>> THE NEXT CASE ON OUR DOCKET FOR THE DAY ARE AMENDMENTS TO THE RULES REGULATING THE FLORIDA BAR.
>> THEY'RE NOT HERE FOR THE AMENDMENTS CASE?
>> PLEASE EXIT QUICKLY AND QUIETLY.
>> I THINK WE'RE READY NOW.
>> I THOUGHT THEY WERE ALL HERE FOR ME.
>> I DID TOO.
>> NOT VERY INTERESTING.
>> MAY IT PLEASE THE COURT, I'M BARRY RICHARD, REPRESENTING THE FLORIDA BAR. IN RESPONSE TO THIS COURT'S INSTRUCTION, THE FLORIDA BAR REQUESTED ITS BOARD REVIEW COMMITTEE TO DO A COMPLETE REVIEW OF THE BAR'S ADVERTISING RULES AND TO RECOMMEND CHANGES TO THIS COURT.
THE BAR REVIEW COMMITTEE UNDER THE CHAIRMANSHIP OF CARL SITUATE, WHO IS WITH ME AT COUNSEL TABLE, MADE THE DETERMINATION THAT IT WOULD BE BEST TO BEGIN WITH A CLEAN SLATE.
THE RULES OVER MANY DECADES HAD BEEN CHANGED ON A HODGEPODGE FASHION AND THE RESULT WAS THAT THEY WERE UNCLEAR AND SOMETIMES HAD THE APPEARANCE OF BEING INCONSISTENT AND THE DEFENSE OF THE RULES IN FEDERAL COURTS WAS EXPENSIVE.
SO THE COMMITTEE DECIDED THAT IT WOULD BE BEST TO BEGIN FROM SCRATCH AND REVIEW EACH RULE OR EACH CONCEPT TO DETERMINE WHETHER OR NOT IT OUGHT TO BE RETAINED, WHETHER OR NOT THE LANGUAGE OUGHT TO BE CHANGED TO MAKE IT CLEARER AND MORE IN COMPLIANCE WITH FEDERAL JURISPRUDENCE AND THEN TO RESTRUCTURE THE RULES TO MAKE THEM MORE SIMPLE.
>> AND ON THIS, AS FAR AS APPROACH, DOES THE BAR -- THE BAR'S POSITION IS THAT T.V. ADS, NAMES ON BUSES, BILLBOARDS IS TO BE TREATED

THE SAME AS A (INAUDIBLE)
WEBSITE.
>> YES, YOUR HONOR, WITH SOME
SPECIFIC EXCEPTIONS.
>> I GUESS -- SEE, AND -- AND
I LOOK LIKE I'VE -- OVER THE
YEARS I THINK I'VE EXPRESSED
MY VIEW ABOUT T.V.
ADVERTISING, ADVERTISING AND
BUS -- WELL, I MAY NOT HAVE
MENTIONED BUSES, BUT JUST
SEEMS THAT ATTORNEYS'
WEBSITES, ESPECIALLY, YOU
KNOW, THE FACT THAT THIS IS A
NEW ERA, IS JUST IN A
DIFFERENT CATEGORY THAN --
FROM A POINT OF VIEW OF THE
HARM THAT CAN OCCUR THAN THE
KIND OF TELEVISION ADS THAT WE
SEE FAIRLY PERVASIVELY AROUND
THE STATE.
FROM A VERY SMALL GROUP OF
ATTORNEYS.

>> I UNDERSTAND THAT, YOUR
HONOR, AND WE -- THE COMMITTEE
WAS COGNIZANT OF THAT AND
ATTEMPTED TO DEAL WITH IT.
BUT TO UNDERSTAND HOW THEY
DEALT WITH IT, WE HAVE TO
BEGIN WITH A CORE PREMISE,
WHICH IS THAT THE UNITED
STATES SUPREME COURT OVER THE
PAST 50 YEARS HAS GIVEN US A
VERY CLEAR SET OF GUIDELINES
AS TO WHAT A STATE CAN AND
CANNOT DO WHEN IT COMES TO
REGULATING BAR ADVERTISING.
SOME OF THOSE GUIDELINES ARE
NOT PARTICULARLY PALATABLE TO
MANY OF THE BAR ASSOCIATIONS
OR SUPREME COURTS IN THE
UNITED STATES, BUT
NEVERTHELESS THOSE ARE THE
RULES AND THE COURT HAS
ADMONISHED AND STRUCK DOWN
RULES TIME AND AGAIN --
>> NO.
AND I UNDERSTAND THAT.
WHAT I DON'T UNDERSTAND IS WHY
THE WEB -- WHY DO WE NEED TO
PUT WEBSITES IN THE SAME
CATEGORY AS -- THAT THEY'RE
ADVERTISING.
AND I KNOW IT'S NOT REALLY --
MARKETING VERSUS ADVERTISING.
I THINK THERE IS A -- TO ME

THERE IS A DISTINCTION IN THE
WAY THE PUBLIC SEES IT.
SO THAT'S -- IT'S NOT THAT I'M
SUGGESTING MORE RESTRICTIONS
-- ON WEBSITES.
I'M QUESTIONING THAT WHY DO WE
NEED IT OTHER THAN THE FALSE
-- OBVIOUSLY NO ONE WANTS TO
HAVE FALSE AND MISLEADING
STATEMENTS, BUT OTHER THAN
THAT, WHY DO WE NEED
REGULATION OF THE WEBSITE?
>> I APPRECIATE THAT'S WHAT
YOU'RE SAYING.
AND HERE'S THE REASON.
THE REASON WE BEGAN WITH THAT
IS BECAUSE THE CORE LESSON
FROM THE UNITED STATES SUPREME
COURT IS THE ONLY THINGS THAT
WE CAN REGULATE ARE DECEPTION,
FACTUALLY DECEPTIVE STATEMENTS
WHICH CAN BE PROHIBITED
BECAUSE THEY HAVE NO
PROTECTION UNDER THE U.S.
CONSTITUTION AND WE CAN
REGULATE BUT NOT PROCEED
POTENTIALLY MISLEADING
STATEMENTS.
WE CAN PROHIBIT UNDULY MA --
ADVERTISING.
THIS WAS THE BOARD'S
CONSIDERATION.
OR ON A WEBSITE.
>> DID THE BOARD FIND, THOUGH,
ANY INDICATION LOOKING AT ALL
THE WEBSITES, ALL THE LARGE
FIRMS, SMALL FIRMS, PROBABLY
EVERY FIRM HAS ONE THESE DAYS,
I WOULD SUSPECT, ANY
INDICATION THAT THERE WAS
EXAMPLES OF FALSE AND
MISLEADING STATEMENTS OR
DECEPTIONS?

>> THE ANSWER TO THAT QUESTION
IS THE BAR DOES NOT HAVE AN
ACCUMULATED RECORD OF THAT
BECAUSE THE BAR HAS BEEN
OPERATING UNDER A RULE IN
WHICH IT EFFECTIVELY DID NOT
REVIEW WEBSITES AS IT DOES
OTHER ADVERTISING.
BUT --
>> HAVE THERE BEEN COMPLAINTS
ABOUT WEBSITES?
>> THERE ARE COMPLAINTS FROM
TIME TO TIME, BUT THE BAR WAS

-- THE COMMITTEE WAS FULLY
COGNIZANT OF YOUR CONCERN, AND
THIS IS WHAT THEY DID, WHICH
THE COMMITTEE CONSIDERED TO BE
A FAIR BALANCE.
THEY SAID WE ARE NOT GOING TO
SAY THAT YOU CAN BE DECEPTIVE
OR UNDULY MANIPULATIVE ON A
WEBSITE, BUT WE RECOGNIZE THE
DISTINCTION, AND SO HERE'S
WHAT WE'RE GOING TO DO TO HAVE
A FAIR BALANCE.
WE ARE NOT GOING TO REQUIRE
THAT WEBSITE ADVERTISING OR
WEBSITES BE FILED WITH THE
BAR.
FIRMS CAN FILE PORTIONS OF
THEM.
THEY DON'T PERMIT THEM TO FILE
THE ENTIRE WEBSITE BECAUSE
IT'S HUNDREDS OF THOUSANDS OF
--
>> I JUST WANT TO STOP YOU ON
WEBSITE ADVERTISING.
THERE'S A DIFFERENCE, THAT
THERE'S SUCH A THING AS
INTERNET ADVERTISING, WHERE
YOU CAN PUT AN AD ON SOMEBODY
ELSE'S WEBSITE, I GUESS, OR
WHATEVER THAT IS.
WE'RE NOT TALKING -- WE'RE
JUST TALKING ABOUT --
>> I UNDERSTAND.
>> WEBSITES.
SO YOU CONSIDER A WEB -- I
MEAN, THE BAR IS CONSIDERING
THE WEBSITE OF A LAW FIRM
ADVERTISING.

>> YES.
IT -- THE TERM ADVERTISING
UNDER THESE NEW RULES APPLIES
TO ALL SOLICITATIONS FOR LEGAL
BUSINESS.
SO THAT INCLUDES THE WEBSITE.
BUT THERE'S A SECOND PART TO
WHAT THE BAR DID IN ORDER TO
BALANCE THIS.
IN ADDITION TO NOT REQUIRING
THAT THE WEBSITES BE FILED, SO
THAT THE BAR WOULD ONLY BECOME
AWARE OF THIS IF IT RECEIVED A
COMPLAINT OR IF IT OTHERWISE
BECAME AWARE OF A PROBLEM, IT
ALSO HAS APPLIED TO THOSE
ASPECTS OF THE WEBSITES IN
WHICH IT WOULD BE SIGNIFICANT

AND THAT WORRIED THE LAW
FIRMS, WHAT WE CALL THE
TAKE-DOWN RULE.
SO A LAW FIRM OR A LAWYER
CANNOT BE DISCIPLINED FOR
CERTAIN ASPECTS OF THE
WEBSITE, IN PARTICULAR UNDER
4-7.4 AND 5, WHICH IS
POTENTIALLY MISLEADING
ADVERTISING AND UNDULY OR
MANIPULATIVE UNTIL IT HAS BEEN
NOTIFIED BY THE BAR THAT THE
BAR CONSIDERS IT TO BE A
NONCOMPLIANCE AND IT FAILS TO
TAKE IT DOWN WITHIN A GIVEN
NUMBER OF DAYS.
NOBODY CAN BE DISCIPLINED
UNTIL THEY RECEIVE NOTICE,
THEY HAVE THE FULL OPPORTUNITY
FOR APPEAL AND THEY FAIL TO
TAKE IT DOWN ASSUMING THAT
THAT DECISION BY THE BAR IS
NOT REVERSED.
ANYTHING ELSE INVOLVES
DECEPTION.
AND THEREFORE THE COMMITTEE
FELT THAT IN THE CASE OF
OUTRIGHT DECEPTION, THERE WAS
NO REASON TO APPLY THE
TAKE-DOWN RULE.
SO THE CONCERN OVER FIRMS THAT
HAVE SIGNIFICANT WEBSITE
ADVERTISING REALLY IS NOT A
CONCERN THAT'S WELL-FOUNDED
BECAUSE THEY'RE NOT SUBJECT TO
DISCIPLINE UNLESS THE BAR
ADVISES THEM THAT IT CONSIDERS
SOME ASPECT OF IT TO BE IN
VIOLATION AND GIVES THEM AN
OPPORTUNITY TO CHANGE IT OR TO
APPEAL.
>> NOW, IN CHANGING THE RULES
TO MAKE IT SORT OF ONE SIZE
FITS ALL -- AND AS I
UNDERSTAND IT, ONE OF THE
REASONS THE BAR NEVER REQUIRED
THE FILING OF WEBSITES IS
THERE IS JUST NOT THE MANPOWER
OR PERSONPOWER TO DO THAT.
>> THAT'S RIGHT.
>> BUT WHAT IS NOW GOING TO BE
ALLOWED IN TELEVISION
ADVERTISING THAT WASN'T
ALLOWED BEFORE?

>> THE ONLY THING THAT WAS NOT
ALLOWED BEFORE THAT WILL BE

ALLOWED NOW, THE OLD RULE
PROHIBITED ANY BACKGROUND
SOUND, AND IT PROHIBITED IN
VERY VAGUE TERMS CERTAIN TYPES
OF DRAMA.
UNDER THE UNITED STATES
SUPREME COURT WE CANNOT DO
THAT.
THE SUPREME COURT HAS SAID THE
DRAMA, PICTURES, SOUNDS, THOSE
THINGS CAN BE AFFECTED AND
COMMUNICATED TO THE PUBLIC,
WHAT THE LAWYER DOES IN
GAINING ATTENTION.

