

FILED 7/4

SID J. WHITE

JUN 2 1994

CLERK SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Petitioner,

v.

PHILLIP SAMUEL DAVIS,

Respondent.

Supreme Court Case  
No. 82,786

The Florida Bar Case  
No. 91-71,419(11K)

REPORT OF REFEREE

I. Summary of Proceedings: Pursuant to the undersigned duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.5 of the Rules Regulating The Florida Bar, a Final Hearing commenced on May 16, 1994 and concluded on May 18, 1994. All of the pleadings, transcripts, notices, motions, orders and exhibits are forwarded with this report and the foregoing constitutes the record of the case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Randi Klayman Lazarus  
Suite M-100, Rivergate Plaza  
444 Brickell Avenue  
Miami, Florida 33131

For The Respondent: Mel Black  
2937 S.W. 27th Avenue  
Miami, Florida 33133

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is charged: After considering The Florida Bar's complaints this Referee finds that all facts are true as stated in The Florida Bar's complaint to wit:

1. That at all times material herein Phillip Samuel Davis was a Judge of the Circuit Court assigned to the Criminal Division of that Court in Dade County, Florida, and in that capacity, was authorized to act on behalf of the Circuit Court, and possessed all of the powers and duties of that office as provided by law and, as such was a public servant.

2. That Raymond J. Takiff, hereinafter referred to as "Takiff", a member of The Florida Bar, acting in an undercover capacity for the United States Government, held himself out to Phillip Samuel Davis as a corrupt attorney who would and did make cash payments to, and for the benefit of Respondent in exchange for favorable rulings in the Circuit Court and for the release of official information through the Respondent.

3. That as part of his undercover role, Takiff informed the Respondent that he represented narcotics traffickers who would or did face criminal charges in the Circuit Court.

#### COUNT I

4. That in or about 1990, the Respondent did contact Takiff to advise him that the Respondent wanted to interact with Takiff and would be willing to perform corrupt acts on Takiff's behalf.

5. That in or about 1990, Takiff, while in his undercover capacity provided Respondent with a sheet of paper containing the names of defendants.

6. That Takiff requested that the Respondent, in his capacity as a Circuit Court Judge provide sealed information to Takiff, to wit: whether outstanding arrest warrants were in existence in regard to the purported defendants whose names are identified on the sheet of paper as aforementioned in paragraph five (5).

7. That the Respondent did provide those names to then Circuit Court Judge, Roy T. Gelber, so that Gelber would provide said information to Takiff.

8. That Gelber did provide Takiff with the sealed information pursuant to the Respondent's request.

9. That Takiff, in his undercover capacity and pursuant to his previous representation to the Respondent placed \$10,000.00 in the medicine cabinet located in the restroom of Respondent's judicial chambers, located at the Metropolitan Justice Building in Dade County, Florida.

10. That Respondent admitted that he in fact did retrieve the \$10,000.00 placed in the medicine cabinet by Takiff.

11. That the monies as referenced in paragraph ten (10) constituted a "payoff" or "bribe" for the sealed information which Respondent caused to be provided to Takiff and for the performance of future corrupt acts by the Respondent.

#### COUNT II

12. That in or about 1991, Takiff requested that the Respondent in his capacity as the presiding Circuit Court Judge reduce the bond of a defendant that Takiff was purportedly representing.

13. That the Respondent requested payment of \$20,000.00 to reduce the bond, as aforementioned in paragraph twelve (12), as well as the purchase of an automobile.

14. That the Respondent did in fact reduce the bond from \$250,000.00 to \$20,000.00 in his capacity as a Circuit Court Judge.

15. That Respondent advised Takiff that he had reduced the bond of a similarly situated defendant on the day before, so as to avoid any suspicion.

16. That Takiff, in his undercover capacity, did provide \$20,000.00 to the Respondent, while Respondent and Takiff sat in Takiff's car.

17. That the Respondent accepted the \$20,000.00 from Takiff as a "payoff" or "bribe" for having reduced the bond of Takiff's purported client.

18. That the Respondent subsequently telephoned Takiff to advise that he had determined the automobile he wanted Takiff to purchase for him as additional payment for having reduced the bond of Takiff's purported client.

### COUNT III

19. That Respondent was unaware that Takiff was acting in an undercover capacity, and believed that Takiff was representing a defendant who would appear before Respondent.

20. That Respondent had conversations with Takiff regarding the bond reduction and failed to advise the office of the State Attorney for Dade County, Florida, of such communications.

