GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. SORRY FOR THE DELAY. WE HAD AN EMERGENCY MATTER THAT HAD TO BE CONSIDERED. THE FIRST CASE ON THE COURT'S CALENDAR IS BARBARA MOAKLEY VERSUS SHERI SMALLWOOD. MR. FENNER, YOU WILL BE REPRESENTING THE PETITIONER. I UNDERSTAND THAT THERE WILL BE NO ONE APPEARING FOR THE RESPONDENT. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. THIS IS A CASE ABOUT LAWYER SANCTIONS. THE CIRCUIT COURT JUDGE I SHOULD SANCTIONS AGAINST -- THE CIRCUIT COURT JUDGE ISSUED SANCTIONS AGAINST BARBARA MOAKLEY APARTMENTS ATTORNEY. SHE WAS THE FORMER WIFE IN A POST-DIVORCE MATTER. THE REASON THEY ISSUED THE SANCTIONS. THE REASON THE COURT ISSUED THE SANCTIONS WAS THERE WAS A POST-DIVORCE HEARING, WHERE THE FORMER HUSBAND WAS REQUIRED TO TURN OVER A PROMISSORY NOTE AND MORTGAGE, AS PART OF THE DIVORCE SETTLEMENT. HE WAS UNABLE TO DO SO. HE CLAIMED THAT HIS LAWYERS HAD IT. HIS LAWYERS INFORMLY SAID WE DON'T HAVE IT. AND THE HEARING WAS HELD ON DECEMBER 10, 1997, WHERE BOTH MR. MOAKLEY, HIS CURRENT LAWYER, FROM NEW YORK, AND HIS PRIOR LAWYER, HIS FORMER LAWYER, HONORABLE SHERI SMALLWOOD, WHO IS NOT HERE BECAUSE OF ILLNESS, WAS, ALSO, SUBPOENAED. NOW, THE SUBPOENA WAS ISSUED LATE. IT WAS SERVED INCORRECTLY, ONLY TWO DAYS PRIOR TO THE HEARING. MS. SMALLWOOD HAD NOTICE OF THE HEARING SIX DAYS PRIOR, BUT BECAUSE SHE WAS NO LONGER COUNSEL, THAT NOTICE DOESN'T COUNT.

YOU ARE GOING INTO FACTS, AND I AM LOOKING AT THE THIRD DISTRICT OPINION THAT SAYS, BECAUSE THERE IS NO TRANSCRIPT, THE TRIAL COURT FINDINGS CONSTITUTE THE ESTABLISHED FACTS OF THE CASE. ARE THE FACTS THAT YOU ARE, NOW, GIVING US, FACTS THAT ARE IN THE RECORD?

YES, YOUR HONOR. THEY ARE IN THE PLEADINGS OR IN THE HOLDINGS OF THE COURT. THE COURT ISSUED TWO ORDERS AFTER THE HEARING. THE FIRST ORDER SAID THAT THE PROMISSORY NOTE IN QUESTION WAS, INDEED, LOST, AND NO ONE KNOWS WHERE IT IS. THE SECOND ORDER THEY ISSUED IMPOSED SANCTIONS ON THE FORMER WIFE AND, MORE IMPORTANTLY, SANCTIONS ON THE FORMER WIFE'S COUNSEL, FORISH USING THE SUBPOENA -- FOR ISSUING THE SUBPOENA.

BUT MY QUESTION, IN THE MOTION THAT WAS FILED TO QUASH THE SUBPOENA, WAS THERE A REQUEST IN THAT MOTION FOR ATTORNEYS' FEES AND SANCTIONS AND COSTS?

YES, THERE WAS.

SO THERE WAS NOTICE THAT THAT WAS BEING SOUGHT, CORRECT?

THAT'S CORRECT. THE DAY BEFORE.

NOW, WAS THERE A HEARING, THEN, ON THE MOTION, OR DID THE JUDGE JUST ENTER THE ORDER THAT I HAVE IN FRONT OF ME, THE ORDER THAT ASSESSED THE COSTS, WITHOUT A HEARING?