>> YES.
THE TERM "ADVERTISING" UNDER
THESE NEW RULES APPLIED TO ALL
SOLICITATIONS FOR LEGAL
BUSINESS.
SO THAT INCLUDES A WEB SITE, BUT
THERE'S A SECOND PART TO WHAT
THE BAR DID IN ORDER TO BALANCE
THIS.
IN ADDITION TO NOT REQUIRING
THAT THE WEB SITES BE FILED SO
THAT THE BAR WOULD ONLY BECOME
AWARE OF THIS IF IT RECEIVED A
COMPLAINT OR IF IT OTHERWISE
BECAME AWARE OF A PROBLEM.
IT ALSO HAS APPLIED TO THOSE
ASPECTS OF THE WEB SITES IN
WHICH IT WOULD BE SIGNIFICANT
AND THAT WORRIED THE LAW FIRMS,
WHAT WE CALL THE TAKEDOWN RULE.
SO A LAW FIRM OR A LAWYER COULD
NOT BE DISCIPLINED UNDER 4-7.4
AND 4-7.5 WHICH IS POTENTIALLY
MISLEADING ADVERTISING AND
UNDULY OR MANIPULATIVE UNTIL IT
HAS BEEN NOTIFIED BY THE BAR
THAT THE BAR CONSIDERS IT TO BE
IN NONCOMPLIANCE, AND IT FAILS
TO TAKE IT DOWN WITHIN A GIVEN
NUMBER OF DAYS.
SO NOBODY CAN BE DISCIPLINED FOR
ANYTHING ON A WEB SITE UNTIL
THEY RECEIVE NOTICE THEY HAVE
THE FULL OPPORTUNITY FOR APPEAL
THAT'S PROVIDED UNDER THE RULES,
AND THEY FAIL TO TAKE IT DOWN
ASSUMING THAT THAT DECISION BY
THE BAR IS NOT REVERSED.
ANYTHING ELSE INVOLVES
DECEPTION.
AND, THEREFORE, THE COMMITTEE

DECIDED THERE WAS NO REASON TO
APPLY THE TAKEDOWN RULE.
SO THE FIRMS THAT HAD
SIGNIFICANT WEB SITE ADVERTISING
REALLY IS NOT A CONCERN THAT'S
WELL FOUNDED BECAUSE THEY'RE NOT
SUBJECT TO DISCIPLINE UNLESS THE
BAR ADVISES THEM THAT IT
CONSIDERS SOME ASPECT TO BE IN
VIOLATION, IT GIVES THEM AN
OPPORTUNITY TO CHANGE IT OR
APPEAL.
>> NOW, IN CHANGING THE RULES TO
MAKE IT ONE SIZE FITS ALL, AND
AS I UNDERSTAND IT, ONE OF THE
REASONS THE BAR NEVER REQUIRED
THE FILING OF WEB SITES IS IT
JUST HAS NOT THE MANPOWER OR
PERSON POWER TO DO THAT.
>> THAT'S CORRECT.
>> SO, BUT WHAT IS NOW GOING TO
BE ALLOWED IN TELEVISION
ADVERTISING THAT WASN'T ALLOWED
BEFORE?
>> THE ONLY THING THAT WAS NOT
ALLOWED BEFORE THAT WOULD BE
ALLOWED NOW, THE OLD RULE
PROHIBITED ANY BACKGROUND SOUND,
AND IT PROHIBITED IN VERY VAGUE
TERMS CERTAIN TYPES OF
DRAMATIZATIONS.
UNDER THE UNITED STATES SUPREME
COURT JURISPRUDENCE, WE CANNOT
DO THAT.
THE UNITED STATES SUPREME COURT
HAS SAID THAT DRAMATIZATIONS,
PICTURES, SOUNDS, THOSE THINGS
CAN BE EFFECTIVE IN
COMMUNICATING TO THE PUBLIC,
WHAT THE LAWYER DOES IN GAINING
ATTENTION.
AND THE SUPREME COURT HAS TOLD
US THAT THE MERE FACT AN AD IS
EFFECTIVE, BECAUSE IT USES THE
DEVICE TO GET ATTENTION, IS NOT
SUFFICIENT TO REMOVE IT.
>> GO AHEAD.
I'M JUST SHAKING MY HEAD
THINKING ABOUT MUSIC AND ALL OF
THOSE OTHER THINGS.
>> WELL, WHAT WE'VE DONE IS WE
HAVE SAID THAT YOU CANNOT
UTILIZE THOSE THINGS IN A MANNER
WHICH IS UNDULY DECEPTIVE, AND I
UNDERSTAND THAT SOME OF THE
COMMENTS THAT WE'VE RECEIVED SAY
THAT THAT'S TOO VAGUE.

AND IN THE HARRELL CASE THE COURT FOUND THAT THE TERM "MANIPULATIVE," WHICH IS ALL THAT WAS IN THE RULE, WAS TOO VAGUE.
IN ORDER TO OVERCOME THOSE PROBLEMS, WHAT THE COMMITTEE IS SUGGESTING AND WHAT THE PROPOSED RULES PROVIDE IS THAT IT FOLLOWS THE STRUCTURE THAT ALL OF THE RULES NOW FOLLOW.
IT BEGINS BY A STATEMENT OF THE CONDUCT THAT IS REGULATED, THE RULE ITSELF.
THAT'S FOLLOWED BY AN, A NONEXCLUSIVE LIST OF SPECIFIC EXAMPLES OF CONDUCT THAT IS PROHIBITED OR REGULATED BY THE RULE, AND THIS LIST IN EACH INSTANCE IS BASED UPON THE BUYER'S EXPERIENCE WITH THOSE ASPECTS, THOSE TYPES OF CONDUCT THAT HAVE MOST FREQUENTLY COME TO ITS ATTENTION EITHER BECAUSE OF DISCIPLINARY PROBLEMS OR BECAUSE OF REQUESTS FOR ADVISORY OPINIONS.
AND THEN, THIRD, THERE FOLLOWS COMMENTARY TO GIVE ADDITIONAL GUIDANCE.
SO EACH OF THE RULES FOLLOW THAT PATTERN, AND THEY ARE DESIGNED TO GIVE THE ADVERTISING LAWYER THE BEST INFORMATION, THE BEST GUIDANCE AND NOT ONLY ADVERTISING LAWYERS, BUT THE ADVERTISING COMMITTEE WHICH MUST INTERPRET THESE RULES BECAUSE ONE OF THE PROBLEMS WE HAD IN HARRELL IS THE COURT SAID THEY WERE NOT INTERPRETED, THE ADVISORY OPINIONS THEMSELVES WERE NOT CONSISTENT OVER THE YEARS.
SO THEY ARE DESIGNED TO GIVE THE GREATEST GUIDANCE THAT CAN BE GIVEN WITHOUT TYING THE HANDS OF THE BAR TO ANTICIPATE FUTURE TYPES OF ADVERTISING THAT CAN'T BE ANTICIPATED OR PROVIDED FOR SPECIFICALLY IN EVERY ONE OF THE RULES.
>> AT ONE POINT IT APPEARS TO ME THERE WERE FLORIDA LAWYERS THAT WERE CONCERNED ABOUT ADVERTISEMENTS IN THE STATE, LAWYERS WHO WERE OUT OF STATE

AND THAT TO SOME EXTENT THE
IN-STATE LAWYERS' HANDS WERE
TIED, AND DOES THESE -- DO THESE
RULES HELP AT ALL TO ADDRESS
THAT KIND OF SITUATION?
>> THEY DO, YOUR HONOR.
LET ME ADDRESS THE CONCERNS THAT
THOSE FIRMS VOICED.
ONE OF THEM WAS THE BELIEF THAT
THE -- FIRST, LET ME TELL YOU
WHAT THE RULE DOES.
THE RULE PROVIDES AT THE
BEGINNING, 4-7.1A PROVIDES THAT
THESE RULES ARE APPLICABLE TO
FLORIDA-LICENSED LAWYERS AND TO
OUT-OF-STATE LAWYERS WHO
ADVERTISE FOR LEGAL BUSINESS TO
BE CONDUCTED IN THE STATE OF
FLORIDA OR THAT DIRECT THE
ADVERTISING AT FLORIDA
RESIDENTS.
NOW, I NEED TO POINT OUT THERE
IS A POTENTIAL PROBLEM WITH THAT
LAST PHRASE WHICH I TAKE
RESPONSIBILITY FOR BECAUSE I
WROTE IT.
WE RECOGNIZE THAT UNDER THE
UNITED STATES CONSTITUTION THE
STATE OF FLORIDA CANNOT REGULATE
CONDUCT IN OTHER STATES EVEN IF
IT INVOLVES FLORIDA RESIDENTS.
AND THAT'S NOT WHAT WAS
INTENDED.
THIS, BY THE WAY, IS CARRIED
FORWARD FROM THE CURRENT RULE.
WHAT IT'S INTENDED TO SAY AND
WHAT THE BAR HAS ALWAYS
INTERPRETED IT TO SAY IS THAT
ADVERTISING DIRECTED AT FLORIDA
RESIDENTS FOR THE PURPOSE OF
PERFORMING LEGAL SERVICES WITHIN
THE STATE OF FLORIDA.
IT'S NOT INTENDED THAT THIS RULE
APPLY TO CONDUCT OUTSIDE THE
STATE OF FLORIDA WHETHER OR NOT
A FLORIDA RESIDENT IS INVOLVED.
ONE OF THE COMMENTS THAT WAS
MADE WAS THAT THIS RULE VIOLATES
THE DORMANT COMMERCE CLAUSE, THE
FEDERAL DORMANT COMMERCE CLAUSE
WHICH ESSENTIALLY SAYS THAT THE
STATE CANNOT DISCRIMINATE
AGAINST OUT-OF-STATE INTERESTS
WHICH THIS RULE DOES NOT BECAUSE
IT APPLIES EQUALLY TO IN-STATE
AND OUT-OF-STATE LAWYERS, SO IT
CLEARLY DOESN'T VIOLATE THE

DORMANT COMMERCE CLAUSE.
THERE WAS A CONCERN THAT BY
APPLYING THIS RULE TO
OUT-OF-STATE LAWYERS ON THE
INTERNET THAT THIS WOULD HAVE AN
ADVERSE IMPACT UPON LAW FIRMS
THAT ADVERTISE THAT ARE NATIONAL
IN SCOPE FOR MULTISTATE AND THAT
ADVERTISE ON THE INTERNET.
THE COMMITTEE BELIEVES THAT THIS
HAS BEEN, THIS PROBLEM HAS BEEN
MITIGATED BY THE TWO THINGS THAT
I MENTIONED EARLIER, THE FACT
THAT INTERNET SITES DO NOT HAVE
TO BE FILED AND THE TAKEDOWN
RULE.
SO THAT THE CONCERN -- AND BY
THE WAY, WE ALSO BELIEVE THAT
THE THINGS THAT ARE PROHIBITED
WHICH IS DECEPTION AND
INHERENTLY MISLEADING
ADVERTISEMENTS, ARE THE SAME
EFFECTIVELY IN ALL STATES.
THE CONCERN WAS THAT A BAR WOULD
NOT HAVE TO BE CONTINUALLY
CHANGING ITS WEB SITE AND WOULD
HAVE TO COMPLY WITH DIFFERENT
RULES IN DIFFERENT STATES.
WE DON'T BELIEVE THAT WOULD
HAPPEN.
THERE IS NO STATE THAT PERMITS
DECEPTION IN ADVERTISEMENT,
THERE IS NO STATE THAT PERMITS
INHERENTLY MISLEADING --
ANYTHING YOU CAN DO WITH
INHERENTLY MISLEADING, BY THE
WAY, IS REQUIRE THAT THERE BE A
DISCLAIMER THAT AVOIDS THE
INHERENTLY MISLEADING NATURE.
SO WE DON'T THINK THERE'S GOING
TO BE A PROBLEM WITH COMPLYING
IN DIFFERENT STATES.
AND IF THAT PROBLEM OCCURRED,
THE BAR WOULD DEAL WITH IT IN
ITS INTERPRETATION.
>> AS WE'RE DEALING THIS MORNING
IN THIS ENTIRE AREA, WE'RE
DEALING WITH PROHIBITIONS,
REGULATION, BUT IT'S ALWAYS OF
SOMETHING THAT IS MISLEADING OR
FALSE, SOMETHING THAT'S
UNTRUTHFUL.
I'M NOT OF THE VIEW THAT JUST
BECAUSE JUSTICE WELLS SAT ON
THIS COURT THAT IT'S MISLEADING
FOR HIM TO HAVE A BUSINESS CARD
THAT SAYS "RETIRED JUSTICE

CHARLES WELLS" OR ANY OTHER
JUDGE WHO HAS SERVED HONORABLY
IN THIS STATE FOR A NUMBER OF
YEARS.
I GUESS -- EVEN IF I ACCEPT THE
BAR'S VIEW THAT, WELL, THIS CAN
BE ABUSED AND IT CAN BE USED SO
THAT IT PRESENTS A PICTURE OF A
PERSON HAVING SPECIAL, SPECIAL
RELATIONSHIP WITH SOME JUDICIAL
BODY, BUT WHY ISN'T THE
SUGGESTION THAT THOSE RETIRED
JUDGES HAVE SUGGESTED THAT AS
LONG AS IT'S NOT USED FOR THAT
PURPOSE DOES NOT JUST ABSOLUTELY
PROHIBIT RETIRED JUDGES FROM SO
INDICATING?
AM I, AM I CLEAR IN MY QUESTION?
>> YES, I UNDERSTAND.
AND I NEED TO PRECEDE THIS BY
TELLING YOU THERE WAS NOT
UNANIMITY ON THIS ISSUE.
THERE ARE DIFFERENCES AMONG
MEMBERS OF THE COMMITTEE ITSELF,
MEMBERS OF THE BOARD OF
GOVERNORS AND AMONG MEMBERS OF
THE BAR AS TO THIS RULE.
AND IT IS PRESENTED TO THIS
COURT FOR THE COURT'S
CONSIDERATION.
WHAT THE BAR DID WAS IT DOESN'T
PROHIBIT ENTIRELY THE
COMMUNICATION OF THE INFORMATION
THAT AN INDIVIDUAL IS A FORMER
JUDGE.
WHAT IT PROHIBITS IS THE USE OF
THE TERM "JUDGE" OR "JUSTICE"
ALONG WITH THE NAME.
FOR EXAMPLE, ON A BRIEF OR ON A
LETTERHEAD.
BUT IT PERMITS A JUDGE IN ANY
KIND OF A BIOGRAPHICAL
PRESENTATION --
>> WELL, AGAIN, A BUSINESS CARD.
>> IT WOULD PROHIBIT IT ON THE
BUSINESS CARD --
>> RIGHT.
TO ME, IF WE ARE TRYING TO STOP
DECEPTION, I MEAN, THAT'S THE
ANTITHESIS, THAT'S STOPPING THE
TRUTH.
>> I THINK BECAUSE OF THE
DIFFERENCE OF OPINION WITHIN THE
BAR I CANNOT --
>> THAT'S TRUE?
I MEAN, I JUST CAN'T -- THIS IS
LIKE EITHER HE SAT HERE, OR HE

