

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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SUPREME COURT
LOS ANGELES

IN THE MATTER OF THE
VERIFIED ACCUSATION OF
ATTORNEY GARY L. ZERMAN

AGAINST

Case No. S042217

ATTORNEY
HENRY P. NELSON

VERIFIED ACCUSATION
OF MISCONDUCT
AGAINST ATTORNEY

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9/16/94*

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IN THE MATTER OF THE
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AGAINST

Case No. _____

ATTORNEY
HENRY P. NELSON

TO CHIEF JUSTICE MALCOLM LUCAS AND THE ASSOCIATE JUSTICES OF
THE CALIFORNIA SUPREME COURT:

Attorney Gary L. Zerman (hereafter CW - complaining witness)
files this verified accusation of serious misconduct against
attorney HENRY P. NELSON (hereafter NELSON).

JURISDICTION

This verified accusation is filed pursuant to California Business & Professions Code, section 6108 and In Re Walker (1948) 32 Cal.2d 488; 196 P 2d. 882. (Also see California Evidence Code, section 451(c) and Day v. Rosenthal (1985) 170 Cal.App.3d 1125, 1147, which require mandatory judicial notice be taken of violations of the Rules of Professional Conduct).

The basis for filing a verified accusation is that the State Bar has failed/refused to do its duty to investigate and discipline serious attorney misconduct, when such was brought to and before it. Thus the accusation then is not only against the attorney, but also charges the State Bar with incompetence and/or misconduct of its own.

Misconduct by attorneys or the State Bar simply can not and will not be tolerated. As stated by our Supreme Court in Beery v. State Bar (1987) 42 Cal.3d 806, 815, where it imposed a 5-year suspension on an attorney with no prior disciplinary record for a single violation (failing to disclose a conflict of interest) of Rule 5-102 (now Rule 3-310):

"'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations.)."

JURISDICTIONAL HISTORY

On August 3, 1990 CW filed a complaint (see exhibit 1) against NELSON (then a California Superior Court judge) with the Commission

on Judicial Performance (hereafter CJP) regarding his egregious judicial misconduct during the aborted trial of Ornelas et. al., v. Greene and Belli, LASC Case No. C596304.¹

On July 8, 1991 CW was sent a letter from the CJP about the NELSON complaint, stating in pertinent part:

"This judge has resigned his judicial position. Accordingly, it has been concluded by the commission that further proceedings are not warranted within the limited authority of the Commission as defined in the California Constitution."²

On or about July 12, 1991 in reference to the above letter and after reading a LA Daily Journal article (see exhibit 4b) that

¹ NELSON's judicial misconduct was so egregious that it supplanted the attorney misconduct committed by BROWNE GREENE and MELVIN BELLI - that was supposed to be on trial; NELSON however made sure that there was no trial. NELSON's misconduct was so egregious it became Issue No. 1 on the appeal. (See exhibit 1 - copy of the CJP/Bar complaint; see also exhibit 8 - appellants' brief, B052519, at p. 8 "THE TRIAL" and at p. 38 "ISSUE I"). NELSON's misconduct included: repeatedly refusing to take mandatory judicial notice of GREENE's and BELLI's violations of Rule 5-102 (their not disclosing, yet representing conflicting interests - the gravamen of the case); having undisclosed ex parte conversations with GREENE after NELSON repeatedly refused to issue a bench warrant for GREENE when he failed to obey a trial subpoena, then not allowing GREENE to be examined when he finally appeared, then issuing illegal/improper rulings for GREENE and BELLI, thereby wrongly preventing the case from getting to the jury; repeatedly without cause threatening plaintiffs' counsel with contempt and sanctions, in fact holding bogus hearings and then also threatening plaintiffs' counsel's attorney. (See ftnts. 9-15 below; also see exhibits 2a and 2b, respectively: 6-27-90 p. 3 LA Daily Journal article "Judge Threatening Sanctions in Belli Legal-Malpractice Suit" and follow up 7-13-90 p. 3 article "Judge Drops Frivolous Suit Fine"). There was no trial - what occurred was a mugging.

On 3-26-91 CW filed a complaint against attorneys GREENE and BELLI with the State Bar for their numerous acts of serious misconduct committed both - during their respective representations of Ms. Ornelas and Ms. Castro (GREENE - Ornelas v. Ford Motor Co., LASC Case No. C209950, B66611; BELLI - Ornelas v. Greene, OCS Case No. 380250) and the prosecution of Ornelas v. Greene and Belli, which NELSON of course refused to address. On 3-10-93 the Bar sent CW a letter (copy attached as exhibit 3) stating that it had concluded that GREENE and BELLI - each - had violated Rule 5-102, when they represented the conflicting interests - again that was the gravamen of the Ornelas legal malpractice case; in fact GREENE and BELLI represented the driver of the vehicle who killed Ms. Ornelas' 8-day-old baby son Jesus and who caused the horrible burn injuries to Ms. Ornelas and Ms. Castro, while they also represented them. Because the driver's fault was the central issue in Ornelas v. Ford, even if GREENE had disclosed the conflict - it could not be waived (Kleem v. Superior Court (1977) 75 Cal.App.3d 893, 898; see also ftnt. 23 below); moreover not disclosing the conflict was fraud! (Bali v. Posey (1986) 176 Cal.App.3d 1209, 1214). Beyond the explicit law set forth in the Ornelas trial brief, appellants' brief, appellants' petition for rehearing (APR) and appellants' petition for review to Supreme Court (APRSC) regarding how clear cut the conflict, duty and breach of duty were, see Mirabito v. Liccardo (1992) 1 Cal.App.4th 43. In the matter of Sular (1993) 2 Cal. State Bar Ct. Rptr 602 and in the matter of Aquiluz (1994) 94 Daily Journal D.A.R. 7727. It is axiomatic then that NELSON violated the law when he refused to follow Evidence Code, section 451(c) and take mandatory judicial notice of such, when he was repeatedly requested. (Day v. Rosenthal (1985) 170 Cal.App.3d 1125, 1147). The Bar failed to discipline attorneys GREENE and BELLI for that "violation" (and many others), which thereby required CW on 12-30-93 to file a verified accusation against attorneys GREENE and BELLI. (See in re the matter of the verified accusation of attorney Gary L. Zerman against attorneys BROWNE GREENE and MELVIN BELLI, S037066 - currently pending before the California Supreme Court; see also "ANOTHER - AND NOW GREATER CONFLICT", below at p. 25).

² NELSON's misconduct was so egregious that he wisely resigned, rather than face a scheduled disciplinary hearing before the CJP on CW's complaint. (See exhibits 4a and 4b, respectively the following articles: 4-16-91 LA Daily Journal p. 2 "Judge Nelson Facing Disciplinary Hearing" that states the investigation stems from complaints against NELSON from his early tenure in criminal court and his last several years presiding over civil cases. Recently he was "reassigned" from the civil department to juvenile court "where complaints against him continue to be made." That article then lists numerous specific attorneys' complaints about NELSON and concludes stating that in 1988 the LA County Bar Association rated him "unqualified" - that he "lacks judicial temperance" and that California magazine named him "one of the state's 10 worst judges" in its November 1989 issue; 6-26-91 LA Daily Journal "Investigated LA Judge Will Retire" which provides even further graphic examples of NELSON's long and well known history of misconduct).

On 2-17-93 CW wrote the CJP asking why it had repeatedly ignored NELSON's misconduct and failed to investigate/discipline him early on when his misconduct first occurred? When it persisted and his misconduct became even more egregious, why the CJP continued to ignore it and failed to remove this thug? On 3-8-93 the CJP replied - but refused to answer the above questions, claiming it was "confidential." How many other litigants' rights and lives did this bandit adversely impact before the CJP finally took some action against him? Obviously that disciplinary hearing should have been scheduled years earlier. Why was it not? (See ftnt. 26 below).

reported NELSON was returning to practice as an attorney, CW called the CJP and inquired whether the CJP was reporting NELSON's misconduct in Ornelas, as well as his long history of judicial misconduct to the Bar - because it was clear that NELSON lacked the moral fitness to practice law and was a clear danger to the public. The CJP informed CW "no" - that upon NELSON's resignation the CJP "no longer had any jurisdiction of or obligation regarding the matter." CW again informed the CJP of NELSON's long history of egregious misconduct and the grave danger he posed to the public if allowed to return to the practice of law. The CJP replied again it had "no jurisdiction" and "no obligation" to report NELSON to the Bar.³ CW then informed the CJP that as a governmental entity - it had a duty to protect the public from NELSON and a duty thus to report NELSON's "history" of misconduct to the Bar; in fact CW informed the CJP that as a citizen CW was demanding the CJP report NELSON to the Bar. The CJP again replied it had "no jurisdiction" and "no obligation"; it then informed CW that if he wanted to file a complaint against NELSON - CW could.

CW was thus compelled to file a complaint with the California State Bar (hereafter Bar) against NELSON, and did so on October 1, 1991 - making several charges of serious misconduct. (CW provided the Bar a copy of his complaint to the CJP, see exhibit 1).

³ Clearly this is not true. Attached as exhibit 5, is a 6-30-93 LA Times p. A20 article entitled "Ethics Probe of Judge Referred to State Bar - San Diego inquiry continues even though Michael Greer resigned, citing poor health. Case stems from charges that he and other jurists received gifts from lawyers" which reports that the CJP had informed the Bar of acts of misconduct committed by Judge Greer. (That article also states that the Commission's investigation of San Diego Superior Court Judge Dennis Adams is still continuing - see fnt. 25 below. See also earlier 4-9-92 p. A3 LA Times article "Attorney's Gifts to Judges, Verdicts Under Scrutiny"). Why did the CJP refuse to report NELSON to the Bar? Was it afraid that it would be reporting about its own failures and misconduct - that it would put the spotlight on its own failure, year after year, to take action on the numerous complaints against NELSON?

On October 16, 1991 the Bar sent CW a one-page letter, stating in pertinent part:

"Your complaint appears to be about the actions of a judge. Mr. Nelson was acting in the capacity of a judge and not that of an attorney. Consequently, he is not subject to the Rules of Professional Conduct nor the State Bar Act.⁴

"You've already filed your complaint with the Commission on Judicial Performance, which is the appropriate agency to handle such matters. [P] Consequently, we are unable to open a file in this matter. Thank you for bringing it to our attention. [P] If you are not satisfied with the State Bar's decision to close your complaint, you may request a review of our decision by the Complainant's Grievance Panel."

Thereafter CW made several telephone calls to the Bar advising that according to the law - In Re Scott (1991) 52 Cal.3d 968 - the Rules of Professional Conduct in fact did apply to NELSON's misconduct and the Bar in fact did have jurisdiction over the complaint. Reluctantly, the Bar finally acquiesced and agreed to "open a file."

On November 19, 1991 the Bar wrote CW a letter stating in pertinent part:

"Your complaint about Henry Nelson has been assigned for investigation to Chris Ota. [P] The State Bar takes complaints about attorney conduct very seriously. We will do all that we can to fully investigate the matter."

On November 25, 1991, in response to a request from Mr. Ota, CW sent Mr. Ota a letter (copy attached as exhibit 6, w/o

⁴ This is false. The Bar's repeated claim that the Rules of Professional Conduct do not apply to judges and that they are not subject to investigation and discipline from the Bar simply is not true. First, common sense would dictate that when a judge (almost always already a member of the Bar) leaves the bench (for whatever reason - usually though through a forced resignation because of misconduct), the judge would be subject to the same rules any other member of the Bar, or person seeking admission to the Bar, must follow. Moreover though, it is the law - see In re Scott (1991) 52 Cal.3d 968 and People v. Martin (1982) 135 Cal.App.3d 710, 720. See also stat. 3 above, which references a 6-30-93 LA Times p. A20 article "Ethics Probe of Judge Referred to State Bar."

enclosures) that provided numerous further documents supporting the charges against NELSON.

On January 9, 1992 CW travelled to the Bar for a meeting with Mr. Ota and his supervisor Ms. Pat Grisinger, Deputy Director Office of Investigation. That meeting was a not only a total waste of time, but insulting, because as memorialized in CW's January 29, 1992 letter to Ms. Grisinger, she:

1. showed no interest in reviewing examples in the trial transcript of NELSON's numerous violations of law with his illegal/improper favoritism of defendant-attorneys Browne Greene (who had ignored a trial subpoena and then had undisclosed ex parte communication with NELSON) and Melvin Belli at the purported trial NELSON wrongly aborted; in fact she refused to look at them;
2. was accepting a self serving denial from NELSON (the ex-judge who was forced to resign because of his judicial misconduct) about his above ex parte communication and was refusing to contact any witness to that communication other than NELSON; and
3. was halting investigation of the complaint and would wait for the outcome of the Ornelas appeal.

On June 11, 1992 the Bar wrote a letter to CW stating in pertinent part:

"It has been determined that the State Bar has no jurisdiction as the alleged misconduct was judicial in nature. Additionally, there are no violations of the Business and Professions Code, nor Rules of Professional Conduct. Accordingly, we are closing our file on this matter."

On September 8, 1992 CW sent a letter to the Bar - its Complainant's Grievance Panel (hereafter CGP) advising dissatisfaction with the above "determination" and requesting review of it by the CGP.

On October 7, 1992 the Bar-CGP sent CW a letter advising it

had received the file on NELSON, CR 11055, that "you will be notified of mail of its decision" and enclosed a copy of the CGP's "information sheet" dated 7/9/92 which stated ". . . your request will probably be reviewed within twenty-four months."⁵

On March 4, 1993 CW sent the Bar-CGP a letter (copy attached as exhibit 7) requesting the status of the NELSON complaint and provided it a copy of the declaration of attorney Stephen Kuri attesting to an illegal undisclosed ex parte communications between NELSON and GREENE trial of Ornelas v. Greene.⁶

On October 5, 1993 the Bar-CGP sent CW a letter advising that:

" . . . it was sorry for any delay you are experiencing with regard to your complaint. In order to be equitable, we are taking cases on a first-come, first-served basis."⁷

That letter also contained an updated "information sheet" dated 9/30/93, now stating ". . . your request will probably be reviewed within eighteen months." (The Bar's latest "information sheet" dated 6/29/94, now claims that a ". . . request will probably be reviewed within twelve months").

CW has since heard nothing further from the Bar-CGP.

Twenty-four months? Eighteen months? Twelve months? Six

⁵ That letter was written by Ms. Lynne Geminder, Director of the Bar's Complaint Audit and Review Dept. Ms. Geminder later wrote a 9-16-93 letter, in reply to CW's 9-1-93 letter that had requested: the status of the GREENE/BELLI and NELSON complaints; when they would be resolved; and an explanation why the NELSON complaint had at that time been pending for over one (1) year. Ms. Geminder replied that the NELSON complaint would "most likely be submitted within the next six months." Six months from her letter would be March 94; it now is six months from March 94, and twelve (12) months from her letter - and still nothing.

⁶ The letter also informed the Bar that Mr. Kuri still had not been contacted by the Bar. CW had provided the Bar with Mr. Kuri's telephone number in his 11-25-91 letter to the Bar. (See exhibit 6). As of this date the Bar still has not contacted Mr. Kuri. The letter also again informed the Bar of the seriousness of this matter and again referenced the 11-26-91 LA Daily Journal p. 4 article "Disqualification of Judge Sought - Ex Parte Communication Alleged" concerning a Santa Clara County Superior Court judge, a copy of which CW previously provided to the Bar in his 10-2-92 letter.

⁷ This is false. CW's Bar complaint against GREENE and BELLI (respectively, Nos. 91 06361 and 91 02431) was submitted to CGP on 3-25-93 and collectively given file No. 93 CR 10503/04. The NELSON complaint, No. 91 007593, was submitted to the CGP earlier on 9-8-92 and was given file No. 92 CR 11055. Clearly, once again the Bar violates its own policy, ignores its own rules, shows contempt for the law and - simply does as it pleases.

months? First-come, first-served? Whatever - it is clear that the State Bar is not following: its own policies; its own rules; and the law of the State of California.⁸ It is also clear the Bar is not protecting the public. Regardless - it is now over twenty-four months since CW submitted the NELSON complaint to the CGP for review; and now almost thirty-six months since CW first filed the complaint with the Bar. The CGP, the Bar, have repeatedly proven that no matter how long it is given - it simply will not follow the facts, will not follow the law, and will not do its duty.

CW was thus forced by the failures and misconduct of the Bar, the CGP to file this verified accusation.

GENERAL ALLEGATIONS

CW asserts here:

1. that CW's complaint and further letters to the Bar have set forth several specific charges of serious misconduct against attorney NELSON, and CW believes that such charges are indisputable and thereby constitute grounds for severe disciplinary action that must be taken by the Bar against NELSON, to wit: disbarment or a very, very lengthy suspension;

2. that CW's complaint, and more particularly CW's November

⁸ For example see In re the matter of the verified accusation of attorney John DeRonde, Jr., against attorney Thomas Pfaltz, S037043, dated 12-29-93, which was filed because, first the Bar failed to properly discipline the charged attorney, and then like in this matter, the CGP failed to act when the complaint went to it for well over 24 months. CW recently discussed the above matter with Mr. DeRonde, who referred to the CGP as a "black whole" and stated that he has heard of matters being lost there for over five (5) years. See below at p. 23, fnnt. 18 - which is a reference to the Bar's Special Discipline Monitor's Final Report, making that exact same complaint about the CGP. Mr. DeRonde also advised that the Supreme Court has not taken any action in his matter; the same is true of CW's verified accusation against attorneys GREENE and BELLI, S037066. Maybe there is also a "black hole" at the Supreme Court? (See fnnts. 25 and 26 below).
On 6-10-93 CW filed an application on behalf of Ms. Ornelas and Ms. Castro with the Bar's Client Security Fund regarding the \$2,000,000 settlement offer from Ford that GREENE had in his hands (twice), but wrongly rejected; and the \$550,000 settlement from GREENE that BELLI had in his hands, but wrongly rejected. The Fund has twice wrongly rejected the application (Nos. 93-F14850 and 52), ignoring its own policies, rules and the law. (See Beery v. State Bar (1987) 42 Ca.3d 806). On 7-19-94 CW wrote another letter to the Fund requesting: again an explanation for its wrongful rejection; again why it continues to ignore the law; when the statute begins to run for a challenge to its rejection; and a reply within fourteen (14) days. It is now almost sixty (60) days and - no reply from the Fund. Maybe there is another "black hole" at the Bar's Fund?

25, 1991 letter, were presented to the Bar (at several levels) for the purpose of invoking the disciplinary powers of the Bar against attorney NELSON; and

3. that since the initial presentation of such charges and thereafter up to this day, the Bar (at several levels) has handled the complaint and the charges therein against attorney NELSON, in an arbitrary, incompetent, and unlawful manner by refusing to apply and follow its own policies, its own rules and the law, by refusing to take appropriate disciplinary action required thereunder, and by refusing to order a hearing against attorney NELSON.

This Court must address the charges of serious misconduct that CW asserts against attorney NELSON and this Court must discipline attorney NELSON. This Court must then call for an independent investigation of the Bar - and its involved personnel - who failed to perform their duty. Those personnel must then be brought to justice and must answer for their own misconduct.

SPECIFIC CHARGES PRESENTED

Attorney NELSON committed several acts of serious misconduct which are set forth in extreme detail in CW's complaint, CW's November 25, 1991 letter to the Bar and further letters. (See exhibits 1, 6, 7 and 8). That misconduct includes: failing to read motions/papers filed by CW; without cause, repeatedly making personal verbal attacks on CW; without cause, repeatedly refusing to allow CW to present evidence and question witnesses; without cause, repeatedly threatening CW with contempt and sanctions, later

holding bogus hearings on same, and there threatening CW's attorney with same; determining as a matter of law that a conflict of interest existed, then intentionally ignoring his mandatory duty to take judicial notice that attorneys GREENE and BELLI owed and breached mandatory fiduciary duties to their clients; refusing to issue a bench warrant against attorney GREENE for disobeying trial subpoenas and then having undisclosed ex-parte conversations with attorney GREENE; and repeatedly ignoring the law, then making illegal/improper rulings favoring defendants-attorneys GREENE and BELLI thereby wrongly eliminating the legal malpractice case of Ms. Ornelas and Ms. Castro.

A reading of the transcript of the purported trial of Ornelas v. Greene and Belli readily shows - there was no trial. The transcript shows what took place was a sham - a rigged proceeding granting illegal favor, after favor, to GREENE AND BELLI. It was a proceeding that was "fixed" by NELSON - who made sure the case would never get to the jury. (Attached as exhibit 8a, are pages 340-42 and 362-391 of the Ornelas v. Greene/Belli, C596304 trial transcript and as 8b are pages 8-24 and 38-40 of appellants' brief, B052519, showing NELSON's egregious misconduct and illegal/improper rulings for GREENE and BELLI; also see exhibit 10b).

Examples. GREENE had ignored an earlier trial subpena, going out of the state on two (2) occasions and never called CW or the court, causing earlier trials date to be continued. Upon his return, he failed to return calls to his office regarding his appearance at the trial before NELSON. CW was thus forced to serve

GREENE with another subpoena that instructed him to appear later that same afternoon. GREENE ignored/disobeyed that subpoena and did not appear as instructed; moreover he also never called CW or the court. The matter was then brought before NELSON (THE COURT).

"THE COURT: OKAY. NOW, SO, WHO DO WE HAVE FOR TOMORROW AFTERNOON. THAT'S WHAT I AM ASKING BECAUSE IF YOU DON'T HAVE SOMEBODY HERE FOR TOMORROW AFTERNOON YOU'RE GOING TO FACE THE PROBLEM OF HAVING RESTED YOUR CASE.

MR. ZERMAN: WELL, WHAT WILL HAPPEN TO THE MATTER OF MR. GREENE?

THE COURT: HE IS A NON APPEARING WITNESS AND, YOU KNOW, THE QUESTION IS THAT'S A PROBLEM FOR ME TO DEAL WITH MR. GREENE.

MR. ZERMAN: OKAY. YES, YOUR HONOR. EXCUSE ME.

THE COURT: SO, WHEN YOU ASK WHAT WILL HAPPEN, THE SAME THING THAT HAPPENS TO EVERY NON APPEARING WITNESS.

MR. ZERMAN: I WOULD REQUEST THEN A BRIEF CONTINUANCE AND I WOULD ALSO REQUEST THE COURT ISSUE A BENCH WARRANT FOR HIM.

THE COURT: I WILL WORRY ABOUT THAT. WHAT ELSE? CONTINUANCE FOR WHAT?

MR. ZERMAN: UNTIL MR. GREENE IS BROUGHT INTO TRIAL HERE TO TESTIFY.

THE COURT: THAT'S DENIED. I SUGGEST YOU GET YOURSELF SOME WITNESSES FOR TOMORROW AFTERNOON. THAT'S WHAT I SUGGEST OR YOU MIGHT BE FACED WITH A PROBLEM OR HAVING RESTED YOUR CASE. WE'RE ADJOURNED UNTIL 9:00 O'CLOCK. I WANT SUCH WITNESSES READY TO OCCUPY A FULL DAY OF COURT TOMORROW.⁹

MR. ZERMAN: THANK YOU, YOUR HONOR." (RT 340:13-341:11).

