The Florida Bar v. Steven Edward Cohen

MARS HAL: PLEASE RISE. PLEASE BE SE ATED .

CHIEF JUSTICE: THE NEXT CASE ON THIS MORN ING'S DOCKET IS FLO RIDA BAR VE RSUS STEVEN EDWARD COHEN. PARTIES READY? YOU MAY PROCEED.

MAY IT PLEASE THE COURT . HAL ANDERSON FOR RESPON DENT STEVEN COHEN, WHO IS BEF ORE YOU TODAY TO REC EIVE APPROPRIATE DISCIPLINE, AFTER HAVING PLEAD G IMENT TO A FEDERAL CHA RGE O F CONSPIRACY, TO STRUCTURE CASH TRANSACTION INS SUCH AWAY AS TO AV OID FEDERAL TRANSACTIONS, IN SUC H A WAY AS TO AVOID FEDERAL REPORTING AT VARIOUS BA NKS .

YOUR REFERE NCE TO MA TTERS OUTSIDE OF CONV ICTION AND THE FLORIDA BAR ONLY SO UGHT DISBARMENT, BA SED ON THE CON VICTION ITSELF AND NO OTHER FA CTS . HOW EVER, ISN'T THE APPROPRIATE DISCIPLINE , UNDER OUR LAW , FOR SIMPLY A FEDERAL FELONY OFF ENSE , WHICH THE CONSPIRACY WAS , ISN'T THE PENALT Y FOR THAT DISBARMENT IN THE USUAL CASE ?

YOUR HONOR, IT IS ENTIRELY CORRECT THAT SECTION FIVE OF THE STANDARD FOR IMPOSING DISCI PLINE , DOES STATE THAT A FELONY CONVICTION IS APPROP RIATE DISCIPLINE. HOWEVER , THIS COURT'S J AHN CASE, ALSO MA KES EQUALLY CLEAR THAT THERE IS NOTHING AUTOMATIC ABOUT IT, AND T HAT THERE IS FURTHERCONSIDERATION, AND IN FACT , IT IS A REBUTTABLE PRESUMPTION, AND THERE IS NO GREATER TEST HERE THAT, IN FACT, THE REBUTTABLE PRESUMPTION WAS OVER COME , THAN THE WORD S OF THE REFEREE , HIMS ELF , WHO STARTED THIS CASE SAYING, A T PAGE 44 OF THE TRANSCRIPT , I AM CERT AINLY FINDING THAT WHAT HE PLED TO AL ONE, IS SUFFICIENT FOR I AM NOT CERTAINLY FINDING THAT WHAT HE PLED TO ALONE IS SUFFICIENT FOR DISBARMENT. IT ISN'T . SO NOW WE HAVE THIS PUZ ZLE .

WE GET INTO THE LAW T HEREABOUT WHAT WE HAVE CONSIDERED SUFFIC IENT. WE DON'T NEED TO DEFER T O THAT STATEMENT, AS MUCH A S WE HAVE TO REFER TO FACT UAL FINDINGS. ISN'T HE SIMPLY WRO NG ON T HELAW ON THAT?

NO , IS HE NOT SIMPLY WRONG ON THE LAW ON THAT, YOUR HONOR, AND WE HAVE SEVERAL CASES AVAI LABLE TO , WHERE , FOR EX AMPLE IN THE ARNOLD CASE , AFTER A SE RIES OF SUSP ENSIONS , THIS COURT , WHEN CONFRONTED WITH A FEDERAL VIO LATION OF A VERY SIMILAR CRIME , KNOWINGLY ENGAGES OR ATTE NTION TO ENGAGE IN A MONE TARY TRANSACTION IN CRI MINALLY DERIVED PROPERTY THAT IS A VALUE G REATER THAN $10,000. THIS PARTICULAR CASE, THE ATTORNEY MADE TH REE $,000 CASH PAYMENTS, WITH MON EY THREE $9 ,000 CASH PAYMENTS WITH MONEY THAT TURNED OUTTO BE FROM MARIJUANA SMUGGLING ACTIV ITIES , MONEY OUR CASE ALLE GED TO BE MARIJUANA PROCEEDS AS WELL , AND IN THIS CASE THE FEDERAL GOVERNMENT CHARGED THIS ATTORNEY WITH THE FELONY OF ACTUALLY KNOW INGLY BENEFITTING FROM T HOSEPROCEEDS, AND USING THOSE PROCEEDS. FAR DIFF ERENT FROM OUR CASE, WHERE IT WAS A CONSPI RACY A T SOME PO INT IN THE FU TURE , MERELY TO AVOID REPORTING REQUIREMENTS FOR PROCEEDS WHOSE OR IGIN WAS NOT KNOWN. IN THAT CASE , THIS COU RTCAME OUT WITH A 60 -DAY SUSPENSION, BALA NCING THE FACTORS, AND I WOULD SU BMIT THAT THE ANSWER TO OW

HOW MUCH MONEY WAS INVOLVED IN THAT CASE? YOU SAID $27,000. AND HERE IT WAS $640,000.

CORRECT?

YES, IN DEED , THE DIFFERENCE, ALSO, BEING

TWENTY TY PES OR 30 TIMESTHE AMOUNT?

VERY TRUE , YOUR HONOR. I GUESS THE POINT AS W ELL , THOUGH, IS THAT HERE Y OUHAVE THE LAWYER ENG AGING IN AFFIRMATIVE ACTS OF SUBSTANTIVE OFFENSES , AND , YES , THE RE IS A SUBSTANTIALAMOUNT OF MONEY INVOLVED HERE, BUT IT DO ESN'T E VEN GET TO THE POINT OF KNOWINGTHAT THIS MONEY IS FROM AN ILLEGAL SOURCE, BECA USE THE FEDERAL SENTEN CING JUDGE SPECIFICALLY ADJUDICATEDTHAT THERE WAS NO KNOWLEDGE ON THE PART OF MR . COHEN , OF THE SOURCE OF THESE F U NDS .

CHIEF JUSTIC E: JUSTICE LEWIS.

WHAT WERE THE OTHERFACTORS.THAT IS THE DAVID AR NOLD CASE FROM SOUTH FLORIDA?

YES, INDEED.

