The Florida Bar vs. Bernard Marc Mogil

NEXT CASE IS THE FLORIDA BAR VERSUS BERNARD MARC MOGIL. WHILE THAT CASE IS BEING CALLED, WE WANT TO ACKNOWLEDGE THE PRESENCE OF THE LAW STUDIES CLASS UNDER MARK McKAY, A TEACHER FROM GODBY HIGH SCHOOL. WE ARE DELIGHTED TO HAVE YOU WITH US. ARE YOU GOING TO BE PRESENTING FOR THE RESPONDENT, MS. ETKIN? YOU MAY PROCEED.

GOOD MORNING. MY NAME IS PATRICIA ETKIN, AND I REPRESENT THE RESPONDENT, MARC MOGIL, ALONG WITH MY PARTNER JOHN WEISS. MR. WEISS IS HERE, PRESENT IN THE COURTROOM. MR. MOGIL IS PRESENT IN THE COURTROOM. MR. MOGIL HAD BEEN AN ATTORNEY WITH NO DISCIPLINARY HISTORY. IN 1996 THIS CHANGED.

HOW LONG HAD HE BEEN A MEMBER OF THE FLORIDA BAR?

SINCE 1974.

HAD EVER PRACTICED IN FLORIDA?

I DON'T BELIEVE HE HAD. 197 --

THE REASON I ASK THAT IS BECAUSE THE ABSENCE OF A DISCIPLINARY RECORD IN FLORIDA, REALLY, WOULDN'T MEAN ANYTHING, IF HE HAD NOT PRACTICED IN FLORIDA.

YES. 1975, I BELIEVE, HE WAS ADMITTED IN NEW YORK. HE HAD BEEN A WELL-RESPECTED MEMBER OF THE NEW YORK JUDICIARY AND, AT THAT TIME, WAS SERVING AS THE DISTRICT, COUNTY COURT JUDGE OF NASSAU COUNTY AND HAD BEEN A DISTRICT COURT JUDGE WITHIN THE COUNTY. IN 1996, THIS CHANGED. AS A RESULT OF JUDICIAL REMOVAL PROCEEDINGS IN NEW YORK, THIS WAS THE BEGINNING OF WHAT WE CAN VIEW AS ALMOST A DISCIPLINARY DOMINO EFFECT. THE JUDICIAL REMOVAL PROCEEDINGS, THE FINDINGS BECAME THE BASIS OF A NEW YORK DISBARMENT ORDER, AND THAT NEW YORK DISBARMENT ORDER BECAME THE BASIS OF THE FLORIDA BAR DISCIPLINARY PROCEEDINGS. THE FLORIDA BAR DISCIPLINARY PROCEEDINGS IS, THEREFORE, THE FINDER FOR THE INITIAL NEW YORK PROCEEDINGS.

WAS THERE EVER ANYTHING IN THE NEW YORK PROCEEDINGS ABOUT YOUR CLIENT'S MENTAL HEALTH, BECAUSE IN READING THE FACTS OF THIS CASE AND IT OCCURRED IN A SHORT AMOUNT OF TIME, I WONDERED IF IT HAD EVER BEEN ATTEMPTED TO BE ESTABLISHED THAT THIS CAME ABOUT AS THE RESULT OF SOME UNUSUAL STRESSORS OR MENTAL PROBLEMS.

THE RECORD, WHICH WAS NOT PRESENTED TO THE REFEREE --

THAT WAS YOUR CLIENT'S CHOICE.

WELL, YOUR HONOR, THAT GETS TO ONE OF THE ISSUES. HE WAS PRECLUDED, BY OPERATION OF THE RULE WHICH THE FLORIDA BAR RULE, WHICH MADE THE ADJUDICATION AND THE FORUM, DISCIPLINARY FORUM, CONCLUSIVE PROOF OF GUILT HERE. THE REFEREE USED THAT RULE, AND THE BAR ARGUED THAT THAT WAS AN APPROPRIATE BASIS FOR SUMMARY JUDGMENT. THE CASE LAW, HOWEVER, SUPPORTS THAT, WHERE A DISPUTES OR GIVES A RESPONDENT A RIGHT TO SHOW WHY CONCLUSIVE EFFECTS SHOULD NOT BE GIVEN TO THE FOREIGN DISCIPLINARY DECISION, THE ORDER.