Later that evening attorney Stephen Kuri (assisting CW) called

⁹ GREENE disobeys another subpoena (this one served on him earlier that morning by attorney Stephen Kuri, see exhibit 7), he fails to appear, he fails to call the court and he disrupts plaintiffs' case and the trial. NELSON refuses to issue a bench warrant against GREENE, refuses to grant plaintiffs' request for a brief continuance until GREENE appears and then he threatens to (and later does) terminate plaintiffs' case. Is NELSON working for justice? Or is he working for GREENE and BELLI?

GREENE's office to find out why he had disobeyed the subpoena and had not even called the court. Kuri was advised by GREENE's secretary that he was then speaking to (judge) NELSON. Kuri never spoke to GREENE and he never called Kuri, as per his request to GREENE's secretary. (See exhibit 7, Kuri declaration).

The next morning when trial resumed NELSON said nothing about his communication with GREENE, in fact he never even mentioned GREENE. CW attempted to bring up GREENE and his failure to appear, but was shot down by NELSON. Later, after Ms. Ornelas testified, NELSON for the first time informed CW that GREENE had showed up.

"THE COURT: ALL RIGHT MR. GREENE IS HERE. WANT TO CALL HIM AS A WITNESS?

MR. ZERMAN: PLAINTIFFS WOULD CALL BROWNE GREENE UNDER EVIDENCE CODE SECTION 776, YOUR HONOR.

THE COURT: I THINK THAT INAPPROPRIATE, BUT MR. GREENE MAY BE CALLED.¹⁰ (362:3-8).

* * * *

MR. ZERMAN: YOU WERE SERVED WITH A SUBPENA AND REQUEST TO BRING SOME DOCUMENTS. HAVE YOU BROUGHT ANY DOCUMENTS IN COMPLIANCE WITH THAT SUBPENA?

MR. GREENE: NO.

Q. DID YOU LOOK FOR THOSE DOCUMENTS?

THE COURT: THAT'S SOMETHING I THINK YOU BETTER TAKE UP WITH ME OUTSIDE THE JURY'S PRESENCE. WHY DON'T YOU GO INTO HIM AS A WITNESS. (364:-9)

* * * *

MR. ZERMAN: WHEN YOU TAKE ON A CASE COULD YOU TELL ME WHAT THE ATTORNEY-CLIENT RELATIONSHIP INVOLVES?

MR. MCLEAN: OBJECTION, YOUR HONOR, RELEVANCE.

THE COURT: IT'S ALSO AN AREA OF LEGAL OPINION WHICH

¹⁰ Clearly what is inappropriate (and an indisputable demonstration of bias) is NELSON's comment. GREENE had been a defendant-adverse party and obviously still was an adverse witness (recall he disobeyed a trial subpoena) thus clearly GREENE could be called under Evidence Code, section 776. Why did NELSON make such a comment? Again is NELSON working for GREENE and BELLI? He certainly is not working for justice.

ALTHOUGH MR. GREENE IS A LAWYER HE IS NOT PERMITTED, AS YOU WELL KNOW, TO GIVE LEGAL OPINIONS AS A WITNESS, SO LET'S MOVE ON.

MR. ZERMAN: AS OPPOSED TO YOUR OPINION MR. GREENE, WHAT IS YOUR UNDERSTANDING OF THE ATTORNEY-CLIENT RELATIONSHIP?

THE COURT: DOESN'T MATTER WHAT HIS UNDERSTANDING IS. THAT'S EXACTLY THE SAME THING. HIS UNDERSTANDING AND HIS OPINION MAY HAVE A DIFFERENCE IN LEGAL MINDS, BUT IN THE REAL WORLD THEIR IS NOT SUCH DIFFERENCE. NOW, LET'S GET TO THE ISSUES INVOLVED IN THIS CASE.¹¹ (367:1-17).

* * * *

MR. ZERMAN: AND WHAT KIND OF A CONTRACT WOULD THAT HAVE BEEN WITH YOUR FIRM?

MR. GREENE: CONTINGENCY FEE.

Q. STANDARD CONTINGENCY FEE CONTRACT?

A. YES.

Q. WHAT ARE THE TERMS OF THAT CONTRACT?

MR. MCLEAN: OBJECTION, YOUR HONOR. RELEVANCE.

THE COURT: SUSTAINED. WE'RE TALKING ABOUT WHETHER OR NOT HE REPRESENTED MR. MUNOZ AS WELL AS THE OTHERS. WHY DON'T WE JUST ZIP RIGHT TO THAT AND GET TO IT AND LET MR. GREENE GO ON HIS WAY.¹² (369:14-25).

* * * *

MR. ZERMAN: ISN'T IT TRUE THAT WHEN YOUR FIRM REPRESENTED THOSE CLIENTS YOU HAD A FIDUCIARY DUTY UNDER THE LAW?

MR. MCLEAN: OBJECTION, YOUR HONOR. CALLS FOR A LEGAL CONCLUSION.

THE COURT: OBJECTION SUSTAINED.

¹¹ Another improper interference by NELSON. This is a legal malpractice case and NELSON will not allow questions to the defendant attorney about his knowledge and understanding of his duties to his clients. NELSON's ruling that can not be done - is simply absurd. (See also the next two series of questions). How can plaintiff even present, much less prove a case with such nonsensical rulings? Why is NELSON favoring GREENE and BELLI? It should be noted that GREENE and BELLI, each, are a past president of CTLA - California Trial Lawyers.

¹² Let GREENE go on his way? Clearly - NELSON was not as concerned about getting GREENE into court, as getting him out. See also the several similar comments by NELSON in the following series of questions. What is truly amazing is NELSON was so successful at curtailing the questioning of GREENE that the entire questioning of GREENE did not exceed 1-hour; defendants even passed at questioning him. NELSON did the same later regarding BELLI, who he ruled did not even have to appear, despite a proper notice/request. (RT 19-20, 227-32).

MR. ZERMAN: IS IT YOUR UNDERSTANDING IN REPRESENTING THEM THAT YOU HAD A FIDUCIARY DUTY?

MR. MCLEAN: SAME OBJECTION.

THE COURT: IT'S THE SAME QUESTION, SIR. I TOLD YOU THAT BEFORE.

MR. ZERMAN: WHAT WERE YOUR OBLIGATIONS IN REPRESENTING THESE PEOPLE, MR. GREENE?

MR. MCLEAN: SAME OBJECTION, YOUR HONOR. CALLS FOR A LEGAL CONCLUSION.

THE COURT: SUSTAINED.

MR. ZERMAN: WHAT DID YOU BIND YOUR FIRM TO DO?

THE COURT: DON'T ASK ANYMORE QUESTIONS ALONG THOSE LINES, SIR. NOW, I THINK YOU REALIZE THAT THOSE QUESTIONS ARE OUT OF BOUNDS AND I DON'T WANT TO HEAR ANY MORE OF THEM.¹³ (370:10-371:2).

* * * *

MR. ZERMAN: WHY IS IT THAT MR. VOORHIES INITIALLY HANDLED THE CASE?

MR. GREENE: BECAUSE THEY WERE BROUGHT IN THROUGH WALT GOODE TO MR. VOORHIES.

MR. ZERMAN: ISN'T IT TRUE ONE OF THE REASONS WAS THAT HE SPOKE SPANISH?

MR. GREENE: THAT WOULD BE A GOOD REASON, YES. I'M SURE THAT WAS ONE OF THE REASONS.

MR. ZERMAN: ISN'T IT TRUE THAT THERE WAS ALSO A SIMILAR PRIOR CASE AGAINST FOR MOTOR COMPANY?

MR. GREENE: YES, THAT WAS BEALY VERSUS FORD.

MR. ZERMAN: WHAT DID THE BEALY CASE INVOLVE?

¹³ Out of bounds? Again, how are plaintiffs going to put on their case, if these basic legal malpractice questions can not be asked? (See Lavless v. Calaway (1944) 24 Cal.2d 81, 89, which was cited at p. 4, appellants' brief, B052519). Clearly GREENE had a fiduciary duty to Ms. Ornelas and Ms. Castro, a duty "of the very highest character and binds the attorney to the most conscientious fidelity." (Day v. Rosenthal, supra). Obviously this includes the duty to: conduct basic research on conflicts of interests (see GREENE's responses next series of questions); disclose conflicts of interest to the clients; not represent conflicts when nonwaivable. (Kleim v. Superior Court (1977) 75 Cal.App.3d 893, 898). Because as a fiduciary, "Accordingly, when an attorney attempts dual relationship without the full disclosure required of him, he is civilly liable to the client who suffers loss caused by disclosure" (Lysick v. Walcom (1968) 258 Cal.App.2d 136, 148; see also Betts v. Allstate (1984) 154 Cal.App.3d 688, 716) and "... if it is established that the attorney is, in fact, undertaking to represent conflicting interest, injury to the former client must be presumed to have resulted by reason of such representation." (Krause v. Davis (1970) 6 Cal.App.3d 484, 490). Recall the Bar concluded GREENE and BELL violated Rule 5-102 because they did not disclose the conflict. Recall Ms. Ornelas and Ms. Castro lost the \$2,000,000 settlement offer from Ford. Recall NELSON never let their case get to the jury.

THE COURT: THAT'S IRRELEVANT, MR. GREENE.

MR. GREENE: IT WAS VERY --

THE COURT: NEVERMIND. LET'S STAY ON THIS CASE.

MR. ZERMAN: ISN'T IT TRUE THAT YOU HAVE NO KNOWLEDGE OF MR. VOORHIES ADVISING MRS. ORNELAS AND MRS. CASTRO OF A CONFLICT OF INTEREST WITH MR. VENTURA MUNOZ REGARDING THE HANDLING OF THAT CASE AGAINST FORD MOTOR COMPANY?

MR. GREENE: YES.

Q. AND ISN'T IT TRUE YOU HAD NO DISCUSSION WITH MR. VOORHIES REGARDING A CONFLICT OF INTEREST REGARDING CASE NUMBER 1 [Ornelas v. Ford]?

A. THAT'S TRUE.

Q. NOW, ISN'T IT TRUE THAT AT SOME TIME MR. VOORHIES LEFT YOUR FIRM?

A. YES.

Q. ISN'T IT TRUE THAT HE WAS LOCKED OUT OF THE OFFICE AT ONE TIME?

MR. MCLEAN: OBJECTION, YOUR HONOR. RELEVANCY.

THE COURT: COME UP HERE TO THE SIDE BAR. (THE FOLLOWING PROCEEDING WERE HELD AT THE BENCH). NOW, I THINK YOU KNOW FULL WELL THAT QUESTION IS ABSOLUTELY IRRELEVANT AND HAS NOTHING TO DO WITH THIS CASE.

MR. ZERMAN: I DISAGREE, YOUR HONOR.

THE COURT: I DON'T CARE WHETHER YOU DISAGREE. IF YOU ASK ANOTHER ONE OF THOSE QUESTIONS LIKE THAT, SIR, I AM GOING TO HOLD YOU IN CONTEMPT OF THIS COURT. YOU KNOW FULL WELL THE RELATIONSHIP BETWEEN VOORHIES AND BROWNE GREENE HAS NOTHING TO DO WITH THIS CASE. IF THEY HAD SOME DISAGREEMENTS AMONG THEMSELVES THAT'S NONE OF THIS JURY'S BUSINESS. YOU KNOW FULL WELL THAT'S THE CASE, AND DON'T STAND UP THERE TELLING ME YOU DON'T. NOW, LISTEN TO ME. IF YOU ASK ANOTHER ONE OF THOSE QUESTIONS ALONG THOSE LINES I'M GOING TO HOLD YOU IN CONTEMPT OF THIS COURT. DO YOU UNDERSTAND THAT?

MR. ZERMAN: YES, YOUR HONOR. I WOULD LIKE TO BE HEARD FOR A MINUTE.

THE COURT: GET BACK OUT THERE AND ASK PROPER QUESTIONS, RIGHT NOW.

MR. ZERMAN: I INSIST ON BEING HEARD, YOUR HONOR.

THE COURT: (PROCEEDINGS WERE RESUMED IN OPEN COURT). I WANT THE JURY TO GO IN THE JURY ROOM FOR JUST A MOMENT. DON'T DISCUSS THE CASE. DON'T FORM OR EXPRESS AN OPINION ON IT. (THE JURORS EXITED THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD). NOW, RULE 88 OF OUR CIVIL TRIAL MANUAL INDICATES AS FOLLOWS: A QUESTION TO A WITNESS SHOULD BE FRAMED TO AVOID THE SUGGESTION OF ANY INADMISSIBLE MATTER. NOW, YOU KNOW FULL WELL THAT ANY BREAKUP IN THEIR LAW FIRM, IF THERE WAS SUCH A THING, HAS NOTHING WHATSOEVER TO DO WITH THIS CASE. AND I'M TELLING YOU AGAIN IF YOU ASK ANOTHER ONE OF THOSE QUESTIONS I AM GOING TO HOLD YOU IN CONTEMPT. NOW, YOU TRY ME ON THIS AND YOU'LL SEE THAT YOU WILL BE FINED AND, IF NECESSARY, I'LL PUT YOU IN JAIL FOR IT. NOW, YOU CONTINUE THIS. AND YOU HAVE DONE THIS BEFORE AND I'M NOT GOING TO HAVE IT.

MR. ZERMAN: WITH ALL DUE RESPECT, YOUR HONOR, I BELIEVE IT'S RELEVANT. THIS IS CROSS-EXAMINATION. THERE IS EXTREME LATITUDE.

THE COURT: THEN YOU ASK ANOTHER SUCH QUESTION AND SEE WHETHER OR NOT YOU ARE HELD IN CONTEMPT. YOU ASK ANOTHER QUESTION LIKE THAT IN FRONT OF THIS JURY AND I'M GOING TO HOLD YOU IN CONTEMPT. I'VE TOLD YOU AND I MADE A RULING THAT IS NOT RELEVANT. AN I'M NOT GOING TO TOLERATE ONE MORE QUESTION ALONG THOSE LINE. NOW, DO YOU UNDERSTAND WHAT I WAS [HAVE] SAID TO YOU.

MR. ZERMAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, LET'S BRING THE JURY --

MR. ZERMAN: I WOULD LIKE TO BE HEARD.

THE COURT: I DON'T WANT TO HEAR ANOTHER WORD FROM YOU.¹⁴

¹⁴ That case was Biehle v. Ford, LASC Case No. MCC 67226 and like Ornelas v. Ford involved a single vehicle left-side roll low speed slide accident of plaintiff-driver Biehle's Ford pickup truck and involved the same design defects (in-cab fuel tank and exposed filler neck tube) as were alleged in Ornelas. Four major differences existed between Biehle and Ornelas cases: 1 - driver William Biehle was the only plaintiff in his case; 2 - Biehle was the only occupant in his truck; 3 - Biehle's case thus had no conflict of interest; and 4 - Biehle prevailed and got a favorable verdict from the jury. Clearly Biehle was relevant, very relevant. NELSON also refused to let plaintiffs' legal expert witnesses (attorney Richard DuPar and Tom Low, ex State Bar prosecutor) testify; they were prepared to testify about how both GREENE and BELLI breached professional standards and duties to Ms. Ornelas and Ms. Castro. But recall - only NELSON could talk about the law. The questions about Voorhies were relevant, as he filed the Ornelas complaint and was handling the case before GREENE locked him out of the office. (See Voorhies v. Greene (1980) 139 Cal.App.3d 989). One of the items they battled over was the Ornelas case. Although GREENE was successful in taking the case from Voorhies (GREENE had letters prepared for the clients to sign electing him over Voorhies, curiously his office letterhead is absent) he obviously was not so successful when he tried the case. GREENE later defended himself in Ornelas v. Greene, on the issue that he failed to communicate the \$2,000,000 settlement offer and violated Rule 5-105, with the claim that clients Ornelas and Castro insisted all offers go through GREENE's employee investigator Walt Goode - obviously another conflict. (See verified accusation against GREENE AND BELLI,

MR. ZERMAN: YOU ARE VIOLATING MY DUE PROCESS RIGHTS, VIOLATING THE DUE PROCESS RIGHTS OF MY CLIENTS. YOU ARE EMASCULATING THE CLAIMS AND ISSUES IN MY CLIENTS' CASE AND I JUST FEEL I HAVE TO MAKE A RECORD. YOU REFUSE TO HEAR ME ON ISSUES. YOU IGNORE ME. I HAVE TRIED TO GO THROUGH YOUR CLERK ON NUMEROUS OCCASIONS. SHE HAS IGNORED ME, AND I JUST CANNOT GET HEAR ON MATTERS. AND WITH ALL DUE RESPECT, YOUR HONOR, I HAVE A DUTY TO ZEALOUSLY REPRESENT MY CLIENTS. I DON'T THINK ANY OF MY CONDUCT HAS BEEN IMPROPER, AND I THANK YOU FOR HEARING ME. (371:20-374:28).

* * * *

MR. ZERMAN: ISN'T IT TRUE, MR. GREENE, YOU NEVER OBTAINED WRITTEN CONSENT FROM FABIOLA CASTRO WAIVING A CONFLICT OF INTEREST WITH VENTURA MUNOZ?

MR. GREENE: I DON'T BELIEVE SO.

Q. WELL, DO YOU HAVE SOME DOUBTS?

A. NO.

Q. SO, YOUR ANSWER IS NO?

A. YES. I THINK THAT'S THE WAY TO PUT IT, BUT, REMEMBER, I HAVEN'T HAD THE RECORD FOR YEARS. BUT I DON'T BELIEVE THAT WE HAD ANY SUCH DOCUMENT, NO.

Q. WASN'T IT TRUE THAT YOU BELIEVED THERE WAS NO CONFLICT OF INTEREST --

A. YES.

Q. -- BETWEEN THEM?

A. THAT'S RIGHT.

Q. WHAT DO YOU BASE THAT ON?

A. YOU WANT ME TO DESCRIBE?

Q. TELL ME ANY LEGAL AUTHORITY THAT YOU BASE THAT ON, ANY LEGAL TREATISE, ANY CASE LAW.

A. YOU MEAN, YOU WANT A CITATION OR A CASE OR WHAT?

8037066, at exhibit 2, p. 8, pt. 2). GREENE could not be questioned about settlement offers because NELSON ruled those were also irrelevant.

Again recall that NELSON allowed GREENE to violate subpoenas at will; then he had undisclosed ex parte communications with GREENE; yet CW could not get a bench warrant, a continuance or ask basic questions. Instead CW was repeatedly threatened with contempt and being thrown in jail by NELSON. One has to wonder what GREENE and NELSON talked about. Because the State Bar has never investigated we can only guess? No we can do better than that - draw the clear inferences from the trial transcript and the fact the case never got to the jury.

THE COURT: WAIT --

MR. ZERMAN: YES.

THE COURT: -- MR. GREENE.

THE WITNESS: YES, YOUR HONOR.

THE COURT: I KEEP TELLING YOU I'M NOT GOING TO LET HIM DISCUSS THE LAW WITH THE JURY. THE ONLY PERSON WHO DISCUSSES THE LAW WITH THIS JURY IS ME. THAT'S MY AREA AND I AM NOT GOING TO GET INTO A WHOLE DISCUSSION HERE. NOW, IF YOU WANT TO ASK HIM A QUESTION -- I WILL SUSTAIN IT. IT'S IRRELEVANT.

MR. ZERMAN: CAN I HAVE A SIDE BAR ON THIS, YOUR HONOR?

THE COURT: NO. (380:10-381:19).

* * * *

THE COURT: NOW, IF THAT IS WHAT THE READING IS ABOUT, THAT'S IRRELEVANT. THAT'S ALREADY BEEN DETERMINED WHAT THE CASE -- THE CASE BETWEEN ORNELAS, CASTRO, MUNOZ AND MUNOZ WAS DECIDED BY A JURY, AS I UNDERSTAND IT. THAT'S DONE AND THAT'S IRRELEVANT TO THIS, WHAT THE MERITS OF THAT CASE WERE. IT'S IRRELEVANT HERE. LET'S GO ON.

MR. ZERMAN: DID YOU REVIEW THE CORONER'S REPORT, MR. GREENE?

A. I BELIEVE SO.

Q. THAT CASE YOU HANDLED --

THE COURT: AGAIN, ALL THAT HAS BEEN DECIDED. THAT WAS THAT CASE. THE ISSUE HERE IS REPRESENTING MUNOZ ALONG WITH THESE 2 PLAINTIFFS, AND I'M TELLING YOU AGAIN WE'RE GOING TO STAY ON THAT LONE ISSUE AS FAR AS MR. GREENE IS CONCERNED. NOW, IF YOU HAVE ANY MORE QUESTIONS TO HIM ALONG THOSE LINES, GET TO THEM. OTHERWISE LET'S LET HIM GO ABOUT HIS BUSINESS. (382:13-384:3).

* * * *

MR. ZERMAN: THE QUESTION WAS DID YOU DO ANY RESEARCH? DID YOU LOOK AT ANY LEGAL BOOKS?

MR. GREENE: NO, I DIDN'T LOOK AT ANY BOOKS. I DIDN'T HAVE TO FOR THAT?

Q. WHY DIDN'T YOU HAVE TO?

A. BECAUSE I KNOW WHAT THE FACTS WERE AND HAVING TRIED A NUMBER OF THESE CASES IT WAS MY JUDGMENT AND THE

JUDGMENT OF EVERYONE OUR FIRM THAT WAS THE WAY TO PROCEED.

Q. ANYONE IN YOUR FIRM A SPECIALIST IN LEGAL MALPRACTICE?

A. NO.

Q. IS ANYONE IN YOUR FIRM A SPECIALIST IN CONFLICTS OF INTERESTS?

A. NO. I WOULDN'T CALL IT THAT. WE KNOW WHAT THE LAW IS, THOUGH.

Q. WHAT IS THE DEFINITIVE LAW AS TO WHETHER OR NOT THERE WAS --

THE COURT: I HAVE ASKED YOU NOT TO ASK HIM QUESTIONS LIKE THAT. NOW, DON'T ASK SUCH A QUESTION AGAIN.

MR. ZERMAN: ISN'T IT TRUE THAT THE JURY IN CASE NUMBER ONE WAS CONFUSED OVER THE STATUS DISTINCTION BETWEEN THE PLAINTIFFS AND THE DEFENDANTS?

THE COURT: THAT'S IRRELEVANT AND ALSO CALLS FOR SOME KIND OF LEGAL CONCLUSION BY THE WITNESS. DO YOU HAVE A QUESTION REGARDING HIM REPRESENTING THE DRIVER AS WELL AS THE PASSENGERS? DO YOU HAVE ANOTHER QUESTION ALONG THOSE LINES?

MR. ZERMAN: IF I MAY HAVE A MOMENT, YOUR HONOR.
(PAUSE IN THE PROCEEDINGS)

THE COURT: THAT'S WHAT YOUR NEXT QUESTION MUST BE OR ELSE YOU'RE THROUGH WITH THIS WITNESS. (385:3-386:9).

