

During the first week of September 1991, Mr. Lanzillo reported the August 30, 1991 discussion with Respondent to Sheriff Wells and the Manatee County Sheriff's office. (Tr. p. 19, L. 17-24). It was suspected that the Respondent made the telephone call to Sheriff Wells. This telephone call and subsequent meeting between Respondent and Mr. Lanzillo prompted the Sheriff's office to contact the State Attorney for the Twelfth Judicial Circuit. An investigation was undertaken by the Sheriff's office and was monitored by the State Attorney. (Tr. p. 24, L. 12-21). Mr. Lanzillo agreed to participate in this investigation. There was no independent evidence discovered that the Respondent made the telephone call to Sheriff Wells. (Tr. p. 24, L. 6-7 should read: "There was 'no' independent evidence...").

Mr. Lanzillo contacted Respondent and requested a copy of the semi-nude photograph of Sheriff Wells. (Tr. p. 84, L. 3, p. 127, L. 16). Respondent testified that he did not feel comfortable giving Mr. Lanzillo his copy, and called Mr. Matthews to request a copy be sent to Mr. Lanzillo. (Tr. p. 127, L. 20-25). On September 6, 1991, a copy was then received in the mail by Mr. Lanzillo. (Tr. p. 84, L. 11). Mr. Lanzillo called Respondent and thanked him for the photo. Thereafter, a series of conversations between Respondent and Mr. Lanzillo were taped under the supervision of the Sheriff/State Attorney investigation. These contacts were initiated by Mr. Lanzillo.

On November 6, 1991, Respondent met with Mr. Lanzillo at Respondent's office. At this November 6, 1991 meeting, Mr. Lanzillo produced a bogus taped telephone conversation between two Manatee County Sheriff deputies. The taped conversation concerned an alleged file not presented to Respondent in a discovery request. (Tr. p. 29, L. 11-13). Law enforcement provided the staged conversation as a vehicle for Respondent to act on this information. (Tr. p. 28, L. 11-13).

During the November 6, 1991 meeting Mr. Lanzillo stressed to Respondent that he did not want the taped conversation traced back to Mr. Lanzillo. The following is a conversation between Respondent and Mr. Lanzillo:

Lanzillo: Hey, I don't want this shit biting me on the ass.

Marable: Well, I ain't.....

Lanzillo: I mean, I don't wa...want my name used or how you got it.....

Marable: ...I won't.....

Lanzillo: I mean that's, that you do with that tape what ever you want but I don't wanta.... you know.

Marable: Yeah, I understand.

Lanzillo: As far as I'm concerned.....

Marable: ...so what...what happens at some point they hey, we don't know what the fuck you're talking about Marable. Say hey, I've got this, I guess I could say I got this anonymous tape.

Lanzillo: I'll deny anything... You did, you can say anything you want.....

Marable:Yeah at that point I can...we tape it, change the writing so won't find your writing or fingerprints then it's none of their business where I got it. They can't.....

Lanzillo: Make your own copy. Do with it what you want.

Marable: Say, hey. I don't know how I got this fucker, but I got it. I ain't telling you. Work product. (pause) I don't know just more intrigue. That's strange, you know, the dealings I've had with Ference have always been cordial. I'm sure he's got to in (inaudible) and stuff to me. I mean he always acted like a gentleman. And he seemed to have more sense. But.....

(R. Bar Ex. 6, 6A - pg. 19, November 6, 1991 conversation)

On November 7, 1991, the Respondent forwarded a letter to the attorneys representing the Manatee County Sheriff's Department in the Matthews lawsuit, indicating that he had received information that evidence and discovery had been withheld.

In the November 6, 1991 conversation Mr. Lanzillo inquired about any other photographs that Respondent may have obtained. Respondent had told Mr. Lanzillo that he had heard a rumor of Sheriff Wells and a cowboy singer in some other photos. (Tr. p. 129, L. 21-24). Respondent heard the rumor from Mr. Matthews. (Tr. p. 130, L. 4). The photos allegedly depicted Sheriff Wells using narcotics. (R. Bar Ex. 6, 6A - p. 19). Respondent was told that a Ms. Poindexter had the negatives somewhere in her house. (Tr. p. 130, L. 16). The conversation on November 6, 1991 continued:

Lanzillo: You never know...Anything else? That you can clue me in on or anything else I need to know? OK. Got any subpoenas coming up?

Marable: You know, I will.

Lanzillo: Thanks...whatever.....

Marable: OK. Well again I will check as I said I, I...you know those pictures of Wells and Chance doing drugs.....

