THING FAIRLY STRAK. -- STRANGE. IF MR. KARTEN NEVER GOT A POWER OF ATTORNEY, HOW DID HE TRANSFER TITLE?

HE APPLIED FOR TITLE. THERE WAS TESTIMONY AS TO THIS. THIS WAS INTERESTING. HE APPLIED FOR DUPLICATE TITLE TO THE DEPARTMENT OF MOTOR VEHICLES, AND THERE WAS A FORM WHICH CONTAINED A QUESTION, DO YOU HAVE A COURT ORDER, AND HE CHECKED A BOX THAT SAID YES, AND I QUESTIONED HIM, YOU KNOW, DURING THE TRIAL. WHAT COURT ORDER WERE YOU REFERRING TO THAT ALLOWED YOU TO APPLY TO THE DEPARTMENT OF MOTOR VEHICLES FOR A CERTIFICATE OF TITLE, AND HE SAID THE ORDER OF FORFEITURE.

SO ESSENTIALLY, ALTHOUGH IT IS NOT SAYING THIS IN STRONG WORDS, THE BAR IS, WE ARE SAYING MISAPPROPRIATED, SAYING THAT HE STOLE THE VEHICLES THAT WERE HIS CLIENTS.

ABSOLUTELY.

AND WITHOUT HIS CLIENT'S KNOWLEDGE OR CONSENT.

THAT WAS MY POSITION FROM DAY ONE, YOUR HONOR, AND YOU KNOW, IT IS A VERY SHOCKING THING, BECAUSE YOU KNOW, I SIT AT MY DESK IN MIAMI, AND I GET A COMPLAINT FROM SOMEONE SITTING IN JAIL, AGAINST A LAWYER THAT I W HAS BEEN PRACTICING 25 YEARS, AND YOU REALLY HAVE TO GIVE THIS A LONG, HARD LOOK, AND WE DID, AND WE DETERMINED THERE WAS NO AGREEMENT. THERE WAS NOTHING WITH THIS CLIENT, AND IN FACT, WHAT WAS EVEN A LITTLE MORE STARTLING IS THAT MR. KARTEN SOUGHT TO HIDE THE PROFITS, AND HE DENIED MAKING PROFITS, AND IN HIS AFFIRMATIVE DEFENSES, HE STATED I MAY NO PROFITS FROM THE SALE OF -- I MADE NO PROFITS FROM THE SALE OF THE CARS. I WAS JUST REIMBURSING THE GOVERNMENT FOR THE CARS, AND THE TESTIMONY, AS WELL, BUT WE WERE ABLE TO TRACE THE PROFITS TO A BUSINESS THAT HE MADE A CAPITAL CONTRIBUTION IN, WHICH WAS THIS LOUIE-LOUIE BUSINESS.

IN ANSWER TO THE QUESTION THAT JUSTICE WELLS WAS ASKING, WHICH IS NOT ONLY DID \$30,000 GET PAID TO THE GOVERNMENT FROM MR. KARTEN, BUT HE DOES IT BECAUSE HE GETS A LOAN FROM HIS WIFE.

YES.

AND WAS THERE TESTIMONY ABOUT HOW THAT, WHETHER THAT EVER WENT THROUGH MR. KARTEN'S TRUST ACCOUNT OR ANYTHING?

WELL, HE HAD TO PAY THE MARSHAL'S OFFICE WITH A CASHIER CASHIER'S CHECK, SO THERE WAS, WE REALLY DIDN'T HAVE A REASON TO LOOK AT THE TRUST ACCOUNT, BECAUSE THE TRUST ACCOUNT WASN'T USED. THE ONLY THING WE TRACED WAS THE \$24,000 CHECK THAT WAS PAID OVER BY MR. DUNCAN TO MR. KARTEN.

WAS THERE ANYTHING IMPROPER IN USING A LOAN FROM HIS WIFE TO GIVE THIS MONEY? I MEAN, NOTHING LIKE THAT WAS CHARGED, AS FAR AS AN ADDITIONAL ACT OF DOUBLE DEALING OR CONFLICT OF INTEREST ON BEHALF --

WE REALLY DIDN'T TAKE THAT APPROACH WITH THIS CASE. I MEAN, I CHARGED UNDER A FRAUD, DECEIT AND DISHONESTY RULE. WE WENT VERY SIMPLY UNDER 4-84-C. THAT IS WHAT THE

REFEREE FOUND, AND IN OUR ESTIMATION HAD, THIS IS A CASE THAT IS EVEN WORSE THAN A MISAPPROPRIATION CASE, BECAUSE WE HAVE A LAWYER THAT ENGAGED IN A FRAUD, AND THEN HID THE ASSETS, AND THAT IS WHY DISBARMENT IS REALLY THE APPROPRIATE DISPOSITION IN THIS CASE.

WHEN SAY HID THE ASSETS, YOU MEAN HID THE PROFITS.

I AM SORRY. YOU ARE CORRECT. HID THE PROFITS.