WASN'T MR. ARNOLD ACTUALLY INCARCERATED IN A FEDERAL CUSTODY AND HE WAS, IT WAS NOT JUST A 60-DAY , AS I RECALL. I THOUGH T THAT WAS A SUSPENSION AND THEN OTHER THINGS OCCURRED AND THEN IT CAME BA CK TO US SE VERAL YEARS LATER, WASN'T IT?

YOUR HONOR IS EXA CTLYRIGHT.THERE WAS A PR IOR SUSPENSION BY THE COURT, AND THEN THIS ULTIMATE CASE CON CLUDING THAT ANOTHER 6 ON DAYS WAS SUFFICIENT IN THE WE IGHING

DON'T YOU THINK THAT WEFIRST MUST GO BACK TO HO W MR . ARNOLD WAS DEALT WITH INITIALLY , RATHER THAN HIS LATEST, BECAUSE AS I RECALL AND I AM JUST GO ING ON MEMORY NOW, BUT THERE SEEMED TO BE A FAR MORE SERIOUSRAMIFICATIONS TO MR . ARNOLD THAN JUST 60 DAY S AS I RECALL.

YOUR HONOR IS RIGHT BUT LET ME ADDRESS THAT, BECAUSE THE RAMIFICATIONS IN THE ARNOLD CASE , FOR EXA MPLE , OUTSIDE OF A SUSP ENSION, WERE IMPOSED AS A PART O F THE CRIMINAL PROCEEDINGS A NDTHE CONSEQUENCES ATTENDANT TO IT. HE WENT TO J AIL, AS YOUR HONOR POINTS OUT. WELL, LET'S LO OK AT WHATHAPPENED TO MR . COHEN . WITH AN UNBLEMIS HED AND PROFESSIONAL RECORD , HE FOUND OU T, FOR HAVING JOINED INTO THIS CONSPI RACY THAT WAS NEVER CONSUM MATED , HE, WHILE BEING INVESTIGATED , ALMOST A YEAR BEF ORE ACTUALLY BEING CHARGED , HELD THE TELL S THE B A R, I AM BEING INVESTIGATED. I VOLUNTARILY SUSPEND MY LICENSE.HE IS ALREADY BEGINNING THE PROCESS TO COME FORWARD AND TO STEP UP FOR WHAT H ASHAPPENED TO HIM. WELL, EVEN BEFO RE THE BAR FILED HIS COMPLAINT, HE ENTERS A PLEA AGREEMENT FOR WHICH HE IS SUB JECT TO FOUR MONTHS IN FEDERAL PRISON AT EGLIN. HE, THEN, IS ON FOUR MONTHS OF HOME SUPERVISION , AND THEN HE I S SENTE NCED TO ADDITIONAL TWO YE ARS , WHIC H HE IS ST IL L UNDERGOING , OF SUPERVISED RELEASE, INCLUDING VISITS AT HIS OFFICE PLACE, RA NDOM D RUG TESTING, VI SITS AT HIS HOME , REQUESTS BEFORE HE CAN EVEN TRAVEL FOR BUSINESS , SO THERE ARE MANY RAM IFICATION THAT IS MR. COHEN HAS ENDURED HERE , AS WELL AS BEGINNING WITH THE MOST IMPORTANT THING , WHICH IS COMING FORWARD T O AL ERT THE BAR THAT SOMETHING WAS DONE WRONG AND A SUSPENSION

WHAT DO YOU CHALLENGE, I N TERMS OF THE REF EREE 'S FINDING AS TO AGGRAVATION , WHICH CERTAINLY SE TS OUT THAT A VERY , VERY SE RIOUS CASE AG AINST YOUR CLIENT , WITH REFE RENCE T O MONEY-LAUNDERING.

ABSOLUTE LY.

MORE THAN A HA LF A MILLION DOLLARS , INV OLVED WITH A MA JOR DRUG RING , AND SO I THINK THE PU BLIC WOULD BE SHOCKED THAT SOMEBODY THAT DID THIS , W OULD BE ALLOWED TO CONTINUE TO PRACTICE LAW , IF THESE FINDINGS OF THE REFEREE ARE VALID.NOW , WHAT DO YOU CHALLE NGE, IN TERMS OF THE FINDINGS OF THE REFEREE - -.

I WILL BE SPEC IFIC

THAT WOULD INDICATE THAT WE SH OULD DO ANYTHING LESS THAN WHAT THE REFEREE HAS RECOMMEN DED , IN VIEW OF THESE VERY, VERY SERIOUS AND SUBSTANTIAL FINDINGS. AS I SAY , MY , IN READING THOSE, I WOULD BELI EVE THAT THE PUBLIC WOULD BE SHO CKEDTHAT WE WOULD AL LOW SOME BODY TO PR ACTICE LAW AND TAKE RESPONSIBILITY FOR OT HER PEOPLE'S MONIES , GOODS , AND ISSUES , THAT WOULD HAVE BEEN GUILTY OF THIS CONDUCT , S O WHAT DO YOU CHALLENGE?

WELL , I THINK YOUR HONOR'S SUMM ARY SHO WS TWO THING THAT IS COME THRO UGH, RIGHT OFF THE BAT IN THE REPORT. FIRST OF ALL, THERE IS NO MONEY-LAUNDERING HERE. THIS IS A CONSPIRACY TO AVOID THE RE PORTING REQUIREMENTS OF THE I. R.S. FOR WHEN EVER $10, 000 IS DEPOSITED INTO THE ACCOUNT.

ISN'T THAT WHAT MONEY LAUNDER ING IS?

NO. I THINK IT IS PUTTING MONEY INTO THE ACCOUN T TO AV OID DISCLOSING TAXABLE INCOME.

AS O PPOSED TO JUST NOTKEEPING IT VISI BLE?

THAT IS TRUE , YES , YOURHONOR, AND I THINK T HESECOND POINT OF THAT, AND I UNDERSTAND THAT THIS IS NOT A PRETTY PICTURE AND THAT THIS IS A SERIOUS MISJUDGMENT , AND ONE THAT MR . COHEN HAS PAID, FOR BUT THE SECOND POINT IS , THE FACT THAT THERE WAS A MARIJUANA SMUGGLING OPER ATION IN THE BACKGROUND. EYE I AM AS KING YOU REALLY TO

I AM ASKING YOU REALLY, TO DIRECTLY ADDRESS , BECAUSEAS I SAID BEFORE AND I T HINKYOU WOULD AGREE, THAT IF WE ACCEPT THOSE FINDINGS BY THE REFEREE THAT , CLEARLY , DISBARMENT IS INDICATED IN THIS CASE, SO WHAT

ABSOLUTELY.