* * * *

Q. AND ISN'T IT TRUE THAT THE ATTORNEY FOR FORD ARGUED AT THE TRIAL MR. MUNOZ WAS THE SOLE PROXIMATE CAUSE OF THE ACCIDENT AND ALL THE INJURIES?

MR. GREENE: YES.

Q. AND ISN'T THAT HE BASED THAT ARGUMENT ON MR. MUNOZ' EXCESSIVE SPEED?

A. HE CONTENDED THAT.

Q. AND ISN'T IT TRUE THAT HE BASED THAT ON MR. MUNOZ' TAKING THE TURN ONTO THE OFF RAMP TOO SHARP?

A. HE CONTENDED VENTURA MUNOZ TURNED ON TO THE ON RAMP TOO QUICKLY, TOO SHARPLY.

Q. ISN'T IT TRUE THAT THEY CONTENDED THAT THE LOAD IN THE TRUCK WAS TOO GREAT FOR THE CAPABILITIES AND THAT ENHANCED I TO TURN OVER?

A. I DON'T RECALL THEM MAKING THAT SPECIFIC CONTENTION. I THINK THEY CONTENDED THAT PART OF THE REASON WHY THE VEHICLE FLIPPED OVER WAS THE FACT THAT THERE WERE SEVERAL PEOPLE IN THE FRONT, WHICH I THOUGHT WAS RIDICULOUS CONTENTION IN LIGHT OF THE FACT THEY BUILT THE VEHICLE, THE PICKUP TRUCK, FOR ANY ONE OF A NUMBER OF PEOPLE, WITH NO LIMITATION OR WARNING OR DIRECTIONS TO THE PUBLIC.

Q. AND ISN'T IT TRUE THE JURY DISAGREED WITH YOU?

A. WELL, THE JURY DID NOT COME BACK WITH A VERDICT, BUT IT WAS NOT FOR THOSE REASONS.

Q. WHAT REASONS WERE THEY?

A. ARE YOU ASKING FOR MY OPINION OR WHAT?

MR. ZERMAN: AM I ALLOWED TO DO THAT, YOUR HONOR?

THE COURT: NO WE HAVE BEEN THROUGH THIS BEFORE. WHAT IS DONE IS DONE.

MR. ZERMAN: WASN'T IT TRUE THE JURY OBVIOUSLY AGREED WITH MR. HUNT?

THE COURT: I THINK WE ARE THROUGH WITH MR. GREENE. YOU [MR. ZERMAN] MAY HAVE A SEAT."¹⁵ (390:12-391:18).

Ms. Ornelas' and Ms. Castro's case - simply had no chance with the renegade rogue jurist NELSON.

APPROPRIATE DISCIPLINE

NELSON must be disbarred. Actually he should be jailed. What NELSON did was the antithesis of the calling of a judge or an attorney. He conspired with GREENE, and possibly BELLI, to "fix"

¹⁵ "I think we are through with Mr. Greene?" Plaintiffs' counsel is then ordered to take a seat by NELSON, while GREENE gets to go along his way - via NELSON's aid. The courts have let GREENE go along his way alright, and so has the Bar. (See verified accusation against GREENE and BELLI, SO37066 at exhibit 2). The CJP and Bar also let NELSON go along his way. That's - the problem. Well we know that the only thing Ms. Ornelas and Ms. Castro got - was the shaft - and they got it from the courts, the Bar, the CJP, GREENE, BELLI, and NELSON and they certainly never got their day in court. We also know that NELSON is no longer judge; and should no longer be an attorney.

the trial.

In People v. Martin (1982) 135 Cal.App.3d 710, a judge and an attorney were convicted of conspiracy to obstruct justice and sent to state prison for fixing cases. At page 720 the court stated:

"This argument is contrary to the holding in Davis v. Superior Court, 175 Cal.App.2d 8, 345 P.2d 513, in which the court, interpreting Lorensen, stated:

'The reference to "Crimes Against Public Justice" does not necessarily exclude a crime not defined within the four corners of that Part I, title VII, of the Penal Code . . . The [Lorensen] court's reference to such crimes was illustrative, rather than exclusionary.' (Citation).

"One illustration given by the Davis court is appropriate here: certain types of corrupt conduct by attorneys, constituting a perversion or obstruction of justice, were formerly set forth in title 7 of the Penal Code but are now contained in the Business and Professions Code under the State Bar act. Such acts are no less an obstruction of justice simply because the statutes prohibiting them were moved from one code to another."

* * * *

"Next, argues Martin, the harsh sentence resulted from the trial court's prejudice against him, or at least against the crime he committed. The court's comments to which Martin points as evidence of this prejudice are:

'I think this is the most uncomfortable case that I have ever tried.'

'Fundamentally, [this crime] is really unforgivable.'

'Judge Martin prostituted his robe. Mr. Brown prostituted his profession.'

"6. Martin also remarked that the court referred to the evidence as 'a bag of fleas.' Martin misquotes the court. Actually, Judge Ringer referred to the Citrus Municipal Court as 'a bag of sleaze.'"

The offenses of misconduct NELSON committed readily demonstrate that he has nothing but contempt for his judicial oath,

his attorney oath and the law. Like judge Martin above, it is indisputable that NELSON "prostituted his robe" in Ornelas. Recall he resigned, rather than face a disciplinary hearing, and now is ex-judge NELSON. The commission of these offenses warrant the permanent disbarment of NELSON - if not also some jail time.¹⁶ Instead we will pay his judge's pension. If the law is to have any meaning NELSON must be punished - promptly and severely - NOW!

The refusal by the Bar to address these offenses and to punish NELSON is proof beyond doubt that the Bar is corrupt. Moreover, the proof is clear that the involved Bar personnel have wilfully failed to perform their duty and thus have violated the law. (See Gov. Code, sec. 1222). The Bar must be investigated and the involved individuals punished.

HISTORY OF NEGLECT BY THE BAR

After conducting only a little research about the Bar's activities, one finds that it actually is no surprise that the Bar has improperly handled this complaint against NELSON, as well as the complaint against attorneys GREENE and BELLI.¹⁷ In fact, all one need do is read the LA Times September 21, 1991, page A25

¹⁶ Rather than follow the law and do justice as sworn to in both his attorney and judicial oaths NELSON did just the opposite. He had undisclosed ex parte communications with GREENE and then made illegal/improper rulings favoring GREENE and BELLI. Rather than do justice NELSON conspired with the undeniably guilty tortfeasor attorneys GREENE and BELLI to frustrate and obstruct justice. Recall the Bar concluded that GREENE and BELLI "violated" Rule 5-102 (see exhibit 3) and thereby also committed fraud. (See Ball v. Posey (1986) 176 Cal.App.3d 1209, 1214). It is indisputable that NELSON was mandated to take judicial notice of such (Evidence Code, section 451(c) and Day, supra); but instead NELSON shunned his duty, claimed the case was "frivolous", repeatedly threatened CW with contempt and sanctions, and threw the case out. There simply is no way to reconcile NELSON's illegal misconduct, with the fact that the Bar concluded - GREENE and BELLI "violated" Rule 5-102 by representing conflicting interest. This is not the conduct of a jurist - but that of a thug. NELSON must be punished severely for his illegal misconduct that caused Ms. Ornelas and Ms. Castro the loss of their right to even present their case. (See People v. Martin (1982) 135 Cal.App.3d 710; 185 Cal.Rptr. 556).

¹⁷ For a list of the numerous claims of reform that the Bar has promised us in the past, see the verified accusation against GREENE and BELLI, 8037066, exhibit 2, CW's 3-25-93 letter to the Bar, "THE BAR'S CONDUCT", at p. 14, fnnt. 9. For the most part those reforms have never been delivered, and where delivered have usually resulted in a miserable failure. The failure of the Bar to do its duty has compelled the filing of this verified accusation.

article entitled "State Bar Steps Up Disciplining of Lawyers" (copy attached as exhibit 9a), that reports about the Bar's Special Discipline Monitor telling that further reforms are still needed to quell a "state of crisis" in attorney misconduct in California and that the "level of attorney dishonesty in representations to the court, in promises to clients [and in] dealings with adverse counsel . . . is embarrassing."¹⁸

¹⁸ The Special Discipline Monitor was Professor Robert Fellmeth, Director of the Center for Public Interest Law - University of San Diego, and his "FINAL REPORT" was dated 9-20-91. He was appointed in January 1987 to serve a four (4) year term in the post, as a result of several reform bills sponsored by Senator Robert Presley. The release of Professor Fellmeth's "FINAL REPORT" coincided with the expiration of his term. Since then there has not been a further special discipline monitor. In his "FINAL REPORT" (condensed version) he further stated the following:

"In 1986, the State Bar had initiated a statewide toll-free "hotline" number . . . to facilitate consumer complaint receipt, but had not listed it in telephone books, either in the California State Government section or in any other location a consumer might logically find it. (fnt. omitted). [P] In 1991, the situation is substantially different, although serious deficiencies remain. For example, the State Bar has for four years expressed its intent to publish its toll-free number at least in the state government section of the telephone directories. At present, however, the State Bar listing is still regrettably absent from most of the major telephone directories of the state and this is true as to any State Bar telephone number, not merely the toll-free discipline number." (at 3).

"Under the system then extant, the Bar relied upon the "complaining witness" (CW)-that is, the person informing the Bar of a possible problem licensee-to "carry the ball" and provide evidence. However, 80% of those complaining to the State Bar by phone did not bother to send in subsequently requested written material. When this occurred, that matter was dropped. With rare exception, the Bar viewed a complaint about an attorney as a matter between the CW and the attorney who was the subject of the complaint." (fnt. omitted). [P] Information about lawyers misconduct from attorney self-reporting (required by the State Bar Act), judges, malpractice judgments, or other potentially rich sources of information about attorney wrongdoing was not reliably gathered, and was not systematically used for pattern detection purposes." (at 5).

"Despite recent staff increases, a choking backlog has developed in CAR [Complaint Audit and Review Unit]. As of December 1989, CAR had 1,066 unscreened cases pending before it, up 505 from the previous six months. At this time, we are distressed to report that the backlog has jumped even more. The open cases before the CAR include over 2,700 cases, two-thirds of them inquiries closed by Intake, and the remaining one-third more serious cases passing through intake but closed by OI. Almost half of the closed inquiries still open within the CAR backlog are more than one year old at this point. The OI-dismissed cases are generally older. [P]. . . The backlog is growing, not shrinking. However, in order to enable the Panel to make considered decisions, and recognizing that it is made up of volunteer appointees who meet once a month, CGP has necessarily limited itself to consideration of a defined number of cases per month. . . this has meant CGP consideration of 30-60 cases per meeting outside the consent calendar. [P] . . . we do not see them solving this problem." (at 9).

"The work product of the State Bar Court was inconsistent and not of the highest quality. The California Supreme Court in extraordinary frustration, openly criticized the work product of the State Bar Court in two published opinions: Maltman v. State Bar, 43 Cal.3d 924 (1987), and Guzetta v. State Bar, 43 Cal.3d 96 (1987)." (page 14).

"In addition to its failure to meaningfully address incompetence by way of licensure barriers to entry or post-entry requirements, the Bar has not seriously disciplined incompetence, nor has it removed the incompetent from the profession except in extreme cases. [P] The failure of the Bar to establish overall standards of personal honesty is similarly stark . . . [and] rightfully a source of embarrassment to many in the profession. [P] . . . But the problem remains, as discussed below. We are less certain here of viable solutions. However, it may well rest in . . . the basic revision of the extreme "adversary"-all is fair-ethic, particularly in civil proceeds. This last problem has created a kind of amoral atmosphere which permeates and poisons much of the profession-without reliably producing the "truth from conflict" which is its *raison d'être*. [P] We have some doubt that these kinds of reform can be accomplished given the regrettable structure of Bar governance; that is a system where the state agency regulating the profession in the interests of the larger body politic consist largely of members of the profession selected by the profession. Political reality makes it difficult for the Bar's governors or its electorate (here, attorneys electing the Board of Governors) to burden themselves substantially for the benefit of a larger population or purpose. . . The State Bar is a long way from assuring acceptable attorneys for the public, particularly in terms of everyday personal honesty . . ." (at 19).

"The Bar must search for ways to deter attorney deceit, particularly in the practice of civil law. . . Regrettably, the large city practice, where an attorney's previous abuses do not become widely known so that his or her statements are then discounted based on reputation, means that misleading behavior is not deterred by the courts adequately, and can even be rewarded by the system." [P] Part of the problem has to do with the lack of certain sanction. And part of it has to do with an adversary system gone awry. . . On the civil side, the ethic has been distorted to justify deceit on a grand and institutionalized scale. It has reached a stage where any trier of fact is going to have difficulty in ferreting out the truth from two persons bound and determined to mislead as much as possible." (at 20).

More recently, a January 28, 1993 LA Daily Journal page 2 article entitled "High Court OKs Mitchelson Discipline Terms", shows that the Bar pays only lip service to, and still has no understanding of - its main purpose - to protect the public from attorney misconduct; the Bar continues to demonstrate an inability to even recognize, much less discipline, a renegade attorney.¹⁹

"... we offer the unsettling experience of listening to the hotline operation ... [as] ... deeply troubling. It is one highly recommended for the "defenders of the profession" who deny serious and endemic abuses practiced upon the public by the legal profession. [P] The sheer force of call after call is momentous ... The number of calls of this type to the Bar is simply overwhelming. They represent a large portion of a bout 75,00 calls to the Bar each year ... one coming in every 80 seconds ... [and] elicits in any listener a profound sadness. [P] The State Bar must understand that the disrepute of what should be a proud profession is not the product of media bias, and is not curable through public relations campaigns - such as the Bar periodically suggests. ... [P] The State Bar, despite its acknowledged progress and new sensitivity, has yet to face up to the magnitude of its problem." (at 21-22).

Again, recall that there has been no special discipline monitor at the Bar since Professor Fellmeth's 9-20-93 "FINAL REPORT" and few, if any, of his recommendations were taken up and implemented. Yet now a 12-21-93 LA Daily Journal p. 3 article "Bar's Discipline System Will Face Panel Review" tells about Bar President Margaret Morrow announcing her appointment of:

"an eleven member commission ... [that] will undertake an nine-month investigation of the bar's discipline system." ... [P] Since 1988, when bar dues were nearly doubled to revamp California's lawyer discipline system after a decade of complaints that it did not provide swift and certain punishment for dishonest attorneys, the system has been held up as a national model. [P] ... Meanwhile, legal consumer advocates have maintained that, despite the reform, the system does not do a good enough job in swiftly punishing unethical lawyers." ... [P] In announcing the appointments, Morrow lauded the experience and independence of the panel's members."

The Bar's true colors however are shown, where the article states "... but no overt critics of the State Bar" were appointed to the commission by President Morrow. Just another PR ploy?

¹⁹ In pertinent part that article states:

"The California Supreme Court accepted an agreement Wednesday to place famed palimony attorney Marvin Mitchelson on three years of disciplinary probation with the State Bar. [P] ... [he] is required to take and pass the California Professional Responsibility Exam, a test on legal ethics and the rules of professional conduct within one year. [P] Mitchelson, currently on trial in Los Angeles federal court on charges he understated his income taxes could not be reached for comment. But his attorney, Arthur Margolis of Los Angeles, said 'We think the disposition is a fair one.' [P] The agreement between Mitchelson and the State Bar disposes of all disciplinary charges ... As part of the deal, Mitchelson stipulated that he failed to properly supervise the work of an associate, failed to tell two clients that he had delegated most of the work on their cases to an associate and commingled personal funds with client funds in his bank account."

"The bar agreed to drop charges that he mishandled client funds, filed frivolous appeals, failed to refund unearned fees and related forms of conduct. [P] Mitchelson also was accused of rape by two women in 1988. But the Los Angeles District Attorney's Office, the state attorney general's office, the county grand jury and the State Bar all declined to prosecute, saying evidence was insufficient to support their claims. [P] The court's one-paragraph order, signed by Chief Justice Lucas routinely goes along with the bar's recommendation in lawyer discipline cases. ..."

A 2-10-93 LA Times page B1 article entitled "Celebrity Lawyer Mitchelson Found Guilty of Tax Fraud - Famed Palimony attorney convicted of concealing nearly \$2 million in income from 1983-86" had U.S. Atty. Terree Bowers stating:

"This is the West Coast version of the Leona Helmsley case. ... This type of case is particularly irksome to us when you have people who are famous and wealthy, yet they engage in manipulative conduct in order to cheat on their taxes. More than 98% of the income that the IRS collected from Mitchelson since 1972 has been obtained through liens and other enforcement activities."

Where was the Bar during all those years? What was the Bar doing in 1-93 when it gave Mitchelson only probation? Lucky for the public he was then convicted of tax fraud and will be put away for a while. But what happens when he gets out? (See also the 7-93 issue of California Lawyer at p. 42 for article "Marvin Mitchelson Hits the Wall").

More recently, see LA Daily Journal articles "Judge Rips 'Misconduct' By Justice Department" (12-7-93, front page) and "Reno to Speed Justice Probes Of Misconduct - Attorney General Reacts to Criticism By Judge

The Bar simply has no credibility. The Bar simply is a joke.²⁰

ANOTHER - AND NOW GREATER - CONFLICT

This Court must recuse itself from hearing this matter - it has a conflict of interest. The underlying legal malpractice case Ornelas v. Greene and Belli, LASC Case No. C596304 - which NELSON reigned over and aborted - was petitioned to this Court and was summarily denied by this Court, In Bank, on June 10, 1992, with order signed by Chief Justice Lucas.²¹ This remarkably was done despite indisputable specific allegations of judicial misconduct by both the trial court - then Judge Henry P. NELSON and the appellate court²² - particularly the failure of both of those courts

in LA" (12-15-93, front page) that indicate that the "crisis" in attorney misconduct is now so great that the conduct of U.S. Attorneys is being questioned.

Continuing to further the "crisis", the Bar did nothing to GREENE and BELLI about the serious acts of misconduct that they indisputably committed. Most blatant, graphic and symbolic of this "crisis" is the Bar's refusal to discipline BELLI about his "ornament" - which is the scales of justice, only BELLI has replaced the lady with the bird finger. CW repeatedly informed the Bar, that as the entity responsible for supervising attorneys, some members of the public might surmise that BELLI was pointing his "ornament" at the Bar. Moreover, as the highest legal office of this state, some might think BELLI is pointing at this Court. (A photocopy of a picture of BELLI's "ornament" is attached as exhibit 6b to verified accusation S037066; also see exhibit 2, at 13, pt. 5 and CW's 9-9-92 letter to the Supreme Court, at 29 and p. 38-39 of the 12-91 issue of California Lawyer from its article "THE LION IN WINTER - Melvin Belli, Both King of Torts and King's Fool, Still Rages at 84"). Interestingly, see how others (non-attorneys) have been treated, when committing some arguably lesser offenses: Kahn v. Cal. Dept. of Motor Vehicles, B064070, 93 Daily Journal D.A.R., where the appellate court affirmed the trial court's decision upholding the DMV's order taking a personal license plate from plaintiff (a shorthand reporter) that had the word F-U-C-K in shorthand symbols "TP U BG" on her plate; and a 9-30-93 LA Times p. C5 article "Dolphin's Cox Fined \$10,000 for Gesture", which reports that a NFL - Miami Dolphin player - was fined \$10,000 for making obscene gesture [double bird fingers] to the crowd during warm-ups, before a Sunday game in Buffalo.

²⁰ See attached exhibit 9, which collectively consists of: a) LA Times 9-21-91 p. A25 article "State Bar Steps Up Disciplining of Lawyers"; b) LA Times 7- -93 CONRAD commentonary about then Stat Bar President Saferstein; and c) a letter written by LASC Judge Robert Einstein that appeared in the 9-93 issue of California Lawyer at page 11 attesting to the Bar's special treatment to influential/well connected members.

²¹ A copy of the order is attached as exhibit 10a. Actually the order appears not to be "signed" by Lucas, but appears with his "stamp." What may have occurred is that the order was "signed" or "stamped" while he was out of the country on one of his famous "trips". (See the 11-16-93 San Francisco Chronicle article "Lucas' Absences, Leadership Questioned" and follow up 11-17-93 article "The Decline of the Court" that reported the Chief Justice was out-of-state on 12 trips during 1992, which took 76-days (53-court days, about one-fourth of the Court's calendar time). Then see the CJP's 1-28-94 two-page whitewash public betrayal press about its purported investigation of the "trips" that concluded no impropriety occurred). Also attached as exhibit 10b is the title page and page 7 (listing Issue I) on the appellants' petition for review to the Supreme Court (APRSC), S026070.

²² See exhibit 10b. Like NELSON, the appellate court refused to do its duty to take mandatory judicial notice of the violations of the "Rules" by GREENE AND BELLI. That court attacked CW at the oral hearing (see CW's 9-9-92 letter "BLACK ROBE CRIME - A COVER-UP" to the Supreme Court at 14, "FRAUD BY THE APPELLATE COURT") and later issued a non-published fraudulent written decision (by Presiding Justice Joan Klein) that confirmed that the "conflict" existed, but then failed to address Nelson's judicial misconduct and the misconduct committed by GREENE and BELLI - in fact the decision amazingly does not cite/reference even one case concerning conflicts of interests. Recall that the Bar concluded those attorneys breached Rule 5-102 (see exhibit 3) and that Evidence Code, section 451 (c) compels mandatory judicial notice. Klein then affirmed Nelson's illegal

to take mandatory judicial notice of the violation by GREENE and BELLI of Rule 5-102 (Evidence Code, section 451(c)) - amazingly after each court had in fact determined that the conflict existed.

Denying the petition, this Court then also ignored its own duty to take mandatory judicial notice of that fundamental violation of Rule 5-102.²³ Recall that the Bar's March 10, 1993 letter in fact concluded that GREENE and BELLI "violated" Rule 5-102 by representing that conflict and that "violation" was in fact

ruling that appellants' damages were "speculative", which was preposterous and clearly contrary to the law - Smith v. Superior Court (1984) 151 Cal.App.3d 491, 496 - amazingly and ironically written by Klein herself), which was brought up at the oral hearing and later in appellants' petition for rehearing (APR, at 5). The APR, APRSC and CW's 9-9-92 letter serially refuted every material conclusion/statement Justice Klein wrote in her fraudulent decision.

On 4-13-91 CW filed a complaint against Justice Klein with the CJP concerning her 3-2-92 fraudulent non-published written decision and her hostile demeanor at the 1-15-92 oral hearing. On 7-13-92 the CJP responded pitifully, as follows:

"Your letter of April 13, 1992 has been considered in order to determine whether there is any basis for action by the Commission on Judicial Performance. (Review of our files does not disclose the "petitions" which you state you previously sent.) It has been concluded that the facts do not constitute grounds for proceeding further. [P] The commission's authority is narrowly limited by the California Constitution to matters in which specific facts are alleged that support a complaint of judicial misconduct or wrongdoing. The commission is not empowered to review or reverse judicial rulings, to reexamine cases on their merits, or take any action that might affect the outcome of litigation. Upon careful review of your letter, it has been determined that the factual information provided does not afford a basis for commission."

