IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,934

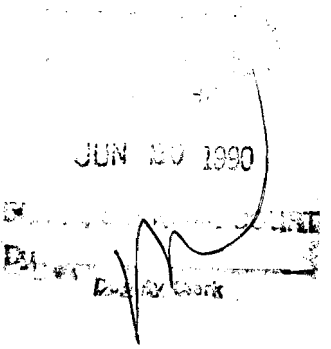
THE FLORIDA BAR,

Complainant,

vs.

GENE FLINN,

Respondent.
_____/



RESPONDENT'S REPLY BRIEF

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TO THIS HONORABLE COURT

FROM: DOROTHEA FLINN

The complexities of mixing two cases and the large amount of transcripts, numerous depositions, and exhibits have forced our office staff to do away with the usual format of a Reply Brief. Therefore, I is an overview commentary about the case, and II is a page by page response to the Complainant's Answer Brief that may not have been covered before.

The limitation of fifteen (15) pages, does not allow us to respond otherwise.

For this reason and time out for last week's Bar Convention, please bear with us.....

OFFICE MANAGER

I

What the not-so-good people, in and out of The Bar are not telling you is this: Investigations have been known to start and stop - before, e.g. Arky/ESM (intermittent over a period of some five (5) years that the Flinns were involved with different Agencies/Bureau). However, it can be said that Justice (finally) prevailed[1]. It has always taken hard work, time and a lot of team effort to put these matters into prospective for Law Enforcement.

In addition to advising The Bar's John Berry - to nolle prosequi - [Talk with Gabe Mazzeo, General Counsel, Larson Building] we have telegraphed him the following.....

> "We request an immediate response to our dictated message of Thursday, May 31, 1990 at Bar Center advising Insurance Fraud investigating case."

What this Honorable Court is faced with (in this very real scenario) is a continuing harassment to cut off the head (Respondent) and thereby get the investigative staff withdrawn from a very fluid front line. Certainly, those behind - pushing relentlessly - The Bar are not making the same mistake in underestimating our crime fighting capabilities in this second go-around. Incidentally, the cases 'they' cite - first, (only) involving Circuit Judges

1. The Respondent's wife and Respondent do not claim credit for the overthrow of Arky, Freed. It took Federal Indictments for that. We are in Federal Court right now.

- and the second are where the attorney throws himself on the mercy of the Bar at the Grievance level...probe abates. Moreover these culpable acts here are clearly definable, and continuation of the attacks on us - while we are still pursuing the case - by those responsible constitutes an indictable obstruction of justice. Gross was in the Flinns' Office and asked about the FBI!

Now to turn to something else, we were only able to get an estimated 15% to 20% of our evidence in the Record. In view of that, however, what Gross presented never made a passing grade, i.e. 'clear and convincing' standard. He does get an A+ - as an assassin - in ex parting the judge [Exhibit].

Well, the Respondent and every appeals jurist in the country want it on the Record. Further, they throw cases out for conduct like what blatantly occurred in these proceedings; not simply reverse for a new trial.

Moreover, an attorney has a duty to report misconduct...Just as we have kept faith with our oath to report criminal activity in the profession. One would think Gross, himself, without any prodding would be professional enough to confess error before this Honorable Court...right now, or give up trying other lawyers for breach of ethics, or both.

In The Florida Bar v. McCain, 36 So.2d 700 (Fla. 1978), the Supreme Court of Florida stated that the burden

of proof necessary to show a violation of the established standards of the legal procession is "clear and convincing evidence". The evidence presented by the Bar, when viewed together with the quality of the evidence presented by Respondent/Staff, did not meet this elevated burden, even though Respondent lacked quantum. Consequently, the Supreme Court of Florida should refuse to give any credence to the Referee's Report because it wasn't arrived at on a fair and lawful basis - as discussed throughout (documented).

For some additional Law on what in other times would be called a Coram Nobis Plea, we respectfully ask this Honorable Court to revisit that issue for a brief moment.

