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Florida Board of Bar Examiners Re: W.F.H.

THE LAST CASE ON THIS MORNING'S DOCKET IS FLORIDA BOARD OF BAR EXAMINERS VERSUS W.F.H. OKAY. MR. BERMAN.

MADAM CHIEF. THIS IS A PETITION FOR REVIEW OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS BY THE BOARD OF BAR EXAMINERS FOR A SECOND TIME, RECOMMENDING THAT THE APPLICANT BE DENIED ADMISSION TO THE FLORIDA BAR.

CAN YOU TELL US RIGHT OFF THE BAT, WHAT ARE THE CONCESSIONS AND ADMISSIONS OF THE APPLICANT, AS TO THE McDUFFIE INCIDENT THAT OCCURRED IN 1979 AND HIS INVOLVEMENT IN IT.

OKAY. HE WAS ON A JOB AT TWO O'CLOCK IN THE MORNING. HE RESPONDED TO A CALL FOR BACKUP. THERE WAS A CHASE BY POLICEMEN OF A MOTORCYCLIST, IN DADE COUNTY, FLORIDA. HE CAUGHT UP WITH THE OTHER OFFICERS. AT THE TIME HE GOT THERE, THE SUSPECT, AT THE TIME, WAS OFF OF HIS MOTORCYCLE, AND THEY WERE HAVING TROUBLE TAKING HIM UNDER CONTROL. THE APPLICANT THEN TOOK MR. McDUFFIE TO THE GROUND AND WRESTLED HIM TO THE GROUND AND HANDCUFFED HIM. HE THEN MOVED SEVERAL YARDS AWAY, AND DUSTED HIMSELF OFF, BECAUSE IT WAS A ROUGH-AND-TUMBLE SITUATION, AND AT THAT POINT ANOTHER OFFICER TOOK HIS FLASHLIGHT AND HIT MR. McDUFFIE OVER THE HEAD THREE TIMES IN RAPID SUCCESSION.

ARE YOU SAYING THAT YOUR CLIENT DID NOT SEE THIS AT ALL? YOU SAY HE MOVED AWAY.

HE MOVED AWAY.

SO YOU ARE SORTING OF REMOVING HIM FROM THE SCENE. ARE YOU SAYING HE DID OR DID NOT SEE THIS?

I AM NOT SAYING HE DID OR HE DIDN'T, BUT HE WAS SEVERAL YARDS AWAY.

YOU ARE SAYING YOUR CLIENT --

IT OCCURRED IN RAPID SUCCESSION AND THEN WAS OVER.

AND YOUR CLIENT TESTIFIED THAT HE WAS A WITNESS IN ALL OF THIS?

HE WAS A MATERIAL WITNESS.

AND THEN HE PARTICIPATED IN A COVER-UP OF THIS.

ABSOLUTELY. HE DID.

REALLY THE COVER-UP OF A HOMICIDE.

YES. WHAT HE DID IS A SERGEANT CAME ON THE SCENE AFTER THE FACT AND SAID THIS LOOKS REALLY BAD. WE HAVE GOT TO MAKE THIS LOOK LIKE AN ACCIDENT, AND HE WAS ASKED TO DO CERTAIN THINGS TO MAKE IT LOOK LIKE AN ACCIDENT, AND HE FOLLOWED THOSE DIRECTIONS.

NOW THERE, HAS BEEN SOME DISPUTE HERE, AS TO, REALLY, WHAT IS GOING ON, YOU KNOW, WHETHER OR NOT THE BOARD IS SAYING, WELL, YOU JUST REALLY HAVEN'T COME CLEAN, AND ADMITTED JUST HOW EGREGIOUS YOUR PARTICIPATION IN ALL OF THIS WAS, AND THAT THAT COMING CLEAN ASPECT, IS A BASIS OF THE BOARD'S DECISION, VERSUS, WHICH I WANT TO YOU ADDRESS BOTH ASPECTS OF THIS, VERSUS THE ISSUE OF WHETHER OR NOT THERE IS SOME MISCONDUCT OR EGREGIOUS CONDUCT, THAT MAY PERMANENTLY DISQUALIFY SOMEONE FROM GETTING, SO I WOULD LIKE YOU TO TAKE ON BOTH THOSE ISSUES, WITH REFERENCE TO YOUR CLIENT'S SEEKING ADMISSION TO THE BAR.

TAKING THOSE IN REVERSE ORDER, I THINK THAT THE IMPORTANT POINT HERE IS THAT THE BOARD, IN JUNE OF 2000, IN ITS FIRST REPORT, SAID AS FOLLOWS, THE BOARD RECOGNIZES THAT THERE MAY BE CASES OF MISCONDUCT FOR WHICH NO AMOUNT OF REHABILITATION WOULD EVER BE SUFFICIENT. THE REGISTRANT'S CASE, HOWEVER, IS NOT ONE OF THOSE CASES. SO OFF THE BAT WE START WITH THE PREMISE THAT HE COULD BE REBIL TATED, AND THEN -- REHABILITATED, A AND THEN IF THE REGISTRANT SO DESIRES, HE CAN BE REESTABLISHED TO THE PROFESSION. IT WOULD UNDOUBTEDLY BE A DIFFICULT TASK. IF HE SUCCESSFULLY DOES DO SO, HE MUST ADHERE TO ALL OF THE ELEMENTS LISTED IN THE RULE, SHOWING POSITIVE ACTION. NOW, WHAT HE DID AND WHAT HE ADMITTED HERE WAS SERIOUS IN ITSELF.

WHAT IF YOUR CLIENT WAS TRYING, NOW, TO SEEK RECERTIFICATION AS A LINE OFFICER OF THE POLICE FORCE HERE, IN THE STATE OF FLORIDA? DO YOU THINK THIS MISCONDUCT IN THIS PARTICULAR CASE, WHICH HE HAS ADMITTED TO, WOULD DISQUALIFY HIM FROM BEING RECERTIFIED?