That CJP letter is pitiful because CW did not send it a "letter", but filed a formal complaint on the CJP's own form and CW formally served copies of the "petitions" [APR and APRSC] on the CJP, yet it could not find them - but nonetheless went blindly ahead and "concluded" there were no grounds. Pitiful, simply pitiful. CW sent several further letters requesting that the CJP explain its above non-action and the further pitiful non-actions it continued to take. The CJP's director-chief counsel continually replied that its purported investigation and conclusions were "confidential". The CJP simply has no credibility - see fntn. 26 below.

²³ See Day v. Rosenthal (1985) 170 Cal.App.3d 1125, which states that the courts are "compelled" to take mandatory judicial notice of the Rules of Professional Conduct and the breaches of such. (at 1147). Day was written by the same appellate court that wrote the Ornelas decision (Appellate Case No. B052519 [nonpub. opn.]). A companion case to Day, Young v. Rosenthal (1989) 212 Cal.App.3d 96, was written by a justice that concurred with Klein in her Ornelas decision (B052519); and Klein concurred in Young. Moreover, when the Supreme Court denied review of the Ornelas petition (Supreme Court Case No. S026070), the Justice who wrote the clever concurring opinion in Day (at 1180-81) and also concurred in Young and Volkswagen v. Williams (allegation of misconduct against GREENE; see the verified accusation against GREENE and BELLI, S037066, at fntn. 1) was then on the Supreme Court. Also see Rosenthal v. State Bar (1987) 43 Cal.3d 612; 238 Cal.Rptr. 377. Clearly then, beyond the arrogance and greed of GREENE and BELLI, is the question of how the jurists presiding over the three (3) Ornelas cases also could repeatedly ignore the issues concerning the conflict of interest and their own independent attendant duty under the law? See Evidence Code, section 451(c) and as set forth in Klewe v. Superior Court (1977) 75 Cal.App.3d 893, 898:

"Though an informed consent be obtained, no case we have been able to find sanctions dual representation of conflicting interests if that representation is in conjunction with a trial or hearing where there is an actual, present, existing conflict and the discharge of duty to one client conflicts with the duty to another. (Citations.) As a matter of law a purported consent to dual representation of litigants with adverse interests at a contested hearing would be neither intelligent nor informed. Such representation would be per se inconsistent with the adversary position of an attorney in litigation, and common sense dictates that it would be unthinkable to permit an attorney to assume a position at a trial where he could not advocate the interests of one client without adversely injuring those of the other."

"A word as to procedure. Initially, the trial court is entitled to accept properly executed written consents to joint representation at their face value. The judge is entitled to presume the attorney is familiar with the law and code of professional ethics and has complied with the proper standards. However, if the judge has any question regarding whether the proper standards have been observed, it is his duty to either inquire himself regarding the circumstances of the execution of the written consents and the state of mind of the clients for the purpose of making the necessary factual determination in this regard." (fntn, omitted) (at page 901).

See fntns. 1 and 15 above. Also see CW's 9-9-92 letter to Supreme Court, "BLACK ROBE CRIME - A COVER-UP", at p. 29 and CW's 7-30-93 letter to the Bar's Client Security Fund, "A FURTHER CONSIDERATION", at p. 13. Some of the involved jurists that presided over the three (3) Ornelas cases have simply ignored the conflict - and their corresponding duty; worse yet, some aided attorneys GREENE and BELLI in covering it up. The California courts lack credibility - see fntn. 26 below.

an act of fraud upon Ms. Ornelas and Ms. Castro. (Ball v. Posey, supra; see also exhibit 3 and ftnt. 1 above re In re Sklar (1993) 2 Cal.State Bar Ct.Rptr. 602, 610 and In re Aguiluz (1994) No. 90-0-14710 Review Dept of State Bar Court, 94 Daily Journal D.A.R. 7727, 7730).

Moreover, this Court was reminded of its failure in the September 9, 1992 letter CW sent to the Supreme Court Justices entitled "BLACK ROBE CRIME - A COVER-UP" (a copy was also sent to the Bar and the Commission on Judicial Performance - hereafter CJP), which was never responded to by the Court (the Bar or CJP).

That letter was followed by CW bringing suit against this Court (naming each Justice in their individual capacities; the three (3) appellate justices and trial judge NELSON) in federal court, Ornelas v. Lucas, USDC - Central District of California, Case No. CV 92 7246 RG, for violating the constitutional rights of Ms. Ornelas and Ms. Castro, and CW, for their refusal to follow California law and apply Evidence Code, section 451(c).

Moreover, the following passages were stated in the "CONCLUSION" of the verified accusation filed against attorneys GREENE and BELLI on December 30, 1993, S037066.

"Shame on the California legal system - it is corrupt. Just how corrupt? The disposition of this verified accusation [against GREENE and BELLI] will tell.

'One reason lawyering has always been treated as something of a special line of work is that lawyers come under such intense and varied ethical pressures. They face countless temptations to exploit opponents and clients alike. Huge amounts of money can hang on the choices they make when no one is looking over their shoulder. Few occupations offer such

chances for dishonest persons to become very rich.

'A job that offers enormous returns to unscrupulousness will attract many unscrupulous persons and corrupt many persons of ordinary character. Most of the possible ways to sort out the bad apples are not very promising.' (Ftnt. omitted. The LITIGATION EXPLOSION - What Happened When America Unleashed the Lawsuit, by Walter K. Olson, Truman Talley Books/Plume Printing 1992, Ch. 2, A PIECE OF THE ACTION: The Triumph of the Contingency Fee, p. 33).

As this Court stated in the case of Berry v. State Bar, 42 Cal.3d 806, at 815, above:

"Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations.)."

Is that in fact the "principal concern" of this Court? Will this Court get rid of the rotten apples? Or as stated in Howard v. Babcock, above in ftnt. 16 [omitted], is there more "concern" about the marketplace of lawyers? The disposition of this verified accusation will tell."

Well this Supreme Court's disposition of the verified accusation filed against GREENE and BELLI December 30, 1993 - has told - and it has told us a lot. It has told us that this Supreme Court is dishonest and corrupt - because it has again joined the misconduct committed by GREENE, BELLI and NELSON and is again attempting to cover it up, rather than promptly addressing, punishing and condemning such egregious attorney and judicial misconduct. Because despite the clear provisions of Business & Professions Code, section 6109, which states:

"Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at

a specified time, and shall cause a copy to be served upon the accused at least five days before the day appointed in the order."

this Court has taken no action on the verified accusation against GREENE and BELLI. This Court has done nothing.²⁴

Furthermore, this Court has taken no action on the request that it recuse itself from presiding over this matter because of its conflict. This Court's failure to take any action in the verified accusation against GREENE and BELLI is indisputable proof not only that it apparently will not get rid of the "rotten apples", but indisputable proof of its own incompetence and/or corruption.²⁵

With the Supreme Court's own conflict, presiding over the verified accusation against NELSON makes the potential for its incompetence and/or corruption now - even greater. Will the

²⁴ See CW's 9-9-92 letter to this Court. Because this Court failed to act pursuant to Bus. & Prof. Code, section 6109, on 2-23-94 CW wrote to the Supreme Court Clerk and requested: an explanation for its failure to act; the current status of the verified accusation; whether there were any other particular rules or procedures establishing other time parameters; and a list of all verified accusations filed in the Court in the last eighteen (18) months and their disposition. On 2-24-93 the Supreme Court Deputy Clerk replied, simply stating "Your case is still pending." On 4-5-94 CW wrote another letter to that Clerk, which advised that: her letter failed to even address, much less answer the questions in the 2-23-94 letter; her claim that the Supreme Court kept no statistics on verified accusations was incredible; her claim that the State Bar and Judicial Council had those statistics was wrong; and that it readily appeared that the Supreme Court was engaging in favoritism, covering-up, and obstruction of justice - with its failure to order attorneys GREENE and BELLI to answer the verified accusation as mandated by Bus. & Prof. Code, section 6109 and by its failing to provide the requested information about verified accusations. Neither Ms. O'Bryant, nor anyone from the Supreme Court Clerk's office ever replied to the 4-5-94 letter.

On 6-6-94 CW then wrote a letter (copy attached here as exhibit 11) to Robert Wandruff, Court Administrator and Clerk of the Supreme Court: again requesting the above information about verified accusations; again advising that the claim that the Court did not keep statistics on verified accusation was incredible; enclosing letters from both the State Bar and Judicial Council attesting that those entities did not keep statistics on verified accusations; making a formal request for the documents/information under the Public Documents Act; and charging his office with obstruction of justice and requesting that he report his office to the state attorney general, or U.S. attorney for such misconduct. There has been no reply from Mr. Wandruff or his office.

Recall above at page 2 above, where it was stated that the "basis" of a verified accusation is that the State Bar has failed/refused to investigate and discipline serious attorney misconduct, and thus the Bar is also being charged with incompetence and corruption? Recall next at page 2, the Supreme Court quote telling us of its "principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys." It is simply incredible that the Supreme Court (who has original jurisdiction of verified accusations) and the State Bar (who is being accused of misconduct and essentially is a party), as well as the Judicial Council - all claim they do not keep statistics on verified accusations. "Principal concern"? They have shown no concern.

²⁵ Recall Judge Adams, above in fnnt. 3, who was being investigated by the CJP for serious judicial misconduct? Well see the 3-18-94 LA Daily Journal front page article "Discipline Case of S.D. Judge Sealed by Court" which reports that the Supreme Court granted a motion by Adams' attorneys to "seal" the file (SO37475, In re Inquiry Concerning a Judge No. 104), where the CJP was about to disclose its findings against Adams and hold a public hearing mandated by our California constitution - the provisions of proposition 92, enacted in 1988. Then see the LA Times article "Judges Flout Law on Disciplinary Hearing, Lungren Says" in fnnt. 26 below. The Supreme Court "sealing" the Adams file is just what Lungren is talking about. "Rotten apples"? This Supreme Court no longer serves the people of California - it ignores its duties and the public welfare and - simply does as it pleases. Why did this Court not ask the CJP to investigate the conflict here, like the Chief Justice did when the San Francisco Chronicle published the articles about his "trips"?

Supreme Court get rid of this "rotten apple"? The disposition of this verified accusation against NELSON will tell.

This Court then not only has a conflict of interest, which prevents it from presiding over, and requires its recusal from this matter, it now also has a major integrity and ethical problem that must be investigated by an independent special commission or prosecutor.²⁶ This Court also has a major credibility problem with those in the honest legal community - and most importantly with the general public.

This is the Supreme Court of the State of California and it belongs to the people of the State of California. The Justices sitting in its seven seats, hold those seats temporarily - only at the will of and with the trust of - the people. This Court has

²⁶ It is clear that the CJP can-not and will not properly investigate and discipline California judges. See the following articles: "Judge Misconduct Case Should Go Public", 7-27-93 p. 2 LA Daily Journal; "Judges Can't Judge Themselves - Council on Judicial Performance is Bigged to Protect Judiciary", 12-17-93 p. 6 LA Daily Journal re Judge Adams; and "Judges Flout Law in Disciplinary Hearing, Lungren Says", 6-9-94 LA Times p. A3. See also these further LA Daily Journal articles "On Secrecy - Punish Bad Judges in Public" (1-8-93, p. 6) and "Make Public Judicial Probes" (12-29-92, p.6). See also "When Lawyers Accuse Judges" from the 11-89 issue of California Lawyer, p. 140, which states:

"The case [Ryan v. Commission on Judicial Performance] provides a good example of the difficult process of investigating and prosecuting charges of judicial misconduct, especially the role lawyers who have witnessed misconduct can play."

For another example see Attorney General Lungren's 6-7-94 letter to State Senator Alquist (referenced above in the 6-9-94 article) which states that:

"The current status of the system of judicial discipline in this state has some troubling aspects. . . found in sealed files of the secret litigation that has kept these hearings [public hearings mandated per Prop 92] closed. . . secret writ relief from other courts of record in this state. This complete frustration of these constitutional provisions . . . raises troubling questions . . ."

For another example see Colusa County District Attorney John Poyner's 5-18-94 letter to the California District Attorney's Association (that was attached as an exhibit to Lungren's above letter) which states that:

"The purpose of this letter is to let you know, and hopefully will convey, my strong support for S.C.A. 44. [P] I have twice in the last eight year had to deal with the Commission on Judicial Performance. The experience that I now have convinces me that I would rather put up with the worst Judge in the state than deal with the cut throat, cloak and dagger, political bullshit that is the result of the closed nature of the entire process. [P] Because of the rules on discovery and confidentiality a Judge is made aware of who the complaining parties and witnesses are and can use such information as a sword with no recourse readily available. [P] In the last case I was involved with, the only Superior Court Judge was charged with some 36 or so counts of misconduct and all but a few were sustained. He committed suicide before the full Commission's findings were released. Consequently, the public never knew how rotten this Judge really was, and to this day I am precluded from discussing details of the case. . . [P] I urge the Board to support S.C.A. 44."

For those who might still think that supreme court justices are beyond reproach, review the following articles: "Supreme Court Set For Crisis - Special Probe Targets Pennsylvania Justices" (LA Daily Journal 12-17-92, p.4) and "PA. Justice's Ouster Urged For 'Grievous Misconduct'" (LADJ 11-9-93 p. 4); "Ex-N.Y. Judge [Sol Wachtler] Gets 15 Months for Threats" (LA Times 9-10-93, p. A4); "Nevada Discipline Case Heats Up" (LADJ 11-11-93, p.3), "Open Nevada Judicial Probe Bought" (LADJ 11-15-93, p.4), "Nevada Jurist Asked to Skip Probe" (LA DJ 11-18-93, p.4 and "Nevada Attorney General Needs Some Good California Counsel" (LADJ 4-15-94, p. 3); "Former R.I. Chief Justice Guilty on Ethics Charges" (LADJ 12-1-93, p.4) and "Former R.I. Justice's Woes Mount" (LADJ 12-6-93, p. 4). See also Nosk v. Superior Court (1979) 25 Cal.3d 474; 159 Cal.Rptr. 494.

shown that it favors special interests and influential members in the legal community, over its duty to impartially follow the law.

This Court has lost the trust of the people.

CONCLUSION

It is indisputable that attorney (ex-judge) NELSON is guilty of several acts of extremely serious misconduct and does not have the moral fitness to practice law. It is equally indisputable that the State Bar of California has repeatedly failed to address that misconduct, when brought to and before it; in fact the Bar has worked hard to cover-up such misconduct.

It is also indisputable that the other jurists, besides NELSON, who presided over the three (3) Ornelas cases, allowed such misconduct and did nothing; worse yet - some like NELSON, actively went to the aid of attorneys GREENE and BELLI, and helped to cover up their misconduct, thereby also obstructing justice.

This Court is left with the following quote to ponder, while it considers its disposition of the NELSON matter, the long pending GREENE and BELLI matter, and its own past conduct in handling the Ornelas petition, S026070.

"Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."
(Justice Brandies in Olmstead v. United States (1928) 277 U.S. 438).

This Court can also ponder the fact that attorney GREENE's, and then BELLI's, malpractice/misconduct not only caused Ms. Ornelas and Ms. Castro to present improper-conflicted cases and

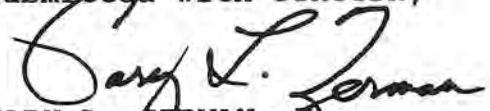
caused them to lose the \$2,000,000 settlement offer from Ford Motor Company, but left them without any compensation for the loss of Ms. Ornelas' 8-day-old baby Jesus and the horrible burns and resulting scars - that Ms. Ornelas and Ms. Castro will wear the rest of their lives. And this Court can ponder NELSON's despicable misconduct, when their case was brought before him and he was asked to "judge" the misconduct of attorneys GREENE and BELLI.

Finally this Court can ponder the scars inflicted upon Ms. Ornelas and Ms. Castro by GREENE, BELLI, NELSON - and the California legal system. Arguably these scars - are as great as those that were inflicted on their flesh.

There is no argument though - that this a "system" largely no longer legal and therefore largely out of control. Contagious? Maybe terminal.

DATED: 9-13-94

Submitted with concern,


GARY L. ZHERMAN, Esq.,
CW - Complaining Witness

VERIFICATION

STATE OF CALIFORNIA)
 ss.
COUNTY OF LOS ANGELES)

I am the Complaining Witness - CW, in the above action; I have read the foregoing verified accusation of attorney misconduct against attorney Henry P. Nelson and know the contents thereof; I certify that the same is true of my own knowledge, except as to those matters which therein are stated upon my information or belief, and as to those matters I believe them to be true; and I attest that the exhibits attached to the verified action are true and correct copies of the writings identified.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on September *13th* 1994 at Agoura, California.



GARY L. ZERMAN
CW - Complaining Witness

Read reverse side before filling in this form.

(1) Your name and address Gary L. Zerman, Esq.

(2) Telephone number: Residence (818) 506-5185 Work (818) 449-7723

(4) Have you or a member of your family complained about this attorney previously?

(5) Did you employ the attorney? Answer yes or no and, if "yes," give the approximate date you employed him or them and the amount, if any, paid to him.

Case No. C 596304 and the post-trial hearings, in Dept. 58, LASC
which began on 6-16-90. The matter is currently on appeal.

(7) Write out on a separate piece of paper and send with this form a statement of what the attorney did or did not do that you are complaining about. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney, state what you employed him to do. Sign and date such separate piece of paper. Further information may be requested. (Attach copies of pertinent documents.) Copy of 8-3-90 complaint filed with the Commission on Judicial Performance attached.

(8) If your complaint is about a law suit, answer the following, if known:

(a) Name of court (For example, Superior or Municipal—in what county)

Ornelas v. Greene, LASC Case No. C596304

(b) Title of the suit (For example, Smith against Jones)
Ornelas v. Greene, et al.

LASC Case No. C596304

(c) Number of the suit.

(d) Approximate date the suit was filed 4-16-86

(e) If you are not a party to this suit, what is your connection with it? Explain briefly.

Attorney for plaintiffs/appellants Maria Ornelas and Fabiola Castro.

NOTE: If you are complaining about more than one attorney, write out the information about each in answer to questions 3, through 8 above on separate sheets if necessary.

Mail to: Office of Intake
State Bar of California
333 S. Beaudry Ave., 9th Floor
Los Angeles, CA 90017-1488

Signature _____

Rev 4/89

MAILED 10-2-91

34

Exhibit 1

In response to your request, we are providing this form for your use in making a complaint about a California Judge.

COMPLAINT ABOUT A CALIFORNIA JUDGE

Confidential under California Constitution
Article VI, Section 18

Today's date: August 3, 1990
Your name: Gary L. Zerman, Esq.
Your telephone number: (818) 506-5185
Your address: 5807 Laurel Canyon Blvd., #106
North Hollywood, CA 91607
Your attorney's name:
Your attorney's telephone number:

Judge's name: Henry P. Nelson
Court: Los Angeles County Superior Court, Dept. 58
County: Los Angeles
Name of case: Ornelas and Castro v. Greene, Belli, et.al.
LASC Case No. C596304

Please specify exactly what action or behavior of the judge is the basis of your complaint. Please provide relevant dates and the names of others present. Use additional sheets if necessary.

I, Gary L. Zerman, was and am the attorney of record for plaintiffs Maria Ornelas and Fabiola Castro, in the above referenced matter, which was assigned out for trial to Dept. 58, Judge Henry P. Nelson, presiding, on June 19, 1990. The purported trial of this matter ended abruptly on June 22, 1990, when Judge Nelson, on his own motion, ordered a directed verdict for the defendants; he then, again on his own motion, set an OSC (Order to Show Cause) hearing, for June 26, which was continued to July 12, 1990 (see the attached articles from the Daily Journal), why sanctions (the imposition of opposing party's attorney fees) should not issue against me personally, pursuant to CCP § 128.5, for bringing an alleged frivolous and bad faith lawsuit.

From the moment I walked into Judge Nelson's courtroom, until this matter was concluded, I found his behavior hostile, rude, threatening, tyrannical, volatile, unprofessional, ignorant of the law and without concern as to whether justice was being served. At times, Judge Nelson's staff followed his lead, particularly, clerk Helen Smith.

(con't)

Return to: Commission on Judicial Performance
1390 Market Street, Suite 304
San Francisco, California 94102

Telephone: (415) 557-2503

rev. 10/31/88

I believe, and the record will show, that Judge Nelson, throughout the purported trial of this matter violated and showed utter disdain for the Code of Judicial Conduct. Judge Nelson, sue sponte, and without an opportunity for plaintiffs counsel to be heard or notice, limited the issues and evidence, to be presented at the trial, and thereby denied plaintiffs from being allowed to present their case.

I hereby complain and list the following charges against Judge Nelson.

1. Ignored the LASC Civil Trials Manual.
 - a. Held no Informal Chambers Conference on an extremely complex case (13.1).
 - b. Failed to discuss the limitation or narrowing of any issues, despite an extremely complex case, with filed motions in limine (13.4).
 - c. Failed to consider or discuss any time problems with counsel regarding witnesses, even where they failed to appear when under notice and subpoena, defendant Belli and attorney Greene, respectively (13.5).
 - d. Failed to even consider important Motions in Limine, in fact failed to even read the moving papers (13.15; 121).
 - e. Failed to rule properly regarding the use of depositions, in fact prohibited the use of defendant Belli's deposition (all of volume 1 and part of volume 2), where there was no proper objection by opposing party, where the Judge failed to order defendant to appear while under notice to appear, and ruled such without reading the transcripts or viewing the videotapes (49).
 - f. Improperly used jury instructions, by reading a jury instruction that did not apply to the case, without any discussion with counsel and which was an instruction not even submitted by any party (51, 54, and 59).
2. Never read plaintiffs' trial brief and declined to rule on pertinent motions in limine regarding duties and burdens of proof.
3. Did not rule on requests to order witnesses to appear: Browne Greene, who was under subpoena, in fact the Judge had ex parte communications with Mr. Greene, but failed to advise counsel of such; defendant Belli, who was under notice to appear and who's counsel had advised he would appear. This was despite repeated requests to the court and advisements that these were foundational witnesses.
4. Without notice and without an opportunity to be heard on the matter, sue sponte, limited the issues and evidence to be presented at trial.
5. Read jury instructions to the jury, without notice to or without any discussion with counsel.

17. Demonstrated a biasness and a lack of understanding of the law, regarding the guest statute and the doctrines of res judicata and collateral estoppel. In fact, it appeared the Judge made rulings against plaintiffs, based on the above, which were not only not correct, but there was not any evidence on such issues offered into evidence, or even presented.
18. Predetermined the issues in the OSC hearing against Mr. Zerman (see RT 13,8;22,2;25,9). Simply ignored the law, in order to set the OSC hearing, as the this case never even approached the legal standards set forth in CCP §128.5. In fact it appeared the Judge did not even consider the declarations of attorneys DuPar and Low filed in support to show the meritoriousness of this case.
19. Made disparaging comments against Mr. Zerman and his counsel Mr. Kuri, regarding "youth". Such comments not only are incorrect, but are totally irrelevant and focus on an immutable characteristic.