HOW DID KARTEN EXPLAIN THE TRANSACTION BELOW? THAT IS DID HE TESTIFY THAT IT WAS JUST SORT OF A COINCIDENCE HERE THAT, BY REPRESENTING THIS MAN, THAT HE FOUND OUT ABOUT THE EXISTENCE OF THESE CARS, AND SO IT WAS SORT OF LIKE DOING HIS CLIENT A SERVICE, AT THE SAME TIME HE WAS DOING SOMETHING FOR HIMSELF, TOO, BECAUSE HE, JUST BECAUSE OF HIS REPRESENTATION IN THIS CASE, HE DISCOVERED THAT THOSE CARS WERE THERE, AND HE WAS GOING TO BE ABLE TO KILL TWO BIRDS WITH ONE STONE? HE COULD DO HIS CLIENT A FAVOR AND GET THESE NICE CARS.

WELL --

WHAT DID HE SAY?

HIS EXPLANATION TO THIS DAY, TO ME, IS STILL CONFUSING. I LIVED THIS CASE, AND I LIVED THE APPEAL, AND I SEE MANY DIFFERENT EXPLANATIONS. ONE, I BELIEVE, WAS THAT MR. LOYNAS REALLY DIDN'T HAVE AN OWNERSHIP INTEREST IN THE VEHICLES AND THEREFORE ANYONE COULD GO PICK UP THESE CARS FROM THE GOVERNMENT AND SELL THEM AND MAKE A PROFIT, AND HE DIDN'T HAVE TO EXPLAIN WHY HE MADE A PROFIT. ANYBODY COULD DO THAT. WHICH MAKES NO SENSE TO ME. THEN -- I AM SORRY.

WAS THERE SOME TESTIMONY RELATIVE TO THE WIFE SHOWING UP IN THE LAWYER'S OFFICE, TO PAY OFF \$30,000?

YES.

WHAT IS ABOUT?

I WILL EXPLAIN HOW THAT HAPPENED. AFTER, FROM ABOUT SEPTEMBER TO DECEMBER, MR. LOYNAS SPENT A LOT OF TIME, AND HE IS IN JAIL AND CALLING THE LAWYER'S OFFICE, AND HE IS ASKING ABOUT THE CARS, AND HE IS SAYING WHEN AM I GOING TO GET MY CARS? WHEN AM I GOING TO GET MY CARS? AND ULTIMATELY THE OFFICE DID GIVE SOME INFORMATION TO MRS. LOYNAS TO PICK UP HER ONE CAR, THE MERCEDES, WHICH WAS SUPPOSED TO BE RETURNED TO HER. MRS. LOYNAS, IN DECEMBER GOES TO PICK UP HER MERCEDES AND IN CHOIRS ABOUT THE HUSBAND'S CARS. SHE IS TOLD THE CARS ARE GONE, THE LAWYER PICKED UP THE CARS, SO BETWEEN DECEMBER AND MARKS MR MR. LOYNA -- AND MARCH, MR. LOYNAS, MEMBERS OF HIS FAMILY ARE SHOWING UP AT MR. KARTEN'S OFFICE TO FIND OUT WHAT HAPPENED HERE, AND ON THREE OCCASIONS, MRS. LOYNAS AND A FRIEND OF MR. LOYNAS, MR. MESA, GO DOWN TO MR. KARTEN'S OFFICE TO TRY TO SEE HIM AND MR. KARTEN DOESN'T SHOW UP, AND BY THE THIRD APPOINTMENT I AM NOT SURE WHETHER IT WAS AN APPOINTMENT OR NOT, BUT THE THIRD TIME THEY SHOWED UP AND CAUGHT HIM IN THE OFFICE AND HAD A CHECK FOR \$30,000, BECAUSE THEY WERE AT LEAST HOPING AT THAT POINT, TO SAVE THE CARS AND GIVE THE \$30,000 AND GET THEM BACK, BUT HE REFUSED TO EVEN SEE THIS INDIVIDUAL AND ACCEPT THE PAYMENT. THAT IS WHAT HAPPENED. THAT WAS IN MARCH OF '98. AND I WOULD SUGGEST TO THIS COURT THAT THE REFEREE WAS RIGHT THAT MR. KARTEN SHOULD BE DISBARRED. THERE WERE SIX AGGRAVATING FACTORS FOUND. THE REFEREE RECOGNIZED THAT THERE WAS SUBSTANTIAL MITIGATING CIRCUMSTANCES, MITIGATING TESTIMONY PRESENTED FROM VERY REPUTABLE MEMBERS OF THE BAR. -- OF THE BAR. TWO JUDGES TESTIFIED. HOWEVER, THE AGGRAVATING

CIRCUMSTANCES SIMPLY OUTWEIGHED THE MITIGATING EVIDENCE THAT WAS PRESENTED.

WHY IS THE CASE LAW MORE SUPPORTIVE OF A SUSPENSION HERE, AS OPPOSED TO A DISBARMENT?