DIDN'T.
AND I SAT HERE WITH HIM FOR TEN YEARS.
I KNOW HE SAT HERE.
[LAUGHTER]
I CAN'T SEE HOW THERE CAN BE A DIFFERENCE OF OPINION AS TO WHETHER IT'S TRUE THAT -- AND I JUST USED JUSTICE WELLS BECAUSE IT CAME TO MIND, AND ANY OF THE RETIRED JUSTICES, HARDING OR ANY OF THEM, JUSTICE ANSTEAD WHO SAT THERE.
I JUST CAN'T -- IT'S BEYOND ME, AND I CAN'T ACCEPT EVEN MORE ARGUMENT THAT IT'S UNTRUTHFUL THAT THAT'S WHAT THEY DID.
>> WELL, IT IS NOT UNTRUTHFUL, OF COURSE.
>> OKAY.
AND IT'S NOT DECEPTIVE.
>> AND IT IS NOT DECEPTIVE, AND THAT'S NOT WHAT THE PURPOSE WAS OF THIS RULE --
>> BUT IT PROHIBITS IT?
>> WELL --
>> ISN'T THE SUGGESTION THAT IT IMPLIES SOMETHING INACCURATE?
IT NECESSARILY IMPLIES THAT THE RETIRED PUBLIC OFFICIAL -- THIS DOESN'T JUST APPLY TO JUDGES, IT APPLIES TO LEGISLATORS AND EXECUTIVE BRANCH OFFICIALS -- THAT THE RETIRED GOVERNMENT OFFICIAL HAS SOME SPECIAL INFLUENCE OR ENTREE TO THE COURTS, AND THAT'S THE RATIONALE BEHIND IT?
MY QUESTION ABOUT THAT IS, WHY IS THAT SO?
WHY DOESN'T IT -- WHY CAN'T IT BE SEEN AS SIMPLY IMPLYING THAT THEY'VE GOT EXPERIENCE?
THAT THEY WERE, THEY HAD THAT POSITION.
IF THE FORMER GOVERNOR OF FLORIDA WANTS TO HAVE HIS FACE ON A BILLBOARD AND SAY "FORMER GOVERNOR" THEN HIS NAME ASSOCIATED WITH A LAW FIRM, I DON'T UNDERSTAND WHY THAT IS INHERENTLY DECEPTIVE OR A BAD THING.
>> WELL, THIS COURT'S GOING TO HAVE A DIFFICULT TIME ARGUING WITH ME OVER THIS BECAUSE I CAN'T, I CAN'T DISPUTE WHAT

YOU'RE SAYING.
[LAUGHTER]
YOU HAVE CORRECTLY CHARACTERIZED THE CONCERN OF THOSE PEOPLE WHO FAVOR THIS RULE.
>> BUT IT COMES BACK TO, I MEAN, THAT THEN NECESSARILY SUGGESTS THAT WE BELIEVE THAT WE HAVE NOTHING BUT CORRUPT INSTITUTIONS.
THAT'S WHAT THAT'S SAYING, YOU KNOW, IF YOU PUT "JUDGE" OR "GOVERNOR" ON, THEN EVERY GOVERNMENTAL BODY IS CORRUPT BECAUSE THEY CAN BE INFLUENCED BY IMPROPER -- I JUST, IT'S LIKE -- IT'S JUST A, IT'S AN UN-AMERICAN VIEW THAT WE'RE, I MEAN --
>> MAYBE -- LET ME -- BECAUSE I THINK, AND I PROBABLY HAVE THE OPPOSITE VIEW ON THIS, THAT WHAT WE WERE -- WE DEALT WITH THIS IN THE CONTEXT OF HOW PLEADINGS ARE TO BE FILED, THAT AS I UNDERSTOOD IT IT'S JUST THAT THE TITLE WOULDN'T BE "FORMER JUSTICE MAJOR HARDING" HERE, THERE'S NOTHING THAT WOULD PROHIBIT EVEN ON THE CARD, YOU KNOW, IF YOU'RE BOARD CERTIFIED TO BE ABLE TO PUT ON "FORMER JUSTICE OF THE UNITED STATES SUPREME COURT."
SO IT'S JUST IN THE TITLE.
I DON'T KNOW IF ARTHUR ENGLAND STILL MAKES PEOPLE REFER TO HIM AS JUSTICE WHEN HE'S, OR WHETHER HE ANSWERS HIS PHONE "JUSTICE," BUT I THINK THAT HAD LED TO SOME CONCERNS THAT CAME TO US ABOUT NOT HAVING IT AS PART OF THEIR EXPERIENCE, BUT JUST PART OF THEIR TITLE.
SO DO YOU SEE THAT'S -- I MEAN, THAT'S WHAT I THOUGHT AS A DISTINCTION WHICH WOULD --
>> YOU'RE MAKING AN IMPORTANT DISTINCTION AND AN ACCURATE ONE.
AS A MATTER OF FACT, A NOTE WAS SENT TO ME TO MAKE THAT SAME POINT.
ON THE BUSINESS CARD OR ON THE LETTERHEAD, IT CAN SAY "CHARLES WELLS, FORMER SUPREME COURT JUSTICE."
IT CANNOT SAY "JUSTICE WELLS."

>> OKAY.
SO IT'S NOT BEEN PROHIBITED.
>> THAT'S CORRECT.
>> OKAY.
I WAS UNDER THE IMPRESSION THAT
IT WAS PROHIBITED.
>> NO.
IT JUST REQUIRES THAT IT SAY
"FORMER" AND THEN THE NAME OF
THE JUDGE.
>> WE DON'T EXPECT WHEN RAOUL
CANTERO APPEARS HERE THAT WE'RE
GOING TO REFER TO HIM AS JUSTICE
CANTERO, NOR DO WE WANT HIM TO
PUT ON HIS PLEADING, YOU KNOW,
"RAOUL CANTERO, ESQUIRE," AND I
THINK FROM MY POINT OF VIEW IT
IS -- THAT'S A CONCERN.
BUT, OBVIOUSLY, EVERYBODY WHO'S
A FORMER JUDGE OR JUSTICE
THEY'RE GOING TO, YOU KNOW, IF
THEY USE THAT IN THEIR
MARKETING, IT'S CERTAINLY A GOOD
THING.
>> CORRECT.
IT'S BEEN MY EXPERIENCE THAT
FORMER JUSTICES AND EVEN JUDGES
WHEN THEY APPEAR BEFORE COURTS
DO NOT USE IT.
AS A MATTER OF FACT, I REMEMBER
JUSTICE GRIMES SAYING TO ME ONCE
DON'T CALL ME JUDGE WHEN I'M IN
COURT, AND I SAID, I'M SORRY, I
CAN'T BREAK THAT HABIT.
SO, BUT -- AND THE REASON THEY
DO NOT DO IT IS NOT, I BELIEVE,
BECAUSE THEY THINK THEY HAVE ANY
EXTRA INFLUENCE OVER THIS JUDGE,
BECAUSE WE ALL KNOW THEY DO NOT.
THE CONCERN IS THE SAME ONE THAT
UNDERLINES THE RULE ON
DISQUALIFICATION OF A JUDGE
WHICH IS THE PERCEPTION OF THE
PUBLIC AND OF OPPOSING PARTIES,
OF THE FACT THAT THAT PERSON
MIGHT HAVE UNDUE INFLUENCE, AND
WE WANT --
>> MY QUESTION DIDN'T DEAL WITH
PLEADINGS AT ALL.
I WAS ASKING ABOUT BUSINESS
CARDS.
AND I DON'T KNOW HOW WE GOT INTO
PLEADINGS BECAUSE THAT'S NOT
WHAT I -- I WOULD NOT ENVISION
THAT'S CORRECT.
I DEALT WITH BUSINESS CARDS
ONLY.

>> RIGHT.
AND I COULD HAVE AVOIDED A LOT
OF TALK IF I HAD RECALLED THAT
WE ALLOW IT AS LONG AS IT SAYS
"FORMER."
>> WHAT EXACTLY DOES THE
PROHIBITION IN YOUR PROPOSED
RULE SAY?
>> IT SAYS THAT A JUDGE --
>> DOES IT SAY A JUDICIAL,
LEGISLATIVE OR EXECUTIVE BRANCH
TITLE WITH OR WITHOUT MODIFIERS
THAT MAY NOT -- SOME THINGS
EXCLUDED.
JUDICIAL, LEGISLATIVE OR
EXECUTIVE BRANCH TITLE WITH OR
WITHOUT MODIFIERS IN REFERENCE
TO A CURRENT, FORMER OR RETIRED
OFFICIAL CURRENTLY ENGAGED IN
THE PRACTICE OF LAW?
TITLE IS WHAT WE'RE TALKING
ABOUT?
>> IT IS ONLY THE TITLE.
>> WELL, JUDGE IS A TITLE.
WHETHER IT COMES BEFORE OR
AFTER, IT SEEMS LIKE TO ME.
I DON'T UNDERSTAND -- OR MAYBE I
MISUNDERSTOOD -- MAYBE I DON'T
UNDERSTAND WHAT THE WORD "TITLE"
MEANS, BUT THAT SEEMS TO ME
REGARDLESS OF ITS POSITION IN
THE SENTENCE, IT SEEMS LIKE TO
ME THAT THAT COULD BE CONSTRUED
TO STATE REPRESENTATIVE,
GOVERNOR, THAT THE FACT THAT IT
COMES AFTER THE NAME MEANS IT'S
NOT A TITLE?
IS THAT THE POSITION YOU'RE
TAKING?
I DON'T MEAN THAT TO BE AN --
I'M JUST TRYING TO UNDERSTAND
THIS.
>> THE INTENT OF THE RULE WHICH,
OF COURSE, IS SUBJECT-MODIFIED
LANGUAGE --
>> WELL, LET ME SAY THIS.
I REALIZE THAT THIS IS -- I
THINK WE SENT THIS TO YOU.
SO --
>> YES, YOU DID.
>> OKAY.
I JUST WANTED TO BE CLEAR.
>> THANK YOU.
[LAUGHTER]
>> THERE MAY BE SOME SECOND
THOUGHTS HERE ABOUT WHAT WE HAVE
SUGGESTED OR AT LEAST SOME OF US

MAY HAVE SOME SECOND THOUGHTS
ABOUT WHAT THE COURT HAS
PREVIOUSLY SUGGESTED, SO I WANT
TO MAKE THAT CLEAR.
I'M SORRY.
>> THIS, AS YOU KNOW, WAS A
SUPPLEMENTAL PROPOSAL BASED UPON
A REQUEST FROM THIS COURT.
WHAT THE COMMITTEE WAS
ATTEMPTING TO DO WAS TO VOCALIZE
THE CONCERN OF THIS COURT
WITHOUT UNDULY RESTRICTING THE
ABILITY OF FORMER JUDGES AND
JUSTICES TO ADVISE THE PUBLIC OF
THAT BACKGROUND.
>> IT SEEMS TO ME THAT WHAT IT
BREAKS DOWN TO IS YOU CANNOT SAY
"JUSTICE CHARLES WELLS," BUT YOU
CAN SAY "CHARLES WELLS, FORMER
JUSTICE OF THE FLORIDA SUPREME
COURT."
>> THAT'S CORRECT.
AND I'LL GIVE YOU ANOTHER
INSTANCE IN WHICH THIS COMES
INTO PLAY WHICH IS CURRENTLY
BEFORE THE BAR.
AND THAT IS A JUDGE, FOR
EXAMPLE, WHO IS SERVING IN THE
CAPACITY AS A FORMER JUDGE, A
PRIVATE JUDGE.
AND THE QUESTION WAS WHETHER A
PERSON WHO DOES THAT REGULARLY
AND HAS A BUSINESS CARD OR A
LETTERHEAD CAN SAY JUDGE SO AND
SO, AND THE BAR'S FEELING WAS
THAT THAT WAS MISLEADING.
>> HOW ABOUT JUDGE, JUDGE ALEX
AND ALL THOSE TV JUDGES?
BUT -- THIS IS VERY -- BEFORE
YOU -- BECAUSE YOU'RE GOING TO
RUN OUT OF YOUR TIME, I WANT TO
MAKE SURE, ARE WE CHANGING THE
RULE ON TESTIMONIALS AND PAST
RESULTS FOR NOT ONLY WEB SITES,
BUT FOR TV ADS?
>> YES, YOUR HONOR.
>> OKAY.
SO WHEN I WAS ASKING ABOUT
MAJOR -- TO ME, THAT'S A MAJOR
CHANGE.
I THINK IT MAY BE A CHANGE IF
IT'S ACCURATE AND NOT
MISLEADING, SEEMS TO ME THAT
SOMEONE HAVING TO BE ACCURATE
ABOUT THE PAST RESULTS IS A FAR
MORE INFORMATIVE WAY TO
COMMUNICATE TO THE PUBLIC THAN

WHAT MOSTLY CONSISTS FOR THE PEOPLE OR FOR THE UNITED STATES OF AMERICA, YOU KNOW, WE'RE ALL ABOUT THIS KIND OF ADVERTISEMENTS THAT REALLY SAY NOTHING.
>> I THINK THOSE ARE PROBABLY THE TWO MOST SIGNIFICANT SUBSTANTIVE CHANGES IN THE RULES, AND THEY STEM FROM THIS. UNDER UNITED STATES SUPREME COURT PRECEDENT, WE BELIEVE THAT YOU CANNOT ENTIRELY PROHIBIT THAT.
THE SUPREME COURT HAS MADE IT VERY CLEAR THAT A STATEMENT OF FACT THAT IS OBJECTIVELY VERIFIABLE --
>> I THINK IT'S A GOOD THING.
>> RIGHT.
>> I THINK IN THAT WAY VERSUS MUSIC AND CATCHY TUNES, COMMUNICATING INFORMATION SEEMS -- AND THAT'S WHAT THE ORIGINAL INTENT WAS.
REMEMBER, THE ORIGINAL INTENT FOR THE U.S. SUPREME COURT WAS THAT LAWYER ADVERTISING BE CLEAR TO MAKE AVAILABLE LOW-COST SERVICES TO THE PUBLIC.
AND IT'S DONE EVERYTHING BUT THAT, BUT THAT WAS THE ORIGINAL INTENT OF WHY THE SUPREME COURT SAID LAWYER ADVERTISING WAS A GOOD THING.
>> RIGHT.
LET ME NOTE WHAT THIS DOES. WITH RESPECT TO PAST RESULTS, A LAWYER CAN USE IT IF IT'S OBJECTIVELY VERIFIABLE.
NOW, SOME OF THE COMMENTERS DIDN'T LIKE THE TERM "OBJECTIVELY VERIFIABLE" WHICH THEY SAID WAS TOO VAGUE.
BUT IN THE FIRST PLACE, THE UNITED STATES SUPREME COURT HAS USED THOSE SAME TERMS.
IN THE SECOND PLACE, I PERSONALLY DON'T THINK THAT IT'S VAGUE.
ONE OF THE OTHER COMMENTS ABOUT IT WAS THAT IT SHIFTED THE BURDEN, WHICH IT DOES NOT.
WE RECOGNIZE THAT THE BURDEN ALWAYS LIES WITH THE BAR TO PROVE A VIOLATION.
>> WHAT'S THE DIFFERENCE BETWEEN