Judge Nelson's conduct simply was shocking. He denied my clients the opportunity to present their case and has cost them and myself, considerable time and money, by his improper actions. I personally, after coming before Judge Nelson, will never walk into a courtroom with the same belief and trust, that I had before that.

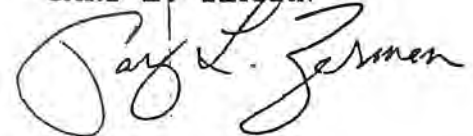
It is my understanding that Judge Nelson is presently under investigation by this Commission for other matters.

In support of my complaint, I enclose copies of the following documents:

1. Plaintiffs' Trial Brief.
2. 8-1-90 letter by Mr. Zerman to Ms. Lauren Blau, Daily Journal.
3. 6-26 and 7-13-90 articles by Ms. Blau, Daily Journal.
4. 6-26-90 declaration of Mr. Zerman re Post Trial Hearing.
5. Written Verified Statement Objecting to Judge Nelson Hearing Matter re OSC per CCP § 128.5 (CCP § 170.1 (A) (6) (C) and § 170.3(c) (1)), which includes a listing of instances of bias and prejudice by Judge Nelson, and the reporter's partial transcript of 6-22 and 26-90 proceedings.
6. Supplemental Written Verified Statement Objecting to Judge Nelson, filed 7-6-90.
7. Opposition by Plaintiffs to Motion by Court re OSC, filed 7-11-90, including declarations of attorneys Richard C. Dupar and Tom Low.

DATED: 8-3-90

GARY L. ZERMAN



Judge Threatening Sanctions In Belli Legal-Malpractice Suit

By Lauren Blau

Daily Journal Staff Reporter

An attorney who lost a legal-malpractice suit Friday against prominent trial lawyer Melvin Belli is facing sanctions from the trial judge, who on Tuesday called the suit frivolous and a waste of court time.

Los Angeles Superior Court Judge Henry P. Nelson made those comments to attorney Gary Zerman at a hearing that nearly brings to a close the third lawsuit in a litigation series that at one time pitted Belli against trial attorney Browne Greene.

"Mr. Zerman knew he had no evidence of any possibility of a collectible judgment against the persons he alleges Belli and Greene should have sued. He knew the person was an illegal alien without assets," Nelson said.

"I think these are bad-faith actions," he added. "I feel the method by which the lawyer has forwarded this case has wasted this court's time and is abusive."

Directed Verdict Ordered

Nelson made the comments following four days of trial in *Ornelas v. Greene*, C596304, in which two women who lost a product-liability case against Ford Motor Co. sued Belli for allegedly mishandling a legal-malpractice suit against Greene, who represented the women in the initial suit.

On Friday, the judge ordered a directed verdict after Zerman acknowledged he had no evidence to prove the vehicle's driver — one of the plaintiffs in the case against Ford — had the ability to pay damages if a jury found him liable.

Outside the courtroom Tuesday, Zerman declined to comment on the judge's statements, but said allegations the lawsuit was frivolous are untrue.

Zerman contended he was not allowed to present his case. He said he wanted to show the court there was a conflict of interest for Greene and Belli in the case, because they represented both the passengers and the driver of the vehicle.

But attorney Kevin R. McLean of Belli, Belli, Brown, Monziona & Zakaria, said passengers Maria D. Ornelas and

'I resent a lawyer going out and chasing a case against another lawyer.'

— Melvin Belli,
San Francisco attorney

Fabiola P. Castro stated in depositions they did not want to sue the driver and did not believe the accident was his fault.

Malpractice Suit Planned

In a telephone interview from his San Francisco office, Belli said he is planning to file a legal-malpractice suit against Zerman, as well as filing harassment charges with the State Bar.

"I resent a lawyer going out and chasing a case against another lawyer," Belli said.

During Tuesday's sanctions hearing, attorney Stephen Kuri, who represents Zerman, told Nelson he was unable to argue why his client should not be sanctioned because he did not know the specific allegations against Zerman.

Nelson reminded Kuri that Zerman had been notified about the hearing Friday, but the judge continued the proceeding until July 12 after outlining his complaints about Zerman's conduct.

McLean said he is seeking nearly \$165,000 in sanctions: \$12,500 in costs and \$152,000 in fees.

The incident that touched off the se-

ries of lawsuits occurred in August 1976, when a Ford truck rolled on its side and its gas tank exploded. An 8-day-old infant was killed and the driver and two other passengers were burned.

In 1981, Greene lost a trial verdict in *Ornelas v. Ford Motor Co.*, C209950. He had sought to prove the truck's gas tank was defective and therefore caused the death and injuries.

Belli later was hired to sue Greene for allegedly not disclosing that Ford made a \$2 million settlement offer while the jury was deliberating.

But in *Ornelas v. Greene*, 380250, Greene was able to produce a surprise witness to win his Orange County Superior Court case.

McLean said Castro's father's employer testified that Castro's father had boasted of the \$2 million settlement offer and indicated Castro and the other plaintiffs had turned it down in the hope of getting a larger jury verdict.

After that lawsuit, the two women were contacted by Zerman to sue Belli and Greene for failing to get written waivers of a potential conflict of interest for representing the driver, the passengers and the father of the infant who died in the accident.

Zerman later filed *Ornelas v. Greene*, C596304, on behalf of the two women.

Nelson dismissed Greene as a defendant because the claims were similar to the ones in the previous suit, leading to the trial last week against Belli and his firm.

LA DAILY JOURNAL

7-13-90

P. 2

Judge Drops 'Frivolous Suit' Fine

By Lauren Blau
Daily Journal Staff Reporter

A Los Angeles Superior Court judge who last month threatened to sanction an attorney for bringing a "frivolous" lawsuit changed his mind Thursday and declined to issue sanctions.

Judge Henry P. Nelson attributed the actions of attorney Gary Zerman and his counsel Stephen Kuri to "youth."

"Stubbornness won't substitute for evidence," Nelson said. "This is youth that doesn't know when to let go."

The judge said he based his reasoning on *Llamas v. Diaz*, 218 Cal.3d 1043. The decision, Nelson said, maintains that a judge has the discretion not to sanction a lawyer when a case is meritless but the attorney believed he had a good case.

Zerman, who has practiced law for seven years, and Kuri, who has practiced eight years, disagreed outside court that they misunderstood the case.

"We believe we proved there was no subjective bad intent on the part of Mr. Zerman in bringing forth this lawsuit," Kuri said.

The threat of sanctions against Zerman stemmed from *Ornelas v. Greene*, C596304, in which two women who lost a product-liability case against Ford Motor Co. sued attorney Melvin Belli for allegedly mishandling a legal-malpractice suit against Browne Greene, who represented the women in the initial suit.

Nelson ordered a directed verdict in the case after Zerman acknowledged he had no evidence to prove the vehicle's driver — one of the plaintiffs in the case

against Ford — had the ability to pay damages if a jury found him liable.

Outside the courtroom, Zerman reiterated his belief that the judge was mistaken in saying it was necessary to prove the driver had the ability to pay damages.

Zerman maintained the important issue was whether Belli Greene had a conflict of interest because they represented both the passengers and the driver.

Zerman said he plans to appeal Nelson's dismissal of the case.

Outside the courtroom, Belli said he believes Zerman should have been sanctioned and still is thinking about filing a legal-malpractice suit against Zerman.

Attorney Kevin R. McLean, who represented Belli and his firm Belli, Belli, Brown, Monziona & Zakaria, was seeking nearly \$165,000 in sanctions.



THE STATE BAR
OF CALIFORNIA

OFFICE OF TRIALS

555 FRANKLIN STREET, SAN FRANCISCO, CALIFORNIA 94102-4498

TELEPHONE: 415 561 4210
FAX: 415 561 4227
TDD: 415 561 8231

DIRECT DIAL: (415) 561-_____

March 10, 1993

PERSONAL AND CONFIDENTIAL

Gary Zerman, Esq.
5821 Hickory Drive, Suite D
Agoura, CA 91301

Re: Case Nos. 91-O-02431 and 91-O-06361;
Respondents: Melvin M. Belli and R. Browne Greene

Dear Mr. Zerman:

The State Bar has conducted an investigation regarding your complaint against Melvin M. Belli and R. Browne Greene.

The State Bar of California has completed its investigation into the above-referenced complaint, and we conclude that there was a violation of former rule 5-102(B) of the Rules of Professional Conduct.

Given the circumstances in which the misconduct occurred, and considering the overall disciplinary record of each attorney, your complaint would not likely result in suspension or revocation of each attorney's license to practice law. We have therefore issued a Warning Letter to the attorneys, cautioning them to avoid such conduct in the future. Should other complaints indicate that this case was not an exceptional circumstance, the matter may be reviewed for further action.

If you are not satisfied with the State Bar's decision to end this matter with the issuance of the Warning Letter, you may request a review of that decision. Your request, which must be in writing, would then be considered by the Complainants' Grievance Panel. Please direct your request to Complaint Audit and Review, State Bar of California, 333 South Beaudry Avenue, 24th Floor, Los Angeles, CA 90017.

Pursuant to the Rules of Procedure of the State Bar of California, your request for review must be received within three (3) months of the date of this letter, except upon a showing of good cause.

The State Bar thanks you for bringing this matter to its attention. As the agency responsible for processing complaints of misconduct by attorneys, the Bar must depend upon the active involvement of the public in bringing these matters to our attention. Your decision to become involved helps to ensure that such conduct is not repeated in the future.

Very truly yours,

Andrea T. Wachter
Deputy Trial Counsel

ATW/mao

EXHIBIT 3

4-16-91

P.2

Judge Nelson Faces Disciplinary Hearing

By Susan McRae
Daily Journal Staff Reporter

Judge Henry Patrick Nelson of the Los Angeles Superior Court is facing a mid-July disciplinary hearing involving complaints about his judicial demeanor and verbal abuse of lawyers appearing in his courtroom, according to sources familiar with the case.

The hearing before three masters designated by the Commission on Judicial Performance had been scheduled for April 9 in Los Angeles, but was postponed, sources say.

The commission has the power to recommend to the California Supreme Court that it remove or censure a judge, or it can publicly discipline a judge on its own, or dismiss the matter.

Nelson, 60, who was appointed to the bench by Gov. Edmund G. "Jerry" Brown Jr. in 1980, declined to comment.

"I don't usually give interviews or comment on cases as a matter of principle," Nelson said.

The investigation stems from complaints during his tenure in the downtown County Courthouse, where he heard mainly civil cases and an occasional criminal case, as well as his previous time in the Criminal Courts Building, sources say.

Meanwhile, Nelson was reassigned in January to the East Lake Juvenile Court, where complaints against him continue to be made, sources say.

Wide-Ranging Complaints

Over the years, lawyers' complaints have ranged from Nelson's unpredictability to his frequent yelling at attorneys before him. Lawyers say he berates them in front of juries, plays favorites and often makes up his mind about a case before the lawyers have presented their arguments.

"He was rude, not just to defense lawyers, but the D.A.s also hated him," said criminal defense attorney Joe Ingbar.

Although Ingbar won an acquittal for his client, he said during the trial, Nelson was "abusive, constantly interrupting and, when it came time for final arguments, interrupted a number of times."

Ingbar launched an unsuccessful challenge against Nelson during his 1988 reelection. At that time, the Los Angeles County Bar Association rated Nelson as unqualified, saying he "lacks judicial temperament."

Nelson responded in a press release, calling the rating an "insulting mistake" from a group of "discontented lawyers."

Among 10 Worst Judges

California magazine also named Nelson one of the state's 10 worst judges in its November 1989 issue.

"I have appeared before a number of exemplary judicial officers," said veteran civil attorney David Casselman. "Judge Nelson is one of the few individuals who I feel would appropriately warrant an investigation by the commission. I trust that the investigation will reveal facts that will urge an appropriate conclusion."

Casselman, who received a favorable settlement before Nelson in a multimillion-dollar lawsuit against Los Angeles County over damages from mud slides in Malibu, said Nelson never looked at the months of accumulated paperwork before ruling.

Civil attorney Edith Matthai of Robie & Matthai, said, "I have never appeared in front of a judge who was less predictable. When you walked in in the morning, you had not the faintest idea of what would happen."

'Guy of High Ideals'

But attorney Sheldon Bardach, who has known Nelson personally, notes the judge's 18 years in private practice as a criminal law specialist. That may be why, said Bardach, that Nelson has little patience for lawyers in court who lack experience and don't know what they're doing.

"I would think Henry became a judge because he believed in the system," said Bardach, who has never appeared before Nelson in court. "He is a guy of high ideals. I have never found him to be anything but rational, philosophical and committed to doing the best job he could on the bench."

But Charles Fleishman, a civil attorney for 21 years, contends there is no excuse for berating new lawyers.

"I have found that judges who just can't deal with lawyers who don't know what they are doing are judges who don't know what they are doing," said Fleishman, who rates Nelson as "low average" on the scale of judges he has appeared before.

Cases Moved Quickly

Another complaint from lawyers is that Nelson moves cases along too quickly, thus failing to provide a fair hearing.

Defense attorney Marc Zilversmit, who appeared before Nelson recently in a juvenile matter, complained that Nelson "railroaded" his case through the system and denied his motion for a continuance despite having "indisputable cause" for one.

Zilversmit said his motion was based on the fact that he was still waiting for a probation report, for which he had issued a subpoena, that stated policy guidelines for sentencing recommendations. Further, Zilversmit said he was awaiting the availability of a crucial expert witness.

Zilversmit said Nelson told him he could appeal the ruling, a process that usually takes from six to 16 months. Meanwhile, Zilversmit noted, his client is doing time in the Youth Authority.

Another lawyer, who asked not to be named, said he was berated by Nelson before a jury during a civil trial.

"I felt like I was under siege in his courtroom," the lawyer said. "Then I picked up a newspaper and saw [Nelson] had been rated unqualified [by the county bar]."

The lawyer said he has tried to put the experience out of his mind.

"It's like having surgery or going to the dentist," the lawyer said. "You don't like to reflect on it if it hurts."

SOUTHERN CALIFORNIA

Investigated L.A. Judge Will Retire

Henry Patrick Nelson Faced Complaints on Judicial Temperament

By Susan McKrae
Daily Journal Staff Reporter

Judge Henry Patrick Nelson, who reportedly has been under investigation by the state Commission on Judicial Performance for his alleged rudeness to lawyers, will retire from the Los Angeles Superior Court effective July 1, according to Presiding Judge Ricardo Torres.

Nelson submitted his "irrevocable retirement" papers to Torres before going on vacation June 1, saying he would not be returning, Torres said.

However, a spokesman from the Judges and Legislative Retirement System said the organization has not yet received Nelson's retirement application.

Nelson, 60, who was appointed to the bench in March 1980 by Gov. Edmund G. "Jerry" Brown Jr., has drawn criticism from members of the criminal, civil and juvenile court bar for allegedly insulting

lawyers in court.

Over the years, lawyers' complaints have ranged from Nelson's unpredictability to his frequent yelling at attorneys before him. Lawyers say he berates them in front of juries, plays favorites and often

The commission — whose actions are confidential until a finding is proven and made public — has the power to recommend to the California Supreme Court that it remove or censure a judge. The commission also can publicly discipline a

'In view of what I have seen in his courtroom and heard from my peers, I believe that the judicial system will benefit from his departure. . . . I think everyone will be better off.'

—David Casselman, Attorney

makes up his mind about a case before the lawyers have presented their arguments.

The complaints eventually led to an investigation by the Commission on Judicial Performance, which had scheduled a hearing in Los Angeles in April, but later postponed it.

judge on its own, or dismiss the matter.

News of Nelson's retirement drew a positive reaction from lawyers who have appeared before him, even those who said they received favorable treatment.

"In view of what I have seen in his courtroom and heard from my peers, I be-

lieve that the judicial system will benefit from his departure," said David Casselman, a veteran civil attorney who received a favorable settlement before Nelson in a multimillion-dollar lawsuit against Los Angeles County over damage from mud slides in Malibu.

"I regret any personal hardship that he may experience as a result of what has taken place, but in consideration of the ultimate goal of our courts I think everyone will be better off," Casselman said.

The Los Angeles County Bar Association rated Nelson "unqualified," during his 1988 re-election campaign, saying he "lacks judicial temperament." Nelson responded in a press release, calling the rating an "insulting mistake" from a group of "discontented lawyers."

California magazine also named Nelson one of the state's 10 worst judges in its November 1989 issue.

Ethics Probe of Judge Referred to State Bar

■ **Courts: San Diego**
inquiry continues even
though Michael Greer
resigned, citing poor health.
Case stems from charges
that he and other jurists
received gifts from lawyers.

By ALAN ABRAHAMSON
TIMES STAFF WRITER

The case of San Diego Superior Court Judge Michael I. Greer, who cited ill health in retiring last week amid an ethics probe, has been referred to the State Bar for further investigation, an unusual turn in the long-running inquiry into

charges that some San Diego judges received gifts from attorneys.

In a press release issued Tuesday, the state Commission on Judicial Performance announced that it was referring Greer's case to the State Bar. The commission's inquiry has focused on whether the gift-giving biased judges' courtroom actions.

Greer's resignation ended the commission's investigation of him. He had denied all charges. If the State Bar finds wrongdoing, it can suspend Greer's license to practice law.

For the first time since 13 San Diego judges were targeted last year, sources Tuesday disclosed the content of the seven charges against Greer. The central charge, sources said, is that Greer dis-

played favoritism when lawyers who had given him gifts appeared before him.

Also among the formal charges, sources said, is one that Greer failed to be "patient, dignified and courteous" to staff, sources said. The commission also accused Greer of once speaking in a "loud, rough voice" to a court employee.

Greer, 59, who as presiding judge of the San Diego court in 1988 and 1989 pushed through a system that speeded up civil cases, declined to comment Tuesday. He suffers from diabetes and heart problems and cited his health in announcing his retirement a week ago.

The San Diego system became a model for courts around California. It forced attorneys to meet dead-

Please see JUDGE, A20

A20 WEDNESDAY, JUNE 30, 1993 / F

LOS ANGELES TIMES

JUDGE: Commission Refers Ethics Probe to State Bar

Continued from A1
lines for getting cases ready for trial, with no exceptions. Greer aggressively demanded that lawyers comply, which earned him both friends and foes.

Greer's attorney, San Diego lawyer Patrick J. Coughlin, said the judge displayed no favoritism.

Coughlin added that Greer properly declared all gifts on state-required disclosure forms. The lawyer said Greer also adamantly denies charges that he was uncivil or loud.

Art Jones, presiding judge of the San Diego Superior Court, said he did not understand why the commission issued a press release about a judge who had retired the week before.

The commission operates in se-

cret, and Jones called the press release a "cheap shot" and a "reflection of some sort of malicious intent."

Victoria B. Henley, director and chief counsel of the commission, said Tuesday that she could neither confirm nor deny the substance of the charges against Greer. In her two years as head of the panel, she said, she could not recall the commission referring any other case involving a judge to the State Bar.

She added that the commission issued the press release because of ongoing press and public interest in the San Diego investigation. "The commission does not act out of spite or ill will," Henley said.

At the time of Greer's resignation, the commission was investi-

gating possible added charges of misconduct, the press release said.

Greer bought two cars through a San Diego lawyer, paying him in full plus interest for the autos, sources said. The purchases remained under investigation by the commission.

Nearly all the San Diego judges questioned by the commission were exonerated or were subjected to minor disciplinary action from the panel.

With Greer's retirement, the only San Diego judge still under investigation is Superior Court Judge G. Dennis Adams. He could not be reached Tuesday for comment, and Henley said she could not confirm or deny information about that case.

LAW OFFICES
OF
GARY L. ZERMAN
5807 LAUREL CANYON BOULEVARD
SUITE 106
NORTH HOLLYWOOD, CALIFORNIA 91607
(818) 506-5185

MEMBER OF
CALIFORNIA BAR
ARIZONA BAR

November 25, 1991

Mr. Chris Ota
The State Bar of California
333 S. Beaudry Avenue, 10th Floor
Los Angeles, CA 90017

RE: Case No. 91007593
Henry Nelson

Dear Mr. Ota:

Pursuant to your request I provide you copies of the following:

1. My 6-6-90 letter to Mr. Browne Greene about his failure to obey a subpoena by leaving the country;
2. 6-27-90 Daily Journal article "Judge Threatening Sanctions in Belli Legal-Malpractice Suit" by Ms. Blau.
3. 7-13-90 Daily Journal article "Judge Drops 'Frivolous Suit' Fine" by Ms. Blau.
4. My 8-1-90 letter to Ms. Blau re her incomplete articles.
5. 4-16-91 Daily Journal article "Judge Nelson Faces Disciplinary Hearing."
6. 6-29-91 Daily Journal article "Investigated L.A. Judge Will Retire."
7. My 9-24-91 letter to Mr. Stephen R. Trousdale, Managing Editor, Daily Journal (cc: Mr. Philip Hager, L.A. Times).
8. Appellants' Brief filed 8-14-91.

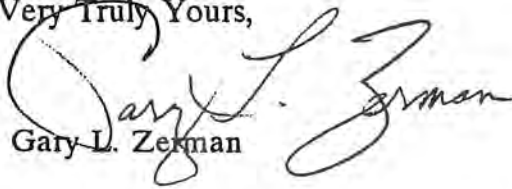
One of the main complaints I raise about Judge Nelson (and attorney Browne Greene) concerned how the Judge improperly handled Mr. Greene's failure to obey subpoenas ordering Mr. Greene to appear at trial. (See my 6-6-90 letter to Mr. Greene, enclosure no. 1). First, both Judge Nelson and Mr. Greene did not honor the first subpoena; that necessitated Mr. Greene having to be served with a second subpoena. Second, Mr. Greene did not appear as ordered by that subpoena and Judge Nelson then

Mr. Chris Ota
November 25, 1991
Page 2

ignored repeated requests by plaintiffs/appellants' counsel that he issue a bench warrant for Mr. Greene to appear. Third, apparently Judge Nelson then spoke with Mr. Greene. (Attorney Stephen Kuri, who assisted plaintiffs/appellants' counsel at trial, called Mr. Greene on the afternoon of 6-20-90 when trial had recessed and spoke with Mr. Greene's secretary. Mr. Kuri inquired about Mr. Greene's failure to appear. The secretary advised Mr. Kuri that Mr. Greene was at that moment speaking on the telephone with Judge Nelson. Mr. Kuri then requested the secretary to tell Mr. Greene to call Mr. Zerman that evening, as indicated on the subpoena. Mr. Greene never called). On the next morning when trial resumed, Judge Nelson never informed plaintiffs/appellants' counsel of the conversation with Mr. Greene, nor that he was going to appear. Fourth, from Judge Nelson's further comments it appears he in fact had conversed with Mr. Greene. Mr. Greene finally appeared and was called as an adverse witness. The Judge then committed several improper acts by: making improper comments; limiting questioning of Mr. Greene and stopping the questioning of Mr. Greene. (See 2 RT 363-391; Appellants' Brief, pages 11, 15, 17-20).

This clearly appears to suggest highly irregular acts by both Judge Nelson and Mr. Greene. This situation should be investigated and Judge Nelson and Mr. Greene must explain their conduct.