I DON'T THINK SO, NOT GIVEN THE PASSAGE OF TIME, AND I WOULD UNDERSCORE THAT HE WAS NEVER REMOVED. HE VOLUNTARILY RELINQUISHED HIS BADGE, BECAUSE HE FELT THAT IT WAS BAD FOR THE COMMUNITY AND HE UNDERSTOOD THE GRAVITY OF WHAT HE DID.

ARE YOU SUGGESTING THAT HE IS A KIND FELLOW, BECAUSE HE RESIGNED? IS IT NOT MORE APPROPRIATE TO REVIEW THIS THAT IT RESIGNED FOR WHAT OCCURRED HERE?

HE RESIGNED FOR WHAT OCCURRED. HE DID A CIVILIAN JOB FOR 20 YEARS.

LET ME ASK YOU THIS QUESTION AND I AM TROUBLED FOR A LITTLE BIT. IF WE HAD AN ATTORNEY WHO HAD TAKEN THE OATH TO BE A LAWYER, AND THAT LAWYER HAD UNDERTAKEN A CAPITAL CASE, AND IN THAT CAPITAL CASE, THE LAWYER NOT ONLY HAD EVIDENCE THAT COULD HAVE PRESERVED A LIFE BUT THAT LAWYER ACTUALLY CONCEALED EVIDENCE, ACTUALLY BECAME INVOLVED IN TAMPERING WITH EVIDENCE AND LET THAT PERSON BE EXECUTED. IS THAT THE KIND OF PERSON THAT WE WOULD PERMIT TO BECOME A MEMBER OF THE BAR?

I THINK IF HE DID THAT 25 YEARS AGO AND YOU LOOK AT WHAT OCCURRED SINCE THEN, VERY WELL MAYBE, AND I THINK THAT IS THE IMPORTANT POINT HERE, AND I THINK --

YOU DON'T BELIEVE THAT THERE IS ANYTHING THAT CAN EVER BE SO DISQUALIFYING THAT WOULD DISQUALIFY SOMEONE FROM BEING A MEMBER OF THE FLORIDA BAR AND BE AN ATTORNEY? WITH WHOM LIVES WOULD BE ENTRUSTED IN THE FUTURE.

I WOULD SAY CERTAINLY SOMEONE LIKE CHARLES MANSON COULD BE FOREVER BARRED, BUT THE POINT HERE IS WE ARE REVIEWING WHAT THE BOARDS DID, AND THE BOARD ITSELF CONCEDED FOUR YEARS AGO, THAT THIS WAS NOT SUCH A CASE, SO THE QUESTION THAT LOOMS AND THE QUESTION CAN BE DECIDED, IS DID THE APPLICANT SHOW SUFFICIENT REHABILITATION FROM JUNE 2000, THE DATE LAST REPORT, UNTIL THE PRESENT TIME?

LET ME ASK AND GO BACK TO JUSTICE ANSTEAD'S INITIAL QUESTION. WHAT, THERE SEEMS TO BE

A LINGERING CONTEST HERE, AS TO WHAT, EXACTLY, YOUR CLIENT ADMITTED TO.

HE ADMITTED TO BEING INVOLVED IN THE COVER-UP, AND HE ADMITTED TO UNLAWFUL ACTIVITY IN ARRESTING MR. McDUFFIE. WHAT THE BOARD --

HE HAS NEVER ACTIVELY PARTICIPATING IN THE BEATING?

NO, AND AS A MATTER OF FACT NEIL SIMON, HIS LAWYER IN THE UNDERLYING CASE, TESTIFIED AT THE FIRST HEARING THAT THE APPLICANT TOOK A LIE DETECTOR TEST WITH HIS FIRST ATTORNEY THERE, AND HE PASSED, AND THAT IS WHY THE STATE DECIDED NOT TO PURSUE HIM.

IS THAT WHY THE STATE DID NOT PURSUE HIM AS A DEFENDANT?

YES, AND THEY STILL HAD THE OBSTRUCTION OF JUSTICE CHARGE THAT THEY HAD A RIGHT TO CHARGE BUT THEY NEVER DID.

LET ME COME BACK TO THE THING THAT, IS THIS CASE IN A DIFFERENT POSTURE BECAUSE OF THE FACT THAT YOUR CLIENT WAS A LAW ENFORCEMENT OFFICER, INsofar AS I REALIZE WHAT THE BOARD SAID IN 2000, BUT WE ARE DEALING WITH WHAT THIS COURT IS GOING TO SAY, AND IN 2004, IS IT, IS WHAT A LAW ENFORCEMENT OFFICER DOES, CAN THAT, IN AND OF ITSELF, BE DISQUALIFYING PERMANENTLY?

IF A LAW ENFORCEMENT OFFICER WOULD HAVE KILLED SOMEONE IN COLD BLOOD, ABSOLUTELY, BUT I THINK -- WOULD WHAT WAS HIS OBLIGATION AS A LAW ENFORCEMENT OFFICER, STANDING THERE WITH THE OTHER LAW ENFORCEMENT OFFICERS, WHEN THIS BEATING WAS BEING ADMINISTERED?

IT WAS AN INSTANTANEOUS BEATING. A COUPLE OF SECONDS IT LASTED.

I DIDN'T ASK YOU THAT.

HIS OBLIGATION WAS TO TELL THE TRUTH, OBVIOUSLY.

YOU ARE NOT ADMITTING THAT HIS OBLIGATION WAS TO INTERVENE AND PREVENT THIS PERSON FROM BEING KILLED BY HIS FELLOW OFFICERS.

JUSTICE ANSTEAD, THERE IS NO EVIDENCE IN THIS RECORD THAT HE COULD HAVE HAD THIS OPPORTUNITY.

DID HE NOT APPLY THE HANDCUFFS? DID HE NOT APPLY THE NIGHTSTICK TO PLACE THIS MAN ON THE GROUND? WAS HE NOT, WITHIN A MATTER OF FEET FROM WHERE THIS MAN WAS KICKED AND BEATEN TO DEATH?