THERE WAS NO COURT REPORTER THERE THAT ANYONE CAN REMEMBER. THERE ARE THE OFFICIAL MINUTES, WHICH WERE ADDED AS APPENDIX, AND IT SAYS THAT 2452.68 COSTS. 9 COURT TOOK THAT UNDER ADVISEMENT AND -- THE COURT TOOK THAUND ADVISEMENT AND DID NOT RULE -- TOOK THAT UNDER ADVISEMENT AND DID NOT RULE ON IT. I WAS THERE. THERE WASN'T ANY DECISION ON IT.

THE NOTICE AND OPPORTUNITY TO BE HEARD, REALLY, IS DIFFICULT FOR US TO DETERMINE IN

THIS CASE, BECAUSE WE DON'T KNOW WHAT HAPPENED AT THE HEARING. CORRECT?

ABSOLUTELY TRUE.

IS IT YOUR POSITION THAT THE COURT, THAT THERE IS NO AUTHORITY INHERENT AUTHORITY, IF WE YEAH THAT WORD, FOR -- IF WE USE THAT WORD, FOR A TRIAL COURT TO ASSESS FEES, IF THERE IS NOTICE AND AN OPPORTUNITY TO BE HEARD, IF AN ATTORNEY ACTS IN BAD FAITH, IN PROLONGING LITIGATION OR IN FILING SHAM PLEADINGS OR IN PERPETRATING FRAUD IN THE COURT, IN ANY OF THOSE SITUATIONS THAT WOULD BE DEEMED EGREGIOUS CONDUCT BY AN ATTORNEY, THAT THERE IS NO AUTHORITY FOR THE COURT TO DO THAT?

THERE IS NO INDEPENDENT AUTHORITY. THERE ARE RULES SET DOWN BY THIS COURT THAT SAY THAT SANCTIONS CAN BE ASSESSED, UNDER SOME CIRCUMSTANCES.

BUT DIDN'T WE, IN BITTERMAN, ALSO, SPEAK ABOUT INEQUITABLE CONDUCT DOCTRINE, TO BE USED IN RARE CIRCUMSTANCES?

THAT IS CORRECT. NEITHER THE TRIAL COURT NOR THE THIRD DCA CITED INEQUITABLE CONDUCT, AND THE BITTERMAN DECISION, ITSELF, DID NOT APPLY TO THE ATTORNEYS, AS IT WAS, THE FACTS OF BITTERMAN DID NOT APPLY.

NOW, FOR SOMETHING THAT IS NOT A JUSTICIABLE ISSUE, 5.105, THE STATUTE APPLIES TO COUNSEL -- 57105, THE STATUTE APPLIES TO COUNSEL, CORRECT?

THE STATUTE HAS NEVER APPLIED, BECAUSE THE STATUTE WAS AMENDED IN 1986. THE COURT RULED, IN 1983, THAT THE STATUTE WAS CONSTITUTIONAL, BUT SINCE THE STATUTE WAS AMENDED TO INCLUDE ATTORNEYS, IN 1986, THIS COURT, TO MY KNOWLEDGE, AND BASED ON MY RESEARCH, HAS NEVER RULED ON THE CONSTITUTIONALITY OF LAWYER SANCTIONS, UNDER 57.105.

BUT YOU ARE NOT CHALLENGING THIS ON A CONSTITUTIONAL BASIS, BECAUSE THIS WAS NOT DONE UNDER 57.105, CORRECT?

THAT'S CORRECT. I HAVE GOT MY PERSONAL FEELINGS ABOUT IT, AND OBVIOUSLY SECTION 57.105 HAS RECENTLY BEEN EXTENSIVELY AMENDED.

BUT LET ME PUT THE FOCUS DIRECTLY ON THE ISSUANCE OF SUBPOENAS. NOW, THAT IS SOMETHING, IN THE CIVIL PRACTICE, WHICH IS WITHIN THE CONTROL OF COUNSEL. CORRECT?

THAT'S CORRECT.