Lanzillo:those would.....

Marable: Apparently they scared the woman that has them, she won't turn them loose.

Lanzillo: Who's scared her?

Marable: Who?

Lanzillo: Who's scared her?

Marable: Wells and Chance fucked her...You know her? she's working for the County six years. She's got the pictures. They think they broke in and stole but she's got the negatives. It'd be interesting.

Lanzillo: About what?

Marable: She's got um. Get her address you can break in there and steal 'em.

Lanzillo: Oh, I'd never do anything like that...Homey, don't play that. Everything's above Board.

Marable: The end justify.....

Lanzillo: Testing one, two, three.

Marable: The end justifies the means.

Lanzillo: The ends justify the means? Is that the motto, the new motto for the day.

Marable: That's something I heard somewhere. I didn't make it up. I appreciate you're a good man. Oh, you know, listen, listen more maybe you'll get more interesting stuff. Like how would they say ha, ha. How could we forget that Matthews case what was the big deal? They arrest people every day.

Lanzillo: Whatever, I just gave you a little early Christmas present. Something for you think about underneath the tree.

(R. Bar Ex. 6, 6A - p. 19 and 20).

On November 8, 1991, Respondent met with Mr. Lanzillo at Mr. Lanzillo's office. The following conversation was tape recorded:

Lanzillo: Hanging in there. Anyway, got a meeting at 2:45? Or a hearing at 2:45? First of all, I want to thank you for uh, that clip and that

file. I know it was....I made out like a bandit on that. It wasn't you know for that cell phone, one, one cell phone tape. But uh, you were talkin' about.....I've been doin' some thinkin' and remember our discussion the other day, you said it'd be nice if we could get the address and break into that house and get them, get them pictures?

Marable: (inaudible).

Lanzillo: (laughs). Anyway, um, I have a, well, let me put it to you this way if you would; gettin' those pictures be worth a hundred bucks to ya?

(pause)

Marable: Yeah, the picture'd be, would be interesting. Again, you know, I don't know what I could use 'em for, you know. It'd, it'd be worth, it'd be worth that to a lot of people. Um, yeah, and maybe not to me, but I think I know people for whatever their own political agendas they'd be worth that but not.....

(R. Bar Ex. 7, 7A - p. 1).

Respondent reiterates that the photos would be worth a lot of money.

Marable: Now to me, to me, they're worth, you know, that to people that I happen to know who for whatever reason uh, you know, it would be worth, you know, worth it. But I'm not....I can't say I would pay anybody or (inaudible) somebody bustin' in. But damn, it'd be worth you, you'd make some money.

Lanzillo: Well.....

Marable: You know, you could sell 'em for a hell of a lot more than that.

Lanzillo: Well, I'd just get 'em to you.

Marable: Yeah. Yeah, but see, then I get involved in the...you know, yeah if you're interested I would mention to some people that if they wanted, that these, perhaps these things can be gotten by somebody but I don't wanna be acting as the middle man.

(R. Bar Ex. 7, 7A - p. 2).

Mr. Lanzillo continued the discussion of the break in.

Lanzillo: Well, an idea I had, 'cause I've been thinkin' about it since you mentioned that.

Marable: Well, it's a good one, you know, I don't know how I somehow become a central clearing house for shit (laughs).

(R. Bar Ex. 7, 7A - p. 3).

Respondent then indicated to Mr. Lanzillo that he wasn't serious about the break in. However, Respondent continued to show an interest in the photos and encouraged Mr. Lanzillo. When Mr. Lanzillo told Respondent that Ms. Poindexter would be out of town that weekend Respondent stated, "OK. Well, I'll uh, give it some thought but it might be interesting it would be. She's out of town, huh? Good for her.". (R. Bar Ex. 7, 7A - p. 5).

After the November 8, 1991, meeting, the Respondent had no contact with Mr. Lanzillo, nor did Mr. Lanzillo have any contact with the Respondent until December 13, 1991. In the interim, law enforcement prepared a staged photograph of Sheriff Wells and others purportedly using cocaine. (Tr. p. 32, L. 21-25, p. 33, L. 1). On December 13, 1991, Mr. Lanzillo advised Respondent that he had obtained the photographs out of the Poindexter garage. No burglary ever occurred. Respondent showed some hesitancy in receiving the photos but then told Mr. Lanzillo to send them anonymously.

Marable: Yeah. Well, send 'em, send 'em to me anonymously or drop 'em off.....

Lanzillo: Send 'em to you anonymously.....

Marable:I can say that.....