AND IN THE TRANSCRIPT OF A HEARING OF A PROCEEDING THAT TOOK PLACE ON JANUARY 4, 1980, WHICH WAS IN THE ORIGINAL DOCUMENTS GIVEN TO THE BOARD AS PART OF THE INVESTIGATIVE MATERIALS, HE TESTIFIED HE WAS ABOUT 8 YARDS AWAY.

BUT YOU ARE PORTRAYING THIS AS HE PUT THE HANDCUFFS ON, AND THEN ALL OF A SUDDEN TWO SECONDS LATER, MR. McDUFFIE IS DEAD, BUT WHAT ABOUT THIS PART WHERE HE IS SHOWING THEM HOW HE COULD BREAK HIS LEGS?

THAT WAS AFTER THE FACT.

HE WAS ALREADY DEAD?

HE WAS, HE DIED THREE DAYS LATER. HE DIDN'T NEED TO BE GIVEN CPR AT THE TIME.

HE IS ALREADY ON THE GROUND. HE HAS BEEN BEATEN THREE TIMES, AND YOUR CLIENT SHOWS THEM HOW THEY CAN ALSO BREAK HIS LEGS, SO HE WASN'T AT THAT POINT, DEAD? HE WAS JUST UNCONSCIOUS?

CORRECT.

WELL, WHY IS THAT NOT ADDITIONAL? THAT IS NOT JUST A COVER-UP. THAT IS ALLOWING SOMEBODY WHO IS IN A STATE WHO IS NOT DEAD, TO CONTINUE TO DIE AND NOT GET HELP FOR THAT PERSON.

HE EXPLAINED IT AS CALLOUS HUMOR. HE DOESN'T HAVE AN EXPLANATION FOR IT. CERTAINLY I AM NOT DEFENDING IT, AND HE IS NOT DEFENDING IT.

DIDN'T HE ALSO GO TO THE POLICE DEPARTMENT THE FOLLOWING DAY, THE WHOLE EVENING FOR AFTERTHOUGHT, AND CONTINUED IN THE COVER-UP. DID THAT NOT OCCUR?

YES. ABSOLUTELY.

THIS IS NOT AFTER JUST TAKING AN OATH TO ARREST PEOPLE BUT TO ENFORCE AND APPLY THE LAW.

THERE IS NO QUESTION THAT WHAT HE DID BACK THEN WAS A HORRIBLE THING, AND BEFORE 1983 OR 1984, YOU WOULD HAVE EVERY RIGHT, BUT I THINK THIS COURT --

THIS IS WHAT SEEMED TO BOTHER THE BOARD ABOUT WHAT DID OCCUR BACK THERE AND MAKING SURE THAT WE ALL UNDERSTOOD STAND. IT WAS ONE OFFICER THAT DID THE BEATING OF MR. McDUFFIE.

OFFICER MORRERO, YES.

IS HE THE ONLY ONE CHARGED?

YES.

AND WHY WAS THAT?

IT IS NOT CLEAR IN THE RECORD AT THE TIME.

YOUR CLIENT TESTIFIED AGAINST THE OTHER OFFICERS, WHICH WOULD BE A REASON WHY THEY WOULDN'T PROSECUTE HIM. HE WAS WILLING TO BE A --

BUT THEY WERE PREPARED TO PROSECUTE HIM, UNTIL HE TOOK THE POLYGRAPH TEST, AND IT WAS DETERMINED THAT HE WAS NOT INVOLVED IN THE ACTUAL PHYSICAL BEATING.

THERE WAS ONLY ONE OFFICER ACTUALLY INVOLVED IN THE PHYSICAL BEAT SOMETHING.

ONE OFFICER TOOK THE FLASHLIGHT AND HIT HIM. WE ARE TRYING TO PROVE REHABILITATION FROM THAT. WE ARE NOT SITTING HERE TODAY, DEFENDING WHAT HE DID. WE THINK THIS IS UNMERCIFUL JUSTICE THAT NEEDS TO BE DISPENSED HERE.

WAS THERE A QUESTION IN THE POLICE DEPARTMENT AS TO YOUR, WERE THERE OTHER CIVIL PROCEEDINGS AGAINST YOUR CLIENT FROM THE POLICE DEPARTMENT?

THERE WAS A CIVIL PROCEEDING.

I AM NOT SPEAKING, I KNOW THERE WAS A CIVIL PROCEEDING, BUT WASN'T THERE AN AGENCY, A GRAND JURY REPORT?

I HAVEN'T SEEN SPECIFIC REPORT AS TO THIS INCIDENT. THERE WAS A GRAND JURY REPORT AS TO THE INCIDENT IN GENERAL.

TYPICALLY WHAT HAPPENS IS THERE IS ALSO AN INTERNAL INVESTIGATION AS TO WHETHER YOU DISMISS HIM FROM THE FORCE OR WHATEVER, BUT THERE WAS NO EVIDENCE THAT HE WAS DISMISSED FROM THE FORCE OR OTHERWISE SANCTIONED, OR DID HE CIRCUMVENT THAT PROCESS BY GIVING UP HIS CREDENTIALS.

GIVING UP HIS CREDENTIALS WAS PART OF THE OVERALL GLOBAL SETTLEMENT THAT HE HAD. HE DIDN'T --

THIS GOES BACK TO JUSTICE LEWIS'S QUESTION. HIS VOLUNTARILY GIVING UP HIS POSITION AS ACTIVE POLICE OFFICER, WASN'T FROM A HUMANITARIAN OR I FELT SO BADLY ABOUT THIS, I MEAN, IT WAS SELF-PRESERVATION INVOLVED IN WHAT HE DID IN EVERY PART OF THIS ACTION.

HE TESTIFIED THAT THAT IS WHY HE DID IT. HE TESTIFIED THAT HE THINKS HE COULD HAVE KEPT IT BUT HE BACKED OFF, SO WE WILL NEVER KNOW WHETHER THEY WOULD HAVE ULTIMATELY TAKEN IT AWAY OR NOT.