> THE DISCIPLINARY PROCEEDING VIOLATED THE RESPONDENT'S PROCEDURAL DUE PROCESS RIGHTS WHERE THE REFEREE'S ARBITRARY RULINGS PRECLUDED THE RESPONDENT FROM EFFECTIVELY PRESENTING HIS CASE.

In Deel Motors, Inc. v. Dept. of Commerce, 252 So.2d 389,390 (Fla. 1st DCA 1971), the Court stated that:

> "All proceedings conducted by any state agency, board, commission or department for purpose of adjudicating any party's legal rights, duties...[or] privileges ...must be conducted in a quasi-judicial manner in which basic requirements of due process are accorded and preserved; such proceeding contemplates that party to be affected by outcome of the proceedings will be given...an opportunity to...be heard on issues presented for determination and contemplates that order to be entered

will be based on competent and substantial evidence...[emphasis added).

The standard of basic fairness must be observed in order to satisfy the requirements of due process of law. City of Miami v. Jervis, 139 So.2d 513 (Fla. 3d DCA 1962) (wherein the Third District held that the proceedings before a civil board "were so pervaded by procedural irregularities, erroneous presumptions...and disregard of basic rules as to burden of proof and presumption of innocence that essential requirements of law were not met and officers were deprived of property rights without due process of law. Id at 514.) [Emphasis added]

In this case, the arbitrary decisions of the referee precluding the Respondent from effectively presenting his case deviated from the aforementioned mandate[2].

In The Florida Bar v. Fussel, 179 So.2d 852 (Fla. 1965) proceeding, the Supreme Court of Florida overturned an order of the Board of Governors of the Bar Association finding that such proceeding violated the Respondent's Due Process rights. In Fussell, the Respondent was allowed to respond via letters, but was denied the opportunity to personally (at a hearing) offer testimony in mitigation of the offenses of which he was accused. Id at 853. After the Board of Governors recommended a three year

2. See also, Drew v. Insurance Commissioner and Treasurer, 330 So.2d 794 (Fla. 1st DCA 1976) (wherein the court held that an administrative proceeding should provide a citizen with a fair, open and impartial hearing).

suspension, the Supreme Court of Florida overturned this finding.

The Supreme Court of Florida held that the refusal to allow the Respondent to present testimony at a hearing of the mitigating factors constituted a denial of the Respondent's Due Process rights[3]. The Court stated that although the rule that a lawyer about to be disciplined must be given an opportunity to offer testimony regarding the alleged offence was adopted prior to the adoption of the integration rule, the due process aspect of notice and a meaningful opportunity to be heard remains the same. Id at 852. The Court further stated that an attorney charged with misconduct should be given an opportunity to be heard in person and through witnesses to counter the charges; This "opportunity to be heard" necessarily assumes a "meaningful opportunity to be heard". In Fussell, the Court found that the Respondent was not given a meaningful opportunity to be heard because he was not given the opportunity to present testimony at a hearing. [Emphasis added]

In this case, Referee cuts off and cuts out witnesses, refused to allow his associate to help him[4],

3. The Supreme Court of Florida so decided even though the Florida Bar pointed out that it had almost uniformly recommended disbarment of lawyers who have been convicted of felonies. Fussell, 179 So.2d at 855. None of the Flinns even have a 'police blotter mark'; a non sequiter.
4. Weiss had to leave the room and Referee: "I'm not going to allow that" and Respondent was left to fend for himself in a soliloquy [TR-1114].

arbitrary rulings had the effect of denying the Respondent a meaningful opportunity to be heard in violation of the Respondent's basic Due Process rights. . . even as to the Bar's tail end costs. Referee signs costs judgment without affording Respondent a right to be heard[5]. Flinn ex parted, again.