Lanzillo:I'll, I'll drop 'em off, man. I don't trust these.....

Marable:I can say in good faith. I don't know where the hell these.....

Lanzillo: And you won't know where they've come from either. I didn't see you, you didn't see me.

Marable: Yep.

(R. Bar Ex. 8, 8A - p. 4).

Within an hour Respondent told Mr. Matthews about the telephone call from Mr. Lanzillo. (Tr. p. 158, L. 12-24). Also on December 13, 1991, Mr. Matthews then contacted Mr. Lanzillo and advised that Respondent told him to call Mr. Lanzillo because Lanzillo had "something that I need". (R. Bar Ex. 11 - December 13, 1991, p. 1).

On December 16, 1991, Mr. Lanzillo met with Mr. Matthews at Mr. Lanzillo's office. Mr. Lanzillo asked what Respondent told Mr. Matthews.

Matthews: He told me, in order to protect his ass so he wouldn't get in the middle of somethin', for me to take care of this and uh, it was cool to take care of it whenever uh, it would just be between Stan, me and you and no other, and uh, I would never say where I got anything.....

Lanzillo: You know my prints ain't going to be on this shit.

(R. Bar Ex. 11, December 16, 1991, p. 2).

Mr. Lanzillo then asked if Respondent told Mr. Matthews how the negatives were obtained.

Lanzillo: Um. Did, did he tell you that I broke into the place?

Matthews: Right.

Lanzillo: I was scared shitless, man. (laughs).

Matthews: Did you find it in the garage? In the box? Right where I said it was. That's pretty good information ain't it.

Lanzillo: Where'd you get that from?

Matthews: That's what I heard.

Lanzillo: Oh, OK.

Matthews: Remember I told you that?

Lanzillo: Yeah.

Matthews: I said that Livingston broke into her house and stole her other picture and she had it out in the garage in a box.

(R. Bar Ex. 11, December 16, 1991, p. 3, 4).

Mr. Lanzillo then showed the negatives to Mr. Matthews depicting Sheriff Wells using cocaine. Mr. Matthews agreed to pay \$50.00 to cover the developing costs. A meeting was held on December 18, 1991 between Mr. Lanzillo and Mr. Matthews, however, no photos or negatives were given to Mr. Matthews.

The State Attorneys Office for the Twelfth Judicial Circuit monitored the investigation involving Mr. Lanzillo, the Respondent and the Sheriff's Department, and determined that no criminal charges should be filed against the Respondent. The investigation was concluded.

I find that Respondent's conduct as set forth above was intended to obtain any evidence that could be used against Sheriff Wells and the Manatee County Sheriff's office. This was not limited to impeachment evidence in the

false arrest case but also any political evidence to be used by Mr. Matthews. There is clear and convincing evidence that Respondent encouraged Mr. Lanzillo to commit a burglary to obtain photos of Sheriff Wells using drugs. This Referee Notes Chapter 777.04(2) Florida Statutes (1993), wherein "a person who solicits another to commit an offense prohibited by law and in the course of such solicitation, commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense...." is guilty of criminal solicitation. The Referee further notes that pursuant to Chapter 777.04(4)(e), "(if) the offense attempted, solicited, or conspired to is a felony of the second degree or a burglary that is a felony of the third degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the third degree....".

The Referee finds Respondent's position lacking credibility in that he made the statements about the break in "flippantly and sarcastically". (Tr. p. 135, L. 9). Respondent's statement immediately thereafter that the "ends justify the means", was made in a serious tone and consistent with his efforts to obtain incriminating evidence or photographs. The forensic report of Dr. Hollien clearly establishes that Respondent made the statement "the ends justify the means". (R. Bar Ex. 9). Further, I find any statements made by Respondent that he "wasn't serious" to be rebutted by his subsequent statements of interest in the tapes, as well as his involvement of his client, Mr. Matthews, in conduct he believed to be criminal. The Respondent should not have involved his client, Mr. Matthews, in conduct he believed to be criminal.

The Referee believes that Mr. Matthews' testimony lacked credibility. The tapes and transcripts reflect that Mr. Matthews believed that a burglary was committed. The Referee notes Mr. Matthews' statement that the photos were "in the garage in a box." (R. Bar Ex. 11, December 16, 1991, p. 3). Respondent likewise made an almost identical statement on November 8, 1991.

Marable: OK. 'Cause that's all I know is, you know, the way I heard it was that they knew these pictures existed and some people broke into the house, and uh, stole a bunch of pictures but that they were out in the garage in a box or somethin'. That's the way I heard it.