AND SO, OBVIOUSLY, IN YOUR PRACTICE, IT WAS CERTAINLY TRUE IN MINE, THAT THERE ARE INSTANCES IN WHICH THAT POWER, BY A LAWYER, IS ABUSED. HASN'T THAT BEEN YOUR EXPERIENCE?

MOST LIKELY YES.

AND SO WOULD YOU -- WOULD YOUR POSITION BE AGAINST THE RULE FOR SANCTIONS, THERE BEING A RULE FOR SANCTIONS IN THE RULES OF CIVIL PROCEDURE, THAT WOULD SPECIFICALLY ALLOW A COURT TO MAKE A DETERMINATION, TRIAL COURT, THAT THERE HAS BEEN IS THAT TYPE OF ABUSE -- THAT THERE HAS BEEN THAT TYPE OF ABUSE BY COUNSEL, AND THEN TO AWARD SOME TYPE OF COMPENSATORY COST FOR THE OTHER PARTY?

I THINK SUCH A RULE MIGHT NOT BE A BAD IDEA, BUT I THINK THE FACT REMAINS THAT THAT WILL BE A RULE ESTABLISHED BY THIS COURT, UNDER ITS EXCLUSIVE JURISDICTION, AND THERE

IS NO SUCH RULE AT THIS TIME.

AND WHAT YOU ARE REACTING AGAINST, AS I READ, YOUR BRIEF, IS THAT, HAVING, THERE BEING THIS NOTION THAT THE TRIAL COURT, WITHOUT ANY STANDARDS SET OUT, HAS THAT TYPE OF INHERENT POWER.

I HAVE SOME GRAVE DIFFICULTY, FROM A CONSTITUTIONAL POINT OF VIEW, OF THERE NOT BEING ANY STANDARDS FOR INHERENT POWER SANCTIONS. ONCE AGAIN, IF POWER IS INHERENT, BY DEFINITION, THERE AREN'T ANY RULES. THIS COURT HAS ACKNOWLEDGED THE POWER OF THE COURTS TO HOLD LAWYERS IN CONTEMPT. IT HAS FOR ALMOST 40 YEARS. AND THAT IS NOT A PROBLEM. BUT THERE ARE RULES INVOLVED WITH CONTEMPT. IT IS VERY CLEAR WHAT CONTEMPT IS. YOU CAN'T BE HELD IN CONTEMPT, UNLESS YOU ARE VIOLATING SOMETHING THAT IS PRETTY CLEAR. AN ORDER OF THE COURT OR OTHERWISE ENGAGING IN CRIMINAL OR CIVIL CONTEMPT.

LET ME ASK YOU THIS QUESTION. LET'S TAKE THE HYPOTHETICAL SITUATION, WHICH YOU ARE, I GUESS, ARE THINKING THIS CASE IS NOT, BUT WHERE THE LAWYER DECIDES TO SUBPOENA A WITNESS, THE SUBPOENA IS SERVED, AND THE LAWYER KNOWS THAT THAT WITNESS DOES NOT HAVE THAT INFORMATION. AND SO STATES THAT THE LAWYER IS DOING IT MERELY BECAUSE IT IS -- HAS BECOME HARD-FOR THE LITIGATION, AND THIS -- HARD FOUGHT LITIGATION, AND THIS IS JUST ONE MORE TACTIC AND ONE MORE BULL NET ARSENAL. IF THE -- BULLET IN THE ARSENAL. IF THE STANDARD IS THAT THE AUTHORITY IS TO BE ASSESSED UPON NOTICE AND AN OPPORTUNITY TO BE HEARD, WHEN THE PARTY'S ATTORNEY ACTS IN BAD FAITH, ABUSIVE, OR ABUSIVELY, WHAT IS WRONG WITH THAT CONSTITUTIONALLY?

THERE ARE RULES. THERE IS NOT A RULE THAT I UNDERSTAND ABOUT BAD FAITH LITIGATION, BUT --

THERE IS IN THE APPELLATE RULES. THE APPELLATE RULES SAY, SPECIFICALLY, THAT ATTORNEYS FEES ARE AWARDED FOR FILING OF ANY PROCEEDING, MOTION OR BRAEF, WHICH IS FRIVOLOUS OR IN BAD FAITH.