YOU HAVE THE BURDEN , REALLY, HERE OF DEMONSTRATING TO US THAT THE REFEREE HAS REALLY GONE OFF AND, IN LEFT FIELD , SO TELL ME HOW T HE REFEREE WENT OUT IN LEFT FI ELD.

SU RE. ITEM NUMBER ONE OF THE FOUR ARE THAT HE WAS HOLDINGFUNDS. THERE WAS NO CRIME FOR CONCEALMENT OR HOLDING O F FUND. IN FACT, NOTHING WAS DONE HERE IN THE SENSE THAT CONSPIRACY WAS PERSPECTIVE , SO THERE IS A SENSE THAT IS IDENTIFIED THAT IS ENTIRELY DIFFERENT FROM THE PLEA AGREEMENT THAT WERA TRAVEL U NDER. SECOND OF ALL

ON THIS IT SAYS "KNEW HE WAS CONCEAL ING DRUG MONEY THAT CAME FROM A DRUG RING ." ARE YOU SAY ING THAT THAT FINDING CANNOT BE MADE , BASED ON THE RECO RD IN T HIS CASE?

THAT'S RIGHT. SDWRUJ JU DGE MARA , THE SENTENCING JUDGE, SPECIFICALLY MADE THE FINDING THAT MR. COHEN DID NOT SPECIFICALLY KNOW THIS WAS DRUG MONEY.

HE HAD TO MA KE THAT FINDING BECAUSE OF THE P LEA AGREE MENT.

HE DID NOT HAVE TO MAKE THAT FINDING. THE PLEA DID NOT BIND HIM TO IT.

WAS THAT PART OF THE P LEA AGREEMENT?

YES, ABSOLUTELY , YOUR HONOR, AND IN FACT , THE PROFFER OF THE FEDERAL GOVERNMENT'S ASSISTANT U.S. ATTORNEY, IS THAT HE HAD INTERVIEWED 60 WITNES SES IN THE FEDERAL CASE , NOT ONE OF WHOM COULD SAY THAT THEY HAD TOLD MR . COHEN WHERE THIS MONEY CAME FROM.

LET ME ASK YOU THIS , BECAUSE YOU AR GUE THAT THE JUDGE WENT BEHIND THE CONVICTION. IN FINDING WHETHER THERE IS A VI OLATION OF THE R ULES, I AGREE THAT THE JUDGE CAN'T GO BEHIND THE CONVIC TION AND FIND, LET'S SAY FOR EXAM PLE, HE CAN'T FIND THAT H E VIOLATED THE FLORIDA BAR RULES , BY LAUNDERING DRUG MONEY. HOWEVER , ONCE HE MAKES A FINDING , ON THE VIOLATION THAT HE COMMI TTED A FELONY CONSPIRACY, IN DETERMINING AGGRAVATING AND MITIGATING CIRCUMSTANCES FOR PUNISHMENT PURPOSES FOR THE DISCIPLINE, CAN HE AT THAT POINT, GO BEHIND THE CONV ICTION , TO THE CONSEQUENCES , TO THE SURROUNDING CIRCUMSTANCES, OF THE CONVI CTION ?

NO , YOUR HONOR, NOT WHE N IT DWREKTLY IMPEACHEST FINDINGS IT DIRECTLY IMPEACH ES T FINDINGS OF THE SENTENCING COURT.

HOW ABOUT THIS ONE , T HAT WHAT HAPPENED WAS HE WAS DELIVERED A $1 0,000 PA CKET , WRAPPED IN C LEAR PLA STIC, WHICH WAS TRANSFERRED TO A SAFE DE POSIT BOX IN A BA NK IN THIS BUIL DING AND THEN TO A F LOOR SAFE BUILT FOR THAT PURPOSE IN HIS PARTNE R'S HOME. IS THAT AT ODDS WITH JUDGE MARA'S FIND SOMETHING.

NO, YOUR HONOR, AND MR . COHEN ADMITS THAT HE WAS ACCEPTING CASH AND WITHDREW IT.

TRANSFERRED $640,000 I N CASH INTO HIS PART NER'S FLOOR SAFE.

YES, I N DEED , AND IN FACT THAT IS THE O VERT ACT O F CONSP IRACY.

WHAT EXPL ANATION C OULDTHERE BE FOR SOMETHING LIKE THAT?

WELL, I THINK WHAT HAS TO BE PUT INTO CONTEXT HERE I S YOU WOULD WANT SOMEONE TO ASK MORE QUESTIONS , PER HAPS, AS TO WHERE THIS MONEY IS COMING FROM, BUT THIS GENTLEMAN WHO IS THE DRUG DEALER, HAD FIREWORKS BUSINESSES, ATM PIECENESSES. THE RECORD IN THIS CASE SA YS THAT ATM BUSINESSES. THE RECORD IN THIS CASE SAYS THAT HE TO OK $18,000 A WEEK ALONE OUT OF HIS ACCOUN T TO S TOCK THE ATM MACH INES.

HE IS LAWYER.

YES.

I THINK I CAN UNDERSTAND THE TR IAL JUDGE REFEREE'S FRUSTRATION, BECAUSE WHETHER IT WAS USED TO CONC EAL DRUG MONEY IS JUST TO SAY IT IS, DEFIES CREDULITY TO SAY T HAT SOMEBODY WHO IS A LAWYER WOULD ACCEPT $6 40,000 IN $10,000 PACKETS , TO , AND ASSUME THAT WAS FROM A LEGITIMATE BUSINESS , IS YOU KNOW, YOU ARE ASKING US TO ACCEPT SOMETHING THAT JUST IS IMPOSSIBLE T O BEL IEVE !

YOUR HONOR, TO ADDRESS THAT POINTEDLY, THIS WAS A DRUG DE ALER WHO MAN AG ED TO EVADE THE AUTHORITIES W HOLOOKED FOR THESE PEO PLE WHO , BETTER THAN TEN YE ARS. IT IS NOT BE YOND A STRETCH THAT SOMEONE ELSE WHO IS NOT IN LAW ENFORCEMENT, COULD MISS THAT.