(R. Bar Ex. 7, 7A - November 8, 1991, p. 2).

III. Recommendations as to Whether or Not the Respondent Should Be Found Guilty: I make the following recommendations as to guilt or innocence:

I find Respondent guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (the standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act

of misconduct be construed as tolerance thereof. The commission by a lawyer of any act which is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline); Rule 4-8.4(a) (a lawyer shall not violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

IV. Recommendations as to Disciplinary Measures to Be Applied:

I recommend that Respondent be suspended from the practice of law for a period of one year and assessed the costs of the disciplinary proceedings as set forth herein. I further recommend that the Respondent be required to pass the ethics portion of The Florida Bar examination prior to the expiration of the suspension period.

According to Standard 5.1 Failure to Maintain Personal Integrity, Florida Standards for Imposing Lawyer Sanctions, disbarment is the appropriate sanction. Standard 5.11(b) states that disbarment is appropriate when "a lawyer engages in serious criminal misconduct, a necessary element which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft. Standard 5.11(e) states that disbarment is appropriate when "a lawyer attempts or conspires or solicits another to commit any offenses listed in section (a) - (d)". Subsection (a) being felony conviction. Standard 5.11(f) states that disbarment is appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice".

However, a reduction in the degree of discipline to be imposed is appropriate in this case because in mitigation, I find the Respondent has no prior disciplinary record.

Standard 7.2 states that "suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system".

V. Personal History and Past Disciplinary Record: After the finding of guilt and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1), I considered the following personal history and prior disciplinary record of the respondent, to wit:

Year of Birth: 1949
Date Admitted to Bar: October 19, 1973
Prior Disciplinary convictions and Disciplinary
Measures Imposed Therein: NONE

Aggravating Factors: Standard 9.22(b) dishonest or selfish motive;
(c) a pattern of misconduct; (g) refusal to
acknowledge wrongful nature of conduct;
(i) substantial experience in the practice
of law.

Mitigating Factors: Standard 9.22(a) absence of a prior
disciplinary record.

IV. Statement of Costs and Manner in Which Costs Should be Taxed:

I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs pursuant to
Rule 3-7.6(k)(1) \$ 500.00

Referee Level

Staff Investigator Expense:

Joseph McFadden (11/91 - 1/19/94)
Time Expended: 35.1 hours @ 19.00/hr. 666.90
Travel Time: 286 miles @ \$0.32/mi 91.52

Bar Counsel Travel Expense:

David R. Ristoff (12/14/92 - 90 miles @ \$0.33)
(Grievance Committee Hearing) 29.70
(Parking & Tolls) 3.00

(Status Conference/Motion Hearing)
(10/29/93 - 220 miles @ \$0.34) 74.80
(Tolls) 2.00

(Deposition of Frank Lanzillo)
(11/23/93 - 90 miles @ \$0.34) 30.60
(Parking & Tolls) 3.00

(Final Hearing)
(Rental car and gasoline 12/16 & 12/17/93 -
123 miles @ 0.34) 41.76
(Lodging) 46.00
(Tolls) 2.00

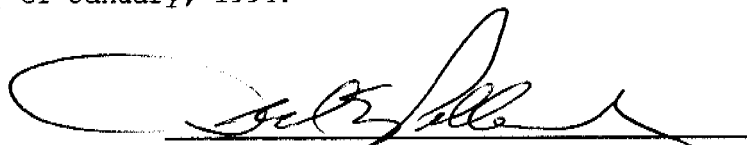
Court Reporter Expense:

Mary Frances Shultz
(Grievance Committee Appearance 11/30/92) 177.50
(Transcript) 599.30
(Grievance Committee Appearance 12/14/92) 35.00
(Transcript) 9.30
(Postage) 2.90

Vincent M. Lucente & Assoc., Inc.	
(Transcript of Lanzillo Deposition)	73.50
(Postage)	3.90
 Douglas B. Metzger	
(Status Conference 10/29/93 Appearance)	35.00
(Transcript for 10/29/93)	58.50
(Final Hearing 12/17/93)	
(1/2 of Original & 1 copy of Transcript)	292.50
(Transcript)	252.00
(Postage & Handling)	24.25
 Forensic Communications Associates	
(Enhancement/Decoding/Speaker Identification and Report)	1,250.00
 TOTAL ITEMIZED COSTS:	 \$ 4,304.93

It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with the forgoing itemized costs, be charged to the Respondent and that interest at the statutory rate shall accrue and be payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 21st day of January, 1994.



DONALD E. PELLECCIA
Referee

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