21. That the conversations with Takiff constituted ex-parte communications.

### COUNT IV

22. That Respondent while acting in his capacity as a Circuit Court Judge did request and receive a loan from an attorney who Respondent later appointed as a special public defender.

23. That Respondent while acting in his capacity as a Circuit Court Judge did request and receive loans from attorneys who were already appearing before the Respondent on behalf of clients.

24. That Respondent while acting in his capacity as a Circuit Court Judge did request and receive a loan from an individual while that individual served as a court appointed expert psychiatrist.

25. That Respondent while acting in his capacity as a Circuit Court Judge did request a loan from another court appointed expert psychiatrist while that individual was serving the Respondent as an expert witness.

26. That the expert psychiatrist as aforementioned in paragraph twenty-five (25) refused to provide a loan to the Respondent and was no longer appointed as an expert in Respondent's courtroom.

COUNT V

27. That while testifying under oath in United States of America v. Harvey N. Shenberg, Alfonso C. Sepe, Phillip S. Davis and David Goodhart, Case Number 91-708-Cr-Gonzalez (s), (commonly known as Operation Courtbroom) the Respondent admitted that he used cocaine and was under the influence of cocaine while presiding as a Circuit Court Judge.

28. That while testifying under oath in the United States of America v. Harvey N. Shenberg, Alfonso C. Sepe, Phillip S. Davis and David Goodhart, Case Number 91-708-Cr-Gonzalez (s), (commonly known as Operation Courtbroom) the Respondent admitted that he used alcohol and was under the influence of alcohol while presiding as a Circuit Court Judge.

29. That while testifying under oath in the United States of America v. Harvey N. Shenberg, Alfonso C. Sepe, Phillip S. Davis and David Goodhart, Case Number 91-708-Cr-Gonzalez (s), (commonly known as Operation Courtbroom) the Respondent admitted that he used prescription drugs and was under the influence of prescription drugs while presiding as a Circuit Court Judge.

30. That while testifying under oath in the United States of America v. Harvey N. Shenberg, Alfonso C. Sepe, Phillip S. Davis and David Goodhart, Case Number 91-708-Cr-Gonzalez (s), (commonly known as Operation Courtbroom) the Respondent admitted that his use of cocaine, alcohol and prescription drugs did adversely affect the performance of his judicial duties generally.

31. That while testifying under oath in the United States of America v. Harvey N. Shenberg, Alfonso C. Sepe, Phillip S. Davis and David Goodhart, Case Number 91-708-Cr-Gonzalez (s), (commonly known as Operation Courtbroom) the Respondent admitted that his use of cocaine, alcohol and prescription drugs did adversely affect the performance of his judicial duties particularly in regard to State of Florida v. Geraldo Balmaseda.

32. That Respondent stated that Balmaseda was a Defendant in his division who was charged with assaulting a former girlfriend, Celtina Montenegro.

33. That Respondent stated that although the prosecutor and the victim's family members pleaded with the Respondent not to release Balmaseda, because they feared he would harm Ms. Montenegro, he did so anyway.

34. That two days after the Respondent caused the release of Balmaseda, Balmaseda killed Celtina Montenegro in broad daylight in front of the Dade County Auditorium.

35. That the Respondent admitted that had he not been under the influence of cocaine, alcohol and prescription drugs he would have given greater weight to the concerns of the prosecutor and the victim's family and would not have allowed Balmaseda's release.

II. RECOMMENDATION AS TO GUILT: I recommend that the Respondent be found guilty of the following violations, to wit: I find that as to Count I, Rules 3-4.3 (The commission by a lawyer of any act that 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), 4-8.4(a) (A lawyer shall not violate or attempt to 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(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice), Rule 4-8.4(f) (A lawyer shall not

knowingly assist a judge or judicial officer in conduct that is a violation of the applicable rules of judicial conduct or other law) of the Rules of Professional Conduct.

I find that as to Count II, Respondent has violated Rules 3-4.3 (The commission by a lawyer of any act that 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), 4-8.4(a) (A lawyer shall not violate or attempt to 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(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct.

I find that as to Count III, Respondent has violated Rules 4-8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) Rule 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) of

the Rules of Professional Conduct.

I find that as to Count IV, Respondent has violated Rules 3-4.3 (The commission by a lawyer of any act that 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), 4-8.4(a) (A lawyer shall not violate or attempt to 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(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), Rule 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct.

I find that as to Count V, Respondent has violated Rules 3-4.3 (The commission by a lawyer of any act that 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), 4-8.4(a) (A lawyer shall not violate or attempt to 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(b) (A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 4-8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice) of the Rules of Professional Conduct.