I THINK YOU WERE TRYING TO ANSWER MY QUESTION AS TO WHETHER THERE WAS ANY ISSUES OF MENTAL HEALTH, AND YOU WERE SAYING, BECAUSE THE RECORD, NOW, HAS BEEN FILED IN THIS COURT FROM THE NEW YORK PROCEEDINGS. WAS THERE ANY ATTEMPT TO ESTABLISH?

THERE WAS NO ATTEMPT. THERE WAS EVIDENCE OF -- THAT HE HAD BEEN TREATED FOR, I BELIEVE, DEPRESSION, AND HAD BEEN ON VARIOUS MEDICATIONS AT VARIOUS POINTS, BUT THAT WAS NOT ASSERTED AS MITIGATION IN THE NEW YORK PROCEEDINGS.

AS FAR AS THE FLORIDA PROCEEDINGS ARE CONCERNED, AT THE SUMMARY JUDGMENT HEARING, AS I UNDERSTAND THE RECORD, YOUR CLIENT CONCEDED THAT, TO THE PARTIAL SUMMARY JUDGMENT. WAS HE OR WAS HE NOT REPRESENTED BY COUNCIL AT THAT POINT?

WELL, FIRST HE WAS NOT REPRESENTED BY COUNCIL AT THAT POINT. HE APPEARED PRO SE.

HE CONCEDED TO THE --

THE -- WE WOULD NOT AGREE THAT HE CONCEDED TO SUMMARY JUDGMENT. THE RECORD SHOWS THAT HE ATTEMPTED -- HE FILED A RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT. HE CAME AND APPEARED AND OPEN OWESED SUMMARY -- AND OPPOSEED SUMMARY JUDGMENT, BUT BECAUSE THE REFEREE AND THE BAR PRESENTED OR PAINT ADD PICTURE FOR HIM OF ABSOLUTE FUTILITY, HE MORE OR LESS ACQUIESCEED. WHEN THE REFEREE SAYS I HAVE SOMETHING TO THE EFFECT OF I HAVE NO CHOICE, MR. MOGIL SAID I AM BURDENED OUT. I WILL BURDEN YOU KNOW FURTHER.

HE DID NOT, AT THAT POINT, ATTEMPT TO FIGHT SUMMARY JUDGMENT.

WHEN HE REALIZED THAT THERE WAS NOTHING THAT COULD BE DONE, HE MORE OR LESS ACQUIESCED. HE DID NOT COME TO THE SUMMARY JUDGMENT PROCEEDING WITH THE INTENT, WITH ANY INTENT OTHER THAN TO OPPOSE IT, AND HE DID FILE A RESPONSE IN OPPOSITION. IT WAS PRETTY CLEAR TO MR. MOGIL, AT THE HEARING, THAT THERE WAS NOTHING THAT HE COULD DO, BECAUSE OF THE DETERMINATION BY THE REFEREE AND THE BAR, THAT THIS RULE IS GIVEN CONCLUSIVE EFFECT IN FLORIDA. THERE WAS NO OPPORTUNITY GIVEN TO HIM, THE REFEREE DID NOT SAY LET ME LISTEN. LET ME MAKE A JUDICIAL DETERMINATION, BASED UPON YOUR ARGUMENTS, AS TO WHY I SHOULD NOT ACCEPT THE NEW YORK ORDER AS CONCLUSIVE PROOF.

DID YOUR CLIENT SAY, JUDGE, BEFORE YOU MAKE THIS DETERMINATION, I WOULD LIKE TO PUT ON OR DISCUSS THE FOLLOWING FACTS IN OPPOSITION?

HE HAD FILED A RESPONSE. HE DID -- HE DID ARGUE THE RATIONALE BEHIND THE WILKES CASE. HE SAID YOU DON'T HAVE TO ACCEPT IT.

SO HE DID, IN FACT, ARGUE, AND THE REFEREE MADE A DECISION FORM.