IS THE RECORD CORRECT THAT THE FIRST TIME THERE WAS ANY ATTEMPT TO REACH OUT TO THE WIDOW AND CHILDREN, WAS IN 2002, 30 YEARS LATER? IS THAT WHAT THE RECORD SAYS?

LITTLE OVER 20 YEARS LATER, YES, HE FELT, HE DID THAT. I ALSO GOT SOME TIME FOR REBUTTAL BUT WANT TO GET OUT BEFOREHAND, THE EFFORTS OF REHABILITATION FOR THIS MAN, HE IS A EUCHARIST MINISTER --

WE TRY TO EVALUATE WHAT HAPPENED BETWEEN NOT WHILE HE WAS IN LAW SCHOOL BUT WHAT REHABILITATION HAPPENED. HE TESTIFIED THAT HE SPENT ABOUT 20 HOURS A WEEK, SEVERAL THOUSAND, ALMOST 3,000 HOURS, EVERYTHING FROM PRO BONO WORK, GUARDIAN AD LITEM, GIVING AFRICAN-AMERICANS AN OPPORTUNITY TO MOVE UP THE LADDER IN THAT PROCESS, COACHING FOOTBALL, SO WE ARE CERTAINLY NOT TRYING TO MINIMIZE WHAT OCCURRED 25 YEARS AGO, BUT WHAT WE ARE SUGGESTING TO YOU IS WHAT YOU HAVE BEFORE YOU TODAY IS A DIFFERENT PERSON, AND WE WOULD JUST ASK YOU TO --

YOU ARE REALLY SAYING HE CAN'T GET MORE REHABILITATED. THAT IS YOUR ARGUMENT IS THAT, IF HE CAME BACK IN TWO YEARS AND DID EVERYTHING THAT HE IS DOING NOW, HOW HE IS GOING TO PROVE IT IF HE HASN'T PROVED IT YET, AND THE BOARD HASN'T TOLD YOU WHAT ELSE HE CAN DO.

AGAINST A BACKDROP BY THE BOARD , CAN WHICH CONCEDED THAT HE COULD BE REHABILITATED. I UNDERSTAND THAT THE COURT IS THE ULTIMATE ARBITER OF THIS ISSUE, BUT CERTAINLY THE PROPOSITION THAT WE BEGAN WITH AND THE STARTING POINT FOR US FROM 2000 FORWARD, WAS THAT HE COULD BE REHABILITATED, SO HE HAS DONE EVERYTHING HUMANLY POSSIBLE TO ACHIEVE THAT RESULT.

EXCEPT NOT REALLY, AND THIS IS WHERE THE BOARD WAS, REALLY TO THE FIRST PART, AS YOU HEAR FROM SEVERAL MEMBERS OF THE COURT, WE ARE FAIRLY APPALLED THAT THIS COVER-UP WASN'T JUST A COVER-UP AFTER HE WAS DEAD. IT WAS A COVER-UP WHILE A MAN WAS STILL ALIVE AND PERHAPS ABLE TO BE SAVED.

WELL, I DON'T THINK THERE WAS ANY ISSUE ABOUT, I WANT THE RECORD TO BE CLEAR, AND I WANT THE COURT TO BE CLEAR ON THAT POINT, MR. McDUFFIE WAS INJURED BADLY, OBVIOUSLY

MORTALLY AT THAT POINT, BUT FIRE RESCUE HAD BEEN CALLED, AND IT WAS AT THAT POINT, APPROXIMATELY A HALF-HOUR LATER, WHEN THE SERGEANT CAME ON THE SCENE AND SAID YOU HAVE GOT TO MAKE THIS LOOK LIKE AN ACCIDENT, BECAUSE IT LOOKS REALLY BAD RIGHT NOW, AND HE WAS FOLLOWING THE DIRECTIONS OF HIS SERGEANT. HE WAS 26 YEARS OLD AT THE TIME. I RESERVE THE REST OF THE TIME FOR REBUTTAL.

MAY IT PLEASE THE COURT. MY NAME IS TOM POBJECKY, AND I AM HERE ON BEHALF THE FLORIDA BOARD BAR EXAMINERS.

LET'S TAKE UP ON THAT LAST POINT, MR. POBJECKY. ACCORDING TO WHAT HAPPENED BEFORE THE BOARD IN 2000, THE BOARD WAS NOT RECOMMENDING AT THAT POINT, THERE BE A PERMANENT REJECTION OF THIS APPLICANT. IS THE BOARD'S POSITION AT THIS POINT, CHANGED IN THAT REGARD?

YES, SIR, I THINK IT HAS. I THINK YOU WOULD HAVE TO PROPERLY VIEW THE COMMENTS THAT THE FIRST PANEL, I MEAN, IT WAS A PASSING REMARK MADE THAT BY THAT PARTICULAR PANEL. IT WASN'T NECESSARY FOR THEIR DECISION. IT WASN'T A FACTUAL FINDING THAT THEY MADE. IT WAS THE CONCLUSION THAT THE PERSON HADN'T BEEN REHABILITATED. IT WASN'T BINDING UPON THAT ARBITER PANEL AND IT CERTAINLY SHOULDN'T BE BINDING UPON THIS COURT.

CERTAINLY IF THIS WAS NOT A MANSLAUGHTER COVER-UP SITUATION, SUCH AS THE McDUFFIE CASE, BUT IN MY RECOLLECTION IS THAT IT WAS A POLICE OFFICER, STATE OF NEW YORK, THAT THE BOARD HAD REJECTED, THAT THIS COURT ALLOWED IN. DO YOU RECALL THAT CASE?

I RECALL AT LEAST ONE POLICE OFFICER WHO HAD A DRUG PROBLEM, AND I THINK HE WAS USING DRUGS, AND HE WAS ALSO, WHILE HE WAS ON THE FORCE, BUT THE BOARD ENDED UP CONDITIONALLY ADMITTING HIM. I BELIEVE THERE WAS ACTUALLY A DISSENT. YOU MAY VERY WELL HAVE BEEN THE DISSENTER IN THAT.