THAT'S CORRECT.

WHY SHOULDN'T THAT SAME STANDARD BE THE STANDARD FOR LITLATION -- FOR LITIGATION IN THE TRIAL COURT?

IT IS NOT PART OF THE RULES.

THE QUESTION IS WHETHER THIS COURT SHOULD, ALSO, ADOPT A RULE, AND MAY BE A GOOD IDEA THAT HAS LONG SINCE BEEN FORTHCOMING, AND THAT IS NOT THE QUESTION TODAY. THE QUESTION IS THE AUTHORITY THAT IS THE STANDARD OF BAD FAITH OR ABUSIVE CONDUCTOR FRIVOLOUS CONDUCT, THAT IS GIVEN, WITH IT, THE OPPORTUNITY TO BE HEARD, WHICH IS THE DUE PROCESS ASPECTS OF IT, UNCONSTITUTIONAL?

SIMPLY BECAUSE THE ARTICLE V OF THE FLORIDA CONSTITUTION IS ABSOLUTIST. THERE IS ABSOLUTE. THERE IS A PROVISION FOR DISCIPLINE.

THE APPELLATE COURT, WHICH ALSO AUTHORIZES APPELLATE FEES TO BE AWARDED, WOULD BE IN CONFLICT WITH THIS COURT ONLY COULD SANCTION AN ATTORNEY?

WELL, THIS COURT CAN DELEGATE AND HAS DELEGATED ITS DISCIPLINARY POWERS AND CAN DO SO BY RULE. HOWEVER IT WISHES. AND THAT IS MY UNDERSTANDING OF THAT APPELLATE RULE, IS THAT THE SUPREME COURT HAS ESTABLISHED A RULE REGARDING FRIVOLOUS APPEALS, AND HAS DELEGATED THE POWER TO DETERMINE THAT TO THE COURTS OF APPEAL. THAT IS MY

UNDERSTANDING OF HOW IT HAS WORKED. BUT THERE HAS BEEN NO SEATING OF JURISDICTION TO THE CIRCUIT COURTS. MAYBE MY ARGUMENT IS ONE ON INHERENT POWERS. INHERENT POWERS ARE POWERS THAT DON'T DEPEND O'DELLGATION BY THE SUPREME COURT. -- ON DELEGATION BY THE SUPREME COURT. THEY COME OUT OF THE NATURE OF THE TRIAL COURTS, THEMSELVES. AND MY PROBLEM IS -- I HAVE A PROBLEM THAT THAT CONTRADICTS THE LEGACY WE HAVE FROM THE LEADERS OF THE FLORIDA BAR FOR ARTICLE V. AND I GO INTO SOME DETAIL ABOUT HISTORY, BUT ARTICLE V WAS ADOPTED IN 1956, AT A TIME WHEN OTHER SOUTHERN STATES, MISSISSIPPI, ALABAMA, AND VIRGINIA, AMONG THEM, WERE ENGAGED IN MASSIVE RESISTANCE TO THE SUPREME COURT'S RULING IN BROWN VERSUS BOARD OF EDUCATION, AND ARTICLE V PROVIDED FOR AN INTEGRATED, INDEPENDENT BAR. ONE OF THE THINGS THAT IS ESSENTIAL TO THAT IS THAT THE SUPREME COURT IS ULTIMATELY RESPONSIBLE FOR ALL LAWYER DISCIPLINE. AND ARTICLE V TOOK THAT AWAY FROM THE LEGISLATURE, TOOK IT AWAY FROM THE CIRCUIT COURTS, IN THE STATE VERSUS REVELS, WHICH I CITE AT GREAT LENGTH. IT SAYS ARTICLE V OUSTS THAT POWER, AND THIS IS NOT A JURISDICTIONAL NICETY. THE DIFFICULTY IS THAT, IN 1956, FLORIDA MADE A DECISION THAT THEY WOULD NOT ENGAGE IN MASSIVE RESISTANCE. FLORIDA DECIDED THAT THEY WERE GOING TO GO, RELUCTANTLY, SLOWLY, BUT THEY WERE GOING TO MOVE INTO THE 20th CENTURY. AT LEAST THE LEADERS OF THE BAR DID THAT, AND THEY GOT ARTICLE V, THROUGH THE CONSTITUTIONAL COMMISSION, AND THEY GOT IT PASSED BY THE VOTERS.