HE ATTEMPTED TO OPPOSE SUMMARY JUDGMENT, AND THE RESPONSE WAS THAT THIS RULE APPLIES AS A BASIS FOR SUMMARY JUDGMENT. IN OTHER WORDS IT PRECLUDED THE JUDICIAL DETERMINATION. IF THE REFEREE HAD INDICATED -- IT IS RESPONDENT'S POSITION THAT THE REFEREE SHOULD HAVE DENIED SUMMARY JUDGMENT AND ALLOWED THE RESPONDENT, MR. MOGIL, AN OPPORTUNITY TO PRESENT HIS POSITION AS TO WHY THE NEW YORK DISCIPLINARY ORDER SHOULD BE GIVEN, SHOULD NOT BE GIVEN CONCLUSIVE EFFECT.

DID THE REFEREE TELL HIM THAT HE COULD NOT DO THAT?

WELL, THE REFEREE, WELL, THE LANGUAGE IN THE -- AT THE SUMMARY JUDGMENT HEARING INDICATES THAT THE REFEREE BELIEVED THAT HE WAS BOUND, SO THE LANGUAGE SUGGESTS THAT --

DID THE REFEREE TELL HIM YOU CANNOT MAKE A PRESENTATION AT ANY POINT?

THE -- WELL, THE REFEREE, I BELIEVE, INDICATED TO HIM THAT IT WAS -- IT WAS NOT NECESSARY, BECAUSE OF THE CONCLUSIVE EFFECT OF THE RULE. THAT HE WAS BOUND. THAT --

HE IS A LAWYER. HE KNOWS WHAT HE WANTS TO PUT ON.

HIS -- YES. AND HIS BACKGROUND WAS THAT, ALSO, IN THE NEW YORK DISCIPLINARY PROCEEDINGS, HE CAME TO FLORIDA HAVING A NEW YORK DISBARMENT ORDER, IN WHICH, IN NEW YORK PROCEEDINGS, IN WHICH THE JUDICIAL REMOVAL PROCEEDING WAS DETERMINED TO HAVE CONCLUSIVE EFFECT, SO HE, ALSO, WAS NOT PERMITTED IN THE NEW YORK DISCIPLINARY PROCEEDING TO CONTEST THE JUDICIAL REMOVAL PROCEEDING FINDINGS. SO HIS -- ALTHOUGH HE ATTEMPTED, DOWN HERE IN FLORIDA, TO TRY TO CONVINCE THE REFEREE THAT JUST BECAUSE NEW YORK HAS DISBARRED ME, YOU DO NOT HAVE TO FOLLOW THAT. THERE IS NO RECIPROCAL DISCIPLINE IN FLORIDA, THE REFEREE AND THE BAR ARGUE THAT, BASED SOLELY UPON THAT RULE, IT IS CONCLUSIVE PROOF OF GUILT, AND THERE IS REALLY NO NEED TO GO FURTHER.

THAT WAS THE ARGUMENT OF THE BAR, AND WHETHER THAT IS A CORRECT STATEMENT OF THE LAW, AND I BELIEVE IT PROBABLY IS, HE DID HAVE AN OPPORTUNITY TO ARGUE TO THE CONTRARY, IF HE WANTED TO. THE COURT DID NOT STOP HIM FROM DOING IT. NOR WAS HE MISLED.

HE APPEARED WITH THE INTENT AND, WHEN IT APPEARED THAT THE -- THAT HIS EFFORTS WOULD BE FUTILE, HE BASICALLY ACQUIESCED, AS OPPOSED TO INITIALLY CONSENTING.

WHAT DO YOU WANT US TO DO?

WELL, IT IS RESPONDENT'S POSITION THAT, IF YOU LOOK JUST AT THE REPORT OF REFEREE AND ITS FINDINGS, THAT THESE FINDINGS ARE CLEARLY ERRONEOUS ON ITS FACE. WE WOULD LIKE -- WE BELIEVE THAT, BASED UPON THAT, THE REFEREE REPORT SHOULD NOT BE ACCEPTED.

ERRONEOUS IN WHAT RESPECT?