LETS CLARIFY THIS. I THOUGHT THAT THE BOARD'S ORDER WAS THAT HE COULD REAPPLY IN TWO YEARS. ARE YOU NOW ANSWERING THE QUESTION THAT THE BOARD'S POSITION IS THAT THIS CONDUCT IS SO EGREGIOUS THAT HE CAN'T BE REHABILITATED AND WE SHOULD, HE SHOULDN'T EVEN HOLD OUT THE CARROT THAT IN TWO YEARS, SOMETHING ELSE IS GOING TO HAPPEN?

THAT WAS NOT ADDRESSED BY THE BOARD IN ITS FINDINGS, AND THE LAW AS IT CURRENTLY STATES, THAT EVERYONE IS ALLOWED TO REAPPLY TO SEEK ADMISSION. THERE IS NO PRONOUNCEMENT BY THIS COURT THAT SOMETHING COULD BE SO EGREGIOUS THAT IT SHOULD PERMANENTLY DISQUALIFY HIM. THERE ARE CASES OUT-OF-STATE, THE GREENBERG CASE FROM -

I DIDN'T HEAR YOU ARGUING THAT HE SHOULD BE PERMANENTLY DISQUALIFIED.

THE BRIEF WAS WORKING WITH THE BINDINGS ENTERED BY THIS PARTICULAR PANEL. THERE IS A PROBLEM HERE THAT WE SHOULD CONFRONT DIRECTLY, THAT IS WHETHER, NOW THE BOARD IS SHIFTING POSITIONS HERE, AND THAT IS, AFTER HAVING SOME EXPLICIT STATEMENT BEFORE THAT THIS IS NOT A CASE WHERE YOU CAN'T BE REHABILITATED, AND IN FACT, WHAT WE ARE CONCLUDING IS YOU JUST HAVEN'T CONVINCED US OF YOUR REHABILITATION. IT IS EASY, FOR INSTANCE, OR IT WOULD BE EASY FOR US TO GET THE IMPRESSION THAT, BASED ON THE QUESTIONS THAT HAVE COME FROM THE COURT TODAY, YOU KNOW, THAT THE BOARD MIGHT LOGICALLY, YOU KNOW, SHIFT POSITIONS, AND SAY, WELL, I CAN SEE WHAT THE COURT MEANS, OR SOMETHING LIKE THAT, AND SO I AM CONCERNED ABOUT THAT, THOUGH, BECAUSE WE ORDINARILY TAKE IT THE WAY THE BOARD PRESENTS IT TO US, AND ALTHOUGH WE OBVIOUSLY HAVE THE AUTHORITY TO DEAL WITH IT AS WE SEE IT, I AM SOMEWHAT CONCERNED THAT THE BOARD WOULD SHIFT GEARS, SO LET ME ASK A QUESTION THAT IS RELATED TO THAT, REALLY, ASSUMING THAT THE BOARD STICKS BY, REALLY, WHAT IT HAS SAID UP TO THIS POINT, WHAT

MORE WOULD THE BOARD HAVE THIS PARTICULAR APPLICANT DO, TO DEMONSTRATE REHABILITATION, OTHER THAN WHAT THIS DEFENDANT, A DEFENDANT APPLICANT HAS DONE IN THIS CASE? WHAT MORE WOULD THE BOARD HAVE HIM DO? IT IS ALMOST LOOKING LIKE SOMEBODY THAT HAS DECIDED TO NOW BE A PRIEST, AND THEY HAVE GONE AND CONFESSED THEIR SINCE AND SAID I DID A TERRIBLE, EGREGIOUS THING, AND, BUT NOW I WANT TO GO ON AND I WANT TO DO THIS, AND THE BOARD IS SAYING, WELL, YOU HAVE TO DO MORE, TO CONVINCING US THAT YOU ARE REHABILITATED FROM THESE MISDEEDS OF YOUR PAST, SO ARTICULATE FOR US, WHAT MORE THE BOARD WOULD HAVE THIS PARTICULAR APPLICANT DO.

WELL, UNDER FINDINGS, THEY NOTED TWO DEFICIENCIES, THE FIRST DEFICIENCY THIS ISSUE ABOUT ACCEPTING FULL RESPONSIBILITY FOR HIS ACTIONS, ESPECIALLY HIS ACTION PRIOR TO THE BEATING, AND I DISAGREE WITH COUNSEL. I THINK THE RECORD DOES SHOW SOMETHING DIFFERENT. WE HAVE ALL ESTABLISHED, THE APPLICANT WALKED UP TO THE SITUATION. HE WAS INVOLVED IN THE HIGH SPEED CHASE. HE WALKED UP TO THE SITUATION WHERE THE INDIVIDUAL IS SURROUNDED BY OFFICERS. HE PERCEIVED THAT SITUATION, HE TESTIFIED AT HIS INVESTIGATIVE HEARING, TO BE OUT OF CONTROL, SO HE TOOK IT UPON HIMSELF TO GO IN THERE AND PUT MR. McDUFFIE TO THE GROUND WITH HIS NIGHTSTICK AND USED HIS OWN HANDCUFFS, TO HANDCUFF MR. McDUFFIE. ONE WOULD THINK THAT YOU SHOULD THEN PROTECT YOUR PRISONER. YOU SHOULD --

HE ADMITS, SO FAR, EVERYTHING THAT YOU ARE SAYING, SO WHAT IS IT THAT YOU ADMIT THAT HE SHOULD HAVE DONE?

HE STEPPED BACK AND DUSTED HIMSELF OFF, WHEN HE KNOWS THIS INDIVIDUAL WHOM HE HAS RENDERED DEFENSELESS, SURROUNDED BY A MOB OF POLICE OFFICERS --

AGAIN, WE KNOW THAT EVERYTHING HE DID WAS WRONG, BUT YOU ARE SAYING THAT THERE IS SOMETHING HE HASN'T ADMITTED TO DOING. WHAT IS IT?