When the Respondent sought to introduce evidence of the corruption scheme which was (and is) in existence, the Referee excluded such evidence but - not too surprisingly entered an affirmative finding that he did not find any evidence of such ethical violations. This evidence was essential to the Respondent's defense (because this issue in determining the propriety of judicial criticism is whether the statement was supported by the circumstances existing at the time the statement was made)[6]. Instead, the Bar purposely created a forum for the Deputies' defense contrary to what Governor Graham, et al. had found. The vehicle was just the false tablet they chiselled the charges on, and Flinn the goat to be sent out into the Sinai. The Referee's capricious and consistent refusal to allow the Respondent to move effectively covered-it-up, again, and shackled any real opportunity to develop even a semblance of a first line defense. Flinn - "Lehtinen called...I'll

5. A friend, who has taken senior status, once commented that if it looks like he was going to put someone away for a spell he gave that defendant every latitude or otherwise he would get reversed in the Fifth Circuit.
6. See In Re: Shimek, Jr., 284 So.2d 686 (Fla. 1973).

hold you in contempt". [TR 184] and in re: Tomlinson [TR 890]

Furthermore, the Respondent asked to introduce a tape of the Respondent in oral argument[7] before this very Court on April 28, 1988, which the people of Florida would think was (is) extremely probative to a lower tier (brand new) Judge on the issue of the Respondent's abilities, in contrast to some ax-to-grind self-incriminated Deputies/Opposing Attorneys[8]. The Referee initially expressed a willingness to consider the evidence by signing a subpoena ordering it, but had a sudden change of heart[9]. When faced with an adjudication as important as an individual's life (threats will probably never subside) and career (disinfranchising the little black people), it certainly bears all the indicia and stigma of arbitrary and capricious acts. It is noteworthy that the Respondent passed - with flying colors - a lie detector test. Gross wouldn't agree to a deposition on November 14, 1988, and

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7. Flinn didn't faint...chew gum; responded to all questions from the Bench and addressed the issues, notwithstanding the fact that Respondent doesn't hold himself out as an appellate specialist. 1st DCA 100%; 3rd DCA 65%.
8. Does the Bar reference where 'they' went to the Bar first before ordering a mounted cossack charge against innocent and unsuspecting claimants and carriers? Are these the acts of reasonable and prudent judges...as they like to be called? Respondent hereby incorporates by reference the Federal Civil Rights and RICO suit hereto. How about the Bar intervening as a ACLU for them? DCs printed 'crazy' over Flinn's name - public bulletin board.
9. Respondent has set the deposition of Tomlinson on why he would go to Miami attorney Perse [TR 102, 103] before a Broward County Referee was appointed and then hire a Fort Lauderdale firm with judiciary clout after the appointment was made. [Supreme Court Clerk Exhibit 000005]

objected...sustained. [DEN 30]

It is also significant that Respondent had attempted to introduce uncontradicted testimony on the leverage (pirating) pressured by Jacobs, who is also actively supporting the Bar's efforts to quell criticism - at the Miami Hearing - and had perpetrated one of the two grievance frauds against the Respondent. Scenario: The Respondent asked Levy, "I ask you to open to page -- and I ask you, under Arthur I. Jacobs --". The Committee (lawyer) Chairperson interrupts: "This is completely irrelevant. What is the next question." Respondent stated: "He happens to represent the Florida Bar and he instituted this grievance, as a leverage on me". [DEN 177 - page 131]. "Next Question." The Committee did not want any inquiry as to Jacobs' affiliation and a conversation can be added-in that they definitely didn't care, either, about any newspaper inquiries on the matter.

The reason that the Bar is asking for a seven member firing squad and they have offered to perform the nape of the neck coup de grace ("no rehabilitation", page 32) is because it has proven time and time again to be most effective in getting rid of leadership and the intelligentsia, e.g. Kaytin Forrest in Poland ('40). The Bar failed to grab off even one comp. client (or other type of client). The people came...some hobbling on artifical legs; others with mangled hands,...but they all came (or signed affidavits and letters including Nieto and Moore) to the Grievance hearings and to Fort Lauderdale.

They believe - while they are not learned in the ways of Fountainbleu Summits - and people know the fundamental truth and the truth will keep them free to continue to choose the Flinns.

II

Page 12 is clearly another compounded falsehood, and fails the test even in this abbreviated Record. Flinn has handled, presented to Masters and to five member subs Claims Bills in the Florida Legislature. Flinn has never sued the Master of the House (or anyone like him). Flinn is not having problems with the Legislature[10]. On the same page Buschbom wants a bigger cut of the pie (so testified), Dorothea Flinn refused to pay it. At the bottom of the page it says "sponsor" ... that's Plummer. The Bar is afraid to name him outright for fear this Honorable Court will call upon its background, expertise, and common sense to know he was Respondent's political opponent in '87 and '88. It would then make the whole thing political and conspiratorial and the Bar would rather put your heads in the sand on that one. Governor refuses signing - fraud.