Very Truly Yours,


Gary L. Zerman

P.S. - MR. KURI CAN BE REACHED AT (714) 964-6124.

- SHOULD YOU NEED ANY FURTHER ASSISTANCE, FEEL FREE TO CALL OR WRITE.

LAW OFFICE OF GARY L. ZERMAN
5821 Hickory Drive, Suite D
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March 4, 1993

Ms. Lynne Geminder
The State Bar of California
Director - Complaint Audit and Review
333 S. Beaudry Avenue, 10th Floor
LA, CA 90017-1466

Ms. Lisa Edwards
The State Bar of California
555 Franklin Street
San Francisco, CA 94102

Re: Case no. 92 CR 11055 (91 0 07593) - Henry Nelson
Complaint no. 91-0-0-6361 - R. Browne Greene

Dear Ladies:

Enclosed find a copy of the declaration of Mr. Stephen Kuri, the witness who's name and address I previously provided to you, regarding the alleged improper ex parte communication between then Judge Nelson and attorney Greene during the trial of the Ornelas matter. (Recall, attorney Greene had ignored/disobeyed earlier subpoenas, by leaving town and the country without notice/permission, forcing continuance of the trial date; he then ignored/disobeyed another subpoena during the trial, where then Judge Nelson requested, but repeatedly refused to issue a bench warrant for Mr. Greene, but then had ex parte conversations with Mr. Greene (which Nelson failed to apprise counsel of) and then when Mr. Greene finally appeared, then Judge Nelson made highly improper/illegal rulings in favor of Mr. Greene and defendant Belli at the trial).

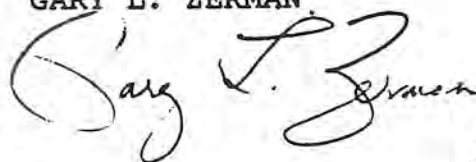
I recently spoke with Mr. Kuri and he advised he still has not been contacted by the Bar. What is going on? Please explain. I continue to believe these are instances of extreme misconduct, clear violations of the Rules of Professional Conduct and possibly violations of criminal law.

As to the seriousness of this misconduct, I again reference the 11-26-91 LA Daily Journal article, page 4, entitled "Disqualification of Judge Sought - Ex Parte Communication Alleged", concerning a Santa Clara County judge, that I previously provided to Ms Edwards.

Please advise me of the status on these matters. Should you need any further information, please write or call.

GZ/ms

GARY L. ZERMAN



DECLARATION OF STEPHEN P. KURI

I STEPHEN P. KURI, declare:

1. I reside at 9182 Pelican Avenue in Fountain Valley, California. My telephone number is (714)964-6124.

2. I am an attorney licensed to practice law before the courts of the State of California. I was first admitted to practice in the State of California in 1982.

3. In January of 1990, Mr Gary Zerman, attorney of record for plaintiffs Ornelas and Castro in the case of Ornelas and Castro v. Greene, Belli, et al., LASC Case No. C596304, asked me if I would be available and could assist him with some administrative trial preparation matters concerning the trial of the above mentioned case. I told Mr. Zerman I would.

4. On June 19, 1990 that case was called to trial, after some continuances, before Judge Henry Nelson, in department 58 of the Los Angeles County Superior Court. I was present in the courtroom during some portions of the trial.

5. On the evening of June 20, 1992 Mr. Zerman asked me if I could serve a trial subpoena the following morning on Mr. Browne Greene. I told Mr. Zerman I could and would. Mr. Zerman then showed me the subpoena, which was made out for witness Mr. Browne Greene to appear as a witness on June 21, 1992 at 1:30 p.m. in department 58 of the Los Angeles County Superior Court. The subpoena also requested that Mr. Greene bring some documents with him on that date. The subpoena also instructed that if there were any questions about the subpoena or about appearing, Mr. Zerman should be contacted; Mr. Zerman's telephone number (818)506-5185, was typed on the subpoena.

6. I was instructed by Mr. Zerman to return to department 58, promptly after service of the subpoena on Mr. Greene, so that the subpoena could be filed with the court. Mr. Zerman advised me that this was important, because Mr. Greene had previously been

served with a subpoena, but ignored it; first going out of town, then out of the country, without notifying the court, or Mr. Zerman, requiring Mr. Zerman to go to court to have trial dates continued. Mr. Zerman advised that in light of Mr. Greene's behavior, it might be necessary to ask the trial court issue a bench warrant, if Mr. Greene again chose to ignore the subpoena. Mr. Zerman told me that this was the reason for prompt service and return to court of the subpoena.

7. Mr. Zerman also advised me that he was experiencing extreme difficulty with the trial judge, who was acting rude, hostile, and intemperate and was not allowing him to present his clients' evidence and case. On several occasions, I personally observed the judge behaving in such a manner.

8. On June 21, 1992 at about 11:00 a.m. I personally served the above referenced subpoena on Mr. Greene in his office at 816 S. Figueroa Street in Los Angeles, California. I instructed Mr. Greene he was to appear in department 58 Los Angeles County Superior Court that day at 1:30 p.m., as set forth on the subpoena and that he was required to bring the documents indicated in the subpoena. I also told Mr. Greene that if he had any questions he could call Mr. Zerman in department 58.

9. I then returned back to court, department 58 at around 11:30 a.m. and filed the subpoena with the clerk, after the Judge Nelson rudely asked who I was. I told him my name and that I was returning the subpoena I had just served on Mr. Greene.

10. I remained in court for the remainder of the proceedings on June 21, 1992. I observed and heard Mr. Zerman, after 1:30 p.m., call Mr. Greene as a witness; Mr. Greene failed to appear in the courtroom. The judge did not advise Mr. Zerman that he had heard from Mr. Greene. Mr. Zerman later repeatedly requested that the judge issue a bench warrant for Mr. Greene. ^{HE} ~~He~~ refused and then threatened Mr. Zerman that his clients' case would be over if he did not have another witness.

11. At about 4:30 p.m. when proceedings were recessed, Mr. Zerman asked me to promptly call Mr. Greene's office to find out where he was and to see if I could find out why he had disobeyed the subpoena. I then went down the hall, used a pay phone and called Mr. Greene's office. A receptionist answered and told me that I had reached the Greene, O'Reilly, something law firm. I asked for Mr. Greene and was then told I would be forwarded to his secretary. A lady then responded she was Mr. Greene's secretary. I informed her who I was, that I had served Mr. Greene with the subpoena earlier that morning and that he had failed to appear in department 58, before Judge Nelson, and that I would like to speak with him regarding his failure to appear and obey the subpoena. She informed me that at that moment, Mr. Greene was on the phone speaking with Judge Nelson. She then asked me to hold. After about one minute, she came back on the line and told me Mr. Greene was still busy, still speaking with Judge Nelson. I then told her I was in a pay phone, gave her the number and told her to have Mr. Greene call me back at that number; I would wait fifteen minutes. I also told her that if Mr. Greene was unable to call back in that time, or if for some reason he did not reach me, he should thereafter call Mr. Zerman at the telephone number on the subpoena.

12. I waited. Mr. Greene never called back. Mr. Greene's secretary never called back. The next morning June 22, 1990, I spoke with Mr. Zerman at department 58 and he advised me Mr. Greene never called him and that he had no idea if Mr. Greene would appear. Later that morning Mr. Greene appeared and was called as a witness. During his testimony, I observed Judge Nelson make what I believe were several improper comments toward Mr. Zerman and several improper rulings. It appeared to me that Mr. Zerman was not allowed to ask Mr. Greene questions without the judge interfering. It appeared to me the judge's conduct was highly improper. I later represented Mr. Zerman at sanction hearings that Judge Nelson held against Mr. Zerman. Judge Nelson's improper conduct continued there.

13. I have known Mr. Zerman since about March of 1984, when we met at Schell & Delamer, where I was working as an associate attorney and Mr. Zerman took a position with the firm. Thereafter I have known him in both professional and social settings, and ^{we} ~~he~~ have become and are very good friends.

14. If called as a witness, I could and would competently testify to the foregoing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 day of December 1992 at Fountain Valley, California.


STEPHEN P. KURI

SUPERIOR COURT OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

MARIA D. ORNELAS, ET. AL.,

PLAINTIFFS-APPELLANTS,

VS.

R. BROWNE GREENE, ET. AL.,

DEFENDANTS-RESPONDENTS.

C-596304

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE HENRY P. NELSON, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFFS-APPELLANTS: GARY L. ZERMAN, ESQ.
5807 LAUREL CANYON BOULEVARD
SUITE 106
NORTH HOLLYWOOD, CALIF. 91607

FOR DEFENDANT-RESPONDENT: KEVIN R. MC LEAN, ESQ.
LAW OFFICE OF
MELVIN M. BELLI, SR.
722 MONTGOMERY STREET
SAN FRANCISCO, CALIF. 94111

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CAROL E. MATTINGLY, CSR #3378
OFFICIAL REPORTER

COPY

1 HOW ABOUT THIS PERSON MR. LOWELL?

2 MR. ZERMAN: HE IS IN SAN FRANCISCO. I HAVE TO
3 CALL HIM.

4 THE COURT: DO YOU HAVE HIM UNDER SUBPOENA?

5 MR. ZERMAN: NO, I DON'T.

6 THE COURT: OKAY. AND HOW ABOUT MR. MONZIONE, DO
7 YOU HAVE HIM UNDER SUBPOENA?

8 MR. ZERMAN: NO, I DON'T, YOUR HONOR.

9 THE COURT: OKAY. AND YOU DON'T HAVE MR. BELLI
10 UNDER SUBPOENA.

11 WELL, HE IS GOING TO TESTIFY BY DEPOSITION.

12 MR. ZERMAN: CORRECT, YOUR HONOR.

13 THE COURT: OKAY. NOW, SO, WHO DO WE HAVE FOR
14 TOMORROW AFTERNOON? THAT'S WHAT I AM ASKING BECAUSE IF
15 YOU DON'T HAVE SOMEBODY HERE FOR TOMORROW AFTERNOON YOU'RE
16 GOING TO FACE THE PROBLEM OF HAVING RESTED YOUR CASE.

17 MR. ZERMAN: WELL, WHAT WILL HAPPEN WITH THE MATTER
18 OF MR. GREENE?

19 THE COURT: HE IS A NON APPEARING WITNESS AND, YOU
20 KNOW, THE QUESTION IS THAT'S A PROBLEM FOR ME TO DEAL WITH
21 MR. GREENE.

22 MR. ZERMAN: OKAY. YES, YOUR HONOR. EXCUSE ME.

23 THE COURT: SO, WHEN YOU ASK WHAT WILL HAPPEN, THE
24 SAME THING THAT HAPPENS TO EVERY NON APPEARING WITNESS.

25 MR. ZERMAN: I WOULD REQUEST THEN A BRIEF
26 CONTINUANCE AND I WOULD ALSO REQUEST THE COURT ISSUE A
27 BENCH WARRANT FOR HIM.

28 THE COURT: I WILL WORRY ABOUT THAT.

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WHAT ELSE? CONTINUANCE FOR WHAT?

MR. ZERMAN: UNTIL MR. GREENE IS BROUGHT INTO TRIAL
HERE TO TESTIFY.

THE COURT: THAT'S DENIED. I SUGGEST YOU GET
YOURSELF SOME WITNESSES FOR TOMORROW AFTERNOON. THAT'S
WHAT I SUGGEST OR YOU MIGHT BE FACED WITH A PROBLEM OF
HAVING RESTED YOUR CASE.

WE'RE ADJOURNED UNTIL 9:00 O'CLOCK. I WANT
SUCH WITNESSES READY TO OCCUPY A FULL DAY OF COURT
TOMORROW.

MR. ZERMAN: THANK YOU, YOUR HONOR.

(AT 4:40 P.M. AN ADJOURNMENT WAS
TAKEN UNTIL FRIDAY,
JUNE 22, 1990 AT 9:00 A.M.)

1 LOS ANGELES, CALIFORNIA; * FRIDAY, JUNE 22, 1990
2 DEPARTMENT NO. 58 HON. HENRY P. NELSON, JUDGE
3 9:20 A.M.

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE COURT: GOOD MORNING.

8 PLEASE CALL YOUR WITNESS.

9 MR. ZERMAN: YOUR HONOR, I HAD A COUPLE OF
10 PRELIMINARY MATTERS. I INFORMED THE CLERK.

11 CAN WE TAKE THOSE UP NOW OR LATER?

12 THE COURT: CALL YOUR WITNESS, SIR.

13 MR. ZERMAN: PLAINTIFFS WOULD CALL MARIA ORNELAS.

14 THE CLERK: MS. INTERPRETER, WOULD YOU RAISE YOUR
15 RIGHT HAND TO BE SWORN.

16 YOU DO SOLEMNLY SWEAR THAT YOU WILL WELL AND
17 TRULY INTERPRET SPANISH INTO ENGLISH AND ENGLISH INTO
18 SPANISH IN THE CAUSE NOW PENDING BEFORE THIS COURT, SO
19 HELP YOU GOD.

20 THE INTERPRETER: I DO.

21 THE CLERK: WILL YOU STATE AND SPELL YOUR NAME.

22 THE INTERPRETER: BARBARA SHELTON, S-H-E-L-T-O-N.

23 THE CLERK: THANK YOU.
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1 (RECESS.)

2
3 THE COURT: ALL RIGHT. MR. GREENE IS HERE. WANT
4 TO CALL HIM AS A WITNESS?

5 MR. ZERMAN: PLAINTIFFS WOULD CALL BROWNE GREENE
6 UNDER EVIDENCE CODE SECTION 776, YOUR HONOR.

7 THE COURT: I THINK THAT INAPPROPRIATE, BUT MR.
8 GREENE MAY BE CALLED.

9
10 BROWNE GREENE +
11 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
12 TESTIFIED AS FOLLOWS:

13 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

14 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
15 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
16 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
17 SO HELP YOU GOD.

18 THE WITNESS: I DO.

19 THE CLERK: THANK YOU. PLEASE BE SEATED.

20 WILL YOU STATE AND SPELL YOUR NAME FOR THE
21 RECORD, PLEASE.

22 THE WITNESS: BROWNE GREENE, B-R-O-W-N-E,
23 G-R-E-E-N-E.

24 THE CLERK: THANK YOU.

25
26 DIRECT EXAMINATION +
27 BY MR. ZERMAN:

28 Q GOOD MORNING, MR. GREENE.

1 A GOOD MORNING.

2 Q YOU WERE SERVED A SUBPOENA AND REQUEST TO
3 BRING SOME DOCUMENTS. HAVE YOU BROUGHT ANY DOCUMENTS IN
4 COMPLIANCE WITH THAT SUBPOENA?

5 A NO.

6 Q DID YOU LOOK FOR THOSE DOCUMENTS?

7 THE COURT: THAT'S SOMETHING I THINK YOU BETTER
8 TAKE UP WITH ME OUTSIDE THE JURY'S PRESENCE. WHY DON'T
9 YOU GO INTO HIM AS A WITNESS.

10 Q BY MR. ZERMAN: MR. GREENE, CAN YOU TELL US
11 ABOUT YOUR BACKGROUND IN THE LEGAL PROFESSION?

12 A WHERE DID YOU WANT TO START? BE HAPPY TO.
13 WANT ME TO START WITH LAW SCHOOL
14 UNDERGRADUATE.

15 Q AFTER LAW SCHOOL.

16 A AFTER OF LAW SCHOOL I TOOK THE BAR EXAM. I
17 WENT TO LAW SCHOOL IN WASHINGTON D. C. WHERE I GREW UP AND
18 I WENT IN THE AIR FORCE AS A LEGAL OFFICER IN THE JAG
19 DEPARTMENT OF THE U. S. AIR FORCE, SERVED IN EUROPE FOR 3
20 YEARS TRYING COURT MARTIAL CASES.

21 CAME BACK, MOVED TO CALIFORNIA IN 1965. GOT
22 A JOB WITH AN INSURANCE COMPANY AS AN ADJUSTER WHILE I
23 STUDIED FOR THE BAR EXAM IN CALIFORNIA WHICH I HAD TO TAKE
24 TO QUALIFY TO PRACTICE IN CALIFORNIA. TOOK THE BAR
25 EXAMINE IN DECEMBER OF 1965, PASSED, BECAME AN ATTORNEY
26 WITH THE TRANSIT CASUALTY INSURANCE COMPANY WHERE I
27 STARTED TRYING PERSONAL INJURY CASES DEFENDING THEM FOR
28 THE INSURANCE COMPANY. I WAS THERE FOR APPROXIMATELY 2

1 YEARS AND WAS OFFERED A JOB WITH A LAW FIRM HANDLING
2 PLAINTIFFS CASES IN 1967, I BELIEVE. IT WAS IN OCTOBER OR
3 NOVEMBER.

4 WAS WITH THAT FIRM FOR APPROXIMATELY 3 OR 4
5 YEARS WHEN IT MERGED WITH ANOTHER LAW FIRM JAMES H. DAVIS.
6 THE FIRM BECAME KNOWN AS DAVIS VAUGHN AND GREENE AND IN
7 JANUARY OF 1973 WE STARTED THIS PARTICULAR FIRM THAT I'M
8 STILL WITH.

9 Q I WOULD LIKE TO BACK UP A MINUTE.

10 YOU SAID YOU WORKED FOR AN INSURANCE COMPANY
11 DEFENDING CASES, IS THAT CORRECT?

12 A YES.

13 Q NOW, ISN'T IT TRUE THAT IN A SITUATION WHERE
14 YOU DEFEND ONE OF THE INSURANCE COMPANIES INSURED'S YOU
15 HAVE 2 CLIENTS, REALLY?

16 A WHAT DO YOU MEAN?

17 Q WELL, YOUR CLIENT IS THE INSURANCE COMPANY
18 AND THE INSURED WHO THE POLICY IS WRITTEN TO, IS THAT
19 CORRECT?

20 A IN THAT SENSE, YES.

21 Q AND ISN'T IT TRUE THAT A LOT OF TIMES THERE
22 IS A CONFLICT OF INTEREST SITUATION BETWEEN THE INSURED
23 AND THE INSURANCE COMPANY?

24 A NOT ON THOSE SITUATIONS, NO. I WAS NEVER
25 UNDER ANY CONFLICT OF INTEREST SITUATION. I WAS AN
26 EMPLOYEE OF THE ONE INSURANCE COMPANY AND ITS SOLE CLIENT
27 WAS THIS BUS COMPANY, THE R. T. D.

28 Q NONETHELESS, YOU WERE FAMILIAR WITH CONFLICTS

1 BETWEEN INSURED AND INSURANCE COMPANY?

2 MR. MC LEAN: OBJECTION, YOUR HONOR. VAGUE.

3 THE COURT: WHY DON'T YOU SAY "IRRELEVANT"?

4 MR. MC LEAN: IRRELEVANT ALSO.

5 THE COURT: SUSTAINED.

6 Q BY MR. ZERMAN: MR. GREENE, ISN'T IT TRUE
7 YOU HAVE HAD A NUMBER OF MILLION DOLLARS VERDICTS IN YOUR
8 CAREER?

9 A YES.

10 Q IN FACT, DIDN'T YOU IN 1989 HAVE ABOUT 26
11 MILLION DOLLARS IN VERDICTS?

12 A SOMEWHERE LIKE THAT.

13 Q YOU DON'T KEEP TRACK?

14 A NOT A TOTAL DOLLAR VALUE. THEY COME DOWN IN
15 DIFFERENT KINDS OF CASES, DIFFERENT TRIALS. SOME GET
16 PAID, SOME DON'T. SOME GO ON APPEAL. I DON'T KEEP A
17 SCORE CARD LIKE THAT.

18 IT WAS WRITTEN UP IN A NEWSPAPER RECENTLY AND
19 THEY TABULATED IT. I HAVE NOT TABULATED IT.

20 Q WELL, IT WAS SOMEWHERE AROUND 26 MILLION
21 DOLLARS?

22 A THAT'S WHAT THEY REPORTED.

23 Q ISN'T IT TRUE THAT IF YOUR LAW FIRM OR ONE OF
24 YOUR LAW FIRMS TAKES A CASE THE PARTNERS OF THAT LAW FIRM
25 ARE RESPONSIBLE FOR THE ACTS OF THE OTHER PARTNERS AND ANY
26 ASSOCIATE ATTORNEYS IN HANDLING CASES THAT YOU TAKE?

27 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

28 THE COURT: SUSTAINED.

1 Q BY MR. ZERMAN: WHEN YOU TAKE ON A CASE COULD
2 YOU TELL ME WHAT THE ATTORNEY-CLIENT RELATIONSHIP
3 INVOLVES?

4 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

5 THE COURT: IT'S ALSO AN AREA OF LEGAL OPINION
6 WHICH ALTHOUGH MR. GREENE IS A LAWYER HE IS NOT PERMITTED,
7 AS YOU WELL KNOW, TO GIVE LEGAL OPINIONS AS A WITNESS.
8 SO, LET'S MOVE ON.

9 Q BY MR. ZERMAN: AS OPPOSED TO YOUR OPINION,
10 MR. GREENE, WHAT IS YOUR UNDERSTANDING OF THE
11 ATTORNEY-CLIENT RELATIONSHIP?

12 THE COURT: DOESN'T MATTER WHAT HIS UNDERSTANDING
13 IS. THAT'S EXACTLY THE SAME THING. HIS UNDERSTANDING AND
14 HIS OPINION MAY HAVE A DIFFERENCE IN LEGAL MINDS, BUT IN
15 THE REAL WORLD THERE IS NO SUCH DIFFERENCE.

16 NOW, LET'S GET TO THE ISSUES INVOLVED IN THIS
17 CASE. WE ARE TALKING ABOUT WHAT HE DID WITH RESPECT TO
18 THE CASE INVOLVING ORNELAS, CASTRO, MUNOZ AND MUNOZ VERSUS
19 FORD.

20 Q BY MR. ZERMAN: MR. GREENE, YOUR FIRM
21 REPRESENTED THOSE INDIVIDUALS, ISN'T THAT CORRECT?

22 A THAT'S RIGHT, TRUE.

23 Q HOW DID THAT BEGIN, THAT REPRESENTATION?

24 A YOU MEAN HOW DID THE CASE COME TO US OR WHAT?

25 Q THAT'S CORRECT, YES?

26 A IT'S MY RECOLLECTION THAT THE ORIGINAL
27 CONTACT WAS WITH MY EX-PARTNER RICHARD VOORHIES BY AND
28 THROUGH A FELLA NAMED WALT GOOD WHO WAS AN INVESTIGATOR

1 WHO HAD MET, I BELIEVE, FABIOLA, AND HAD MENTIONED TO
2 FABIOLA AND TO THE OTHERS, VENTURA AS WELL AS MARIA, THAT
3 OUR FIRM HAD HANDLED A NUMBER OF CASES INVOLVING DEFECTIVE
4 DESIGNS OF VEHICLES AND THOSE KINDS OF ISSUES, AND THEY
5 DECIDED TO COME AND SPEAK WITH RICHARD VOORHIES. AND THEY
6 CAME OVER AND THEY DISCUSSED IT WITH HIM, AND THEY SIGNED
7 UP TO HAVE OUR FIRM REPRESENT THEM.