COULDN'T YOU, THOUGH, EXTEND THAT ARGUMENT, ALSO, TO THE CONTEMPT POWERS OF THE COURT? IN OTHER WORDS AREN'T YOU PROVING TOO MUCH BY THAT ASSERTION? HELP ME WITH ANOTHER PROPOSITION.

THE COURT DID BACK OFF ON THAT.

HELP ME WITH A PROPOSITION. WE HAVE A SITUATION WHERE A LAWYER FALLS ON HIS SWORD, SO TO SPEAK. THAT IS THAT THE CLIENT, PERHAPS THE LAWYER, TOO, IS NOTICED, AS IN A SITUATION LIKE THIS, REFERENCE TO SEEKING COSTS OR FEES, BECAUSE OF ALLEGEDLY SOME UNNECESSARY OR IMPROPER PROCEDURE, AND AT THE HEARING, THE COURT IS CHASTISING THE CLIENT OF THE LAWYER. THAT IS THE OTHER PARTY. AND THE LAWYER COMES FORWARD, THOUGH, AND SAYS, JUDGE, YOU KNOW, WAIT A MINUTE. I HAVE TO TELL YOU THAT IT IS NOT MY CLIENT THAT IS RESPONSIBLE HERE. THAT, IT IS ME THAT IS RESPONSIBLE FOR THIS. SO IF YOU ARE GOING TO SANCTION ANYBODY, YOU SHOULD SANCTION ME. THAT IS BECAUSE I AM THE ONE THAT MADE THE DECISION TO DO WHATEVER IT IS, THIS UNDERLYING CONDUCT. WHY WOULDN'T IT BE ENTIRELY APPROPRIATE FOR THE COURT, IN A SITUATION LIKE THAT, TO IMPOSE THE SANCTIONS AGAINST THE PARTY THAT THE COURT HAS DETERMINED, IN THAT CASE, BY THE LAWYER, THEMSELVES, AS I SAY, FALLING ON THEIR SWORD AND SAYING DON'T SANCTION MY CLIENT FOR WHAT OCCURRED HERE. IF SANCTIONS ARE TO BE IMPOSED, THEY, REALLY, SHOULD BE IMPOSED AGAINST ME, BECAUSE I AM THE ONE THAT CONSIDERED THAT AND MADE THAT DECISION TO DO THAT, AND SO IF THERE WAS SOMETHING IMPROPER GOING ON HERE, I AM THE ONE THAT SHOULD BE HELD RESPONSIBLE.

ONE PROBLEM, AT THAT POINT, FROM THE JUDGE'S POINT OF VIEW, IS THAT THE JUDGE'S REACTION TO THAT WOULD PROBABLY BE COLORED BY WHO THE LAWYER IS. IF THE LAWYER IS SOMEBODY WHO HAS SERVED HONORABLY IN FRONT OF HIM FOR 10, 15 YEARS, WAS BEING HONEST WITH THE COURT, THE JUDGE WOULD BE STRONGLY ATTEMPTED TO GIVE A VERBAL ADMONISHMENT, AS REQUIRED UNDER THE CANONS, AND NOT REFER IT TO THE BAR. THE DIFFICULTY IS, IF THIS IS A DIFFICULT LAWYER IN THE PAST. IF THIS IS A LAWYER THAT HAS BEEN TOO AGGRESSIVE FOR THAT JUDGE IN THE PAST, HAS BEEN IMPROPERLY OR LESS THAN SUFFICIENTLY RESPECTFUL IN THE PAST, OF THAT PARTICULAR JUDGE, THEN THAT JUDGE IS GOING TO BE ATTEMPTED TO IMPOSE THOSE SANCTIONS, BASED ON --