AS TO FINDINGS. IF WE LOOK AT THE NEW YORK DISCIPLINARY ORDER, THE NEW YORK ORDER IS BASED UPON THE CODE OF PROFESSIONAL RESPONSIBILITY, WHICH HAS BEEN SUPERSEDED IN FLORIDA. THE NEW YORK CODE, THE NEW YORK DISBARMENT ORDER CHARGES RESPONDENT WITH VIOLATING CONDUCT WHICH ADVERSELY AFFECTS ON FITNESS TO PRACTICE LAW. WE DON'T HAVE THAT RULE IN FLORIDA. THE BAR SELECTED ANOTHER RULE, WHICH HAS NO APPLICABILITY TO THE FACTS. THEY -- THE BAR SELECTED CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE. THE DISCRIMINATORY CONDUCT LANGUAGE.

ARE YOU ARGUING, THEN, THAT YOU HAVE TO HAVE THE EXACT WORDING IN THE CODES, IN ORDER TO BE ABLE TO USE DISBARMENT, BASED UPON ANOTHER STATE'S DISBARMENT?

THERE HAS TO BE SOME RELATIONSHIP BETWEEN THE CHARGED MISCONDUCT. IF THE RULE IS NOT THE SAME, IT HAS TO BE A SIMILAR COUNTERPART. IF THERE IS NO COUNTERPART, YOU CAN'T MAKE A BALD ASSERTION OF A DIFFERENT RULE THAT HAS NO APPLICABILITY.

WAS THIS ARGUMENT MADE TO THE REFEREE?

NO. THIS ARGUMENT WAS RAISED ON APPEAL. THE SECOND FINDING MADE BY THE NEW YORK DISCIPLINARY FORUM WAS THAT HIS TESTIMONY, WHICH WAS PRESENTED IN DEFENSE OF THE CHARGES IN THE JUDICIAL REMOVAL PROCEEDING, WAS FALSE. THERE IS A RULE IN FLORIDA THAT DOES HAVE A COROLLARY TO THE NEW YORK RULE. HOWEVER, IN FLORIDA, IF WE LOOK AT

THE CASE LAW, THAT CHARGE MUST BE SUPPORTED BY AN INTENTIONAL AND WILLFUL ASSERTION OF -- FALSE ASSERTION OF A MATERIAL FACT, AND IF WE LOOK AT THE DAVEY CASE, WHICH IS A JUDICIAL REMOVAL PROCEEDING IN FLORIDA, THIS CASE SUPPORTS THAT YOU NEED -- IT CAN'T JUST BE A DISBELIEF OF A RESPONDENT'S DEFENSE, WHICH IS THE BASIS FOR A CHARGE. THERE MUST BE A SHOWING OF -- THAT THE RESPONDENT KNOWINGLY MADE A FALSE MISREPRESENTATION, AND THE RECORD HAS NO EVIDENCE TO SUPPORT THAT CHARGE. IN ADDITION --

SO YOU ARE TALKING ABOUT THE ACTUAL JUDICIAL PROCEEDING IN NEW YORK.

THE ONLY PROCEEDING WAS THE JUDICIAL REMOVAL PROCEEDINGS. THAT FIRST FORUM BECAME THE BASIS FOR THE FINDINGS, AND THE SECOND FORUM --

SO YOU ARE NOW CONTESTING FINDINGS OF FACT THAT WERE MADE IN THE JUDICIAL REMOVAL PROCEEDING?

NO. I AM CONTESTING THE REFEREE'S REPORT, WHICH IS BASED UPON, SOLELY UPON THE NEW YORK DISBARMENT ORDER, WHICH IS, IN ITSELF, BASED UPON THE FIRST FORUM.

IF YOU WANT TO SAVE SOME TIME FOR REBUTTAL, YOU MAY.

THANK YOU. I WISH TO.

THANK YOU. MR. DAVIS.

MAY IT PLEASE THE COURT. LAWRENCE DAVIS ON BEHALF OF THE BAR COUNSEL.

CAN WE REVIEW SOMETHING THAT WAS NOT RAISED BELOW?