MA YBE IF HE WAS , A NEW YOUNG LAWYER THIS. IS A 20- YEAR LAWYER IN A SOPHISTICATED REAL E STATE INVESTOR.

SOPHIS TICATED ENOUGH TO KNOW THAT THERE ARE ATM BUSINESSES, FIREWORKS BUSINESSES, FL ORAL SHOP BUSINESSES, ALL HE AVY CASH INTENSIVE , AND IN FACT , THAT THE REAL ES TATE TRANSACTIONS , THERE ARE BANKS

WHAT REA SON , THOUGH , I AM STILL TRYING TO UNDERSTAND, WHAT REASON DID HE G IVE FOR WHY HE WAS HOLDING THIS MONEY?

ORIGINALLY , I T WAS BECAUSE THIS GENTLE MAN DID NOT WANT TO HAVE I T AVAILABLE TO HIS GIRLFRIEND . THAT IS THE ST ORY ON HOW I T ALL STARTED. AND I THINK , AS FRIENDS O F MORE THAN TEN YEARS AT THAT POINT , THIS BECA ME ONE OF THOSE SITUATIONS , WHERE A FIRST MIS JUDGMENT ALMOST BECAME ONE OF THOSE THIN GS THAT DID N'T BEAR F URTHER EXAMINATION.THERE WAS AN EXPLANATION. BANKS QUALIFIED THIS DRUG DEALER FOR LET MATT I N COME , TO MAKE THESE - - LEGITIMATE INCOME TO MAKE THESE OTHER INVESTMENTS THAT YOUR HONOR MENTIONED.THERE IS NOTHING COMING BACK TO RAIS E A RED FL AG, AND IN FACT THE AUTHORITIES DON'T EVEN FIND THIS DRUG DEALER FOR OV ER TEN YEARS O F OPERATION.HE IS THAT CA GEY AND THAT LOW PROFILE , AND MY CLIENT'S ERROR IN THIS CASE, WAS

IT WOULD HAVE BEEN A LOT EASIER FOR THEM TO FIND THE DRUG DEALERS, IF THE DRUG DEALERS HAD BEEN GI VING THE AGENTS $10,000 BU NDLE S OF CASH, RIGHT? THAT WOULD HAVE RAISED T HEFLAG TO THEM.

THAT CERTAINLY MAY HAVE TRIGGERED SOME RESPONSE TO REPORTING.ON THE OTHER HAND , YOUR HONOR, WITH CA RB O INTENSIVE BUSINESSES WITH CASH INTENSIVE BUSI NESSES PU LLING $80,000 OUT OF A BANK A WEEK ALONE, IS NOT THAT UNUSUAL FOR THIS KIND OF CASH FLOW .

LET ME GET BACK TO YOUR REBUTTAL REBUTT ABLE CONVICTION, WHAT WOULD GIVE HIM THE CIRCUMSTANCES TO GO AROUND STANDARD SENTEN CING FOR DISCIPLINE?

THERE ARE TH REE CASES THAT WE CITED THAT THE REFEREE IS NOT PERMITTED TO GO BEHIND THE ADJUDICATED FACTS OF THE CONVICTI ON.

IS THAT IN ORDER TO FIND A VIOLATION OR IN ORDER TO DETERMINE THE DISCIPL INE?

BO TH, YOUR HONOR, BECAUSE IT CAME OUT IN THE CONT EXT OF LAWYERS TRY ING TO COME IN AND BACK OFF THEIR PLEA AGREEMENTS, IN ORDER TO MITIGATE. AND SO THIS COURT HAS THREE TIMES AD HERED TO THAT PRINCIPLE , AND THE CONSEQUENCE OF DEVI ATING FROM IT, IS T O DIMINISH WHAT GOES ON IN THE SENT ENCING PROCESS, DIM INISH THE COMITY OF THE FEDERAL COURTS , DIMINISH THE ROLE OF COU NSEL WHO NEGOTIATE PLEAS.

ROLE IN THE FEDERAL PROCEEDING, IN FACT THE CRIMINAL CASE, IS TO PROTECT , THE STATE BEARS THE BU RDEN OF PROVING , AND THERE ARE FUNDAMENTAL RIGHTS THAT HAVE TO BE PROTECTED FOR A DEFENDANT, SO THE GO AL IS T O MAKE SU RE THAT PEOPLE ARE NOT UNJU STLY CONVICTED O F CRIMES. THE GOAL IN OUR RULES IS TO MAKE SURE THAT THE PU BLIC IS PROTECTED. AREN'T THEY D I FFERENT FUNDAMENTALLY ?

I SEE I HAVE OUT OF T IME. MAY I HAVE LE AVE TO ANS WER ? CHIEF CHIEF GO AHE AD. YOU MAY ANSWER.

THOSE GOAL S AS STATED ARE DIFFERENT , YOUR HONOR, BUT I THINK THE RELE VANT POINT IS THAT, EVEN AT A SENTENCING HEARING, WHERE A FEDERAL JUDGE HAS A PREPONDERANCE O F THE EVID ENCE STAN DARD , HE I S UNABLE TO FIND THE VE RY FACTORS AND IN FACT ADJUDICATE AGAINST KNOWLEDGE , AGAINST DRUG USE, AND YET SOMEHOW IN A CLEAR AND

CONVINCING STANDARD, EVEN THOUGH THE BAR IS RELYING ON THAT EXACT SAME SENTEN CING CONVICTION, NOW THE REFEREE COMES BACK AND IMPEACHES ALL OF THAT OR CONTRA DICTS A LLOF THAT, AND THAT IS THE INCONGRUITY THAT IS SET UP , BY WHAT HAPPENED BELOW.

CHIEF JUSTICE: THANK YOU VERY MUCH. MS. CO QUINTELA.