YOU ARE TALKING ABOUT THE POTENTIAL ABUSE, BUT IN TERMS OF TALKING ABOUT

SAFEGUARDS, AND THAT IS A RECORD THAT DEMONSTRATES WRORNT THERE HAS OR HAS NOT BEEN -- DEMONSTRATES WHETHER OR NOT THERE HAS OR HAS NOT BEEN MISCONDUCT IN THE RECORD AND WHETHER THERE HAS OR HAS NOT BEEN PROPER NOTICE IN SEEKING OF THE COSTS AND A RECORD THAT DEMONSTRATES WHETHER OR NOT, INDEED, SOME UNNECESSARY COSTS WERE BORNE BY A PARTY OR WITNESS OR SOMEBODY THAT IT IS UNJUST FOR THEM TO ABSORB THOSE COSTS OR WHATEVER, IN TERMS OF THOSE ELEMENTS, WHICH IT SEEMS TO ME WOULD BE THE FUNDAMENTAL ELEMENTS, IN TERMS OF WHETHER OR NOT WE CONSIDER GRANTING A TRIAL COURT THESE INHERENT POWERS, ARE PROPERLY BALANCED AGAINST CONSTITUTIONAL CONSIDERATIONS, WHY WOULDN'T THOSE THINGS BE MET, IN A SITUATION LIKE THAT?

I COULD IMAGINE A RULE OF THIS COURT THAT COULD PROVIDE FOR SIMILAR SANCTIONS. I COULD CERTAINLY IMAGINE A RULE OF CIVIL PROCEDURE INVOLVING COSTS FOR UNNECESSARY SUBPOENAS OF WITNESSES. I WOULD HAVE NO PROBLEM WITH SUCH A RULE. THE DIFCULL I -- THE DIFFICULTY I HAVE IS THE RULE BEING IMPOSED BY EACH ONE OF THE CIRCUIT COURT JUDGES OF THE STATE.

DON'T WE HAVE VERY BROAD LANGUAGE, NOW, IN OUR PRESENT DISCOVERY RULES, WITH REFERENCE TO ABUSE OF DISCOVERY AND SANCTIONS?

CORRECT.

WHY ISN'T THERE ENOUGH ROOM, IN THERE, FOR A SITUATION LIKE THIS? THAT IS THAT, IF THAT RULE IS BROADLY INTERPRETED, THAT IT WOULD COVER A SITUATION LIKE THIS?

PERHAPS IT MIGHT. THE THIRD DISTRICT COURT OF APPEALS, HOWEVER, AND THE FOURTH DISTRICT COURT OF APPEALS DID NOT CONCEIVE OF THIS AS A DISCOVERY VIOLATION. AND NO ONE HAS, IN THIS CASE, AT LEAST, BEEN ABLE TO POINT TO ANY RULE, ANY RULE THAT WAS VIOLATED. EITHER THE TRIAL COURT, THE BRIEFS ON APPEAL, THROUGH THE THIRD DCA, NO ONE HAS BEEN ABLE TO POINT TO ANY RULE THAT WAS VIOLATED. NOW, PERHAPS THERE SHOULD BE A RULE.

WELL, THIS IS WHAT WAS GOING ON HERE. IS THAT CORRECT?

THAT IS THAT, ALLEGEDLY WHAT WAS BEING ATTEMPTED WAS THE DISCOVERY OF THE LOCATION OF THIS ORIGINAL NOTE. IS THAT CORRECT?

THAT'S CORRECT.

AND MS. SMALLWOOD WAS CALLED AS A FACT WITNESS, BECAUSE SHE WAS THE LAST RESPONSIBLE PERSON TO GO THROUGH THE FORMER HUSBAND'S DOCUMENTS.

DO WE NOT, HOWEVER, HAVE AN INDICATION THAT, ON THE FACE OF THE MOTION, IF SELF, THAT IT WAS KNOWN THAT THIS WITNESS DID NOT HAVE POSSESSION OF THE DOCUMENT? IS THAT A FAIR CHARACTERIZATION?