The utmost credit should be to Flinn for not

10. Flinn delivered a requested dossier on Elaine Gordon who actively opposed (now) Speaker Tom Gustafson, who was fighting for the Speakership. Rep Flinn pledged his commitment and for 3 more votes to Bob Crawford (now President) to become Speaker on an Everglades Hotel napkin and gave it to him there. Further Staff/Tedcastle was assigned to the Flinn's defense but Referee would allot no more time [DEN 32].

killing that '89 Bill through former colleagues. They use a child as a shield which is taking a page right out of the barbaric Dark Ages. Bohannon never domiciled in Dist. 39.

Page 14 - The fact is that Dorothea Flinn testified she received only $15,616.01; not $19,700.00 from Buschbom [TR-1018] so Bohannon never paid for Dr. Mitzner's services. All the doctors charged about the same (e.g. Garrison $3,000.00 - plus cash, Natiello $2,500.00 - plus a deposition appearance) and none submitted billable time statements. This was a contingency matter. Flinn's instruction to all was to do the job you were trained to do ... that being the best job for this little boy. Verdict: $1,224,000.00.

Page 16 - At the risk of redundancy: Send it to the FBI Lab for analysis. The Flinns have worked closely with these agents - <u>they know their job and do it well</u>. The Bar never had the document analyzed (even by a private concern), or produced any kind of an expert or lay (eye ball) witnesses to state something different than what was adduced or will ever be in any record. There is neither smoke nor a gun in hand as a probative basis throughout all of the Bar allegations made while Respondent and family were tied up in the Senate 39 and 34 races ('87 through '89). Erwin's microscope is better than Gross' eyes. [TR 906]

Page 18 - With respect to that West Palm Beach

discovery package, it is interesting to note that the Bar purposely skips over the testimony of Mr. Jagolinzer, a prominent attorney and credible witness who assisted Flinn in the Palm Beach Circuit Court fee dispute matter, where Mattie and Bill Bohannon were present along with Hall/Buschbom/Jacobs, testifying [DEN 67]. They used their own Bar charges to bolster in Court their weak side while Gross stands idly by. Jagolinzer finds Respondent to be credible, and a Bar attorney was present for cross-examination. It stands uncontroverted [DEN 47].

Pages 19, 20 - Gross is wrong again. Flinn worked along side Gregory (as adjusters) thirty-three (33) years ago at Bituminous Casualty [TR-10], and Gregory borrowed money around this office, and never paid back Flinn because HE couldn't make it on the outside with a shingle out. So who then was an incompetent attorney [TR-11].

Further, the Respondent has <u>beaten</u> Gregory and Kronenberg (along with a lot of other E/C defense attorneys although not every time with the others) every time before Judges Stuedler, Branham, Trask, Cardone and (now) Circuit Judges Henderson and Capua.

Page 21 - D. C. Johnon has never forgiven the Flinns for breaking ranks with every other comp. attorney in supporting the other fellow for Circuit Court.

Page 21 - There is nothing in the Record from Powell, Mitzner, Burak, Garcia, and Gumer that they were

to be paid to be expert witnesses. All of the Respondent's Judges/D. C.s are Honorable (can't be bought) and were strictly volunteers. They didn't even get subpoena fees (or if they did, all returned the money) like the Bar gave the Deputies, et al. Dr. Stillman billed the Bar for some outrageous appearance fee, after setting himself up as a complainant. The Bohannons got travel, motel, and expenses from Georgia to see their family here. They moved back.