YES . MAY IT PLEASE THE COURT . ADRIA QUIN TELA ON BEHALF THE FLORIDA BAR. WE ASKED THE COURT TO UPHO LD THE RECOMMEN DATION OF THE FLORIDA BAR FOR DISBARMENT AND A FTER REVI EW OF THE RECORD REVEAL THAT IT IS CLEAR FOR THE FOLL OWING REASONS. AS JUSTICE CAN TERO POINTED OUT, WE BE GAN AN ANALO GY OF CASES SUCH AS THIS ONE , WHERE AN ATTORNEY HAS BEEN CONVICTED OF A FELO NY , W ITH THE PRESUMPTION THAT DISBARMENT IS THE APPROPRIATE SANCTION. IT IS THE SANCTION THAT WE WANT TO PROTECT THE PUBLIC . IN THIS CASE , WE BEGAN WITH THAT PRESUM PTION. WHILE AS COUN SEL STATE S THAT , PRESUMPTION CANNOT , IN EVERY INSTANCE, NOT BE OVER COME, IN THIS IN STANCE , IT WASN'T OVERCOME BY THE RESPO NDENT . AND THE WAY IT CAN B E OVERCOME AND IN THE CASES CITED BY RESP ONDENT'S COUNSEL IN THE BRI EF, SUCH AS THE ARNO LD CASE , THERE ARE CASES WHERE THERE IS EXTREME MI TIGATION SHOWN BY THE RESPONDENT , AND THE COURT HAS CONSID ERED THAT MITIGATION AND R ULED THAT, EVEN THOUGH WE HAVE T HAT PRESUMPTION OF DISB ARMENT , THE MITIGATION IS SOME WHAT HEAVIER, AND THE BUR DEN HAS NOW BEEN OVERCOME. WE DON'T HAVE THAT.

WOULD YOU AD DRESS HIS UNDERLYING PRINCI PLE, I THINK, IS HOW I WOULD PHRASE IT, THAT HE IS PRESENT ING TO THE COURT TODAY, AND THAT IS WE HAVE AN INDIVIDUAL THAT HAS GONE THROUGH THE CRIMINAL JUSTICE SYSTEM , AND CERTAIN , HE IS SUGGE STING THAT CE RTAIN FINDINGS HAVE BEEN MADE IN THAT PRO CESS. AND THAT , IN A S EPARATE PROCEEDING, THAT THE FLORIDA BAR, HAVING EVEN A HIGHER STANDARD, HAS NO W, REFEREE HAS GONE IN AND MADE FINDINGS CONTRARY TO THOSE FINDINGS, AND HE SAYS THAT THERE HIS CASE LAW THAT SAYS THAT THE BAR AND THIS COURT, CANNOT DO THAT. WOULD YOU ADD RESS THAT. AS I UNDERSTAND, THAT IS LIKE A FUNDAMENTAL PRINCIPLE.

YES, JUS TICE LE WIS . THE IS SUE ON APPE AL IS THAT THEY ARE ARGUING THAT THE REFEREE HAS GONE BEHIND THE CONVICTION. IF YOU EXAMINE THE CASES WHERE THE COURT HAS HELD THAT THE REFEREE CANNOT GO BEHIND THE CONVICTION , THOSE ARE ALL CASES WHERE THE RESPONDENT HAS PLED GUILTY OR HAS BEEN FOUND GUIL TY TO A CRIME. THE BAR SEEKS SUBSEQUENT DISCIPLINE, AND THE RESPONDENT WANTS A TRIA L DE NOVO. IN ES SENCE THE RESPONDENT NOW SAYS TO THE REFEREE, EVEN THOUGH I PLED , EVEN THOUGH I WASN'T CONVICTED, I WAS NOT GUILTY. THIS COURT HAS HELD THAT THE REFEREE CAN GIVE THAT RESPONDENT A TRI AL DE NOVO AND RE TRY THE CASE. THAT IS VERY DIF FERENT FROM OUR CASE , AND A NUMBER OF CASES , WE HAVE THE DIAMONDS CASE, WHERE THE COURT RULED THAT THE REFEREE WAS ENTITLED TO CONSIDER THE TESTIMONY OF THE FEDERAL JUDGE INVOLVED IN THE LINEDING CRIMINAL CASE. IN THE J A HN CASE, THE CO URT CONSIDERED THE TESTIMONY OF WIT NESSES INVOLVED IN THE UNDERLYING CRIMINAL CASE. IN ALL OF THOSE CASES , THISCOURT HAS HELD THAT DOES NOT EQUATE TO GOING BEHIND A CONVICTION! BECAUSE ULTIMATE LY, IT IS THE REFEREE WHO MUS T DETERMINE WHAT THE FACT S ARE , WHAT THE CREDIBILITY OF THE WITNESSES ARE.

CERTAINLY WHAT YOU HAVE PRESENTED IS FAR DIFF ERENT CIRCUMSTANCE THAN WE ARE TALKING ABOUT TODAY. DO YOU FIND ANY CASES AT ALL , THAT ARE DIRE CTED TO THE PRINCIPLE THAT HE IS ASSERTING TO US, THAT WOULD SUPPORT THAT PROPOSITION?

THE PROPOSITION THAT THE REFEREE WENT BEHIND THE CONVICTION IN THIS CASE?

RIGHT. IN A SITUATION SO THAT YOU ARE ENHA NCING , R A THER THAN PERMITTING A LAWYER

TO CONAN IT MAKES SENSE. YOU CAN'T COME IN AND DENY THE FELONY CONVICTION AND WHAT HAPPENED IN YOUR PLEA. THAT MAKES A LOT OF SENSE . HE IS SUGGESTING, THOUGH , THE OPPOSITE, AND THAT IS WHY I AM ASKING, IS D O YOU FIND ANY CASE THAT ADDRESSES THE PRINCIPLE THAT HE IS ASSERTING , THAT THE BAR CANNOT EN HANCE OR GO BEHIND IT T O ENHANCE WHAT , W HICH IS CONTRARY TO WHAT A FEDERAL JUDGE HAS FOUND.