VERIFIABLE AND OBJECTIVELY
VERIFIABLE?
>> PROBABLY NO DIFFERENCE, BUT
THE POINT -- I CAN GIVE YOU A
DIFFERENCE IN WHAT IS AND IS NOT
OBJECTIVELY VERIFIABLE.
FOR A PERSON TO SAY THAT I HAVE
THE BEST RECORD OF ANY TRIAL
LAWYER IN FLORIDA IS NOT
OBJECTIVELY VERIFIABLE --
>> [INAUDIBLE]
>> OR VERIFIABLE.
BUT TO SAY, BUT TO SAY I HAVE AN
80% RECORD OF SUCCESS IN THE
SECOND DISTRICT COURT OF APPEAL
IS VERIFIABLE.
AND THE BAR CAN REQUEST FROM THE
LAWYER RUNNING THAT AD THE
DOCUMENTATION TO ESTABLISH THAT
THIS IS ACCURATE, BUT THE BAR
RETAINS THE BURDEN IF IT DECIDES
TO ADVISE THAT FIRM THAT IT IS
IN VIOLATION OF THE RULE.
SO THERE IS NO BURDEN SHIFT --
>> AND THEN THE TESTIMONIALS?
BECAUSE I THINK THAT WAS
SOMETHING THAT WE WERE
CONCERNED.
WHAT WAS THE TESTIMONIAL?
SO WHAT IS A -- WHAT CAN, NOW,
AN ADVERTISER ON TV, WHAT CAN
THEY DO?
>> THE ADVERTISEMENT CAN UTILIZE
ANOTHER PERSON TO TESTIFY WITH
RESPECT TO THE LAWYER'S
CHARACTERISTICS, WHATEVER THEY
MAY BE, PROVIDED THAT THE PERSON
WHO IS GIVING THE TESTIMONY HAS
THE EXPERIENCE AND THE EXPERTISE
TO BE ABLE TO MAKE THAT
STATEMENT VALIDLY.
SO, EXAMPLE, FOR EXAMPLE -- AND
IT DEPENDS ON WHAT IT IS.
FOR EXAMPLE, A FORMER CLIENT
COULD SAY THE REASON I LIKE THIS
LAWYER IS HE ALWAYS CALLS ME
BACK.
OUR CLIENT IS PERFECTLY CAPABLE
OF MAKING THAT STATEMENT, AND
IT'S SOMETHING -- BY THE WAY, AN
OVERWHELMING MAJORITY OF THE
PUBLIC ON SURVEYS HAVE INDICATED
THAT BOTH OF THESE THINGS
INVOLVE INFORMATION THAT THEY
WOULD LIKE TO HAVE --
>> I -- NO, I THINK THESE ARE,
THOSE PARTS OF THE RULE, I

THINK, IS GOOD.
I THINK THAT HAVING RESPONSIBLE TESTIMONIALS AND RESPONSIBLE PAST RESULTS IS INFORMATION AS OPPOSED TO SOMEBODY WHO'S A SPOKESPERSON WHO IS SAYING SOMETHING THAT IS SAYING, BASICALLY, A JINGLE.
>> THE RULE --
>> GET A CELEBRITY, FOR EXAMPLE, WHO HAS NEVER USED THE SERVICES OF THAT LAW FIRM --
>> THAT'S SPECIFICALLY PROHIBITED, CORRECT.
>> YOU CAN USE A LAWYER WHO HAS EXPERTISE OR WHO IS A SPECIALIST IN THE FIELD, FOR EXAMPLE, OF TRUSTEESHIPS OR OF SECURITIES.
I'M A LAWYER WHO IS CERTIFIED IN THE AREA OF SECURITIES LITIGATION, AND I HAVE BEEN IN COURT AND UTILIZED THIS LAWYER ON SECURITIES CASES, AND IT'S MY BELIEF THAT THIS IS, THIS LAWYER IS EXCELLENT AND HAS THE CREDENTIALS TO DO THE JOB.
THAT'S PERMITTED UNDER THIS RULE, AND I DON'T THINK UNDER UNITED STATES SUPREME COURT PRECEDENT WE COULD SUSTAIN A PROHIBITION ANY LONGER OF THAT TYPE OF TESTIMONY, AND IN ADDITION THE PUBLIC OVERWHELMINGLY SAYS THAT THAT'S THE KIND OF INFORMATION YOU WOULD LIKE.
IN ADDITION, BY THE WAY, IT'S VERY DIFFICULT TO EXPLAIN WHY YOU CAN SAY THAT PRIVATELY.
BECAUSE ONE OF THE GREATEST SOURCES OF INFORMATION ON WHAT LAWYER TO HIRE IS ASKING ANOTHER LAWYER, BUT THAT THE LAWYER CANNOT SAY IT PUBLICLY.
I BELIEVE MY TIME IS UP, UNLESS THE COURT HAS ANY ADDITIONAL QUESTIONS.
>> SO IF SOMEONE WANTED TO USE A CELEBRITY TO JUST HAVE THEM AS THE CLIENT AND YOU CAN GO AHEAD AND SAY ANYTHING YOU WANT TO SAY?
>> WELL, THE RULE PROHIBITS THE USE OF A CELEBRITY UNLESS THAT CELEBRITY HAPPENS TO BE IN THE UNIQUE POSITION OF HAVING THE INFORMATION.

>> AND IF HE'S YOUR CLIENT, HE MIGHT BE IN THAT POSITION.
>> IF IT'S MY CLIENT AND THAT CELEBRITY IS SPEAKING TO THINGS THAT A LAY CLIENT -- UNLESS IT'S A LAWYER WITH EXPERTISE -- WOULD HAVE THE EXPERIENCE AND THE KNOWLEDGE TO BE ABLE TO TESTIFY TO.
FOR EXAMPLE, MY FIRM'S ATLANTA OFFICE REPRESENTS, STRANGELY ENOUGH, COUNTRY SINGERS AND RAP SINGERS.
AND IF ONE OF THOSE CELEBRITIES HAPPENS TO TESTIFY THAT THEY LIKE TO USE OUR LAW FIRM BECAUSE WE'RE ALWAYS ACCESSIBLE TO THEM AND WE'VE ALWAYS DONE A GOOD JOB, THEY WOULD BE ABLE TO DO THAT.
>> YOU HAVE THEM --
>> [INAUDIBLE]
>> THEY MIGHT BE ABLE TO SING IT.
[LAUGHTER]
WE DON'T PROHIBIT BACKGROUND MUSIC.
>> YOU CAN HAVE A RAP, RAP SONG ON YOUR -- BUT YOU DON'T -- THE LARGE FIRMS ARE NOT, YOU KNOW, THE LARGE COMMERCIAL FIRMS ARE NOT ROUTINELY DOING TELEVISION ADVERTISING.
YOUR CONCERN THERE IS MORE WHAT THEY'RE ABLE TO DO ON THEIR WEB SITES TO REALLY GET BUSINESS THAT IS -- WHERE THE CLIENT IS LOOKING FOR A FIRM.
>> THAT'S CORRECT.
SOME LARGE FIRMS DO DO TELEVISION ADVERTISING.
THE BAR HAS NOT HAD EXTENSIVE DISCIPLINARY PROBLEMS WITH THOSE ADVERTISEMENTS, HOWEVER.
>> THANK YOU, MR. RICHARD.
IF YOU DO A RAP ON YOUR WEB SITE, I BET IT GETS A LOT OF HITS.
[LAUGHTER]
>> WE DON'T DO RAP.
>> MAY IT PLEASE THE COURT, I'M THOMAS JULIN OF HUNTER AND WILLIAMS, REPRESENTING HUNTER AND WILLIAMS AND SEVEN OTHER LARGE LAW FIRMS WITH APPROXIMATELY 6500 LAWYERS.
I REALLY HAVE FOUR POINTS THAT I

WOULD LIKE YOU TO CONSIDER HERE.
ONE IS THAT THIS SHOULD BE AN
EXEMPTION FROM THE ADVERTISING
RULES FOR WEB SITES.
I THINK THAT THE INCLUSION OF
WEB SITES WITHIN THE ADVERTISING
RULE, IT CREATES FIRST AMENDMENT
PROBLEMS, IT CREATES COMMERCE
CLAUSE PROBLEMS, AND CREATING AN
EXEMPTION FOR THE WEB SITES
WOULD ELIMINATE THOSE
PROBLEMS --
>> ON THAT POINT ONE, WHAT I'M
UNDERSTANDING IS THE ONLY THING
YOU CAN'T DO IS -- OR ANYONE CAN
DO NOW IS YOU CAN'T BE DECEPTIVE
OR INHERENTLY MISLEADING.
SO YOU AGREE THAT YOU'RE HAVE --
I MEAN, WHAT'S, HOW IS THAT A
PROBLEM, I GUESS?
>> THERE'S A CONTINUING PROBLEM
IN THAT IT'S NOT ONLY INHERENTLY
FALSE AND MISLEADING ADVERTISING
THAT IS PROHIBITED.
THEY HAD -- THERE ARE PROVISIONS
IN THIS RULE FOR POTENTIALLY
MISLEADING AND FOR UNDULY
MANIPULATIVE ADS.
NOW, THERE'S A TAKEDOWN RULE
THAT HAS BEEN IMPOSED, BUT THAT
DOESN'T CHANGE THE RULE.
UNDER THE BAR RULES, THEY DO
PROHIBIT POTENTIALLY MISLEADING
ADVERTISING AND UNDULY
MANIPULATIVE ADVERTISING.
NOW, BOTH OF THOSE PROVISIONS
ARE VAGUE, AND THEY HAVE
PROBLEMS WITH ADVERTISING
GENERALLY AND TRYING TO APPLY
THEM TO WEB SITES PARTICULARLY
IS AN ENORMOUS PROBLEM --
>> I STILL DON'T UNDERSTAND.
I HEAR YOU SAYING THE WORDS, BUT
I DON'T APPRECIATE THAT THERE'S
A DIFFERENCE BETWEEN THE WEB
SITE OR A NEWSPAPER.
THEY'RE BOTH SITTING ON MY DESK,
AND THEY BOTH DO THE SAME THING.
WHY THE SAME STANDARD SHOULD NOT
APPLY?
IT'S SOMETHING THAT CAN BE
REGULATED, I UNDERSTAND IF YOU
CAN'T REGULATE ONE, YOU CAN'T
REGULATE THE OTHER.
>> YES.
AND FUNDAMENTALLY, THAT IS OUR
POSITION THAT YOU CAN'T PROHIBIT

POTENTIALLY MISLEADING OR UNDULY
MANIPULATIVE ADS WHEREVER IT
OCCURS.
>> OKAY.
>> AND I'M SIMPLY SAYING WHEN
YOU TRY TO APPLY THOSE STANDARDS
IN THE CONTEXT OF WEB SITES,
IT'S AN ENORMOUS PROBLEM.
>> WELL, WHY?
I DON'T UNDERSTAND THAT.
WE LOOK AT THE PAGE, WE LOOK AT
THE PRINTED PAGE.
>> RIGHT.
AND THE DISTINCTION IS THAT WEB
SITES ARE ENORMOUS.
THEY'RE LIKE ENCYCLOPEDIAS NOW.
THEY HAVE GROWN UP UNDER A
REGIME WHICH --
>> WELL, OKAY, ALL RIGHT.
I ACCEPT THAT.
>> YES.
>> AND NEWSPAPERS --
[INAUDIBLE]
>> THAT'S RIGHT.
[INAUDIBLE CONVERSATIONS]
>> THAT'S RIGHT.
SO WHEN YOU LOOK AT THE
STANDARDS THERE OF POTENTIALLY
MISLEADING AND UNDULY
MANIPULATIVE, BOTH OF THEM ARE
VAGUE STANDARDS.
>> ARE YOU SAYING WOULD YOU WANT
TO BE ABLE TO DO THOSE THINGS?
>> NO.
WHAT WE'RE SAYING IS WE WANT
CLEAR AND SPECIFIC GUIDELINES,
AND THE CLEAR AND SPECIFIC
GUIDELINES THAT ARE GENERALLY
USED, AND THIS IS SEEN IN THE
ABA RULES, IS IT PROHIBITS FALSE
AND MISLEADING STATEMENTS.
AND THAT'S THE SECOND POINT THAT
I WANTED TO MAKE, IS IF YOU'RE,
IF YOU'RE NOT INCLINED SIMPLY TO
EXEMPT WEB SITES FROM THE
ADVERTISING RULES, AN
ALTERNATIVE THAT I WOULD SUGGEST
IS TO LOOK TO THE ABA RULES.
THEY ARE VERY DISTINCT, VERY
DISTINCT FROM WHAT HAS BEEN
PROPOSED BY THE FLORIDA BAR.
AND WHAT IS MOST DISTINCT ABOUT
THEM IS THAT THEY ARE SIMPLE,
AND THEY ARE CLEAR.
THEY ARE LITERALLY TWO PAGES.
AND THE STRUCTURE -- AND THIS
HAS RECENTLY BEEN REVIEWED BY

THE ABA JUST AT THE AUGUST
ANNUAL MEETING.
IT WAS LOOKED AT AGAIN.
THEY ADOPTED RESOLUTION 105B
THAT WE JUST FILED NOTICE OF
THIS SUPPLEMENTAL AUTHORITY, AND
WHEN YOU LOOK AT THOSE RULES,
THEY'RE STARKLY DIFFERENT --
>> DO THEY DISTINGUISH BETWEEN
WEB SITES AND TELEVISION?
>> THEY DON'T EXPRESSLY
DISTINGUISH.
>> THEY DON'T EXEMPT WEB SITES?
>> THEY DON'T DO IT IN THAT WAY.
WHAT THEY, WHAT THE ABA'S RULES
DO, THEY PROHIBIT FALSE AND
MISLEADING COMMUNICATIONS
GENERALLY, AND THEN THEY ALLOW
ADVERTISING, AND THEY THEN
PROHIBIT SOLICITATIONS AND THEN
COMMENTS MAKE IT CLEAR THAT
NEITHER ADVERTISING, NOR WEB
SITE COMMUNICATIONS ARE REGARDED
AS PROHIBITED SOLICITATIONS.
ALL THEY DO, AND, IN ESSENCE,
WHAT THEY'RE SAYING IS FALSE AND
MISLEADING COMMUNICATIONS ARE
WHAT'S PROHIBITED.
NOW, THE BAR GETS ITSELF IN
TROUBLE --
>> SO ARE YOU SAYING THERE'S A
DIFFERENCE BETWEEN MISLEADING
AND INHERENTLY MISLEADING?
>> NO.
THERE'S A DISTINCTION BETWEEN
FALSE AND MISLEADING
COMMUNICATIONS AND POTENTIALLY
MISLEADING COMMUNICATIONS AND
UNDULY MANIPULATIVE
COMMUNICATIONS --
>> BUT, YOU SEE, I GUESS THE
THING ABOUT IT, AND THIS IS WHY
I AGREE TO SOME EXTENT THAT --
MAYBE I DISAGREE WITH JUSTICE
LEWIS ON THE -- THAT THERE IS A
DIFFERENCE IN A TV AD AND A WEB
SITE IN THAT SOMEONE HAS TO GO
TO A WEB SITE.
YOU DO NOT HAVE IT IN YOUR FACE
WHEN YOU'RE WATCHING MORNING TV.
SO THAT -- AND THE IDEA -- I
DON'T KNOW ANY WEB SITE THAT
EMPLOYS JINGLES OR KIND OF, I
MEAN, I THINK LAW FIRMS WOULD BE
LAUGHED OUT OF THEIR CLIENT BASE
IF THEY, MAYBE NOT, YOU KNOW?
THEY'RE, YOU KNOW, LOOKED OVER