**III. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:**

I believe the following cases to be applicable to this matter and have based my recommendation that Respondent be disbarred from the practice of law for a period of ten (10) years: The Florida Bar v. Gross, 610 So. 2d 442 (Fla. 1992); The Florida Bar v. Insua, 609 So. 2d 1313 (Fla. 1989); The Florida Bar v. Golub, 550 So. 2d 455 (Fla. 1989). I have also attached my findings in open court on May 18, 1994 which more fully set forth the rationale for my findings. (Exhibit A).

**IV. FLORIDA'S STANDARDS FOR IMPOSING LAWYER SANCTIONS:** I believe the below listed sanctions apply to this case:

- 5.11(b) Disbarment is appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;
- 5.11(e) Disbarment is appropriate when the lawyer engages in the sale, distribution or importation of controlled substances.
- 5.11(f) 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.

5.21 Disbarment is appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent of obtain a significant benefit or advantage for himself or another, or with he intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

I also find the existence of the following aggravating circumstances:

9.22(b) Dishonest and selfish motive.

As regards the misconduct as alleged in the complaint of The Florida Bar.

9.22(c) A pattern of misconduct.

As regards the misconduct as alleged in the complaint of The Florida Bar as well as the evidence of witness tampering, lying to a State Attorney and the court, lying to those individuals as set forth in my oral ruling, incompetence in a recent case in California.

9.22(d) Multiple offenses.

As regards the misconduct as alleged in the complaint of The Florida Bar as well as the evidence of witness tampering, lying to a State Attorney and the court, lying to those individuals as set forth in my oral ruling, incompetence in a recent case in California.

9.22(f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

As regards advising the court in this proceeding both in motion and in open court that a member of the Grievance Committee had solicited contributions for the Respondent's opponent in his judicial campaign, when that statement was false.

9.22(g) Refusal to acknowledge wrongful nature of conduct.

As regards failing to admit unequivocally the violation of any rule regulating the Florida Bar, as evidenced by Respondent's answer to the Florida Bar's request for admissions as well as Respondent's failure to testify as such.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Age: 41

Date Admitted to Bar: July 17, 1981

Prior disciplinary record: None

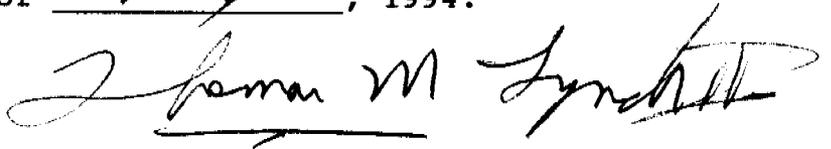
VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

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

Administrative costs.....	\$ 500.00
Court Reporter's Attendance at Grievance Committee hearings on February 1-9-17, 1994...	558.25
Court Reporter's Attendance and transcription of final hearing May 16-18, 1994 .....	*
Investigator's Costs .....	1,472.36
Bar Counsel Travel Costs .....	266.34
Photocopying.....	48.00
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TOTAL	\$ 2,844.95

(\*The Cost for the Court Reporter's attendance and transcription of the final hearing will be provided upon receipt. This report will be amended to reflect same.)

Dated this 25 day of May, 1994.



THOMAS M. LYNCH, Referee  
Broward County Courthouse  
201 S.E. 6th Street, Room 822  
Fort Lauderdale, Florida 33301

Copies to:

Randi Klayman Lazarus, Bar Counsel  
Mel Black, Attorney for the Respondent  
John T. Berry, Staff Counsel

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THE REFEREE: Right. Let me indicate that in this case -- in, I guess, nine-plus years on the bench -- I probably read more evidence in this case than any case I have tried in that time frame.

Fortunately, I read it well before the hearing, so I didn't have to interrupt the hearing to read it because it would have been an interruption of probably a couple of weeks.

Let me indicate that after reading all the evidence, hearing all the testimony, hearing the audio tapes, seeing the video tapes, and hearing argument from both sides, I find that the Florida Bar has proven each element in each count of the Complaint and that the Respondent has failed to prove any defense whatsoever.

Specifically, there has been insufficient evidence from my reading of all of the evidence to show entrapment and coercion, using the standard that we

1 use in this particular proceeding.

2 Mr. Black, as usual, was correct in  
3 a number of respects.

4 There are a lot of people that have  
5 a lot of hope for Phil Davis, including  
6 myself. He's a dynamic individual, a  
7 charismatic individual, and the man knew  
8 the law and still does know the law.