WHAT WAS KNOWN AND WHAT WAS NECESSARY TO BE ADMITTED IN COURT IN NEW YORK, WHERE THE PROPERTY WAS, ARE TWO DIFFERENT THINGS.

WELL, MAYBE NOT. I MEAN, FOR EXAMPLE, IF THERE IS A LAWSUIT PENDING IN CALIFORNIA, AND TO AVOID GOING THROUGH WHATEVER NEEDS TO BE DONE IN CALIFORNIA, WE WILL JUST USE, COME UP WITH A PROCEEDING IN FLORIDA, AND WE WILL SUBJECT A WITNESS IMPROPERLY TO THAT PROCEEDING, SOMEHOW. IS THAT WITNESS WITHOUT RECOURSE TOTALLY, UNDER YOUR VIEW, OR HOW WOULD YOU VIEW THAT? WOULD IT BE AN ABUSE OF PROCESS? CERTAINLY HERE THE MONETARY AWARD WAS DIRECTED FOR COMPENSATION, FOR DRIVING 50 MILES AND LOSING ALL THAT TIME. IT WAS NOT DESIGNED AS A TOOL OF, PER SE, DISCIPLINE. WOULD YOU AGREE

WITH THAT?

WELL, I BELIEVE IT WAS DESIGNED AS DISCIPLINE.

BUT THE MEASURE OF WHAT WAS AWARDED WAS DIRECTED TO THE LOSSES THAT THE WITNESS SUSTAINED BY BEING SUBJECTED TO THAT.

YES, IT WAS, AND IT WAS IN THE IDEA OF COMPENSATION, AND IN FACT THE COURT REDUCED IT BY MORE THAN ONE HALF REQUESTED. ONE DIFFICULTY THAT I HAVE IS THAT THE SUBPOENA WAS ISSUED AND SERVED ON THE 8th OF DECEMBER, 1997, AND THE RESPONSE, WHICH MIGHT HAVE OBVIATED THIS, AND-AND I CAN THINK OF A LOT OF WAYS THAT WOULD HAVE OBVIATED THE NEED FOR MS. SMALLWOOD TO DRIVE 100 MILES, AND THE LAWYER WAS SANCTIONED ON THE 8th. NOW, IT IS ENTIRELY POSSIBLE WHEN SHE GOT THE MOTION, SHE READ THE MOTION AND SAID MY GOD, I DON'T NEED THIS. I CAN INTRODUCE THIS IN COURT AND CALL MS. SMALLWOOD. ONCE AGAIN, IT WAS SERVED ON THE 9th, THE DAY BEFORE THE HEARING. WAS THERE A SNAFU? ABSOLUTELY. HERE. ON THE OTHER HAND, WAS IT DESERVING OF DISCIPLINE? I HOPE NOT.

WAS MS. SMALLWOOD ENTITLED TO HER LOSSES? I AM NOT TALKING ABOUT IN TERMS OF DISCIPLINE TO A LAWYER. DOES A WITNESS, UNDER THAT CIRCUMSTANCES, HAS NO RIGHT WHATSOEVER, SO A LAWYER CAN DO ANYTHING THEY WANT, AND IT IS JUST AS WELL AS INDICATED. NOW, THAT IS THE POWER OF THE PEN, WITH MEMBERS OF THE BAR, AND OUR SYSTEM PROVIDES NO RELIEF FOR THAT.

NO DIRECT RELIEF. YOU ARE ENTITLED TO WITNESS FEES. IF YOU ARE CALLED AS AN EXPERT, YOU ARE ENTITLED TO YOUR PROFESSIONAL FEES OR AS A SKILLED WITNESS, BUT ORDINARY WITNESSES AND WITNESSES, PARTICULARLY, WHO AREN'T LAWYERS AND DON'T KNOW HOW TO FILE MOTIONS, HAVE TO SHOW UP.

THANK YOU VERY MUCH. YOUR TIME HAS EXPIRED.