THE -- I DON'T SEE ANYTHING,
THAT'S WHY I ASKED WHAT WERE THE
PROBLEMS?
I JUST HAVEN'T EVER SEEN A --
WHAT I WOULD CONSIDER A PROBLEM
WITH A WEB SITE WHEREAS WITH ADS
YOU PUT POLICE OFFICERS ON,
PEOPLE DRESSED AS JUDGES.
IT'S, IT'S THERE FOR THE PUBLIC
TO LAUGH ABOUT.
>> RIGHT.
>> AND SO I DO, IT'S -- AND SO,
TO ME, I WOULD MAKE A
DISTINCTION.
BECAUSE I DON'T -- I DON'T HAVE
A PROBLEM WITH "UNDULY
MANIPULATIVE" BEING APPLIED TO
THE TV ADS.
BECAUSE I THINK IT IS A
DIFFERENT MEDIUM, AND IT HAS A
DIFFERENT IMPACT ON MARSHALL --
[INAUDIBLE]
SAID THE MEDIA'S THE MESSAGE.
THE MESSAGE IN A TV IS DIFFERENT
THAN A MESSAGE ON A WEB SITE.
>> WELL, AND I DON'T DISAGREE
WITH YOU THAT THERE IS A
FUNDAMENTAL DISTINCTION BETWEEN
THE TWO DIFFERENT MEDIA, THAT
TELEVISION IS MUCH MORE IN YOUR
FACE, BILLBOARDS, RADIO, THAT
CREATES DISTINCT PROBLEMS FROM
WEB SITES.
WEB SITES YOU HAVE TO SEARCH
FOR, YOU HAVE TO FIND.
THAT'S WHY HISTORICALLY WHEN
FIRST WE WERE DEALING WITH WEB
SITES, WE WERE TREATING THEM AS
CLIENT-REQUESTED MATERIAL, AND
THERE WAS A GENERAL EXEMPTION
OF, FOR MOST OF THE ADVERTISING
RULES FOR THAT WEB SITE WHICH
WAS REGARDED AS CLIENT-REQUESTED
MATERIAL.
>> AND WE WERE THINKING BY
SAYING YOU HAD TO AT LEAST CLICK
ON ONE CLICK THAT THAT WAS GOING
TO BE A GOOD COMPROMISE, BUT NO
ONE SEEMED TO LIKE THAT.
>> WELL, WE LIKE THAT, THAT THAT
IS A GOOD COMPROMISE, THAT IF
YOU'RE --
>> NO ONE, SEE, I THOUGHT AFTER
WE ADOPTED THAT EVERYONE SAID
THAT WAS, THAT WAS BAD.
>> NO, NOT -- WELL, THE
ORIGINAL, BACK TO THE ORIGINAL

RULES, THE HOMESITE WAS, WAS
REGULATED, WAS SUBJECT TO THE
ADVERTISING RULES, AND WE DIDN'T
HAVE A PROBLEM WITH THAT, AND
THAT'S BECAUSE IT WAS FAIRLY
EASY TO MAKE THE HOMESITE COMPLY
WITH ADVERTISING RULES.
>> RIGHT.
>> AND THEN WHEN YOU WENT BEYOND
IT AND WENT INTO ALL OF THE
DETAILED INFORMATION THAT WAS
BEING PROVIDED, THAT THAT'S WHAT
CREATED THE PRIMARY PROBLEM AT
LEAST FOR THE LARGE LAW FIRMS IN
TRYING TO COMPLY WITH THE RULES.
AND THE COMPLIANCE IS WHAT
REALLY BROUGHT US HERE, AND
THAT'S WHAT I WANT TO EMPHASIZE
TO YOU IS THAT THESE WEB SITES,
THEY HAD BEEN DEVELOPED OVER
COURSE OF MORE THAN A DECADE.
AND THEY HAD BEEN DEVELOPED
UNDER A REGIME THAT DID NOT
SUBJECT THEM TO THE ADVERTISING
RULES.
AND SO THERE ARE THOUSANDS AND
THOUSANDS OF PAGES OF MATERIALS
THAT ARE CREATED AND THAT ARE
OUT THERE --
>> WELL, IS THE CONCERN THAT
THESE THOUSANDS AND THOUSANDS OF
PAGES MAY BE IN VIOLATION OF THE
RULE?
BECAUSE IT SEEMS TO ME IF YOU'VE
GOT THOUSANDS AND THOUSANDS OF
PAGES, THE PROBLEM IS GOING TO
BE WITH THE BAR EVEN BEING ABLE
TO FIND ANYTHING THAT WOULD BE A
VIOLATION OF THE RULES.
>> FRANKLY, IT'S NOT SO MUCH A
PROBLEM WITH THE BAR.
THE LARGE LAW FIRMS ARE VERY
CONSERVATIVE INSTITUTIONS, AND
THEY WANT TO DO EVERYTHING THAT
THEY POSSIBLY CAN TO COMPLY WITH
WHATEVER RULES ARE --
>> SO YOU DON'T -- SO ARE YOU
SAYING THAT YOU DON'T THINK
THESE WEB SITES WOULD NOW COMPLY
WITH THE RULES?
>> OH, I THINK THAT THEY WOULD,
AND WHAT I'M HERE TO ARGUE TO
YOU IS THAT THAT'S NOT A GOOD
THING TO HAVE VERY CONSERVATIVE,
LARGE LAW FIRMS REMOVING
MATERIAL BECAUSE OF CONCERNS
THAT IT'S NOT IN COMPLIANCE WITH

VERY VAGUE STANDARDS.
BECAUSE LAW FIRMS WILL TAKE THE MOST CONSERVATIVE APPROACH.
THEY WILL TAKE DOWN LOTS OF INFORMATION ABOUT PAST RESULTS, ABOUT LAWYERS' AWARDS, ABOUT ALL THE THINGS THAT MIGHT BE TREATED AS POTENTIALLY MISLEADING OR UNDULY MANIPULATIVE --
>> HOW COULD IT BE IF A PAST RESULT AND, AGAIN, YOU'RE SAYING -- YOU'RE TALKING ABOUT CONSERVATIVE LAW FIRMS.
YOU EITHER GOT THE VERDICT, OR YOU DEFENDED THIS.
IT'S EITHER TRUE OR NOT TRUE.
YOU CERTAINLY WOULD SAY, I MEAN, BEING IN THE BEST LAWYERS IN AMERICA IS VERIFIABLE.
BEING THE BEST LAWYER IN MIAMI-DADE COUNTY WOULD -- WE ALL AGREE THAT THAT WOULD BE NOT, I MEAN, THERE'D BE A LOT OF PEOPLE CLAIMING TO BE THAT.
YOU COULDN'T PUT THAT ON THERE.
>> RIGHT.
THERE ARE MANY LAWSUITS THAT EVERYONE CLAIMS THAT THEY WON.
AND IT'S VERY --
[LAUGHTER]
>> YOU DID OR YOU DIDN'T.
>> I MEAN, I THINK WILLIE GARYS IS FAMOUS FOR SAYING HE'S WON EVERY LAWSUIT, ONLY HE'S WON SOME MORE THAN OTHERS.
[LAUGHTER]
AND I THINK THAT'S JUST A FUNDAMENTAL PROBLEM THAT LAWYERS FACE, PARTICULARLY IN CONSERVATIVE LAW FIRMS IN TRYING TO DESCRIBE THEIR SERVICES AND TRYING TO COMPLY WITH VAGUE STANDARDS.
AND SO THAT'S ONE OF THE PRINCIPLE REASONS I'M SAYING TAKE WEB SITES OUT OF THIS, KEEP IT APPLICABLE TO TELEVISION ADS AND BILLBOARDS AND BUS BENCHES AND SO FORTH.
>> AND WHAT ABOUT THE HOME PAGE?
>> THE HOME PAGE WE COULD LIVE WITHOUT.
I'M NOT SAYING THAT DOESN'T VIOLATE THE FIRST AMENDMENT --
>> THAT'S NOT A DIFFICULT THING TO --
>> IT'S NOT A DIFFICULT THING TO

BRING A HOME PAGE INTO
COMPLIANCE, AND THEN YOU CAN
STILL HAVE ALL OF THE
INFORMATION WHICH WE REGARD AS
VERY VALUABLE TO CONSUMERS,
EXTREMELY VALUABLE TO CONSUMERS
EVEN THOUGH SOME OF OUR
ADMINISTRATORS MIGHT SAY LET'S
BE VERY CAUTIOUS, LET'S NOT PUT
SOMETHING THERE THAT MIGHT BE
REGARDED AS POTENTIALLY
MISLEADING OR UNDULY
MANIPULATIVE.
>> BUT THE PROBLEM IS IN TODAY'S
INTERNET WORLD YOU HAVE
ADVERTISEMENTS DRAWN ON FACEBOOK
AND ALL THESE DIFFERENT PLACES,
AND YOU HAVE POP-UP VIDEOS.
YOU CAN HAVE ALL KINDS OF
DIFFERENT THINGS ADVERTISING,
ALL KIND OF DIFFERENT COMPANIES
COULD USE, LAWYERS AS WELL THAT
REALLY CONSTITUTES ADVERTISING
AND HAVE THE SAME PRESENTATION
AS WHAT YOU'D SEE IN A
TELEVISION AD.
THERE WOULD BE EFFECTIVELY NO
DIFFERENCE.
>> I AGREE WITH YOU, AND THAT'S
A FUNDAMENTAL FAILING OF THE
RULES THE BAR HAS PROPOSED
BECAUSE IT DOESN'T DISTINGUISH
BETWEEN ADS THAT YOU WOULD
SAY -- SEE, ON SAY THE HUNTER
AND WILLIAMS WEB SITE ITSELF --
>> WELL, I THOUGHT IT TREATED
ALL THE SAME.
>> IT TREATS --
>> IT IS ADVERTISING AND
TELEVISION AND PRINTED MATERIAL,
ALL THESE THINGS ARE
ADVERTISING, AND THEY'RE ALL
SUBJECT TO THE SAME RULES, DO
THEY NOT?
>> THEY DO.
AND THAT'S THE PROBLEM.
>> WHY IS THAT?
I STILL DON'T UNDERSTAND --
>> THE REASON THAT'S THE PROBLEM
IS THAT THE WEB SITES ARE NOT
COMMERCIAL SPEECH FROM A GENERAL
PERSPECTIVE.
THE VAST MAJORITY IF NOT ALL OF
WEB SITES, THEY'RE REALLY NOT
COMMERCIAL SPEECH UNDER THE
UNITED STATES SUPREME COURT
STANDARD.

COMMERCIAL SPEECH IS SPEECH THAT
IS DOING NOTHING MORE THAN
PROPOSING A COMMERCIAL
TRANSACTION.
WHEN YOU PUT A LABEL ON A BEER
CAN OR YOU PUT AN AD FOR THE
PRICE OF DRUGS, THAT'S WHAT THE
UNITED STATES SUPREME COURT HAS
SAID IS ADVERTISING IS
COMMERCIAL SPEECH, AND THAT'S
WHAT LOWERS THE STANDARD FOR
UNDER THE FIRST AMENDMENT AND
ALLOWS FOR HEAVIER REGULATION.
WHEN YOU LOOK AT THESE WEB SITES
AGAIN, THEY'RE NOT SIMPLY
LABELS, THEY'RE NOT SIMPLY
SAYING TOM JULIN IS HERE, AND
I'LL OFFER YOU MY SERVICES FOR
$200 AN HOUR.
THESE ARE COMPLEX BEASTS.
>> WHAT'S THE PURPOSE OF IT?
I MEAN, WEB SITES AREN'T THERE
AS PART OF ADVERTISING TO THE
PUBLIC THAT THESE SERVICES ARE,
YOUR SERVICES ARE AVAILABLE?
SO WHAT'S THE POINT OF A WEB
SITE?
>> WELL, A -- CERTAINLY A PART
OF IT IS THAT YOU WANT
CONSUMERS, OUR POTENTIAL
CLIENTS, TO KNOW WHAT WE DO.
AND SO THERE IS A COMMERCIAL
INCENTIVE TO IT.
BUT THAT'S NOT WHAT TRANSFORMS
SOMETHING INTO COMMERCIAL
SPEECH.
THE SUPREME COURT, WHICH HAS
BEEN TIGHTENING AND TIGHTENING
THE RULES EVEN ON COMMERCIAL
SPEECH, HAS BEEN SUGGESTING THAT
THEY MAY ULTIMATELY SUBJECT
COMMERCIAL SPEECH TO STRICT
SCRUTINY.
IN THE MOST RECENT CASE, ONE OF
MY CASES, THE COURT TALKS ABOUT
HEIGHTENED SCRUTINY FOR EVEN
COMMERCIAL SPEECH BECAUSE IT'S
RECOGNIZING THAT THERE IS SUCH
GREAT VALUE TO COMMERCIAL
SPEECH.
IN MANY INSTANCES COMMERCIAL
SPEECH IS EVEN MORE VALUABLE
THAN POLITICAL SPEECH.
SO THAT'S, THAT'S WHAT THE
CONCERN HERE IS, THAT IF WE HAVE
VERY VAGUE RULES AND THEY'RE
APPLIED TO WEB SITES WHICH ARE