8 THAT'S MY RECOLLECTION OF THE FACTS GOING
9 BACK HOW MANY YEARS NOW.

10 Q WHAT WAS YOUR RELATIONSHIP WITH WALT GOOD AT
11 THAT TIME?

12 A HE WAS SOMEBODY THAT WORKED ON CASES BEFORE
13 AS AN INVESTIGATOR. I HAD MET HIM AT A SEMINAR ONE TIME
14 YEARS BACK WHERE I WAS A SPEAKER IN FRONT OF OTHER
15 ATTORNEYS.

16 Q HOW LONG HAD HE WORKED WITH YOUR FIRM?

17 A AS OF WHAT TIME?

18 Q AS OF THE TIME OF THE ORNELAS MATTER?

19 A WELL, WHAT PART OF IT? THE TRIAL WAS ONE
20 TIME AND THE CASE WAS WITH US FOR YEARS BEFORE THAT. DO
21 YOU MEAN AS OF THE ORIGINAL TIME THEY CAME IN?

22 Q YES, UH-HUH. HOW LONG HAD YOU KNOWN HIM?

23 A TRYING TO REMEMBER WHEN HE FIRST CAME IN.

24 IT'S MY RECOLLECTION THE TRIAL WAS AROUND
25 1981, IF NOT MISTAKEN. THEY WOULD HAVE COME INTO US
26 SOMETIME IN THE LATER SEVENTIES AND I WOULD HAVE KNOWN
27 WALT GOOD, I'M SURE, SAY, SEVERAL YEARS BEFORE THAT.
28 EXACTLY HOW MANY YEARS I CAN'T RECALL.

1 Q NOW, WHEN YOU OR YOUR FIRM SIGNED UP THE
2 ORNELAS PLAINTIFFS WHO SIGNED THEM UP?

3 A RICHARD VOORHIES.

4 Q WERE YOU INVOLVED IN THAT AT ALL?

5 A WE HAD A DISCUSSION WITH IT. I REMEMBER
6 RICHARD DISCUSSING IT WITH ME AND IT SOUNDED LIKE A GOOD
7 CASE AND I AGREED THAT WE SHOULD TAKE IT.

8 Q BUT WERE YOU INVOLVED IN THE ACTUAL SIGNING
9 THE CONTRACT WITH THE PLAINTIFFS?

10 A YOU MEAN, WAS I THERE AND SPEAK WITH THEM
11 ABOUT IT?

12 Q YES.

13 A I DON'T BELIEVE SO.

14 Q AND WHAT KIND OF A CONTRACT WOULD THAT HAVE
15 BEEN WITH YOUR FIRM?

16 A CONTINGENCY FEE.

17 Q STANDARD CONTINGENCY FEE CONTRACT?

18 A YES.

19 Q WHAT ARE THE TERMS OF THAT CONTRACT?

20 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

21 THE COURT: SUSTAINED.

22 WE'RE TALKING ABOUT WHETHER OR NOT HE
23 REPRESENTED MR. MUNOZ AS WELL AS THE OTHERS. WHY DON'T WE
24 JUST ZIP RIGHT TO THAT AND GET TO IT AND LET MR. GREENE GO
25 ON HIS WAY.

26 Q BY MR. ZERMAN: ISN'T IT TRUE, MR. GREENE,
27 YOU REPRESENTED ALL 4 OF THOSE PLAINTIFFS?

28 A YOU MEAN -- WE REPRESENTED VENTURA, MARIA,

1 FABIOLA AND I'M TRYING TO REMEMBER THE NAME OF THE 4TH
2 WHICH WE RARELY EVER MET.

3 Q JOSE?

4 A JOSE, THAT'S RIGHT.

5 Q BUT YOU WEREN'T INVOLVED IN THE ACTUAL
6 SIGNING THEM UP, CORRECT?

7 A NOT TO MY RECOLLECTION.

8 Q DO YOU KNOW WHO WAS SIGNED UP FIRST?

9 A NO.

10 Q ISN'T IT TRUE THAT WHEN YOUR FIRM REPRESENTED
11 THOSE CLIENTS YOU HAD A FIDUCIARY DUTY UNDER THE LAW?

12 MR. MC LEAN: OBJECTION, YOUR HONOR. CALLS FOR A
13 LEGAL CONCLUSION.

14 THE COURT: OBJECTION SUSTAINED.

15 Q BY MR. ZERMAN: IS IT YOUR UNDERSTANDING IN
16 REPRESENTING THEM THAT YOU HAD A FIDUCIARY DUTY?

17 MR. MC LEAN: SAME OBJECTION.

18 THE COURT: IT'S THE SAME QUESTION, SIR. I TOLD
19 YOU THAT BEFORE.

20 Q BY MR. ZERMAN: WHAT WERE YOUR OBLIGATIONS IN
21 REPRESENTING THESE PEOPLE, MR. GREENE?

22 MR. MC LEAN: SAME OBJECTION, YOUR HONOR. CALLS
23 FOR A LEGAL CONCLUSION.

24 THE COURT: SUSTAINED.

25 Q BY MR. ZERMAN: WHAT DID YOU BIND YOUR FIRM
26 TO DO?

27 THE COURT: DON'T ASK ANYMORE QUESTIONS ALONG THOSE
28 LINES, SIR. NOW, I THINK YOU REALIZE THAT THOSE QUESTIONS

1 ARE OUT OF BOUNDS AND I DON'T WANT TO HEAR ANYMORE OF
2 THEM.

3 PROCEED TO THE ISSUES IN THIS CASE.

4 Q BY MR. ZERMAN: WHY IS IT THAT MR. VOORHIES
5 INITIALLY HANDLED THE CASE?

6 A BECAUSE THEY WERE BROUGHT IN THROUGH WALT
7 GOOD TO MR. VOORHIES.

8 Q ISN'T IT TRUE ONE OF THE REASONS WAS THAT HE
9 SPOKE SPANISH?

10 A THAT WOULD BE A GOOD REASON, YES. I'M SURE
11 THAT WAS ONE OF THE REASONS.

12 Q ISN'T IT TRUE THAT THERE WAS ALSO A SIMILAR
13 PRIOR CASE AGAINST FORD MOTOR COMPANY?

14 A YES, THERE WAS, BEALY VERSUS FORD.

15 Q WHAT DID THE BEALY CASE INVOLVE?

16 THE COURT: THAT'S IRRELEVANT, MR. GREENE.

17 THE WITNESS: IT WAS VERY --

18 THE COURT: NEVERMIND.

19 LET'S STAY ON THIS CASE.

20 Q BY MR. ZERMAN: ISN'T IT TRUE THAT YOU HAVE
21 NO KNOWLEDGE OF MR. VOORHIES ADVISING MRS. ORNELAS AND
22 MRS. CASTRO OF CONFLICT OF INTEREST WITH MR. VENTURA MUNOZ
23 REGARDING THE HANDLING OF THAT CASE AGAINST FORD MOTOR
24 COMPANY?

25 A YES.

26 Q AND ISN'T IT TRUE YOU HAD NO DISCUSSION WITH
27 MR. VOORHIES REGARDING A CONFLICT OF INTEREST REGARDING
28 CASE NUMBER 1?

1 A THAT'S TRUE.

2 Q NOW, ISN'T IT TRUE THAT AT SOME TIME MR.
3 VOORHIES LEFT YOUR LAW FIRM?

4 A YES.

5 Q ISN'T IT TRUE THAT HE WAS LOCKED OUT OF THE
6 OFFICE AT ONE TIME?

7 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCY.

8 THE COURT: COME UP HERE TO THE SIDE BAR.

9
10 (THE FOLLOWING PROCEEDINGS WERE HELD
11 AT THE BENCH:)

12
13 THE COURT: NOW, I THINK YOU KNOW FULL WELL THAT
14 THAT QUESTION IS ABSOLUTELY IRRELEVANT AND HAS NOTHING TO
15 DO WITH THIS CASE.

16 MR. ZERMAN: I DISAGREE, YOUR HONOR.

17 THE COURT: I DON'T CARE WHETHER YOU DISAGREE. IF
18 YOU ASK ANOTHER ONE OF THOSE QUESTIONS LIKE THAT, SIR, I
19 AM GOING TO HOLD YOU IN CONTEMPT OF THIS COURT. YOU KNOW
20 FULL WELL THE RELATIONSHIP BETWEEN VOORHIES AND BROWNE
21 GREENE HAS NOTHING TO DO WITH THIS CASE. IF THEY HAD SOME
22 DISAGREEMENTS AMONG THEMSELVES THAT'S NONE OF THIS JURY'S
23 BUSINESS. YOU KNOW FULL WELL THAT'S THE CASE, AND DON'T
24 STAND UP THERE TELLING ME YOU DON'T.

25 NOW, LISTEN TO ME. IF YOU ASK ANOTHER ONE OF
26 THOSE QUESTIONS ALONG THOSE LINES I'M GOING TO HOLD YOU IN
27 CONTEMPT OF THIS COURT. DO YOU UNDERSTAND THAT?

28 MR. ZERMAN: YES, YOUR HONOR.

1 I WOULD LIKE TO BE HEARD FOR A MINUTE.

2 THE COURT: GET BACK OUT THERE AND ASK PROPER
3 QUESTIONS, RIGHT NOW.

4 MR. ZERMAN: I INSIST ON BEING HEARD, YOUR HONOR.

5
6 (PROCEEDINGS WERE RESUMED IN OPEN COURT:)

7
8 THE COURT: I WANT THE JURY TO GO IN THE JURY ROOM
9 FOR JUST A MOMENT. DON'T DISCUSS THE CASE. DON'T FORM OR
10 EXPRESS AN OPINION ON IT.

11
12 (THE JURORS EXITED THE COURTROOM
13 AND THE FOLLOWING PROCEEDINGS
14 WERE HELD:)

15
16 THE COURT: NOW, RULE 88 OF OUR CIVIL TRIAL MANUAL
17 INDICATES AS FOLLOWS: A QUESTION TO A WITNESS SHOULD BE
18 FRAMED TO AVOID THE SUGGESTION OF ANY INADMISSIBLE MATTER.

19 NOW, YOU KNOW FULL WELL THAT ANY PROBLEMS
20 BETWEEN THE 2 ATTORNEYS AND THEIR BREAK UP AND THEIR LAW
21 FIRM, IF THERE WAS SUCH A THING, HAS NOTHING WHATSOEVER TO
22 DO WITH THIS CASE. AND I'M TELLING YOU AGAIN IF YOU ASK
23 ANOTHER ONE OF THOSE QUESTIONS I AM GOING TO HOLD YOU IN
24 CONTEMPT. NOW, YOU TRY ME ON THIS AND YOU'LL SEE THAT YOU
25 WILL BE FINED AND, IF NECESSARY, I'LL PUT YOU IN JAIL FOR
26 IT.

27 NOW, YOU CONTINUE THIS. AND YOU HAVE DONE
28 THIS BEFORE AND I'M NOT GOING TO HAVE IT.

MR. ZERMAN: WITH ALL DUE RESPECT, YOUR HONOR, I BELIEVE IT'S RELEVANT. THIS IS CROSS-EXAMINATION. THERE IS EXTREME WIDE LATITUDE.

THE COURT: THEN YOU ASK ANOTHER SUCH QUESTION AND SEE WHETHER OR NOT YOU ARE HELD IN CONTEMPT. YOU ASK ANOTHER QUESTION LIKE THAT IN FRONT OF THIS JURY AND I'M GOING TO HOLD YOU IN CONTEMPT. I'VE TOLD YOU AND I MADE A RULING THAT THAT IS NOT RELEVANT. AND I'M NOT GOING TO TOLERATE ONE MORE QUESTION ALONG THOSE LINES.

NOW, DO YOU UNDERSTAND WHAT I WAS SAID TO YOU?

MR. ZERMAN: YES, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, LET'S BRING THE JURY --

MR. ZERMAN: I WOULD LIKE TO BE HEARD.

THE COURT: I DON'T WANT TO HEAR ANOTHER WORD FROM YOU.

MR. ZERMAN: YOU ARE VIOLATING MY DUE PROCESS RIGHTS, VIOLATING THE DUE PROCESS RIGHTS OF MY CLIENTS. YOU ARE EMASCULATING THE CLAIMS AND ISSUES IN MY CLIENTS' CASE AND I JUST FEEL I HAVE TO MAKE A RECORD.

YOU REFUSE TO HEAR ME ON ISSUES. YOU IGNORE ME. I HAVE TRIED TO GO THROUGH YOUR CLERK ON NUMEROUS OCCASIONS. SHE HAS IGNORED ME, AND I JUST CANNOT GET HEARD ON THE MATTERS. AND WITH ALL DUE RESPECT, YOUR HONOR, I HAVE A DUTY TO ZEALOUSLY REPRESENT MY CLIENTS. I DON'T THINK ANY OF MY CONDUCT HAS BEEN IMPROPER, AND I THANK YOU FOR HEARING ME.

1 THE COURT: I WANT YOU TO READ THAT LATEST CASE.
2 IF YOU LAWYERS THINK THAT NOWADAYS YOU CAN MAKE ALL THESE
3 LITTLE SMART REMARKS AND THEN YOU CAN WALK AWAY FROM IT BY
4 SAYING "I'M JUST REPRESENTING MY CLIENT ZEALOUSLY", YOU
5 BETTER READ THAT LATEST CASE. THEY'RE BEGINNING TO ON THE
6 APPELLATE LEVEL RECOGNIZE THERE SHOULD BE SOME TEETH TO
7 THE NOTION OF CONTEMPT OF COURT, AND SO YOU TRY ME AGAIN
8 AND YOU WILL BE THE NEXT PERSON UP THERE WITH THE CASE.

9 NOW, LET'S GO ON.

10 MR. ZERMAN: YOUR HONOR --

11 THE COURT: I DON'T WANT TO HEAR ANYMORE.

12 MR. ZERMAN: I WILL READ THE CASE IF YOU TELL ME --

13 THE COURT: I DON'T WANT TO HEAR ANYMORE FROM YOU.
14 GET BACK OUT THERE.

15 BRING THE JURY OUT.

16 MR. ZERMAN: IF YOU WILL TELL ME WHAT THE CASE IS
17 I'LL READ IT.

18
19 (THE JURY ENTERED THE COURTROOM AND
20 THE FOLLOWING PROCEEDINGS WERE HELD:)

21
22 THE COURT: BEFORE WE PROCEED -- THE JURY IS
23 PRESENT.

24 I AM GOING TO AGAIN READ TO YOU WHAT I READ
25 TO YOU ONCE BEFORE AND I AM GOING TO REMIND YOU THAT THIS
26 IS MY FAVORITE JURY INSTRUCTION. REMEMBER I SAID THAT?
27 OKAY. I AM GOING TO SAY IT AGAIN AND AGAIN.

28 I HAVE NOT INTENDED BY ANYTHING I HAVE SAID

1 OR DONE, OR BY ANY QUESTIONS THAT I MAY HAVE ASKED TO
2 SUGGEST HOW YOU SHOULD DECIDE ANY QUESTION OF FACT, OR
3 THAT I BELIEVE OR DISBELIEVE ANY WITNESS. IF ANYTHING I
4 HAVE DONE OR SAID HAS SEEMED TO SO INDICATE YOU MUST
5 DISREGARD IT AND FORM YOUR OWN OPINION.

6 I READ THAT AND I SAY IT'S MY FAVORITE JURY
7 INSTRUCTION TO EMPHASIZE THAT I MEAN IT. NOW, IN THE
8 COURSE OF A TRIAL FREQUENTLY, UNFORTUNATELY, I MUST DO
9 THINGS TO MAKE SURE THAT THE CASE GOES ALONG WITH SOME
10 EXPEDITION AND IN ACCORDANCE WITH OUR RULES. SO, WE'RE
11 TALKING ABOUT THE MERITS OF A CASE, NOT ABOUT
12 PERSONALITIES, NOT ABOUT PERFORMANCES; THE MERITS OF A
13 CASE. REMEMBER I STARTED YOU OUT WITH THAT. YOU ARE TO
14 JUDGE THE CASE ON THE BASIS OF THE EVIDENCE AND THE
15 INSTRUCTIONS AND YOU MUST, AS YOU WERE SUPPOSED TO, YOU
16 WERE SUPPOSED TO SET ASIDE ALL OF YOUR BIASES AND
17 PREJUDICES BEFORE YOU STARTED. YOU'RE NOT TO DEVELOP ANY
18 OF THEM ON THE JOURNEY, AND YOU ARE TO MAKE A FAIR AND
19 IMPARTIAL JUDGMENT ON THE EVIDENCE AND THE INSTRUCTIONS.

20 NOW, THAT'S OUR COMMITMENT, YOURS AND MINE,
21 AND WE HAVE TO KEEP IT ALWAYS IN MIND. AND THAT'S AGAIN
22 WHY THAT ADMONITION IS CONSTANTLY GIVEN TO YOU, TO KEEP
23 THAT IDEA IN MIND. IN THE HEAT OF THINGS THAT CAN BE LOST
24 AND YOU MUST CONSTANTLY REMEMBER. IF YOU DON'T THEN WE'RE
25 DOING THE WORSE THING AND THAT IS RESOLVING A CASE
26 IMPROPERLY.

27 LET'S GO FORWARD.

28 MR. ZERMAN: MAY I PROCEED, YOUR HONOR?

1 THE COURT: YES.

2 Q BY MR. ZERMAN: MR. GREENE, UNDER SOME
3 CIRCUMSTANCES MR. VOORHIES LEFT THE FIRM, YOUR FIRM, IS
4 THAT CORRECT?

5 A YES.

6 Q WHAT HAPPENED TO THE CASE, THE ORNELAS CASE?

7 A IT REMAINED IN THE FIRM.

8 Q AND YOU CONTINUED TO REPRESENT ALL 4
9 PLAINTIFFS?

10 A YES.

11 Q NOW, THAT COMPLAINT AGAINST -- THE COMPLAINT
12 THAT YOU FILED ON BEHALF OF THOSE PEOPLE WAS AGAINST ONE
13 DEFENDANT, IS THAT CORRECT?

14 A THAT'S MY RECOLLECTION. I DON'T THINK --

15 Q AND WHO WAS THE DEFENDANT?

16 A EXCUSE ME.

17 I DON'T THINK WE FILED AGAINST THE RETAILER.
18 I THINK IT WAS THE FORD MOTOR COMPANY.

19 Q WHAT HAPPENED TO THE CASE AFTER MR. VOORHIES
20 LEFT?

21 A IT WAS WORKED UP IN THE OFFICE. CHARLES
22 O'RILEY AND I. BASICALLY CHARLIE WORKED THE CASE UP AND
23 WHEN IT CAME TIME FOR TRIAL -- YOU WANT ME TO PROCEED?

24 Q I WILL ASK A QUESTION.

25 A OKAY.

26 Q SO, MR. O'RILEY HANDLED THE CASE UNTIL YOU
27 TOOK OVER SOMETIME LATER, CORRECT?

28 A YES.

1 Q HE WAS THE PRINCIPAL ATTORNEY HANDLING IT?

2 A YES.

3 Q ISN'T IT TRUE YOU NEVER HAD A CONVERSATION
4 WITH MR. O'RILEY REGARDING A CONFLICT OF INTEREST
5 INVOLVING THAT CASE AGAINST FORD?

6 A THAT'S TRUE.

7 Q ISN'T IT TRUE THAT YOU WERE ASKED TO PRODUCE
8 A COPY OF THE CONTRACT THAT YOU HAD WITH THE VARIOUS
9 PLAINTIFFS AND YOU WERE UNABLE TO EVER PRODUCE ONE?

10 A WE DON'T HAVE ANY OF THE RECORDS LEFT. THE
11 CASE WENT -- FROM OUR OFFICE WENT TO THE BELLI OFFICE.
12 ALL RECORDS, ALL INFORMATION WENT THERE.

13 Q HOW IS IT THAT YOU THEN TOOK OVER THE CASE
14 FROM MR. O'RILEY?

15 A MR. O'RILEY HAD A CONFLICT IN THAT HE WAS IN
16 TRIAL AT THE TIME AND THIS CASE WAS COMING UP FOR TRIAL.
17 I HAD JUST FINISHED A BIG CASE AGAINST THE FORD MOTOR
18 COMPANY A MATTER OF A FEW MONTHS BEFORE THIS AND I WAS
19 OPEN, AND SO THE DECISION HAD TO BE MADE AS TO WHO WAS
20 AVAILABLE AND WHO WOULD HANDLE THE CASE AND IT WAS AGREED
21 I WOULD DO IT.

22 Q WHAT CASE DID YOU JUST COME OFF OF?

23 A ESPINO VERSUS FORD.

24 Q WHAT WAS THE RESULT IN THAT CASE?

25 A YOU MEAN, THE VERDICT?

26 Q YES.

27 A VERDICT IN FAVOR OF THE PLAINTIFF IN THE SUM
28 OF 3.9 MILLION DOLLARS.

1 Q AND THAT WAS JUST BEFORE YOU BEGAN THE TRIAL
2 OF THE ORNELAS MATTER?

3 A WHEN YOU SAY JUST BEFORE, I THINK IT WAS
4 ABOUT MAYBE 3 MONTHS, SOMETHING LIKE THAT.

5 Q WASN'T IT TRUE THAT THE ORNELAS CASE BEGAN
6 TRIAL ABOUT THE MIDDLE OF JUNE, 1981?

7 A I CAN'T RECALL THE MONTH. I KNOW IT WAS
8 AROUND MID 1981.

9 Q AND ISN'T IT TRUE YOU JUST FINISHED ESPINO IN
10 MAY OF '81.

11 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE AND
12 I BELIEVE IT'S BEEN ASKED AND ANSWERED.

13 THE COURT: SUSTAINED.

14 Q BY MR. ZERMAN: NOW, I BELIEVE YOU STATED
15 EARLIER THAT WHEN MR. VOORHIES HAD THE CASE YOU REALLY HAD
16 NOTHING TO DO WITH THAT DURING HIS HANDLING OF IT,
17 CORRECT?

18 A NO, THAT'S NOT TRUE. I MEAN, WE DISCUSSED
19 THE CASE. WE WERE A SMALL LAW FIRM AND WE ALL WORKED
20 TOGETHER ON THE CASES, BRAINSTORMED THEM AND GAVE EACH
21 OTHER WHATEVER INFORMATION OR ASSISTANCE WE COULD. I
22 WASN'T ONE THAT WAS PRINCIPALLY HANDLING THE CASE, BUT I
23 WOULD DISCUSS IT WITH RICHARD AND CHARLIE.

24 Q WELL, ISN'T IT TRUE YOU HAD YOUR OWN CASE
25 LOAD?

26 A SURE.

27 Q AT THE TIME?

28 A SURE.

1 Q HOW MANY CASES WOULD YOU HAVE?

2 A I CAN'T REMEMBER.

3 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

4 THE COURT: THAT'S IRRELEVANT. THE QUESTION IS
5 WHETHER OR NOT HE REPRESENTED MR. VENTURA MUNOZ AT THE
6 SAME TIME HE REPRESENTED MS. ORNELAS AND MRS. CASTRO, AND
7 I THINK THAT'S THE ESSENTIAL AND ONLY QUESTION THAT IS
8 LEFT TO ASK MR. GREENE. IF YOU WANT TO ASK THAT YOU MAY.
9 IF YOU DON'T THEN WE WILL GO FORWARD.