YOUR HONOR, THE CASE LAW WE CITED INDICATES THAT, IF IT IS NOT PART OF THE RECORD, IN THE RULES OF APPELLATE PROCEDURE, THEY ARE THAT YOU ARE TO HAVE THE RECORD THAT WAS PRESENTED IN THE LOWER COURT, AND EVEN THOUGH WE DID NOT OBJECT TO THE MOTION, WE DID NOT CONCEDE THAT IT WOULD BE RELEVANT. OUR POSITION IS IT HAS TO BE BASED UPON THE RECORD THAT THE REFEREE HAD BEFORE HIM AT THE TIME HE MADE HIS DECISION. OUR ANSWER TO THAT IS WE DON'T BELIEVE THAT THAT RECORD WOULD BE APPLICABLE AT THIS TIME. OUR CONTENTION IS THAT -- OUR CON TENSION IS THAT SUMMARY -- OUR CONTENTION IS THAT SUMMARY JUDGMENT WAS PROPNER THIS CASE BECAUSE OF RULE 3.6, WHICH IS IN EFFECT THE RULE OF ADJUDICATION OF MISS CONDUCT IS -- OF MISCONDUCT IS CONCLUSIVE PROOF OF MISCONDUCT, AND THIS WAS A MOTION FOR A PARTIAL SUMMARY JUDGMENT, AND THERE WAS, BECAUSE OF THAT RULE, NO ISSUE, NO GENUINE ISSUE OF MATERIAL FACT. AND WE BELIEVE THAT, WHEN JUDGE MOGIL CAME HERE, HE HAD THAT EXPERIENCE OF HAVING SET ON THE BENCH FOR TEN YEARS. HE HAD BEEN ADMITTED IN 1974 IN FLORIDA AND 1975 IN NEW YORK, AND THAT EVEN HIS STATEMENTS, DURING THE HEARING, INDICATED THAT HE CONCEDED THERE WAS NO GENUINE ISSUE OF MATERIAL FACT. IN THE TRANSCRIPT, IF I COULD JUST REFER TO IT, ON PAGE 6 OF THE TRANSCRIPT, AFTER MR. SPANGLER, WHO AT THAT TIME WAS BAR COUNSEL, HAD DISCUSSED THIS RULE, JUDGE MOGIL, AT THAT TIME, STATED, ON LINES 13 THROUGH 17, I DON'T DISAGREE NOR DO I WISH TO CREATE ANYMORE WORK FOR THIS COURT. AND THEN HE SAYS I DON'T SEEK A NEW HEARING ON THE FACTS AT ALL. THE FACTS WERE CONCEDED. I BELIEVE THE ISSUE HERE IS THE DISCIPLINE. WE BELIEVE THAT THE RECOMMENDATION BY JUDGE CARUSO IS CORRECT. THERE ARE TWO THINGS THAT THIS COURT DOES NOT COUNTENANCE, THAT STEALING MONEY FROM CLIENTS AND LYING UNDER OATH. THIS CASE WAS NOT SIMPLY ABOUT A JUDGE SENDING MOCKING FAXES OR DISPARAGING FAXES TO ANOTHER ATTORNEY. THIS WAS HIS ABOUT A JUDGE WHO REPEATEDLY, UNDER OATH, TESTIFIED FALSELY DURING THE COMMISSION'S INQUIRY IN NEW YORK.

WHAT WOULD YOU SAY -- WHAT IS THE MOST SALIENT EXAMPLE OF FALSIFICATION OF OF TESTIMONY UNDER OATH THAT WAS PRESENT IN THE RECORD IN NEW YORK?