THESE COMPLEX, MASSIVE THINGS, THAT YOU WILL HAVE LOST ALL THE VALUE OF A LOT OF THAT SPEECH BECAUSE YOU HAVE VERY CONSERVATIVE LAW FIRM ADMINISTRATORS TRYING TO COMPLY WITH THESE RULES.
AND NOW WE DO APPRECIATE WHAT THE BAR HAS DONE IN REVISING THE RULES.
>> I WANT TO MAKE SURE, BECAUSE WHEN I TALK ABOUT INTERNET ADVERTISING --
>> YES.
>> -- THAT'S WHEN YOU GO ONTO SOMEONE ELSE'S WEB SITE.
YOU'RE ASKING THAT THE WEB SITE OF THE LAW FIRM BE NOT, NOT UNDER THE SAME RULES AS OTHER TV, RADIO --
>> THAT IS PRECISELY CORRECT.
WE SEE THOSE AS VERY DISTINCT THINGS, THAT WEB SITES POSE SPECIAL PROBLEMS.
THEY DO POSE THESE COMMERCE CLAUSE PROBLEMS WHICH ARE NOT AT ALL INSIGNIFICANT WHEN WE'RE DEALING WITH THESE LARGE LAW FIRMS THAT HAVE PEOPLE PRACTICING IN VIRGINIA, IN NEW YORK, IN CALIFORNIA AND SO FORTH.
AND THEN WHAT THEY SEE IS WE HAVE FLORIDA BAR RULES, AND THOSE FLORIDA BAR RULES ARE FAR STRICTER THAN THE ABA'S MODEL RULES, FAR STRICTER THAN RULES IN OTHER STATES.
AND THEY'RE SAYING IF YOU'RE -- YOU MAY NOT BE IN FLORIDA, BUT IF YOU'RE HOPING TO GET SOME BUSINESS FROM FLORIDA, YOU'RE GOING TO HAVE TO COMPLY WITH OUR RULES.
WHAT THAT ESSENTIALLY IS DOING, IT'S SAYING LAWYERS ACROSS THE COUNTRY, YOU MAY NOT BE PLANNING TO COME INTO FLORIDA, BUT THERE ARE MANY LAWYERS IN MY RICHMOND OFFICE WHO ARE DELIGHTED TO COME INTO FLORIDA IF SOMEONE HAPPENS TO COME TO OUR WEB SITE AND SEE THAT THEY HAVE A PARTICULAR SPECIFICITY THAT IS NEEDED IN FLORIDA, AND THAT THE WAY THE BAR RULES NOW WORK, IT MEANS THAT THEY'RE GOING TO HAVE TO

COMPLY WITH THE FLORIDA BAR
RULES WHICH MAKES IT FAR MORE
DIFFICULT FOR OUT-OF-STATE
LAWYERS TO COMPETE WITH IN-STATE
LAWYERS BECAUSE YOU HAVE TO BE
SUBJECTED TO THESE HEAVY
IN-STATE REGULATIONS.
THAT'S ONE OF THE THINGS THAT
CREATES A SERIOUS COMMERCE
CLAUSE PROBLEM.
SO YOU'RE SOLVING TWO PROBLEMS
BY EXEMPTING WEB SITES, YOU'RE
SOLVING THE FIRST AMENDMENT
PROBLEM, AND YOU'RE SOLVING THE
COMMERCE CLAUSE PROBLEM.
BUT, AGAIN, WHAT I WANT TO LEAVE
YOU WITH IS TO CONSIDER THE ABA
RULES.
THEY ARE FAR LESS COMPLEX, THEY
ARE SIMPLE, THEY'RE TWO PAGES,
THEY'RE DIRECT, THEY'RE USED IN
MOST OF THE STATES.
AND WHERE FLORIDA IS GETTING
ITSELF INTO TROUBLE IS TRYING TO
ADOPT THESE EXCESSIVELY COMPLEX
RULES.
THERE'S 20 PAGES OF MATERIAL.
THEY DO IT IN THE NAME OF TRYING
TO EXPLAIN THINGS BETTER, BUT IT
REALLY TAKES THE FOCUS OFF OF
WHAT THEY'RE TRYING TO DO WHICH
IS TO STOP LAWYERS FROM MAKING
FALSE AND DECEPTIVE
COMMUNICATIONS, TO STOP THEM
FROM ENGAGING IN SOLICITATION
WHERE THE SOLICITATION IS LIKELY
TO BE IN A COERCIVE OR AN
ADDRESSABLE SITUATION.
THAT'S WHERE THE FOCUS OF THE
ABA RULES ARE.
THE FLORIDA RULES DO SOMETHING
COMPLETELY DIFFERENT, AND THEY
TRY TO DO WAY TOO MUCH.
IN THIS INSTANCE LESS WOULD BE
MORE.
LESS REGULATION WOULD BE MORE
REGULATION BECAUSE IT WOULD GIVE
CLEAR AND SPECIFIC GUIDELINES TO
THOSE PEOPLE AT OUR LAW FIRMS
THAT NEED TO COMPLY.
>> THANK YOU.
>> THANK YOU VERY MUCH.
>> GOOD MORNING.
I'M JOE LANG FROM CARLTON
FIELDS, AND I'M HERE
REPRESENTING THE CLIENT OF
CARLTON FIELDS AND BILLS AND

SUNDBERG, TWO FLORIDA-BASED LAW FIRMS THAT HAVE NATIONAL PRESENCES.
WE FULLY JOIN AND ENDORSE EVERYTHING MR. JULIN JUST SAID.
WE WERE PART OF THE COMMENT OF THE EIGHT LAW FIRMS, BUT WE HAVE TWO DISTINCT ASPECTS OF THESE PROPOSED RULES THAT WE THINK UNFAIRLY TREAT FLORIDA-BASED LAW FIRMS OR COULD DO THAT DEPENDING ON HOW THEY GET ENFORCED AND APPLIED.
THE FIRST ASPECT OF THAT IS HOW YOU WOULD REPORT PAST RESULTS OR THE QUALITY OF LEGAL SERVICES AS TO A PRACTICE GROUP OR AS TO A FIRM AT LARGE.
AND WE GAVE AN EXAMPLE, AND I THINK EXAMPLES REALLY HELP, UM, EXPLAIN THIS.
WE GAVE AN EXAMPLE IN OUR COMMENT OF A WHITE COLLAR PRACTICE GROUP.
WE HAVE A WHITE COLLAR PRACTICE GROUP.
THERE ARE NATIONAL FIRMS THAT HAVE WHITE COLLAR PRACTICE GROUPS, AND WE TRY TO, UM, GIVE INFORMATION TO OR MARKET TO LARGELY THE SAME CLIENT BASE ON A NATIONAL SCALE.
SO IF YOU HAVE TEN MEMBERS OF A PRACTICE GROUP AT A FIRM OUTSIDE OF FLORIDA AND TEN MEMBERS IN A FLORIDA PRACTICE GROUP, PROBABLY ALL TEN MEMBERS -- AT LEAST NINE OF THE MEMBERS AT CARLTON FIELDS -- WOULD BE FLORIDA ATTORNEYS.
SO THEY WILL HAVE -- WHATEVER WE SAY IN THE AGGREGATE AS TO THE PAST RESULTS OF THE PRACTICE GROUP OR OF THE FIRM, IT WILL HAVE TO COMPLY WITH THE FLORIDA BAR RULES, THESE PROPOSED RULES, BECAUSE NINE OF THE TEN OR TEN OF THE TEN ATTORNEYS WILL BE FLORIDA ATTORNEYS WHO PRACTICE IN FLORIDA.
A FIRM OUTSIDE OF FLORIDA THAT HAS TEN ATTORNEYS, MAYBE ONE OF WHICH WOULD EVER PRACTICE IN FLORIDA, COULD AGGREGATE THEIR EXPERIENCE AND GIVE A SUMMARY OF WHAT THE FIRM DOES OR A SUMMARY OF THE PRACTICE GROUP AND THE

PAST RESULTS AND NOT BE AFFECTED
BY THE RULES.
SO THAT'S THE PREMISE OF WHERE
THE PROBLEM STARTS.
IF WE COULD USE, IF WE COULD
TREAT WEB SITES AS JUST
CLIENT-ACCESSED COMMUNICATION AS
THEY HAVE TRADITIONALLY BEEN
TREATED, THEN WE WOULD HAVE A
LEVEL PLAYING FIELD.
>> WHAT ABOUT WHAT HAD BEEN
PROPOSED BY THIS COURT BEFORE WE
WERE TOLD THAT WASN'T WHAT THE
BAR WANTED, WHICH WAS THE HOME
PAGE IS SUBJECT TO THE RULES,
BUT THEN IF A CLIENT OR
PROSPECTIVE CLIENT CLICKS ON THE
NEXT PAGE, OBVIOUSLY, STILL
CAN'T DO FALSE AND MISLEADING,
BUT THE OTHER PROVISIONS ARE NOT
CONSIDERED ADVERTISING?
>> I THINK THAT WOULD BE FAR
BETTER THAN WHAT IS PROPOSED
HERE.
I THINK IDEALLY WE WOULD JUST
HAVE THE WEB SITE FALL UNDER A
DIFFERENT REGIME.
NOT THE ADVERTISING RULES, BUT
JUST SUBJECT TO WHAT CURRENTLY
EXISTS WHICH IS THAT YOU CAN'T
HAVE FALSE INFORMATION,
DECEIVING INFORMATION.
>> LET ME SEE IF I UNDERSTOOD
YOUR EXAMPLE.
ARE YOU SAYING THAT AS FLORIDA
LAWYERS IF YOU HAVE A PRACTICE
GROUP, YOU CANNOT TAKE ALL THE
LAWYERS IN THE PRACTICE GROUP
AND SAY COLLECTIVELY WHAT THEIR
RESULTS HAD BEEN AS OPPOSED TO
YOU CAN DO THAT IF YOU'RE
OUTSIDE OF THE STATE OF FLORIDA?
IS THAT, IS THAT WHAT I
UNDERSTOOD YOU TO SAY?
>> I DIDN'T FINISH HOW IT ALL
PLAYS OUT.
>> OKAY.
>> BOTH PRACTICE GROUPS CAN DO
THAT, BUT THE FLORIDA-BASED FIRM
WILL BE SUBJECTED TO THESE NEW
RULES IF ENACTED, THE FIRM
OUTSIDE OF THE STATE WOULD NOT
BECAUSE NINE OF THEIR TEN
LAWYERS OR ALL TEN OF THEIR
LAWYERS ARE NOT FLORIDA LAWYERS.
AND HERE IS WHERE WE BELIEVE A
PROBLEM COMES UP, ONE PORTION OF

THE NEW RULE IS NOT SUBJECT TO
THE TAKEDOWN REQUIREMENT.
4-7.4 AND 4-7.5 IS SUBJECT TO
THE TAKEDOWN REQUIREMENT, BUT
4.7.3 IS WHERE THE PAST RESULTS
SECTION IS, AND THAT IS THE,
ACTUALLY, MISLEADING OR
MISREPRESENTING INFORMATION.
AND THE STANDARD THERE, AND THIS
IS WHERE THE CRUX IS, THE
STANDARD IS OBJECTIVELY
VERIFIABLE.
AND WE BELIEVE WITHOUT A
DEFINITION IN THE RULES AS TO
WHAT THAT MEANS THAT
"OBJECTIVELY VERIFIABLE" CAN BE
DIFFERENT THAN "TRUE."
AND THAT IS A CONSERVATIVE LAW
FIRM WITHOUT KNOWING HOW IT'S
GOING TO BE ENFORCED --
>> HELP ME UNDERSTAND THAT ONE.
>> OKAY.
"OBJECTIVELY VERIFIABLE" IS WE
WON THIS CASE, AND IT'S
REPORTED.
THE BAR, WITHOUT EVEN COMING TO
CARLTON FIELDS AND ASKING HOW
COULD YOU SAY THAT, COULD GO ON
WESTLAW AND VERIFY IT
THEMSELVES, COULD GO ON GOOGLE
AND VERIFY IT THEMSELVES.
THERE ARE THINGS THAT ARE 100%
TRUE.
THAT'S ALL WE WOULD PUT UP IS
SOMETHING THAT IS 100% TRUE, BUT
YOU CAN'T GO ON GOOGLE AND PROVE
IT.
IF "OBJECTIVELY VERIFIABLE"
MEANS THAT A THIRD PARTY CAN GO
AND INDEPENDENTLY VERIFY IT WITH
PUBLICLY AVAILABLE RESOURCES,
THEN THAT'S GOING TO MAKE US
TAKE A NUMBER OF THINGS DOWN OR
COULD MAKE US TAKE THINGS DOWN
THAT ARE 100% TRUE.
>> [INAUDIBLE CONVERSATIONS]
>> TRYING TO UNDERSTAND.
>> WHAT?
LIKE WHAT?
>> OKAY, WE GAVE SOME EXAMPLES.
IN OUR COMMENT WE SAID THAT 50
CASES SETTLED WITHOUT
INCARCERATION AND SATISFACTORILY
TO CLIENTS.
IF THE BAR CAME AND ASKED US HOW
CAN YOU SAY THAT, WE COULD
INDEPENDENTLY PROVE THAT'S

ACCURATE.
THERE'S NO PLACE THE BAR COULD GO WITHOUT COMING TO US AND OBJECTIVELY VERIFY ON GOOGLE OR INDEPENDENT RESOURCES WHAT WE'RE TALKING ABOUT OR WHY THAT IS TRUE.
>> OR THEY CAN OBJECTIVELY VERIFY IT THROUGH YOUR OFFICE.
>> RIGHT.
AND IF -- AND THAT'S --
>> YOU WANT US TO MAKE THAT, PUT THAT CLARIFICATION IN THERE, WOULDN'T HAVE TO BE VERIFIABLE BY GOING ON WESTLAW?
>> AND THAT'S WHAT OUR COMMENT -- IT BOILS DOWN TO TWO SOLUTIONS.
IDEALLY, WE WOULD NOT HAVE WEB SITES REGULATED UNDER THE ADVERTISING RULES, BUT SIMPLY SUBJECTED TO THEY CAN'T BE FALSE OR MISLEADING.
BUT SHORT OF THAT WE WOULD LIKE A DEFINITION OF "OBJECTIVELY VERIFIABLE," THAT IT MEANS PROVABLE TO THE SATISFACTION OF THE BAR IF REQUESTED.
AND THAT WAS RIGHT IN OUR COMMENT, AND THAT'S THE CRUX, EITHER A DEFINITION OF "OBJECTIVELY VERIFIABLE" SHOWING THAT IT MEANS THAT WE CAN PROVE IT --
>> UNREASONABLY HARD TO SATISFY?
>> WHAT'S THAT?
>> WHAT IF THEY'RE UNREASONABLY HARD TO -- TO THE SECOND, A STANDARD THAT IS TO THE SATISFACTION OF ANYBODY ELSE SEEMS TO ME TO BE PROBLEMATIC.
IT OUGHT TO BE SOME KIND OF REASONABLENESS.
>> I AGREE WITH THAT.
THIS IS THE COURT RIGHT OUT OF OUR COMMENT THAT I AGREE A REASONABLENESS REQUIREMENT.
BUT WE THINK THAT DEFINITION IS BETTER THAN HOW IT CURRENTLY IS BECAUSE "OBJECTIVELY VERIFIABLE" DOES NOT NECESSARILY --
>> NOW, I JUST WANT TO MAKE -- YOU WOULD HAVE THE OPTION TO TAKE THE WEB SITE WHERE YOU'RE CONCERNED AND SEND IT TO THE BAR, IS THAT CORRECT?
>> I DON'T THINK THE BAR WANTS