THIS IS THE SAME ISSUE THAT CALM ON THE LAST APPEAL, TOO, AND HE, SOMETIMES YOU THINK IT IS SETTLED AND THEN OTHER TIMES YOU DECIDE IT IS NOT SETTLED. THE BOARD'S POSITION IS HE PLAYED A PART IN THE EFFECTS THAT LED TO THE BEATING.

BUT WHAT PART? IS THERE ANY QUESTION THAT IT WAS A LAWFUL ARREST? THE GUY WAS SPEEDING. HE CAME IN TO ASSIST OFFICERS. HE WAS CALLED TO ASSIST, RIGHT?

HE WAS INVOLVED. YES.

I THINK THAT IS A CRITICAL ISSUE, TO UNDERSTAND LAW ENFORCEMENT PROCEDURES. HE WAS CALLED IN TO ASSIST. IS THAT CORRECT OR INCORRECT?

I DON'T KNOW IF THE RECORD IS THAT SPECIFIC. I APOLOGIZE. I KNOW THERE WERE A NUMBER OF OFFICERS, WHEN HE GOT --

I THINK IT IS CRITICAL, BECAUSE MY UNDERSTANDING OF THE LAW ENFORCEMENT POLICY, IS, ONCE HE HAS BEEN RENDERED ARRESTED, THAT AT THAT POINT IF HE IS JUST CALLED IN TO ASSIST, IT IS NOT HIS CASE. IT IS THE PERSON WHO ORIGINALLY SAW HIM SPEEDING OR WHATEVER, THAT TAKES OVER. YOU CAN'T HAVE EIGHT POLICE OFFICERS WORKING UP THE CASE FROM THERE. SOMEBODY HAS GOT TO BACK OFF. AND IF YOU CAN'T TELL ME AT THIS POINT, THAT WHERE IT IS IN THE CIRCUMSTANCE, IT IS TROUBLING TO ME.

WELL, ALL I COULD DO IS TELL YOU WHAT HE TOLD US, AND THOSE, I WOULD THINK, WOULD BE ADMISSIONS BY HIM AND SPECIFICALLY, IF YOU WERE TO LOOK AT THE BOTTOM OF PAGE 10 AND THE TOP OF PAGE 11 OF THE MOST RECENT FINDINGS, IT IS QUOTING HIM, AND THIS WAS FROM PREVIOUS TESTIMONY WHERE HE SAID THAT IT HAPPENED QUICKLY BUT I REACTED BADLY. I

DON'T HAVE AN EXPLANATION. I WISH I COULD SAY THERE IS A REASON WHY. THERE IS NO REASON WHY. IT WAS WRONG NOT TO DO SO.

ISN'T THE BOARD'S ASSUMPTION THE SAME AS YOURS, THAT ONCE HE HANDCUFFED HIM, HE HAD THE DUTY TO STAY THERE AND PROTECT HIM FROM THE OTHER OFFICERS. IS THAT THE BOARD'S POSITION?

YES, SIR.

OKAY. IS THERE ANY ACKNOWLEDGMENT OF THE, MY UNDERSTANDING OF THE REALITY OF IT IS THAT, ONCE THEY ARE SUBDUE, THAT IT IS AT THAT POINT OFFICERS, WHOEVER, IF IT IS A SERGEANT OR WHOEVER, CASE, AT THAT POINT THEY TAKE OVER, AND THOSE CALLED TO ASSIST BACK OFF.

IF THE SITUATION IS OUT OF CONTROL, AS THIS APPLICANT PROCEEDED TO BE, WHEN HE TOOK IT UPON HIMSELF TO ACTUALLY TAKE THE PERSON TO THE GROUND.

AND GOT HIM UNDER CONTROL.

HOW DID IT ALL-OF-A-SUDDEN BECOME NOT OUT OF CONTROL? THE MOB WAS STILL THERE. THE POLICE OFFICERS WERE STILL THERE.

HOW MANY POLICE OFFICERS WERE STILL THERE?

THERE WERE AT LEAST, I THINK, FOUR THAT WERE CRIMINALLY CHARGED, SO I KNOW THERE WAS AT LEAST FOUR AND PROBABLY MORE.

DID HE DESCRIBE WHAT OUT OF CONTROL MEANT? WHAT WERE THEY, WAS IT OUT OF CONTROL BECAUSE McDUFFIE WAS OUTFIT CONTROL OR BECAUSE THE POLICE OFFICERS WERE OUT OF CONTROL?

I BELIEVE THE APPLICANT, THE VICTIM WAS STRUGGLING, OBVIOUSLY, WITH THE OFFICERS, AND OUT OF CONTROL WAS THE PHRASE TO USE, BUT ALSO --

IT SEEMS TO ME FROM READING THE BOARD'S RECOMMENDATION, YOU HAVEN'T SAID IT HERE, BUT WHAT IT SEEMS THE BOARD RECOMMENDS, WAS IT ASKED HIM, DID YOU PARTICIPATE IN THE DEATH OF THE VICTIM, AND AT THAT POINT HE SAID, I DIDN'T PARTICIPATE IN THE DEATH. I WAS STANDING BEHIND HIM. THE BOARD WANTED HIM TO ADMIT THAT, BY NOT GOING IN AND HELPING HIM, HE ACTUALLY PARTICIPATED IN THE DEATH, BUT THAT IS MORE A MATTER OF SEMANTICS. HE ADMITS TO ALL OF THE FACTS SURROUNDING THAT. WHETHER THAT MADE HIM PARTICIPATE IN THE DEATH OR NOT IS ANOTHER ISSUE. HE ADMITTED HE HANDCUFFED HIM. HE ADMITTED HE WATCHED. HE ADMITTED HE DIDN'T INTERVENE. HE ADMITTED HE COVERED UP. HE ADMITTED ALL OF THOSE THINGS, AND THEN THE BOARD WANTED HIM TO GO AHEAD AND ADMIT, YOU PARTICIPATED IN THE DEATH OF THE VICTIM, AND HE DIDN'T ADMIT THAT, AND THAT IS WHAT YOU ARE SAYING IS THE BOARD'S RECOMMENDATION.