THE MOST SALIENT, I BELIEVE, THAT WE HAVE HERE, AND IT IS IN COUNTS THREE THROUGH SIX, IT INVOLVED THE EMAIL TO THE WHITE HOUSE IN WASHINGTON, D.C. WHEN HE DENIED THAT. AND A FACT THAT HAS INDICATED HE HAD AN AOL ACCOUNT, NEEDED A PASSWORD, AND HE TAKES IT, THE LETTER, TO THE POLICE DEPARTMENT, AND TRIES TO MAKE IT APPEAR AS IF THE ATTORNEY WITH WHOM HE WAS SENDING THESE FAXES TO HAD SENT THIS EMAIL. THAT WAS FALSE TESTIMONY. ANOTHER EXAMPLE, I BELIEVE, OF FALSE TESTIMONY THERE, WHICH WAS VERY SERIOUS, HAD TO DO WITH THE FACTS INVOLVING AN AD FOR A MOVIE, AND HE WAS INDICATING THAT IT WAS TO BE SENT TO HIS FORMER SECRETARY, BARBARA, WHEN HAD, IN FACT, IT IS SENT TO THE OFFICE OF TOM LIOTTA, WITHOUT A FAX SHEET, TO GO TO BARBARA KNOWLES.

WHILE THIS OCCURRED WHILE HE WAS A JUDGE AND HE CAN BE REMOVED AS A JUDGE, IT HAD NOTHING TO DO WITH THE PRACTICE OF LAW. DISCIPLINE.

I REFER THE COURT TO THE GARY GRAHAM CASE, AND IN THE GRAHAM CASE, IT SAID THAT THE TYPE OF BEHAVIOR FOR WHICH YOU CAN BE DISCIPLINED AND DISBARRED IS DISHONESTY, ILLEGALITY, DECEIT. THIS FALSE SQUARELY WITHIN THAT PARTICULAR CATEGORY. DISHONESTY. THERE IS NOTHING WORSE.

THE PRACTICE OF LAW OR DISHONESTY WHILE HE WAS A JUDGE?

YES, SIR. THAT IS WHY JUDGE MERKLE WAS DISBARRED. PERJURY. LYING TO JUDGE McDONNELL DURING THE COMMISSION'S INQUIRY. GARY GRAHAM WAS A DIFFERENT SITUATION.

WOULD YOU GO THAT FAR, IF IT HAD NOTHING -- THE FACT THAT HE IS A JUDGE AND LIES WOULD GET HIM OFF THE BENCH. BUT YOU TAKE THE POSITION THAT THAT COULD, ALSO, GETTING GET HIM DISBARRED?

YES. I BELIEVE IT GOES --

WHAT SECTION IS THAT?

EXCUSE ME?

WHAT SECTION WOULD YOU BE GOING UNDER?

UNDER 4-8.4 [C] DISHONESTY.

THAT SAYS WHAT?

IF I MAY JUST. IT IS MISCONDUCT. IT IS A LAWYER SHALL NOT ENGAGE IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION. THAT IS THE WHOLE RULE. DISHONESTY, DECEIT, FRAUD OR MISREPRESENTATION, AND IN THIS PARTICULAR CASE WHAT WE HAVE IS DISHONESTY, WHEN YOU ARE FALSELY TESTIFYING UNDER OATH. IT IS PART OF THE DISCIPLINARY PROCESS. IT IS PART OF THE PRACTICE OF LAW, THAT YOU ARE SUBJECT TO THE DISCIPLINARY PROCESS. OF A JUDGE, THERE IS SO MUCH MORE THAT IS REQUIRED. THAN JUST ATTORNEY. ANY FURTHER QUESTIONS? THANK YOU.

THANK YOU. REBUTTAL.

MR. MOGIL WAS NOT LYING. HE WAS DEFENDING HIMSELF IN THE JUDICIAL REMOVAL PROCEEDINGS. THE FACT THAT THE FORUM, THE COMMISSION DID NOT BELIEVE HIM DOES NOT

MAKE A -- DOES NOT CONSTITUTE WHAT IS NEEDED TO FIND HIM GUILTY OF FRAUD, DISHONESTY, DECEIT OR MISREPRESENTATION. UNDER THE DAVEY CASE, THERE NEEDS TO BE A FACTUAL BASIS UPON WHICH TO FIND THAT HE INTENTIONALLY, KNOWINGLY, WILLFULLY MISREPRESENTED A MATERIAL FACT, WHICH HE KNEW TO BEFALLS.

IS THE FINDING -- TO BE FALSE.