HUNDREDS OF THOUSANDS OF PAGES.
>> WELL, I WOULDN'T THINK THAT PAST RESULTS, I MEAN, THERE COULD BE HUNDREDS OF THOUSANDS OF PAGES, BUT I WOULD ASSUME FOR YOUR CLIENT, PROSPECTIVE CLIENT, YOU WANT TO MAKE IT EASY FOR THEM TO SEE WHY THEY WOULD WANT YOU OVER GREENBERG --
[INAUDIBLE]
SO THIS THOUSANDS OF PAGES THING IS WHAT I'M SORT OF -- YOU COULD HAVE THAT OPTION, LIKE SAY I WANT TO PUT IN, WE'VE SETTLED 50 CASES WITHOUT INCARCERATION, WHATEVER.
AND YOU SAY I WANT TO MAKE SURE THAT MEETS THE CRITERIA, YES?
THEY CAN SEND IT TO YOU?
YES, THEY'RE SAYING YES.
SO IT SEEMS THE CONSERVATIVE PERSON SAYS NOT SURE YET, LET ME MAKE SURE.
>> HERE'S THE PROBLEM WITH THAT, IS THESE WEB SITES ARE CONTINUALLY BEING UPDATED AS NEW PAST RESULTS ARE CREATED, AND WE HAVE PRACTICE GROUPS, 20 PRACTICE GROUPS IN A FIRM.
IT'S GOING TO BE AN ADMINISTRATIVE NIGHTMARE HAVING THE PAST RESULTS PAGE --
>> SEE, I GUESS EVERYONE SAYS THESE LAW FIRMS ARE CONSERVATIVE.
SO I THINK A CONSERVATIVE LAW FIRM WOULD MAKE SURE WHAT THEY'RE PUTTING ON THEIR WEB FOR THEIR CLIENTS WOULD BE ACCURATE.
AND YOU'RE CONCERNED ABOUT SOMETHING THAT IT SEEMS LIKE THERE IS A BOGEYMAN HERE THAT ISN'T REALLY EVER GOING TO HAPPEN, BUT YOUR ARGUMENT IS THAT'S WHY IT SHOULDN'T BE REGULATED?
>> WELL, I'M -- WE ARE NOT GOING TO PUT UP ANYTHING UNTRUE.
I'M NOT WORRIED THAT WE'RE PUTTING UP SOMETHING UNTRUE AND WE NEED THEM, THE BAR, TO VERIFY FOR US THAT IT'S TRUE ENOUGH OR IT HAS TRUTHINESS.
WHAT WE PUT UP IS TRUE, THE PROBLEM IS, IS IT OBJECTIVELY VERIFIABLE, OR IS IT ONLY PROVABLE IF YOU COME AND ASK US

WHERE IS THE EVIDENCE?
>> WELL, THAT'S ASSUMING,
THOUGH, THAT "OBJECTIVELY
VERIFIABLE" IS NOT THE SAME AS
COMING TO --
>> AND WE JUST WOULD LIKE TO
HAVE A DEFINITION.
>> EVERYTHING IN THE WORLD I
GUESS YOU COULD PUT A DEFINITION
TO, BUT TO ME, I'M MISSING THE
LOFTIER ARGUMENT THAT
"OBJECTIVELY VERIFIABLE" IS
SOMEHOW SO VAGUE THAT YOU HAVE
NO IDEA WHAT THAT MEANS.
I JUST -- I'M, I'M MISSING THAT
ARGUMENT.
>> THE ARGUMENT IS JUST A
CONCERN THAT IF THE RULE SAYS
"OBJECTIVELY VERIFIABLE," WE
HAVE TO READ THAT IN THE MOST
CONSERVATIVE WAY WHICH MEANS
THAT OBJECTIVELY WITHOUT ASKING
CARLTON FIELDS --
>> I DON'T THINK -- I'M
CONSERVATIVE ON THAT READING,
AND I DON'T READ IT THAT WAY.
THAT'S WHAT I'M SAYING, I'M --
IT'S BEYOND, BEYOND
UNDERSTANDING THAT "OBJECTIVELY
VERIFIABLE" MEANS ONE ABSOLUTE
THING, AND THAT'S IT.
I'M MISSING THAT.
I'VE NEVER SEEN A CASE THAT SAYS
THAT.
I MEAN, THAT, TO ME, IS A VERY
REASONABLE STANDARD.
OBJECTIVELY IT'S NOT SOMEBODY'S
SUBJECTIVE DETERMINATION.
YOU UNDERSTAND THE DIFFERENCE
BETWEEN SUBJECTIVE AND
OBJECTIVE, AND "VERIFIABLE" IS
THAT YOU CAN DETERMINE WHETHER
IT IS, YOU CAN DETERMINE WHETHER
IT'S TRUE OR NOT.
>> IT GIVES ME GREAT COMFORT
THAT YOU FEEL THAT WAY.
[LAUGHTER]
I WOULD LIKE THE DEFINITION --
[INAUDIBLE CONVERSATIONS]
>> YOU DON'T WANT REGULATION OF
WEB PAGES.
YOU WANT -- THAT'S WHERE THIS
COMES TO, IS THAT -- MAYBE NOT
YOU, MR. LANG, BUT THAT'S WHAT
THE UNDERLYING ARGUMENT IS HERE.
WE WANT TO BE FREE TO DO WHAT WE
WANT TO DO ON OUR WEB PAGES AND

HAVE COME UP WITH ARGUMENTS THAT
THIS IS SOMEHOW JUST ALL OF A
SUDDEN HAS CHANGED, CHANGED THE
WHOLE WORLD, THAT THAT'S NOT A
COMMUNICATION WHEN YOU SAY
YOU'RE USING IT TO TRY TO GET
PEOPLE TO HIRE YOU.
>> WELL, IT IS CLIENT-ACCESSED
INFORMATION THOUGH.
IT'S FUNDAMENTALLY DIFFERENT
THAN THE NEWSPAPER ON THE
KITCHEN TABLE OR THE TV AD.
I MEAN, THERE'S A CLIENT CHOICE
OR A POTENTIAL CLIENT CHOICE TO
ACCESS A WEB SITE.
>> WELL, THERE'S POTENTIAL
CLIENT CHOICE TO PICK UP A
NEWSPAPER.
TRUE?
>> I THINK THAT WHEN YOU GO TO A
WEB SITE --
>> WELL, I UNDERSTAND THIS WHOLE
ARGUMENT'S GONE WITH THIS FOLKS
CAN DO ALL KINDS OF THINGS WITH
THE INTERNET.
I MEAN, YOU CAN SOLVE THE
BIGGEST PROBLEMS IN THE WORLD
WITH THE INTERNET, AND YOU CAN
ALSO SELL CHILDREN THROUGH THE
INTERNET.
SO, I MEAN, THIS IS WHERE WE GET
INTO TRYING TO PEEL THE ONION SO
FINELY IS THAT WE'RE MISSING THE
POINT OF WHAT THIS WHOLE
THING -- AND I THINK THE BAR AND
THESE FOLKS HAVE DONE A
FANTASTIC JOB IN PULLING THIS
ALL TOGETHER.
THEY'VE DONE IT BETTER THAN I
THOUGHT THEY WOULD.
>> THANK YOU FOR YOUR ARGUMENT.
>> THANK YOU FOR YOUR TIME.
>> MAY IT PLEASE THE COURT, I'M
JAMES GREEN, WEST PALM BEACH
LAWYER, I REPRESENT THE ACLU OF
FLORIDA AND SEARCY DENNEY WHICH
IS A PLAINTIFFS' PERSONAL INJURY
FIRM IN WEST PALM BEACH AND
TALLAHASSEE.
LIKE TO, FIRST, ADDRESS SOME OF
THE VAGUENESS ISSUES OF
"OBJECTIVELY VERIFIABLE."
ON MY WEB SITE BACK IN THE LATE
'70s, REALLY '80S, I FILED A
NUMBER OF JAIL CONDITIONS, CLASS
ACTIONS, ONE OF WHICH WAS BLAND
V. NORVILLE AGAINST THE ST.

LUCIE COUNTY SHERIFF AND
COMMISSIONERS.
THAT CASE WAS RESOLVED BY A
CONSENT DECREE, STAYED ACTIVE
FOR APPROXIMATELY TEN YEARS.
IT WAS CLOSED OUT BY JUDGE PAYNE
APPROXIMATELY 22 YEARS AGO.
RANDY BURG FROM THE FLORIDA
JUSTICE INSTITUTE CONTACTED ME
EARLIER THIS YEAR AND ASKED ME
FOR SOME -- BECAUSE HE'D
RECEIVED SOME COMPLAINTS FROM
SOME INMATES AT THE ST. LUCIE
COUNTY JAIL ASKING ME FOR COPIES
OF THE PROCEEDINGS.
I COULDN'T FIND THEM FROM 22
YEARS AGO.
I CHECKED WITH THE FEDERAL
COURT.
THEY HAVE NO COPIES OF THOSE
DOCUMENTS.
I'VE GOT THAT CASE LISTED AS ONE
OF MY PAST RESULTS.
IS THAT OBJECTIVELY VERIFIABLE?
I CAN SWEAR THAT IT HAPPENED,
BUT I CAN'T FIND ANY PAPERWORK
EITHER IN THE FEDERAL COURT,
WESTLAW OR IN MY OFFICE TO
INDICATE THAT IT'S OBJECTIVELY
VERIFIABLE.
>> UNDER THAT STANDARD I COULD,
AT A FUTURE TIME, I COULD SAY
THAT THE SUPREME COURT OF
FLORIDA NEVER REVERSED ME AS A
FOURTH DISTRICT COURT OF APPEALS
JUDGE.
[LAUGHTER]
>> AND I CERTIFY THAT ON
WESTLAW.
>> [INAUDIBLE]
[LAUGHTER]
>> ANOTHER EXAMPLE IS
CONFIDENTIAL SETTLEMENTS.
CONFIDENTIAL SETTLEMENTS
ENCOURAGE PARTIES TO SETTLE
CASES.
I HAVE A CLIENT THAT HAS
INDICATED ON ITS WEB SITE THAT
IT HAS SETTLED CASES FOR
MILLIONS AND MILLIONS OF
DOLLARS.
BUT SOME OF THOSE ARE
CONFIDENTIAL SETTLEMENTS AND
CANNOT OBJECTIVELY VERIFY IF THE
BAR CAME TO --
>> THAT'S PROBABLY WHY IT'S
CONFIDENTIAL, THEY DON'T WANT

YOU PUTTING IT ON YOUR WEB SITE.
>> AS LONG AS WE DON'T SAY WHAT HAPPENED, BUT I THINK MY CLIENT COULD SAY IT'S RECOVERED MILLIONS AND MILLIONS OF DOLLARS OF SETTLEMENTS IN THE PARTICULAR CLASS OF CASES.
BUT AGAIN, IF YOU CAN COME UP WITH A DEFINITION THAT CAN PROTECT THOSE TWO EXAMPLES, AND THOSE ARE TWO EXAMPLES OF TRUTHFUL SPEECH, THEN THAT MAY WORK.
I DON'T KNOW.
BUT --
>> WHAT DO YOU SUGGEST AS THE STANDARD?
>> PARDON?
>> WHAT DO YOU SUGGEST AS THE STANDARD FOR MEASURING TRUTHFULNESS?
>> WELL, IF A LAWYER SIGNS A DECLARATION OR AN AFFIDAVIT THAT HE OR SHE, IN FACT, HANDLED THE BLAND V. NORVILLE CASE AND RECEIVED A FAVORABLE CONSENT DECREE IN A CLASS ACTION ON BEHALF OF THE INMATES, THEN THAT MIGHT BE OKAY.
>> AND IF THE BAR CAN'T PROVE OTHERWISE, IS THAT NOT OBJECTIVELY VERIFIABLE?
>> IF IT'S --
>> I'M ASKING YOU.
THERE MUST BE A STANDARD IN THE WORLD THAT WOULD APPLY TO CIRCUMSTANCES.
AND IF YOU DON'T LIKE THE OBJECTIVELY VERIFIABLE, WHAT STANDARD WOULD YOU WANT SOMEONE TO APPLY?
>> WELL, IF YOU SAY THAT A LAWYER'S SWORN DECLARATION THAT HE OR SHE, IN FACT, HANDLED A PARTICULAR CASE AND RECEIVED A PARTICULAR RESULT IS ENOUGH --
>> IN THE ABSENCE OF OTHER EVIDENCE?
>> THEN THAT'S FINE.
BUT THAT'S NOT IN THE COMMENTARY.
>> SOMEHOW OBJECTIVELY --
>> YEAH, AN EXTERNAL SOURCE.
IT DOESN'T SAY "EXTERNALLY VERIFIABLE," BUT IT JUST SAYS "OBJECTIVELY."
I DON'T KNOW WHAT IT MEANS.