Page 22 - The Hearing before D. C. Fontaine (as authorized by the Governor: Respectfully remember that Kuker ups and recuses himself, suddenly, leave town, EC attorney doesn't know what to do and the client in on Respondent's back) was a bona fide Hearing [DEN 179]. Some of the Comp. cases have been lost, or not approved at this juncture. This is not a friendly suit! Further, the Referee heard that D. C. testify and so when he states that the Respondent has not been before any of his D. C. witnesses "recently", it is a bold faced lie to this Honorable Court. He is another Broward Berkowitz.

Page 22 -They say all the Circuit Judges are no good, then Gross references Reinert. The Bar can't have it both ways. Reinert is discussing a jury (tort) case. By the way, Reinert says competent for comp. and liability [TR-897-898]. The client wanted her day in Court, and they brought up her divorces. Flinn didn't exactly

lose the case when the taxable costs were added in. Conversely Respondent doesn't always receive offers to settle, either. There is nothing unusual or unethical in any of this. It's concocted straw grabbing.

Page 22 - With respect to this Chambers one, it was Miller and Hodges, Perse and Ginsburg (all opponents before the Supreme Court) who moved to hold Flinn in contempt, for no good reason except to pin Respondent even further down during the Grievance. That Motion was denied and the Circuit Court Judge further ordered that the Flinns did not have to give an accounting on Chambers. [Exhibit] Both Gregory and Buschbom had appeared before that Deputy to attempt (1) to get Chambers to switch representation from Flinn to Buschbom (talked directly to Frank Chambers and his wife, like Bohannon, but refused) and (2) again, to hold Flinn in contempt to get other clients away from this office. Moreover, this Court should find it strange that Gross never asked any of the Broward County Deputies to appear and knock the Flinns in-depth, addressing (now) the Bar's Burden of Proof. It is 'they', not Miami, who have had the last clear chance to see Flinn Sr. and Jr. in action, and Trawick says the Best Evidence Rule applies, always.

Competency or incompetency based upon medical is a permanent thing. Either one is brain damaged or he or she isn't with impaired faculties [TR 909-920]. We

will be forwarding a copy of another order on CEO transferred case to Division "J" wherein Respondent prevails against Miller & Hodges, who hit hard Respondent on the flank via the Grievance route. With that out of the way, Respondent/Cohen counterattacked with a Writ of Mandamus to dislodge a three (3) month old oral ruling to move Chambers back into the Appellate mainstream...and the firm of Miller & Hodges split apart down the middle. (Briefs filed [TR 27]). Perse and Ginsberg are out.

Page 30 - The Bar and the Referee now gingerly pass over Stillman (completely and almost apologetically) when this was touted in the beginning as the whole big basis for the incompetency charge on which statement the scamming Deputies based their mass recusals, shutting down the Bureau.

With respect to the Bar charges that Respondent/wife don't get along with the judiciary, Flinn looked after (money-wise) the building needs of the DCA in his District (T. Barkdull); had a hand in where to draw the lines for the new Fifth DCA (along with 'Ham' Upchurch) [also insured constitutionally tight so the Supreme Court didn't throw out our Reform Act - Rollins, Justice McDonald] and was selected by the White House and placed under the direction of Ray Randolph of Pepper, Hamilton and Mr. Karcher of Los Angeles to manage the campaigns in South Florida for the confirmation of both Justices Bork and Kennedy.

Mary Ellen Bork and Dorothea exchanged letters. Further,both have hosted parties for the Clerk of the Court et al. that every Judge and his or her spouse, in town, attended. Recently, Respondent defended the competency of the First DCA to judge W. C. cases (700+ filed in '89 out of 3,000 filings) before the Oversight Board, and in other forums.

CONCLUSION

Based upon the documentation submitted heretofore, the Report (and the cost addendum) should be quashed, and attorneys fees and costs awarded against the instigators (not the Bar; through threat of indirect contempt); the Referee summoned to be denounced for risking forfeiture of his office (first time) and the Bar Leadership quietly admonished (an arm of the Court) for allowing political and other type games being played in the system and with the Courts; further, to seek new safeguards (reporting back within sixty (60) days and to speed-up the reforms to be instituted throughout.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Reply Brief was mailed this 18th day of June, 1990 to: PAUL A. GROSS, ESQ., The Florida Bar, 444 Brickell Avenue, Miami, Florida 33131.

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