LET ME CLAR IFY SOMETHIN G. THE REFEREE IN T HIS CASE DID NOT ENHANCE WHAT HAPPEN ED IN THE CRIMINAL CASE. THE REFEREE READ THE TRANSCRIPTS , THEN IN FACT WERE PRESE NTED THAT, IN FACT, WERE PRESENTED BY RESPONDENT'S COUNSEL. THE INTERESTING THING ABOUT THIS CASE IS RESPONDENT 'S COUNSEL DURING THE PROCESS CHOSE TO BRING I N A CRIMINAL COUNSEL, NOT ONLY THE COUNSELOR WHO EVO LVED HIM IN THE CASE BUT ACTU ALLY A CO-COUNSEL IN THE CASE AND DURING OPENING STATEMENT, BROUGHT OUT THE ISSUE OF THE LACK OF KNOWLEDGE. THE BAR WANTED THE REFEREE TO MERELY ACCEPT THE PLEA AND THAT WAS SUFFICIENT TOGET A RESPONDE NT. WE FOUND D URING OPE NING , EVEN GOING BACK TO THE MEMORANDUM, ALL PA RT OF THE RECORD, PRESENTED TO THE COURT, BR OUGHT OU T A DISTINCTION BETWEEN WHATTHEY OUTLINED AS SERI OUS FELONIES VERSUS MI NOR FELONIES, AND THEIR OPENING AND THEIR EN TIRE THR UST OF THE CASE WAS BASE D ON THE FACT THAT , WHIL E THIS WAS A FEDERAL FEL ONY, WHI CH WE WOULD ALL SAY A RATHER SERIOUS FELONY, THIS RESPONDENT SHOULD NOT BE DISBARRED BECAUSE HE HA D NO KNOWLEDGE THAT ALL OF THIS MONEY HE WAS HIDING FOR OVER TEN YEARS AND ACCE PTING IN PACKETS WRAPPED IN RUBBERBANDS , WRAPPED IN CLEAR PLASTIC, HAD NO KNOWLEDGE THAT THIS WAS DRUG MONEY.

DIDN'T THE FEDERAL JUDGE MAKE THAT FINDING?

THE THE FEDERAL JUDGE MADE THE FINDING, AND WHEN YOU READ THE TRANSCRIPT, A NDTHIS IS ALL PART OF THE REFEREE 'S RE PORT OF REFEREE , THE FINDING THAT WAS MADE BY THE JUDGE WAS THAT , YES , HE WAS PU TTING ON THE ACTUAL PLEA THAT THE RESPONDENT HAD NO KNOWLEDGE, THAT THE MONEY WAS DRUG PROCE EDS , BUT THAT THAT WAS CONTRARY TO WHAT WAS INDICATED IN THE PRESENTENCING INVESTIGATIONREPORT.

OKAY.SO YOU ARE REALLY SAYING THAT THE BAR , BE CAUSE Y OUARE REPRESENTING THE PUBLIC, THE INTEREST OF THE PUBL IC, SHOULD NOT BE COLLATERALLY ESTOPPED IN THIS SI TUATION , ESPECIALLY BECAUSE IT BECAMEAN ISSUE , FROM SHO WING THE CIRCUMSTANCES THAT WOULD ESTABLISH FAR MORE CULPABILITY THAN THE ACTUAL VERY, VERY LE NIENT SENTENCE THAT THIS DEFENDANT IN THE CRIMINAL CASE RECEIVED.

YES, JUSTICE PA RIENTE , AND WHAT WE ARE SAYING IS THAT, IF THE REP ORTER REFEREE, WHICH IS A IF THE REPORT OF REFEREE, WHICH IS A VERY DETAILED 20-PAGE REPORT OF REFEREE , DRAFTEDBY THE REFEREE, HIMSELF , DETAILED AND POINTED OUT TO SEVERAL OF YOU THAT IT WOULD INSULT YOUR CREDIBILITY TO THINK THAT A REAL EST ATE LAWYER, A LAWYER WHO WAS A SOPHISTICATED INDIVIDUAL FOR 20 YEARS, HAD NO KNOW LE DGE THAT THIS WAS DRUG MONEY THAT HE WAS CONCEALING.

WHAT ABO UT THE ISSUE OF THE DEFENDANTS OR THE RESPOND THE DEFENDANT'S OR THE RESPONDENT'S OWN DRUG USE? WHAT IS YOUR POSIT ION AS T O WHETHER THAT IS SOMETHING T O CONSIDER OR NOT?

THE REFEREE DID PUT THAT IN HIS REPORT OF REFEREE , AGAIN, BASED O N WHAT JUDGE MARCH A STATED I N THE JUDGE MARA STATED IN T HETRANSCRIPTS THAT BECAME A PART OF THIS CASE AND THE CRIMINAL CASE, AND THOSE TRANSCRIPTS REVEALED THAT, ACCORDING TO SE VERAL INDIVIDUALS, THE RESPONDENT WAS IN FACT A DRUG USER AND USED COCAINE.

SO THAT COULD BE A CIRCUMSTANCE , SHOULDN'T THAT HAVE BEEN CHAR GED SEPARATELY , THAT HE WAS INVOLVED IN ILLEGAL DRUG US E?

I LLEGAL DRUG USE? I CAN UNDERS TAND GOING BEHIND THE CONVICTION WHERE THERE IS, UNTHE CIRCUMSTANCES, THAT YOU ARE SPEAK UNDER THE CIRCUMSTANCES THAT YOU ARE SPEAKING ABOUT, TO GO TO THIS WAS REALLY WAS HIS INVOLVEMENT IN AN IL LEGAL SCHEME TO HIDE MONEY, BUT I AM CONC ERNED ABOUT THE QUESTION ABOUT THE DRUG USE. WHERE WOULD THAT BE APPROPRIATE TO THERE , A NDALSO THE RESPONDENT'S INDIFFERENCE TO MAKING RESTITUTION. THAT SEEMS TO ALSO BE SOMEWHAT OF AN UN FAIR THING TO CONSIDER AN AGGRAVATION , BECAUSE YOU HAVE GOT A DEFENDANT WHO IS BEING REPRESENTED BY HIS OWN LAWYER, WHO SAYS THIS IS HOW THIS DEAL IS GOING TO BE MADE. YOU ARE GOING TO , A FTER THE PLEA IS SEND , YOU WILL , THEN , GIVE THEM A $64 0,000 , SO HOW IS THAT, TWO THINGS , DRUGS , SHOULD HAVE BEEN CHAR GED, AND, SE COND, INDI FFERENCE TO MAKING RESTITUTION .