IS THE FINDING OF EMAIL THAT HE SENT AND IT WAS FOUND THAT THE EMAIL, THAT HE SENT IT, HOW IS THAT NOT -- HOW DOES THAT, ALONE -- WHY DOESN'T THAT, ALONE, ESTABLISH FRAUD? THAT IS DIFFERENT FROM THE FACT OF SAYING, LISTEN, I AM NOT REMORSEFUL BECAUSE I DON'T THINK I DID ANYTHING WRONG. THAT IS A DIFFERENT ISSUE, BUT WHEN YOU FIND THAT SOMETHING IS FALSE, IN A PROCEEDING, SOMEONE HAS PERCENTAGEURED THEMSELVES, DOESN'T THAT NECESSARILY -- HAS PERJURED THEMSELVES, DOESN'T THAT NECESSARILY NOT SHOW INTENT?

THERE WAS NEVER A FINDING OF PERJURY, BASED UPON HIS TESTIMONY UNDER OATH. SECONDLY, HIS DENYING HAVING SENT THE EMAIL DOESN'T MEAN THAT HE ACTUALLY SENT THE EMAIL. IT IS PACED ON THE STANDARDS OF THIS THAT JURISDICTION, WHICH IS NOT FLORIDA BAR CLEAR AND CONVINCING STANDARDS, HE WAS BELIEVED, BY THE FORUM, TO HAVE SENT IT. AN EMAIL IS DIFFERENT. AN EMAIL, ANYBODY CAN SENT ZENDA EMAIL. ANYONE, IT IS DIFFERENT. IT IS NOT A -- CAN SEND AN EMAIL. IT IS DIFFERENT THAN HANDWRITING EXPERTS TO ACTUALLY CORROBORATE WHO ACTUALLY WROTE THIS. ANYONE WHO HAS ACCESS TO AOL OR, IN TODAY'S TECHNOLOGICALLY ADVANCED SOCIETY, YOU CAN HAVE PEOPLE SEND DUMENTS UNDER YOUR NAME -- DOCUMENTS UNDER YOUR NAME. IT CAN BE DONE. THE FACT THAT HE DENIED DOING IT DOESN'T MEAN THAT HE WAS LYING IN HIS DEFENSE, SO BASED UPON THE CORBIN AND THE LIPPMAN CASE, THAT SHOULD NOT BE HELD AGAINST HIM. THE BAR ARGUES THAT JUDGE CARUSO'S RECOMMENDATION OF DISBARMENT IS CORRECT, BUT WHAT IS THE RECOMMENDATION BASED UPON? IF WE LOOK AT THE REPORT OF REFEREE, IT IS BASED UPON NOT ONE SINGLE CASE. NOT ONE SINGLE CASE DID THE BAR ARGUE AT THE DISPOSITIONAL HEARING ON DISCIPLINE, TO SUPPORT DISBARMENT. THERE WAS NOT ONE SINGLE CASE ARGUED BY THE BAR IN ITS BRIEF TO SUPPORT DISBARMENT. WHY SHOULD HE BE DISBARRED, ASSUMING THAN THIS COURT DOES NOT AGREE WITH OUR POSITION THAT THE REFEREE'S REPORT IS CLEARLY ERRONEOUS AND SHOULD NOT BE APPROVED? WHY SHOULD HE BE DISBARRED? THERE IS NO REASONABLE BASIS UPON CASE LAW OR UPON THE FACTORS ENUMERATED BY THE BAR AND THE REFEREE, IN THE REFEREE'S REPORT, UPON WHICH TO BASE DISBARMENT? IN FACT THOSE FACTORS THAT ARE SET FORTH IN THE REFEREE'S REPORT, AS AGGRAVATING FACTORS, HAVE NO APPLICABILITY TO THIS CASE. HE -- HIS SUBSTANTIAL EXPERIENCE IN THE PRACTICE OF LAW IS IRRELEVANT TO THE CONDUCT THAT INVOLVES PERSONAL BEHAVIOR. THESE ANONYMOUS COMMUNICATIONS, THESE ANONYMOUS FAXES.

THANK YOU VERY MUCH. YOUR TIME IS CONCLUDED. WE APPRECIATE THE ASSISTANCE OF BOTH OF YOU. WE WILL BE IN RECESS FOR 15 MINUTES.