IT IS. BUT AT THE BEGINNING OF THE HEARING, I WOULD ENCOURAGE THE BOARD TO LOOK AT THE BEGINNING OF THE HEARING. A BOARD MEMBER, QUOTE, SAID, DO YOU OR DO YOU NOT FEEL THAT YOU WERE INVOLVED IN THE DEATH OF MR. McDUFFIE. HIS RESPONSE STARTING AT LINE 14, I DEFINITELY WAS INVOLVED IN THE DEATH OF MR. McDUFFIE, THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING UP TO IT, WHEN IT OCCURRED, AND THE AFTERMATH. HE GOES ON TO SAY, AND THE TOTALITY OF IT, I WAS EVERY BIT AS MUCH A PART OF THAT EVENT AS THE PERSON THAT DELIVERED THE BLOWS.

SO, AGAIN, WE ARE BACK TO --

WELL, AGAIN THAT IS WHAT HE SAID AT THAT POINT IN TIME, AFTER BEING QUESTIONED BY THE BOARD MEMBERS, BUT IN THE BEGINNING IT WAS THE OTHER EXPLANATION, WHERE EVERYTHING I DID WAS --

SO I CAN'T UNDERSTAND WHAT THE BOARD IS NOW SAYING, WHAT ELSE DOES HE NEED TO ADMIT, BECAUSE WE ARE BACK TO SQUARE ONE NOW. THE REASON THE BOARD SAYS HE IS NOT REHABILITATED IS BECAUSE HE HASN'T FULLY ADMITTED HIS INVOLVEMENT IN THIS ATROCIOUS CONDUCT. NOW THAT HE HAS, WHAT IS LEFT FOR HIM TO ADMIT?

AS A RESULT OF THIS QUESTIONING, HE THEIR IS NOTHING, BUT THAT IS NOT AS RESULT OF DIRECT TESTIMONY.

BUT, AGAIN, THE BOARD SAID THIS IS NOT ONE OF THOSE CASES WHERE NO AMOUNT OF REHABILITATION WILL ALLOW YOU TO BECOME A MEMBER OF THE BAR, THEN WHERE ARE WE NOW? WHAT ELSE IS LEFT FOR HIM TO DO?

WELL, I DON'T THINK THAT TOTALLY RESOLVES THE ISSUE. IF YOU COME IN VOLUNTARILY AND YOU OFFER DIRECT TESTIMONY AND YOU DON'T ADMIT IT AND IT IS ONLY UNDER POINTED QUESTIONING THAT YOU EVENTUALLY ADMIT IT, I THINK IT IS A RIGHT OF THE BOARD TO SAY HOW MUCH SINCERITY IS INVOLVED IN THAT DECISION. IF WE HAVE TO BRING IT OUT AND DRAW TOUT OF YOU, AND IF YOU GO BACK TO THE ORIGINAL APPEAL, THEY TOOK THE POSITION THAT HE ORIGINALLY TOOK, THAT, NO, HE DID NOTHING WRONG.

I DON'T THINK HE SAID HE DID NOTHING WRONG. I THINK THAT IS A MISCHARACTERIZATION, UP TO THE BEATING.

MY QUESTION --

IT IS ABSOLUTELY UNCONTESTED THAT HE TOOK STEPS AFTERWARDS. THEY DON'T CONTEST, AND YOUR HONOR, IF YOU THOUGHT I WAS CONTENDING THAT, THAT IS ABSOLUTELY INCORRECT, BUT THIS IS THAT ONE MATTER OF CONTENTION.

I QUESTION IF HE CAME BACK IN TWO YEARS AND SAID WHAT HE SAID THERE, WOULD HE BE ABLE TO BE ADMITTED? I MEAN --

THAT WOULD CLEARLY RESOLVE THAT PARTICULAR ISSUE. THE PANEL, ALSO, FOUND --

IS THERE ANYTHING MORE THAT, IF HE IS PUT OFF FOR TWO YEARS, THAT HE SHOULD AND COULD DO IN REHABILITATION, OTHER THAN DEALING WITH THAT SPECIFIC ISSUE.

I THINK THE ANSWER TO THAT, I WOULD LIKE TO COMPARE PERHAPS HOW THE TWO DIFFERENT HEARING PANELS DIFFER, AND THERE WAS ABOUT A 3-YEARS DIFFERENCE BETWEEN THE DECISIONS OF THOSE TWO HEARING PANELS. AS I READ THE FIRST FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT SEEMS LIKE THERE WAS A FOCUS ON WHAT DOES THIS MAN NEED TO DO TO PERSONALLY REHABILITATE HIMSELF, TO ASSURE US THAT HE WILL NEVER ENGAGE IN THIS TYPE OF CONDUCT, IF HE WAS ADMITTED AS AN ATTORNEY. THAT APPEARS TO ME, AND THAT IS MY INTERPRETATION, TO BE THE FOCUS OF THE FIRST PANEL. THE SECOND PANEL, I THINK, WENT FURTHER. I THINK CLEARLY THAT IS THE FACT THAT YOU HAVE TO CONSIDER, BUT YOU ALSO HAVE TO CONSIDER THE CONTEXT IN THIS OCCURENCE. HOW WOULD HIS ADMISSION AFFECT THE INTEGRITY AND STANDING OF THE LEGAL PROFESSION. WOULD IT TARNISH IT. HOW -

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BECAUSE YOU HAVE A LIMITED TIME, IT SEEMS TO ME THE ANSWER TO JUSTICE WELLS'S QUESTION SHOULD BE ABLE TO BE SOME KIND OF A SIMPLE ANSWER. I AM NOT SURE, CAN YOU BRING THIS TO, WHAT WOULD HE, YOU ARE HIS LAWYER. YOU HAVE NOW LOOKED AT THIS THING,

AND YOU SAY THIS IS NOW, THE NEXT, WE ARE GOING TO ENTER INTO A STIPULATION TO WHAT HE HAS DONE, ON PAGE 88. WE ARE GOING TO HAVE THAT BE I AGREE, THIS IS IT. THIS IS MY TESTIMONY. I ADMIT IT. I WASN'T CHARGED WITH MANSLAUGHTER, BUT THIS IS WHAT MY ADMISSION IS. UNDER THAT POSITIVE ACTION, WHAT ELSE DOES HE NEED TO DO?