LE T ME ADDRESS THE FIRST ONE FIRST , IF I MAY. THE INDIFFERENCE TO MAKING RESTITUTION WAS FOUND BY THE REFEREE, BECAUSE THE RESPONDENT HAD PLA CED AN ISSUE A S A MITIGA TING FACTOR , THE FACT THAT WE DID A GO OD THING. WE RETURNED ALL OF THIS OVER $640,000 WORTH OF MONEY. THE REFEREE FOUND THAT IT REALLY ISN'T REST ITUTION AND YOU ARE NOT REALLY DO ING A GOOD THING, WHEN YOU ARE REALLY DOING IT TO BENE FIT YOURSELF, AND IN THIS CASE , THROUGH SOME VERY CARE FUL LAWYERING , THE REFEREE FOUND THAT OUR RESPONDENT HELD ON TO THOSE PROCEEDS THAT THE GOVERNMENT DESPERATELY WANTED BACK , AND USED IT U P UNTIL THE VERY LAST MO MENT, WHEN IT WAS BENEFICIAL FOR HIM TO G ET A GOOD PLE A, AND THEN AT THAT POINT SAY I HAVE ALL THIS MONEY. IF YOU WANT IT, HERE IS WHAT I WANT IN RETUR N. SO THE REFEREE FOUND THAT THAT REALLY WASN'T RESTITUTION, BE CAUSE HE WASN'T DOING IT OUT OF THE GOODNESS OF HIS HEART BUT , REALLY, BECAUSE HE WAS USING IT AS A BARGAINING CH IP.

SO RATHER , SO WHAT YOU ARE SAYING IS THAT , RATHER THAN LOOKING AT RESTITUTION IN THIS CASE AS MITIGATING FACTOR, WE SHOULD JUST N OTCONSIDER IT AT ALL.

THAT IS EXACTLY WHAT HE FOUND. THAT IT REALLY WASN 'T RESTITUTION .

ACTUALLY HE FOUND IT AS AN AGGRAVATOR.

HE FOUND IT AS AN AGGRAVATOR, BECAUSE HE USED IT AS HIS ADVANTAGE, AND HE FOUND IT AS ONE O F SEVERAL AGGRAVATORS IN THIS CASE. BUT IT WAS ARG UED BY RESPONDENT'S COUNSEL THAT, IN FACT , THAT THEY WANTED I T AS A MITIGATOR , AND THE REFEREE FOUND NOT ON LY AM I NOT GOING TO FIND IT A S N OTA MITIGATOR, BUT IN FACT I T IS AN AGGRAVATOR , BECAUSE HERE IS WHY I CONCLUDE YOU DID THAT , TO HIS BENE FIT.

THAT IS WHY I AM AS KING. I DO N'T SEE HOW IT IS AN APPROPRIATE AGGR AVATOR . I CAN UNDERSTAND IT NOT BEING A MITIGATOR , BUT IT DOESN'T SEEM THAT IT IS APPROPRIATE, IF THIS WAS ALL DONE AS PART OF A PLEA, TO CONSIDER IT AN AGGRAVATION OF THE FELO NY.

THERE ARE SEVERAL OTHER AGGRAVATORS , YOUR HONOR , THAT THE REFEREE FOUND IN ADDITION TO THAT ONE , AND IN THAT ONE , I T WAS BASE D AS I SAID, ONLY BEC AUSE O F THE ISSUE THAT WAS PLACED BY THE RESPONDENT ON THE RE CORD.

BUT YOU WOULD SAY THAT , EVEN IF WE DIS COUNT THE AGGRAVATION , THAT BECAUSE O F REALLY INSIGNIFICANT MITIGATION, THAT HE HA S NOT OVERCOME THE PRESUM ING OF DISBARMENT.

CORRECT, YOUR HONOR. THE ONLY MITIGATION PRESENTED IN THE CASE , WAS THE ISSUE, NUM BER ONE AS I SAID, THEY TR IED TO MITIGATE IT BY SAYING HE DIDN'T KNOW IT WAS DRUG PROCEEDS , SO THEY PLACED THAT IN ISSUE, AND THE ONLY TESTIMONY PRESENTED ON BEHALF THE RESPONDENT WAS THAT OF TWO WITNESSES, BOTH LAWYERS , ONE OF THEM A BROTHER-IN-

LAW , AND THEY, BOTH , SA ID THAT THIS GUY IS A GOOD GUY. HE COAC HES LITTLE LEAGUE. HE DOES A LOT OF PRO BONO , AND THAT WAS IT , AND THE REFEREE FOUND THAT THOSE TWO MITIGATORS WERE CERTAINLY NOT SUFFICIENT TO OVERCOME THE NUMBER OF AGGRAV ATORS THAT WERE PRESENT. THE REFEREE , ALSO

LET ME A SK YOU ABOUT ANOTHER FINDI NG. THE JUDGE FOUND , NOT ONLY AS AN AGGRAVATOR BUT , A LSO , AS A SEPARATE VIOLATION , T HEFACT THAT THE RESPONDENT MADE A FALSE STATEMENT IN THE DISCIPLINARY PROCEEDINGS.SO THIS WAS , BOT H, AN INDEPENDENT VIOLATION AND AN AGGRAVATOR. WHAT EVIDENCE WAS THERE THAT HE MADE FALSE STATEMENTS DURING THE PROCEEDING?

THE REFEREE BASED THAT , YOUR HONOR, ON THE FACT THAT THE RESPONDENT TEST IFIED THAT AT NO TIM E DID HE EVER KNOW THAT THE PROCEEDS IN QUESTION WERE DRUG MONEY. THE REFEREE WEIGHED THAT WITH THE TESTIMONY OF THE DRUG ENFORCEMENT AG ENT, WHO TESTIFIED IN THE CASE.

WELL , DID THE BAR ALLEG E , IN ITS COMPLAINT, THAT THAT WAS A VIOLATION?

IT DID NOT, YOUR HON OR, NO.

HOW COULD THE REFEREE, THEN, FIND , AS INDEPENDENT VIOLATION, SOMETHING THAT THE BAR HAD NOT ALLE GED?

BECAUSE WE SUBMIT TO THE COURT, YOUR HONOR, THAT THE REFEREE IS ALWA YS EN TITLED TO CONSIDER THE CREDIBILITYOF ANY WIT NESSES , INC LUDING RESPONDENT , AND CAN , INDEPENDENTLY, MAKE A FINDING THAT A WI TNESS IS NOT BEING CREDIBLE , A NDCONSIDER THAT AS AN AGGRAVATING FACTOR .

I UNDERSTAND AS AN AGGRAVATING FACTOR , AND I UNDERSTAND HE CAN CONSIDER THE RESPONDENT NOT CREDIBLE, BUT CAN HE ACTUALLY FIND A VIOLATION OF THE R ULES, WITHOUT ANY ALLEGATION O F THE BAR THAT H E VIOLATED THAT RULE?