I DON'T THINK IT IS, YOUR HONOR. I THINK, UNDER FITZGERALD, UNDER KRAMER, THOSE ARE TWO SIMILAR CASES WHERE A CLIENT'S PROPERTY WAS TAKEN BY THE LAWYER AND, IN FACT, IN THOSE CASES, IN FITZGERALD, THERE WAS MITIGATING CIRCUMSTANCES, AND IN THAT CASE THE CLIENT WAS HAPPY. THE CLIENT WAS REPAID, AND THEY DIDN'T WANT MR. FITZGERALD TO BE DISBARRED, BUT THIS COURT DISBARRED MR. FITZGERALD, AND THIS CASE IS REALLY NO DIFFERENT THAN MISAPPROPRIATION CASES. I SUBMIT TO YOU THAT IT IS WORSE THAN A MISAPPROPRIATION CASE, AND THERE REALLY IS NO GOOD CASE LAW TO SAY THIS LAWYER SHOULDN'T BE DISBARRED.

WHAT ABOUT THE POSITION THAT THERE, ABOUT REMANDING THIS FOR FURTHER TESTIMONY. WHAT IS THE BAR'S POSITION ON THIS?

I WAS ACTUALLY QUITE SURPRISED TO HEAR MR. STRAFER ADDRESS ISSUES THIS MORNING ON A MOTION TO RELINQUISH THAT IS A PENDING MOTION BEFORE THE COURT AND HAS NOT BEEN PART OF THE BRIEF, AND AS FAR AS I KNOW, HAS NOT BEEN SOMETHING THAT THE COURT ASKED THIS TRIBUNAL TO CONSIDER, BUT, AND I DON'T THINK YOU SHOULD, IN THIS PARTICULAR TIME THAT WE ARE ARGUING THIS CASE, BUT AS FAR AS THE REHEARING AND MOTION TO SUPPLEMENT, THERE HAS BEEN NO ABUSE OF DISCRETION SHOWN. THERE WAS NO SHOWING WHY THAT EVIDENCE SHOULDN'T HAVE BEEN PRESENTED BEFORE THE REFEREE. TWO OF THE WITNESSES THAT ACTUALLY THREE OF THE WITNESSES THAT PRESENTED AFFIDAVITS IN THIS MOTION WERE WITNESSES AT THE AGGRAVATION STAGE, SO THERE HAS BEEN NO SHOWING BY THE RESPONDENT WHY, HOW THAT EVIDENCE WAS NEWLY-DISCOVERED, WHY IT WAS OMITTED, WHY IT SHOULDN'T HAVE BEEN PRESENTED AT ALL, AND THE REFE WAS CORRECT TO PROHIBIT IT, AND THE REFEREE DOESN'T HAVE TO SAY WHY NOT.

CHIEF JUSTICE: THANK YOU, MS. LASS RUSS.

-- MS. LAZARUS. REBUTTAL?

I WOULD LIKE TO START WITH THE LAST POINT, AND THAT IS WHAT DO WE DO WITH THE TESTIMONY OF MS. GARCIA. MS. GARCIA STATED THAT SHE HAD NO MOTIVE TO LIE. SHE IS AN EX-SECRETARY OF MR. KARTEN. SHE STATEED THAT SHE HAD NUMEROUS CONVERSATIONS WITH MR. LOYNAS, WHERE HE AGREED TO SELLING THE CARS. SHE ALSO REFUTED HIS TESTIMONY THAT HE CLAIMED AND WOULD CALL AND NEVER GET THROUGH. SHE TOTALLY REFUTED. THAT IN ADDITION, THE TELEPHONE RECORDS WERE INTRODUCED AT THAT PROCEEDING, TO SHOW CONCLUSIVELY THAT THAT WAS NOT TRUE.

DID SHE TESTIFY AT THE GUILT PHASE?

NO, SHE DIDN'T.

IS THERE AN EXPLANATION?

NO, THERE ISN'T. WE HAVE ASKED, HOWEVER, THAT --

WOULDN'T SHE APPEAR TO BE A CRITICAL WITNESS?

I AGREE, YOUR HONOR. I THINK THERE WAS A TOTAL BLUNDER, AND THE PROBLEM HERE IS THAT THERE IS NO 3.850-TYPE PROCEDURE IN BAR PROCEEDINGS, TO CURE SOMETHING LIKE THAT. AND THERE WAS A MOTION TO REOPEN THE PROCEEDING. THE REFEREE HAD NOT I SHOULD HIS

REPORT -- HAD NOT ISSUED HIS REPORT YET. THERE WAS NO REASON, REALLY, THAT IT COULD NOT HAVE BEEN REOPENED TO ALLOW THAT TESTIMONY WHEN IT WAS SO CRITICAL. SHE TOTALLY REFUTES THE TESTIMONY OF LOYNAS, WHERE THIS WAS, IN ESSENCE, A SWEARING CONTEST BETWEEN THE LAWYER AND THE CLIENT ABOUT WHAT WAS IN THIS ORAL CONTRACT.

CHIEF JUSTICE: THANK YOU. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS AND BE IN RECESS FOR 15 MINUTES.