10 Q BY MR. ZERMAN: ISN'T IT TRUE, MR. GREENE,
11 YOU NEVER OBTAINED WRITTEN CONSENT FROM FABIOLA CASTRO
12 WAIVING A CONFLICT OF INTEREST WITH VENTURA MUNOZ?

13 A I DON'T BELIEVE SO.

14 Q ISN'T IT TRUE YOU NEVER OBTAINED WRITTEN
15 CONSENT FROM MARIA ORNELAS WAIVING A CONFLICT OF INTEREST
16 WITH VENTURA MUNOZ?

17 A I DON'T BELIEVE SO.

18 Q WELL, DO YOU HAVE SOME DOUBTS?

19 A NO.

20 Q SO, YOUR ANSWER IS NO?

21 A YES. I THINK THAT'S THE WAY TO PUT IT, BUT,
22 REMEMBER, I HAVEN'T HAD THE RECORD FOR YEARS. BUT I DON'T
23 BELIEVE THAT WE HAD ANY SUCH DOCUMENT, NO.

24 Q WASN'T IT TRUE THAT YOU BELIEVED THERE WAS NO
25 CONFLICT OF INTEREST --

26 A YES.

27 Q -- BETWEEN THEM?

28 A THAT'S RIGHT.

Q WHAT DO YOU BASE THAT ON?

A YOU WANT ME TO DESCRIBE?

Q TELL ME ANY LEGAL AUTHORITY THAT YOU BASE THAT ON, ANY LEGAL TREATISE, ANY CASE LAW.

A YOU MEAN, YOU WANT A CITATION OF A CASE OR WHAT?

THE COURT: WAIT --

MR. ZERMAN: YES.

THE COURT: -- MR. GREENE.

THE WITNESS: YES, YOUR HONOR.

THE COURT: I KEEP TELLING YOU I'M NOT GOING TO LET HIM DISCUSS THE LAW WITH THE JURY. THE ONLY PERSON WHO DISCUSSES THE LAW WITH THIS JURY IS ME. THAT'S MY AREA AND I AM NOT GOING TO GET INTO A WHOLE DISCUSSION HERE.

NOW, IF YOU WANT TO ASK HIM A QUESTION -- I WILL SUSTAIN IT. IT'S IRRELEVANT.

MR. ZERMAN: CAN I HAVE A SIDE BAR ON THIS, YOUR HONOR?

THE COURT: NO.

Q BY MR. ZERMAN: IN HANDLING CASE NUMBER 1, MR. GREENE, AGAINST FORD MOTOR COMPANY DID YOU REVIEW -- WAS THERE A POLICE REPORT OF THE ACCIDENT?

A I BELIEVE SO.

Q DID YOU REVIEW THAT?

A I AM SURE I DID. I'M TRYING TO REMEMBER. I HAVEN'T SEEN THIS IN SO LONG. THERE MUST HAVE BEEN ONE, I BELIEVE.

Q ISN'T IT TRUE THAT YOUR UNDERSTANDING OF THAT

1 CASE IS THAT VENTURA MUNOZ WAS OPERATING THE VEHICLE AT AN
2 EXCESSIVE SPEED AND THE BABY WAS KILLED IN THE ACCIDENT?

3 A THAT WAS ONE OF THE CONTENTIONS THE FORD
4 MOTOR COMPANY MADE.

5 Q WASN'T THAT YOUR UNDERSTANDING OF THE CASE?

6 A MY UNDERSTANDING? IN OTHER WORDS, DID I
7 BELIEVE THAT?

8 Q YES.

9 A NO, I DIDN'T BELIEVE HE WAS OPERATING AT AN
10 EXCESSIVE RATE OF SPEED. I THINK UNDER THE FACTS WHAT HE
11 WAS DOING WAS NOT BY ANY STRETCH OF THE IMAGINATION WHAT
12 ONE WOULD CONSIDER TO BE REALLY EXCESSIVE. FORD CONTENDED
13 THAT AND THAT WAS THEIR MAIN DEFENSE.

14 Q WHO PREVAILED ON THE CASE?

15 A FORD DID.

16 Q I WOULD LIKE TO READ FROM THE WITNESS'S
17 DEPOSITION, YOUR HONOR, TAKEN ON SEPTEMBER 19, 1989, PAGE
18 14, LINE 9 THROUGH 20.

19 THE COURT: DO YOU HAVE A COPY?

20 MR. MC LEAN: NO, I DON'T, YOUR HONOR.

21 THE COURT: DO YOU MIND IF HE LOOKS AT YOUR COPY
22 BEFORE HE READS THAT?

23 MR. ZERMAN: I WOULD WELCOME IT TO HIM, YOUR HONOR.

24
25 (PAUSE IN THE PROCEEDINGS.)
26

27 MR. MC LEAN: I HAVE NO OBJECTION TO HIM READING
28 THAT. I DON'T THINK THAT IT WILL IMPEACH. I DON'T KNOW

1 WHAT PURPOSE IT'S BEING OFFERED, YOUR HONOR.

2 THE COURT: DO YOU HAVE A LEGAL OBJECTION YOU ARE
3 MAKING OR WHAT?

4 MR. MC LEAN: NO, YOUR HONOR.

5 THE COURT: DON'T MAKE SPEECHES THEN. MAKE LEGAL
6 OBJECTIONS.

7 MR. MC LEAN: YES, YOUR HONOR.

8 Q BY MR. ZERMAN: (READING):

9
10 "Q GENERALLY WHAT WAS THE PLAINTIFF'S
11 CASE? WHAT WAS THE DEFENSE?"

12
13 THE COURT: NOW, IF THAT IS WHAT THE READING IS
14 ABOUT, THAT'S IRRELEVANT. THAT'S ALREADY BEEN DETERMINED
15 WHAT THE CASE -- THE CASE BETWEEN ORNELAS, CASTRO, MUNOZ
16 AND MUNOZ WAS DECIDED BY A JURY, AS I UNDERSTAND IT.
17 THAT'S DONE AND THAT'S IRRELEVANT TO THIS, WHAT THE MERITS
18 OF THAT CASE WERE. IT'S IRRELEVANT HERE.

19 LET'S GO ON.

20 Q BY MR. ZERMAN: DID YOU REVIEW THE CORONER'S
21 REPORT, MR. GREENE?

22 A I BELIEVE SO.

23 Q THAT CASE YOU HANDLED --

24 THE COURT: AGAIN, ALL THAT HAS BEEN DECIDED. THAT
25 WAS THAT CASE. THE ISSUE HERE IS REPRESENTING MUNOZ ALONG
26 WITH THESE 2 PLAINTIFFS, AND I'M TELLING YOU AGAIN WE'RE
27 GOING TO STAY ON THAT LONE ISSUE AS FAR AS MR. GREENE IS
28 CONCERNED.

1 NOW, IF YOU HAVE ANY MORE QUESTIONS TO HIM
2 ALONG THOSE LINES, GET TO THEM. OTHERWISE LET'S LET HIM
3 GO ABOUT HIS BUSINESS.

4 Q BY MR. ZERMAN: ISN'T IT TRUE, MR. GREENE,
5 YOU DIDN'T THINK IT WAS NECESSARY TO GET THE CLIENT'S
6 WRITTEN CONSENT WAIVING THE CONFLICT?

7 A YES.

8 Q WHAT DO YOU BASE THAT ON?

9 A BECAUSE I DIDN'T THINK THERE WAS A CONFLICT
10 OF INTEREST. I THOUGHT IT WAS ABSOLUTELY ABSURD TO TURN
11 AROUND AND TRY TO SUE OUR OWN DRIVER WHEN WE WOULD
12 BASICALLY BE THEREFORE MAKING THE CASE FOR THE FORD MOTOR
13 COMPANY AGAINST THE INTEREST OF OUR CLIENTS. AND, ABOVE
14 ALL, IT WAS UNCOLLECTIBLE EVEN IF THERE WAS EVENTUALLY
15 SOME KIND OF A RECOVERY THEORETICALLY AGAINST VENTURA.

16 Q WASN'T IT TRUE YOU WERE WRONG?

17 A NO. I WASN'T WRONG.

18 Q ISN'T IT TRUE YOU DIDN'T GET ANY RECOVERY FOR
19 YOUR CLIENTS?

20 A THAT'S TRUE.

21 Q ISN'T IT TRUE YOU DIDN'T DO ANY RESEARCH
22 REGARDING WHETHER OR NOT IT WAS NECESSARY TO DO -- TO
23 OBTAIN A WAIVER OF WRITTEN CONSENT?

24 A YOU SAY RESEARCH. WHAT DO YOU MEAN RESEARCH?
25 WE KNEW VENTURA HAD NO ASSETS. WE KNEW THE
26 FORD MOTOR COMPANY WASN'T GOING TO CONSENT, THE VERY THING
27 AT THE HEART OF DESTROYING THE CASE ON OUR OTHER CLIENTS.
28 IF WE CONTEND HE WAS NEGLIGENT AND, THEREFORE, CAUSED

1 INJURY TO OUR -- TO FOLKS IN OUR PARTICULAR VEHICLE. WHY
2 WOULD WE MAKE THAT CONTENTION?

3 Q THE QUESTION WAS DID YOU DO ANY RESEARCH?
4 DID YOU LOOK AT ANY LEGAL BOOKS?

5 A NO, I DIDN'T LOOK AT ANY BOOKS. I DIDN'T
6 HAVE TO FOR THAT.

7 Q WHY DIDN'T YOU HAVE TO?

8 A BECAUSE I KNOW WHAT THE FACTS WERE AND HAVING
9 TRIED A NUMBER OF THESE CASES IT WAS MY JUDGMENT AND THE
10 JUDGMENT OF EVERYONE IN OUR FIRM THAT WAS THE WAY TO
11 PROCEED.

12 Q ANYONE IN YOUR FIRM A SPECIALIST IN LEGAL
13 MALPRACTICE?

14 A NO.

15 Q IS ANYONE IN YOUR FIRM A SPECIALIST IN
16 CONFLICT OF INTEREST?

17 A NO. I WOULDN'T CALL IT THAT. WE KNOW WHAT
18 THE LAW IS, THOUGH.

19 Q WHAT IS THE DEFINITIVE LAW AS TO WHETHER OR
20 NOT THERE WAS --

21 THE COURT: I HAVE ASKED YOU NOT TO ASK HIM
22 QUESTIONS LIKE THAT. NOW, DON'T ASK SUCH A QUESTION
23 AGAIN.

24 Q BY MR. ZERMAN: ISN'T IT TRUE THAT THE JURY
25 IN CASE NUMBER ONE WAS CONFUSED OVER THE STATUS
26 DISTINCTION BETWEEN THE PLAINTIFFS AND THE DEFENDANTS?

27 THE COURT: THAT'S IRRELEVANT AND ALSO CALLS FOR
28 SOME KIND OF CONCLUSION BY THE WITNESS.

1 DO YOU HAVE A QUESTION REGARDING HIM
2 REPRESENTING THE DRIVER AS WELL AS THE PASSENGERS? DO YOU
3 HAVE ANOTHER QUESTION ALONG THOSE LINES?

4 MR. ZERMAN: IF I MIGHT HAVE A MOMENT, YOUR HONOR.

5
6 (PAUSE IN THE PROCEEDINGS.)
7

8 THE COURT: THAT'S WHAT YOUR NEXT QUESTION MUST BE
9 OR ELSE YOU'RE THROUGH WITH THIS WITNESS.

10 MR. ZERMAN: WOULD YOU LIKE TO ASK IT FOR ME, YOUR
11 HONOR?

12 THE COURT: DON'T GET SMART WITH ME, YOUNG MAN.
13 DON'T DO THAT.

14 MR. ZERMAN: I APOLOGIZE.

15 THE COURT: THAT'S NOT PROFESSIONAL, AND IT'S ALSO
16 DANGEROUS.

17 Q BY MR. ZERMAN: ISN'T IT TRUE IN REPRESENTING
18 MARIA ORNELAS AND FABIOLA CASTRO IN CASE 2 ALONG WITH
19 VENTURA MUNOZ, I'M REFERRING TO MR. BELLI'S OFFICE, AND
20 THEM ALSO REPRESENTING SAME PARTIES IN THE APPEAL AGAINST
21 FORD MOTOR COMPANY AT THE SAME TIME YOUR OFFICE BELIEVED
22 THERE WAS A CONFLICT OF INTEREST.

23 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCY.

24 THE COURT: I'M NOT SURE I UNDERSTAND THE QUESTION.
25 IT STARTED OUT ONE WAY AND I THINK SKEWED SOMEWHERE ELSE.

26 MR. ZERMAN: I WILL REPHRASE, YOUR HONOR.

27 THE COURT: YOU'RE ASKING HIM HIS OPINION OF
28 WHETHER MR. BELLI REPRESENTED A CONFLICT OF INTEREST ALSO?

1 MR. ZERMAN: I WILL REPHRASE THE QUESTION, YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. WELL LET'S SEE WHAT IT
4 SAYS.

5 Q BY MR. ZERMAN: ISN'T IT TRUE THAT AFTER THE
6 VERDICT IN CASE NUMBER 1 AGAINST FORD MR. BELLI'S LAW FIRM
7 SUBSTITUTED IN AND REPRESENTED THE SAME PLAINTIFFS, MARIA
8 ORNELAS, FABIOLA CASTRO, VENTURA MUNOZ AND JOSE MUNOZ?

9 A I BELIEVE SO.

10 Q AND ISN'T IT TRUE AT THE SAME TIME THEY WERE
11 SUING YOU FOR NEGLIGENCE, LEGAL MALPRACTICE?

12 A THERE WAS A LAWSUIT FILED AGAINST US FOR
13 THAT.

14 Q AND ISN'T IT TRUE AT THAT TIME YOUR LAW FIRM
15 SENT A LETTER TO MR. BELLI'S LAW OFFICE ADVISING OF A
16 CONFLICT OF INTEREST?

17 A I DON'T RECALL. I DON'T HAVE THE RECORDS.

18 MR. ZERMAN: MAY I HAVE A MOMENT, YOUR HONOR?

19 THE COURT: YES.

20 Q BY MR. ZERMAN: I WOULD LIKE TO MARK FOR
21 INTRODUCTION PLAINTIFF'S ^ NUMBER 1, A JANUARY 12, 1983
22 LETTER TO PAUL MONZIONE ON THE LETTERHEAD OF GREENE,
23 O'RILEY, AGNEW AND BROILLET AUTHORED BY CHARLES B.
24 O'RILEY.

25 THIS WAS EXHIBIT 8 TO YOUR DEPOSITION, MR.
26 GREENE. SHOW YOU THE ORIGINAL.

27 MAY I APPROACH THE WITNESS, YOUR HONOR?

28 THE COURT: YES.

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THE WITNESS: IT'S 5 PAGES.

IS THERE ANYTHING IN SPECIFIC YOU WOULD LIKE
ME TO LOOK AT, OR THE WHOLE THING, OR WHAT?

Q BY MR. ZERMAN: WELL, I WILL ASK YOU SOME
QUESTIONS, FIRST OF ALL.

ISN'T IT TRUE WHEN THIS LETTER WAS WRITTEN
MR. BELLI'S FIRM WAS HANDLING THAT APPEAL OF CASE NUMBER
1?

A EXCUSE ME JUST A MOMENT.

Q IF YOU READ THE FIRST PARAGRAPH?

A WELL, THE FIRST PARAGRAPH SAYS IT CONFIRMS
OUR TELEPHONE CONVERSATION OF LAST FRIDAY WHERE YOU
REQUESTED THIS OFFICE PROVIDE YOU WITH ITS THEORIES ON THE
APPEAL.

IT DOESN'T SAY SPECIFICALLY I ASSUME THAT THE
BELLI OFFICE AT THAT POINT WAS NOW REPRESENTING THE
PLAINTIFFS.

Q NOW, ISN'T IT TRUE THAT MR. BELLI
UNYIELDINGLY INSISTED ON TAKING YOUR DEPOSITION WHILE THE
APPEAL WAS PENDING IN CASE 1?

MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

THE COURT: SUSTAINED.

LET ME SEE THIS AND LET'S SEE HOW FAR WE'RE
GOING TO GO WITH THIS.

(PAUSE IN THE PROCEEDINGS.)

THE COURT: ALL RIGHT. THE RECORD WILL REFLECT

1 THAT I'VE READ THIS JANUARY 12, 1983 LETTER WHICH IS
2 PLAINTIFF'S 1 FOR IDENTIFICATION. IN MY VIEW IT HAS
3 ABSOLUTELY NO RELEVANCE TO THE ISSUES IN THIS CASE AND
4 WE'RE NOT GOING TO GO INTO IT ANY FURTHER.

5 Q BY MR. ZERMAN: MR. GREENE, ISN'T IT TRUE YOU
6 EMPLOYED A ROBERT SOLNICK IN YOUR OFFICE?

7 A NO. HE WASN'T EMPLOYED. HE WAS AN
8 INDEPENDENT CONTRACTOR WHO WAS A LAW PROFESSOR AT, I
9 BELIEVE, LOYOLA WHO ON SOME OCCASION DID SOME TEMPORARY
10 WORK FOR US, BUT HE WAS NOT AN EMPLOYEE.

11 Q WAS HE OF COUNSEL TO YOUR FIRM?

12 A I DON'T BELIEVE SO, BUT HE WAS SOMEONE WHO
13 WORKED FOR THE FIRM CERTAIN CASES.

14 Q ISN'T IT TRUE HE APPEARED ON YOUR LETTERHEAD
15 OR DID AS OF JANUARY 1, 1983?

16 A I THINK HE DID FOR A PERIOD OF TIME.

17 Q ISN'T IT TRUE YOUR OFFICE EMPLOYED HIM TO
18 PREPARE OR TO BEGIN TO PREPARE THE APPEAL OF CASE NUMBER
19 1?

20 A YOU USE THE TERM "EMPLOY". THAT'S THE ONLY
21 PROBLEM I HAVE. WE RETAINED HIM. HE WORKED WITH US. I
22 THINK THAT WOULD BE CLOSER TO THE MARK.

23 WHEN I SAY HE WASN'T EMPLOYED, HE WAS NEVER
24 SOMEONE WE TOOK WITHHOLDING PAY OUT OF AND SOCIAL SECURITY
25 AND ALL OF THAT BUREAUCRATIC RED TAPE ORDINARILY YOU DO
26 WITH EMPLOYEES.

27 Q OKAY. NONETHELESS, YOU SECURED HIS SERVICES?

28 A I THINK SO.

1 Q RETAINED HIM TO PREPARE THE APPEAL, THAT IS
2 CORRECT?

3 A UH-HUH.

4 Q AND ISN'T IT TRUE THAT HE RESPONDED TO MR.
5 MONZIONE'S REQUEST FOR SOME THEORIES ON THE APPEAL.

6 MR. MC LEAN: OBJECTION, YOUR HONOR. RELEVANCE.

7 THE COURT: SUSTAINED.

8 Q BY MR. ZERMAN: IN THE HANDLING OF CASE
9 NUMBER 1 ISN'T IT TRUE THAT MR. MUNOZ WAS GROUPED WITH THE
10 OTHER PLAINTIFFS? HE WAS ON THE SAME SIDE AS THEM?

11 A YES.

12 Q AND ISN'T IT TRUE THAT THE ATTORNEY FOR FORD
13 ARGUED AT THE TRIAL MR. MUNOZ WAS THE SOLE PROXIMATE CAUSE
14 OF THE ACCIDENT AND ALL THE INJURIES?

15 A YES.

16 Q AND ISN'T IT TRUE THAT HE BASED THAT ARGUMENT
17 ON MR. MUNOZ' EXCESSIVE SPEED?

18 A HE CONTENDED THAT.

19 Q AND ISN'T IT TRUE THAT HE BASED THAT ON MR.
20 MUNOZ'S TAKING THE TURN ONTO THE OFF RAMP TOO SHARP?

21 A HE CONTENDED VENTURA TURNED ON TO THE ON RAMP
22 TOO QUICKLY, TOO SHARPLY.

23 Q ISN'T IT TRUE THAT THEY CONTENDED THAT THE
24 LOAD IN THE TRUCK WAS TOO GREAT FOR THE CAPABILITIES AND
25 THAT ENHANCED IT TO TURN OVER?

26 A I DON'T RECALL THEM MAKING THAT SPECIFIC
27 CONTENTION. I THINK THEY CONTENDED THAT PART OF THE
28 REASON WHY THE VEHICLE FLIPPED OVER WAS THE FACT THAT

1 THERE WERE SEVERAL PEOPLE IN THE FRONT, WHICH I THOUGHT
2 WAS A RIDICULOUS CONTENTION IN LIGHT OF THE FACT THEY
3 BUILT THE VEHICLE, THE PICKUP TRUCK, FOR ANY ONE OF A
4 NUMBER OF PEOPLE, WITH NO LIMITATION OR WARNING OR
5 DIRECTIONS TO THE PUBLIC.

6 Q AND ISN'T IT TRUE THE JURY DISAGREED WITH
7 YOU?

8 A WELL, THE JURY DID NOT COME BACK WITH A
9 VERDICT, BUT IT WAS NOT FOR THOSE REASONS.

10 Q WHAT REASONS WERE THEY?

11 A ARE YOU ASKING FOR MY OPINION OR WHAT?

12 MR. ZERMAN: AM I ALLOWED TO DO THAT, YOUR HONOR?

13 THE COURT: NO. WE HAVE BEEN THROUGH THIS BEFORE.
14 WHAT IS DONE IS DONE.

15 Q BY MR. ZERMAN: WASN'T IT TRUE THE JURY
16 OBVIOUSLY AGREED WITH MR. HUNT?

17 THE COURT: I THINK WE ARE THROUGH WITH MR. GREENE.

18 YOU MAY HAVE A SEAT.

19 DO YOU HAVE ANY CROSS-EXAMINATION?

20 MR. MC LEAN: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. THANK YOU, MR. GREENE.
22 YOU'RE EXCUSED.

23 THE WITNESS: YES, YOUR HONOR.

24 THE COURT: YOU MAY CALL ANOTHER WITNESS.

25 MR. ZERMAN: WE WOULD CALL MR. BELLI THROUGH THE
26 VIDEO TAPE DEPOSITION, YOUR HONOR.

27 THE COURT: FINE. YOU HAVE IT SET UP?

28 MR. ZERMAN: YES. IT WILL TAKE JUST A COUPLE OF

RECEIVED

91 AUG 14 P12:02

SUN THE COURT OF APPEAL
LOS ANGELES
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 3

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MARIA D. ORNELAS AND
FABIOLA CASTRO,

APPELLANTS,

vs.

R. BROWNE GREENE, et. al.,

RESPONDENTS

CIVIL NO. B052519

APPEAL FROM
THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HON. HENRY P. NELSON, JUDGE

APPELLANTS' BRIEF

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