IT IS OUR PO SITION T HAT HE CAN, B ASED ON THE TESTIMONY THAT WAS CONSIDERED AND BASED ON WHAT HE HEARD, NOT ONLY FRO M THE RESPONDENT BUT FROM THE OTHER WITNESSES WHO TESTIFIED IN ADD ITION TO USING HIS COMMON SENSE AS CHIEF JUSTICE PARIENTE SAID. IT INSULTS CREDIBILITY, TO THINK THAT THIS RESPONDENT 'S STORY WAS CREDI BLE .

AND THE RESPONDENT HIMSELF , TESTIFIED AT T HEHEARING THAT HE DID NOT KNOW THAT THIS WAS PROCEEDS O F DRUG TRANSACTIONS?

SEVERAL, SEVE RAL TIMESTHROUGHOUT THE ENTIRE REC ORD, AND IT WAS BROUGHT UP BY COUNSEL IN OPE NING STATEMENT AND IN A MEMORA NDUM OF LAW SUBMITED TO THE COURT PRETRIAL. THE ISSUE WAS PLACED ON THE RECORD BY THE RESPONDENT. AND NOW THAT SAME ISSUE

BUT HE TESTIFIED UNDER OATH AT THE PROCEEDING T O THAT EFFECT?

YES, HE DID, YOUR HONOR , SEVERAL TIMES ON THE RECO RD, AND THAT SAME BENEFIT THEY WANTED TO GAIN BY THAT LACK OF KNOWLEDGE, IS WHAT IS NO W IN FRONT OF THIS COURT T HAT THEY ARE APPEALING AND SAYING THAT IT WAS IMPROPER , AND YOU CAN'T HAVE IT BOTH WAYS.

YOU DID NOT RESPOND TO THE QUESTION ABOUT THE U SEOF THE DRUG ISSUE .

YES, IF I MAY , YOURHONOR. THE USEFUL THE DRUG ISSUE , WAS, AGAIN, DE RIVED BY THE REFEREE, FROM READING THE UNDERLYING RECORD FROM JUDGE MARRA. AND JUDGE MARA , AND, NO , THE RESPONDENT'S ANSWER TOTHE QUESTION WAS NOT CHARGED BY THE BAR WITH ANY D RUG USE.THAT CAME OUT TH ROUGH THE TESTIMONY THAT WAS PRESENTEDFROM THE DRUG ENFORCEMENT AGENT, AND THE REASON THAT C AME OUT, IS BECAUSE IT TIED IN WITH HE HAD KNOWLEDGE , AND HERE IS HOW WE KNOW HE HAD KNOWLEDGE. HE DIDN'T FAIL TO KNOW T HAT A LONG TIME FRIEND OF HIS FOR TEN YEARS , WAS, WHICH IS WHAT WAS ALLEGED. HE DIDN'T KNOW THIS GENTLEMAN WAS A DRUG DE ALER, AND IT WAS B ROUGHT OUT B Y THE DEA AGENT WHO TESTIFIED, WHO SAID HE KN EW , AND HERE IS HOW I KNOW HE KNEW , BECAUSE HE, TOO , USED DRUGS. THE BAR DID NOT CHA RGE HIM WITH THAT.

I DON'T FIND THAT, THE REFEREE FOUND THAT AS AN AGGRAVATOR OR AS AN INDEPENDENT VIOLATION.

NO. HE MENTIONS IT IN HIS RE PORT , BUT IT IS NOT, I DON'T BELIEVE IT IS MENTIONED AS AN AGGRAVATING FACTOR OR THAT HE FOUND HIM GUILTY AFTER INDE PENDENT RULE , BASED ON. THAT.

BUT HE DID, HE CONSIDERED HIS DRUG USE, IN TERMS O F LENDING SUPP ORT TO THE CONCLUSION THAT HE HAD TO KNOW ABOUT WHAT THIS MONEYWAS BEING, WHAT THIS MONEYWAS PART OF , THAT IT WAS PART OF DRUG MONEY.

YES, JUSTICE PARIENTE. I WOULD SUB MIT TO THE COURT THAT THE REFEREE'S FINDINGS ARE APPROPRIATE. THEY ARE PRO PER . THERE IS NOTHIN G THAT OVERCAME THE PRESUM PTION OF DISBARMENT. THE REFEREE ME RELY CONSIDERED, AS HE IS ENTITLED TO DO, ALL OF THE EVIDENCE IN F RONT OF HIM , AND AS JUSTICE ANSTEAD POINTED OUT , THE PUBL IC WOULD BE SHOCKED , IF THIS IS A CASE WHERE WE HAVE THE FACTS THAT ARE ON THIS RECORD, WITH A 20-PAGE DETAILED REPORT OF REFEREE AND ALL OF THE INFORMATIONTHAT WAS PRESENTED TO THE COURT, AND WE ALLOW THIS LAWYER TO EVENTUALLY RESUME THE PRACTICE OF LAW AG AIN. DISBARMENT IS THE ONLY APPROPRIATE AL COVE.

THA NK YOU V ERY MU CH. REBUTTAL?

I RAN THR OUGH REBUTT AL. CHIEF CH EE YOU ARE OUT , YOU SAID ONE QU OTE. ONE QUOTE.

YOU YES. I APPRECIATE IT. THIS IS THE EVIDENCE BEFORETHE FEDERAL JUDGE, ASSI STANT ATTORNEY POWELL STAT ING IT WAS OVER A YEAR AND-A-HA LF INVESTIGATION, AND PERSONALLY I S POKE TO EVE RY WITNESS IN THIS CASE , AND I CAN ASSURE THE COURT THAT THERE WAS NO WITNESS A MONG OVER 60, IN WHICH THEY REPORTED TO ME THAT THEY HAD A CONV ERSATION WITH MR . COHEN THAT THE MONIES INVOLVED IN ANY , EITHER A DAILY TRAN SACTION OR DEPO SIT TRANSACTION TO THE SAFE DEPOSIT BOX , IN VOLVED D RUG PROCEEDS. PERIOD. END OF STORE I THAT IS WHAT JUDGE MEYER HE ARD FROM OVER 60 WITNESSES. THE REFEREE HEARD HEAR SAY TESTIMONY THROUGH A DEA AGENT FROM AN INDI CTED COCONSPIRATOR.THAT COMES THROUGH A DIFFERENT RESU LT .

CHIEF JUSTICE: THANK YOU VERY MUCH.