IT IS A STRAIGHTFORWARD QUESTION BUT OBVIOUSLY THERE ISN'T A STRAIGHTFORWARD ANSWER.

I THINK YOUR ARGUMENT HERE IS THERE IS NOTHING HE CAN DO, THERE IS NOTHING HE NEEDS TO DO, AND WE ARE BACK TO SQUARE ONE AND SAYING, WELL, YOU JUST CAN'T BE REHABILITATED, NO MATTER WHAT. YOU SHOULD NOT BE ALLOWED INTO THE BAR, BECAUSE YOUR CONDUCT WAS SO OUTRAGEOUS.

THAT IS CLEARLY AN ISSUE THAT HAS BEEN RAISED TO THIS DAY, AND IT HAS BEEN RAISED BY THE COURT.

IT IS NOT WHAT HAS BEEN RAISED. IT IS RAISED HERE TODAY.

THE RULE IS CLEAR AND CONVINCING EVIDENCE. YOU SEEM TO BE ASKING, TELL US, DOES HE NEED TO PUT IN TEN EXTRA HOURS OR A WEEK PER MONTH, IN ORDER TO BE REHABILITATED, AND I DON'T THINK WE CAN DO THAT. I DON'T THINK WE CAN MAKE THAT --

PUT IT INTO CONTEXT. OTHER THAN THIS ONE INCIDENT, THE 26 OR 27 YEARS BEFOREHAND OR THE 25 OR SOMETHING YEARS AFTERWARDS, WHAT EVIDENCE OF THIS MAN'S LACK OF MORAL CHARACTER, IS THERE?

THAT WAS THE ONLY SPECIFICS FOUND AT THE FIRST PANEL, AND THERE WAS NO OTHER DISCUSSION AT THE HEARING PANELS. THAT IS IT.

ANY OTHER QUESTIONS?

THE BOARD WOULD ASK THAT THE COURT WOULD REVIEW THE FINDINGS AND AFFIRM THE BOARD'S DECISION THAT THIS APPLICANT IS NOT READY TO BE ADMITTED TO THE FLORIDA BAR AT THIS TIME.

JUSTICE BELL, JUST TO PICK UP ON YOUR LAST POINT, NOT ONLY WAS THERE NO EVIDENCE OF ANYTHING IN HIS CONDUCT SINCE THIS INCIDENT BACK IN 1980, BUT THE OVERWHELMING EVIDENCE IN THIS CASE, IS THAT THIS IS AN IMPECCABLE HUMAN BEING WITH INTEGRITY THAT I WOULD PUT UP AGAINST ANYBODY IN THIS COURTROOM RIGHT NOW.

HOW ABOUT BEFORE THIS INCIDENT? WAS THERE SOME OTHER POLICE REPORTS ABOUT MISCONDUCT ON HIS BEHALF?

THERE WERE SPECIFICATIONS. THERE WERE SPECIFICATIONS THAT WERE FILED BACK IN 1999. THOSE WERE, THEY WERE FOUND BY THE BOARD TO BE INSUFFICIENTLY PROVED AND SO THEY WERE ULTIMATELY DISMISSED. WHY THEY CAME BACK IN THE SECOND REPORT, IS A MYSTERY TO ALL OF US BUT THAT WASN'T PROVEN. IN FACT --

THIS, IN FACT, GOES BACK, TO THE FACT THAT THIS WAS A LAW ENFORCEMENT OFFICER WHO IS CHARGED WITH ENFORCING THE LAWS AND PROTECTING THE PUBLIC. AND SO IT IS VERY UPSETTING, WHEN THE PERSON WHO IS CHARGED WITH THAT KIND OF DUTY, DOES NOT IN FACT CARRY IT OUT, AND DOES SOMETHING AFFIRMATIVELY NOT TO CARRY IT OUT, AND SO UNDER THOSE KINDS OF SITUATIONS, SHOULDN'T A LAW ENFORCEMENT OFFICER, IN FACT, BE HELD TO A HIGHER STANDARD THAN SOME ORDINARY CITIZEN WHO, MIGHT ENGAGE IN THE SAME KIND OF CONDUCT?

ABSOLUTELY, THAN IS WHY THIS COURT HAS ESTABLISHED A SLIDING SCALE WHICH THEY HAVE CITED IN THEIR BRIEF AND WE DON'T DISAGREE WITH. THE MORE SERIOUS THE MISCONDUCT, THE MORE SHOWING OF REHABILITATION NECESSARY TO OVERCOME IT, AND IF YOU USE THAT SLIDING SCALE, CERTAINLY IN EXTREME USE, IT STARTS OUT WITH A HEAVY BURDEN. NO ONE DISPUTES THAT, BUT IF YOU ACCEPT THE PROPOSITION THAT HE CAN BE REHABILITATED, HE HAS DONE ANYTHING AND EVERYTHING, AFTER THAT INCIDENT, EVEN BEFORE HE DECIDED TO GO TO LAW SCHOOL. I MEAN, THIS ISN'T A MAN WHO TRIED TO MANUFACTURE REHABILITATION.

DO OTHER PANEL MEMBERS HAVE QUESTIONS? THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL 2:30 THIS AFTERNOON.

MARSHAL: PLEASE RISE.