>> OKAY.
BUT THE OTHER OPTION IS THAT IN A SITUATION LIKE YOU HAVE WHERE 20, 30 YEARS AGO AND YOU HAVE ANY DOUBT ABOUT IT, YOU COULD SUBMIT IT TO THE BAR AND MAKE SURE YOU'RE OKAY WITH DOING THAT.
>> AND IF THEY ACCEPT MY SWORN DECLARATION, THAT'S FINE.
>> IF THEY SAY THERE'S NOTHING WRONG WITH IT, THEN YOU'RE FINE ON IT.
I MEAN, THAT'S WHAT THEY'RE -- I UNDERSTAND THE --
>> DO YOU SUPPORT WHAT MR. JULIN SAID ABOUT A PREFERENCE FOR AN ABA-TYPE REGULATORY SCHEME, A SIMPLER SCHEME THAT JUST FOCUSES ON PRIMARILY MISLEADING CONDUCT AND INAPPROPRIATE SOLICITATION?
>> NOT WHOLEHEARTEDLY TO THE EXTENT THAT THEY CARVE WEB SITES OUT OF THE CLIENT'S SOLICITATION PROVISION.
WE SUPPORT THAT.
HOWEVER, WE TAKE A MUCH STRONGER POSITION, AND THIS IS CONSISTENT WITH THE 2004 TAFT STUDY WHICH SAID THAT WE DON'T NEED TO SUBJECT OUR LAWYER WEB SITES TO, YOU KNOW, THE RULES GENERALLY REGULATING ADVERTISING BY LAWYERS AND, ALSO, THE ABA BASICALLY SAID AFTER ITS MOST RECENT, YOU KNOW, FAIRLY EXHAUSTIVE STUDY WHERE IT CONCLUDED NO NEW RESTRICTIONS ON LAWYERS' WEB SITES ARE NECESSARY AT TIME.
>> SO LET ME UNDERSTAND SOMETHING.
FOR THE ABA MODEL, ARE WEB SITES TREATED DIFFERENTLY?
THEY'RE NOT CONSIDERED ADVERTISING?
>> YES, AND IN A SOMEWHAT DIFFERENT WAY THAN I'M GOING TO ARGUE, WHICH IS MY MAIN ARGUMENT IF I CAN -- I HAVE 30 MINUTES OF ARGUMENT TO MAKE IN, LIKE, THREE MINUTES.
IF I CAN GO INTO THAT.
>> YOU'RE DOWN TO TEN SECONDS HERE.
[LAUGHTER]
[INAUDIBLE CONVERSATIONS]

>> I'D LIKE TO TALK ABOUT THE CONCEPT OF PUSH AND PULL.
IF I'M A LAWYER AND I, YOU KNOW, PUT A BANNER ADVERTISEMENT ON THE WEB OR A POP-UP ON THE WEB OR, PERHAPS, POSITIONING.
IF THE BAR COULD EMPIRICALLY SHOW THAT THAT IS INTRUSIVE AND MANIPULATIVE OR MEETS WHATEVER OTHER STANDARDS THE BAR HAS FOR ADVERTISING, I THINK THOSE COULD CONSTITUTIONALLY UNDER THE CURRENT SCHEME -- CENTRAL HUDSON WHICH IS, I THINK, SLIPPING AWAY BASED ON WHAT MR. JULIN SAID, BUT I THINK THOSE COULD PROPERLY BE REGULATED UNDER THE CURRENT STATE OF THE LAW AS LAWYER ADVERTISING.
BUT ALL THOSE DO, THEY MIGHT GET YOU TO THE WEB SITE.
THEY MIGHT GET YOU TO THE WEB SITE.
BUT ONCE YOU GET TO THE WEB SITE, THAT IS MUCH MORE AKIN TO A CLIENT PICKING UP THE TELEPHONE AND CALLING THE LAWYER, A CLIENT WALKING INTO THE LAWYER'S OFFICE, A CLIENT MEETING WITH A LAWYER.
THOSE CONVERSATIONS ARE CONSIDERED CLIENT-SOLICITED COMMUNICATIONS.
WHEN A CLIENT GOES ON A WEB, GOES ON THE INTERNET AND USES A SOPHISTICATED SEARCH ENGINE TO SEARCH OUT A LAWYER IN WEST PALM BEACH, FLORIDA, WHO DOES PERSONAL INJURY CASES AND THAT, AND THEN SEES THE NUMBER OF WEB SITES ON A GOOGLE SCREEN AND CLICKS ON ONE OF THOSE WEB SITES, THAT IS MUCH MORE AKIN TO THE LAWYER PICKING UP A TELEPHONE CALLING ME OR THE LAWYER WALKING INTO MY OFFICE AND TALKING TO ME OR MEETING ME SOMEWHERE TO TALK TO ME.
THERE'S NO -- RIGHT NOW THE BAR DOES NOT REGULATE THOSE TELEPHONIC, E-MAIL OR OFFICE IN-PERSON COMMUNICATIONS EXCEPT BY THE GENERAL PROHIBITION AGAINST FALSE, MISLEADING OR DECEPTIVE CONDUCT.
AND WE HAVE NO PROBLEM WITH CLIENT-SOLICITED COMMUNICATIONS

ON THE WEB SITES, ON THE
E-MAILS, ON FACE-TO-FACE
COMMUNICATIONS BEING GOVERNED BY
THAT GENERAL RULE.
THAT'S BEEN A LONGSTANDING RULE
THAT'S GOVERNED WEB SITES AND
OTHER CLIENT-SOLICITED
COMMUNICATIONS.
>> IF YOU'D WRAP IT UP, I'D
APPRECIATE IT.
>> PARDON?
>> PLEASE, WRAP IT UP.
>> OKAY.
AND I'D LIKE TO -- IN ADDITION,
I THINK ONE OF THE WAYS THAT THE
COURTS HAVE DEALT WITH
POTENTIAL -- AND BARS HAVE
REGULATED POTENTIALLY DECEPTIVE
INFORMATION IS BY REQUIRING
DISCLAIMERS.
AND I'D URGE THAT THE COURT
CONSIDER THOSE.
I WOULD ALSO URGE THAT THE COURT
NOT REQUIRE DISCLAIMERS THAT ARE
SO BURDENSOME THAT THEY SWALLOW
THE OVERALL MESSAGE, AND WE'D
ASK THAT THE COURT NOT REGULATE
OR TREAT WEB SITES, LAWYER WEB
SITES, JUST LIKE THEY TREAT ANY
OTHER CLIENT-INITIATED OR
SOLICITED COMMUNICATION.
>> THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENT.
>> MAY IT PLEASE THE COURT, MY
NAME IS TIM CHINARIS, AND I
REPRESENT 1-800-411-PAIN.
TODAY WE ASK THE COURT --
>> WHERE DOES PAIN, IS THAT A --
>> IT'S A MEDICAL AND LEGAL
REFERRAL SERVICE, YOUR HONOR.
AND TODAY WE'RE ASKING THE COURT
TO REJECT THREE PROPOSED RULES,
THE THIRD REQUIRED DISCLAIMER
FOR LAWYER REFERRAL SERVICE ADS,
THE RULE REGARDING AUTHORITY
FIGURES IN ADS, AND THE RULE
THAT ALLOWS THE BAR TO
ARBITRARILY REVOKE A FINDING OF
COMPLIANCE WITH AN AD, THAT AN
AD COMPLIES WITH THE RULES.
FIRST, WE ASK THE BAR TO -- OR
THE COURT TO REJECT THE RULE
THAT THE BAR'S PROPOSED
REGARDING A THIRD DISCLAIMER FOR
LAWYER REFERRAL SERVICE
ADVERTISEMENTS.
RIGHT NOW THE RULES REQUIRE TWO

REFERRAL SERVICES, THIS WOULD
ADD A THIRD, AND WE THINK THIS
WOULD IMPOSE AN UNJUSTIFIABLE
AND POTENTIALLY UNCONSTITUTIONAL
BURDEN ON REFERRAL SERVICES THAT
ADVERTISE VIA RADIO AND TV.
THE TREND IN RADIO ADVERTISING
IS TOWARD SHORTER AND SHORTER
ADS AND TO REQUIRE THREE
DISCLAIMERS IN A 15-SECOND AD
REALLY ELIMINATES THE ABILITY TO
USE THAT MEDIUM.
THE LAW PUTS THE BURDEN ON THE
BAR TO JUSTIFY RESTRICTIONS ON
COMMERCIAL SPEECH BY SHOWING
THAT THERE IS A REAL HARM IN
THAT THE RULE ALLEVIATES THE
HARM TO A MATERIAL DEGREE AND IN
THIS CASE THE BAR HAS NOT DONE
THAT.
THE BAR OFFERS ONLY THE
UNSUPPORTED ASSERTION THAT THE
PUBLIC WITHOUT THIS DISCLAIMER
MIGHT BE MISLED INTO THINKING
THAT REFERRAL SERVICES REFER
CASES TO LAWYERS WHO HAVEN'T
PAID TO JOIN THE SERVICE.
AND REALLY THERE'S NO EVIDENCE
THAT THE PUBLIC THINKS THIS WAY.
FOR ALL WE KNOW, THE PUBLIC
COULD ASSUME THAT LAWYERS PAY TO
BELONG TO REFERRAL SERVICES, OR
THE PUBLIC MAY NOT CARE.
WE DON'T KNOW.
BUT THE POINT IS, AND I THINK
THE IMPORTANT POINT FOR THIS
CASE, IS THAT THE BAR HAS THE
BURDEN OF PRODUCING EVIDENCE TO
SHOW THAT THERE WAS A HARM
ADDRESSED BY THE RULE, AND THE
BAR HASN'T DONE THAT.

>> THE TREND IN RADIO
ADVERTISING IS TOWARDS SHORTER
AND SHORTER ADS AND TO REQUIRE
THREE DISCLAIMERS IN A
15-SECOND AD REALLY ELIMINATES
THE ABILITY TO USE THAT
MEDIUM.
THE LAW PUTS THE BURDEN ON THE
BAR TO JUSTIFY RESTRICTIONS ON
COMMERCIAL SPEECH BY SHOWING
THAT THERE'S A REAL HARM AND
THAT THE RULE ALLEVIATES THE
HARM TO A MATERIAL DEGREE.
AND IN THIS CASE THE BAR HAS
NOT DONE THAT.

THE BAR OFFERS ONLY THE
UNSUPPORTED ASSERTION THAT
THE PUBLIC MIGHT BE MISLED IN
THINKING REFERRAL SERVICES
REFER TO CASES TO LAWYERS THAT
VICE-PRESIDENT PAID FOR THE
SERVICE.
FOR ALL WE KNOW, THE PUBLIC
COULD ASSUME THE LAWYERS PAY
FOR THE REFERRAL SERVICES OR
THE PUBLIC MAY NOT CARE.
WE DON'T KNOW.
THE IMPORTANT POINT IS THAT
THE BAR HAS THE BURDEN OF
PRODUCING EVIDENCE THAT THERE
IS A HARM ADDRESSED BY THE
RULE AND THE BAR HASN'T DONE
THAT.
THE 11TH CIRCUIT DIDN'T ALLOW
FOR A DISCLAIMER WHERE THE BAR
FAILED TO SHOW CONCRETE
EVIDENCE OF ANY REAL HARM.
IN CASES THE SUPREME COURT DID
RECOGNIZE THAT DISCLAIMERS CAN
BECOME UNDULY BURDENSOME AND
SO VIOLATE THE FIRST
AMENDMENT.
WE THINK THAT IS WHAT THIS
RULE DOES.
WE'D ASK THE COURT TO REJECT
THIS RULE.
IN THE ALTERNATIVE IF THE
COURT IS SO INCLINED TO
CONSIDER STAYING ACTION ON
REFERRAL SERVICE RULE BECAUSE
THE BAR IS PRODUCING A
COMPREHENSIVE PACKAGE OF
CHANGES TO THE REFERRAL
SERVICE RULES.
THE SECOND POINT IS WE ASK THE
COURT TO REJECT THE RULE
DEALING WITH AUTHORITY FIGURES
IN ADS.
IT'S VAGUE AS A MATTER OF LAW
AND UNJUSTIFIED BY THE REPORT
THAT THE BAR OFFERS IN SUPPORT
OF IT.
THE RULE DOESN'T DECLINE THE
KEY TERM AUTHORITY FIGURES.
NEITHER DOES THE COMMENTARY.
THE BAR HAS PUT IN THE RULE
THE EXAMPLES OF JUDGES AND LAW
ENFORCEMENT OFFICIALS, BUT
THEY'RE ONLY EXAMPLES.
THE RULE ISN'T LIMITED TO THAT
SITUATION.
AND SO WE THINK WITHOUT

FURTHER DEFINITION IT'S JUST
TOO VAGUE OF A STANDARD TO
GIVE FAIR NOTICE TO WHAT IS OR
IS NOT REQUIRED.
IT'S ALSO INTERESTING THAT
THIS IS THE ONE AREA IN WHICH
THE BAR SEEMS TO THINK THAT
DISCLAIMERS WILL NOT CURE A
POTENTIAL PROBLEM.
THE BAR'S RULES WOULD ALLOW
TESTIMONIALS, DRAMATIZATIONS,
WITH PAST RESULTS, BUT NOT IN
THIS AREA.
IT'S INTERESTING ALSO THE BAR
APPROVED THE USE OF ADS WITH
ACTORS DRESSED AS POLICE
OFFICERS.
THE JUSTIFICATION THEY OFFERED
DOESN'T PROVIDE THAT EVIDENCE
OF HARM.
IT DEALS WITH LIVE IN-PERSON
ENCOUNTERS WITH PEOPLE IN
UNIFORM.
THIS RULE GOES BEYOND THAT AND
DEALS WITH UNDEFINED AUTHORITY
FIGURES WHO COULD BE ANYONE, A
COACH, AN OLDER PERSON, A
PARENT.
IT JUST LEAVES THE ADVERTISER
AT THE MERCY OF GUESSING AND
WE THINK THAT'S TOO VAGUE A
STANDARD.
IN THE REPORT THE AUTHOR ALSO
KIND OF SUGGESTS THAT THE IDEA
OF THE MOST GULLIBLE CONSUMER
IS A STANDARD THAT SHOULD BE
USED AND WE OF COURSE THINK
THAT THAT IS NOT JUSTIFIED BY
THE LAW OR BY THIS COURT'S
DECISIONS.
AND FINALLY WE THINK THE COURT
SHOULD REJECT THE RULE DEALING
WITH THE ABILITY OF THE BAR TO
REVOKE ITS FINDINGS OF
COMPLIANCE WITH NO REASONS.
RIGHT NOW THE BAR ISSUES
INTERPRETATIONS AND THE
ADVERTISER IS TOLD TO RELY ON
THEM AND BUILD AD CAMPAIGNS
AROUND THEM.
THAT IS WHAT IS DONE IN THE
T.V. CAMPAIGN AREA, COSTS A
LOT OF MONEY, TAKES A LOT OF
TIME.
WE THINK PEOPLE OUGHT TO BE
ABLE TO RELY ON A FINDING OF
COMPLIANCE WHERE THERE'S BEEN

NO MISREPRESENTATION.
THEY SHOULD RELY ON THAT FOR
LONGER THAN THE 30-DAY PERIOD
PROPOSED BY THE BAR.
>> THANK YOU FOR YOUR
ARGUMENT.
THE COURT WILL BE IN RECESS
FOR TEN MINUTES.
>> ALL RISE.