9 And once again, Mr. Black was  
10 right. The videos show two different  
11 Phil Davises, one of last Sunday and one  
12 when he was taking a bribe for about  
13 \$20,000.

14 And once again, Mr. Black was  
15 correct when he indicated that Phil  
16 Davis is a talented individual --  
17 extremely -- but Phil Davis for years  
18 and years lies.

19 He lied to the Chief Judge and he  
20 lied to his administrative Judge when  
21 they offered help for what he knew in  
22 his own mind, that he had at least a  
23 problem with drugs. They offered him  
24 help, and he lied.

25 Mr. Davis lied to his family, he

1           lied to his friends, he lied to his  
2           colleagues, he lied to attorneys, he  
3           lied to doctors, and these are people  
4           that are behind him the whole way, from  
5           the inception of his career.

6           He even lied to his own attorney,  
7           Congressman Hastings, who was  
8           representing him in the Courtbroom  
9           trial.

10          Before he was a Judge -- in between  
11          the time he was a Judge and a State  
12          Attorney, he lied to an Assistant State  
13          Attorney in a trial and during that same  
14          time frame, he lied to a Judge as well.

15          He also lied on loan applications  
16          saying he didn't have a drug problem,  
17          when he has testified under oath he did  
18          have a drug problem during that time  
19          frame. And another outrageous lie was  
20          lying about the death of your child.

21          Phil seems to think that the rules  
22          don't apply to him.

23          I find that he tampered with a  
24          witness as a defense attorney. During  
25          the hearing, I found out through the

1 individual from your own testimony and  
2 from your own testimony, your response  
3 was after you learned of this woman's  
4 death, you became depressed -- probably  
5 an understatement of what her family  
6 felt.

7 You had everything going for you  
8 because of the hard work and the faith  
9 of an awful lot of people, many of whom  
10 are sitting in this courtroom today.  
11 Thousands more are not sitting in the  
12 courtroom. They were counting on you  
13 and amazingly enough, they still support  
14 you.

15 I hope no one follows in your  
16 footsteps and destroys our system of  
17 justice like you did. You essentially  
18 flushed the respect of the judiciary  
19 right down the sewer, and I'm not sure  
20 if we can ever recover.

21 But also, there are some mitigating  
22 factors. Your community service is  
23 admirable. Your work in the church is  
24 very good, and I wish you continued  
25 success in your recovery, but you don't



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testimony of his own witness that he participated in fund raising for a Judge. From his own testimony, he was hustling loans from lawyers and experts with cases before him and at the time of his testimony, he saw nothing wrong with that, which is amazing. And the rewarded the lenders with appointments.

I use the word "loan" very loosely since very little of the money was repaid, but I have used the term loan.

Phil took bribes. You traded your judicial discretion for cash and as a Judge, you had so much to offer and you blew it. You traded your discretion for cash.

You were clouding your reasoning -- from your own testimony, which I don't know how many pages it is, probably five, six, seven, eight hundred pages, something like that -- from your own testimony, you were clouding your reasoning with drugs and alcohol while you were on the bench.

One decision led to the death of an

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deserve to be a lawyer.

As late as a few weeks ago, there was an article -- which I am not relying on the article. I am relying on the order and the motion that has been filed.

A Federal Judge, because of your admitted incompetency, had to grant a motion for a new trial based on your motion alleging that you were incompetent in that particular case. That shows that the public needs protection from your representation.

I am going to recommend disbarment for a period of 10 years.

What I would like to do is get from each side a proposed written recommendation within whatever time frame you need -- although I don't know what the time frame is that the Supreme Court gave me. I haven't looked at the order yet, but I think I probably have a month or something like that.

MS. LAZARUS: I'm not sure, Your Honor. It's six months from the date of

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THE FLORIDA BAR'S AFFIDAVIT OF COSTS

THE FLORIDA BAR, through undersigned counsel hereby submits its affidavit of costs expended in the above referenced matter:

Administrative costs..... \$ 500.00

Court Reporter's Attendance  
at Grievance Committee  
hearings on February 1-9-17, 1994  
before Referee, which constitute  
a part of the record before the  
Florida Supreme Court..... 558.25

Court Reporter's Attendance and  
transcription of final hearing  
May 16-18, 1994 ..... \*

Investigator's Costs ..... 1,472.36

Bar Counsel Travel Costs ..... 266.34

Photocopying..... 48.00

TOTAL \$ 2,844.95

(\*The Cost for the Court Reporter's attendance and transcription of the final hearing will be provided upon receipt. This report will be amended to reflect same.)

