IN THE SUPREME COURT OF THE STATE OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

SUPREME COURT CASE NO: 94,027
TFB NO: 98-11,359 (12A)

RICHARD LEE BUCKLE,

Respondent.
_____/

RESPONDENT'S AMENDED APPEAL OF REPORT OF REFEREE

RESPONDENT'S AMENDED INITIAL BRIEF

This matter is presented for review to THE SUPREME COURT OF THE STATE OF FLORIDA, pursuant to the Rules Regulating The Florida Bar which gives this court jurisdiction and authority over the matters contained herein.

ATTORNEY'S CERTIFICATE OF SIZE AND STYLE OF TYPE

The undersigned attorneys hereby certify that this Brief is 12 point Courier New and not proportionately spaced as required by this Court.

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STATEMENT OF THE CASE

HUMBLY COMES NOW, the Respondent, Licensed Attorney **RICHARD LEE BUCKLE, ESQUIRE**, in proper person, as co-counsel, and by and through his undersigned attorney of record, **LAYON F. ROBINSON II, ESQUIRE**, pursuant to Rule 3-7.7(c)(1), of the Rules of Discipline of The Florida Bar, and hereby appeals the Findings of Fact and Recommendations of the referee contained in his report to this Court dated May 12, 1999. The Respondent and his undersigned counsel respectfully pray and request that they be given the opportunity to orally argue the merits of this cause.

This case arises from one letter and two enclosures sent by the Respondent to the alleged victim of a crime in Toronto, Canada in June of 1997. The complaint by the alleged victim was not made until more than four months after the disposition of the criminal case. The position of The Florida Bar is that the letter in question and its enclosures constitute a violation of Rule 4-8.4d of the Rules Regulating The Florida Bar. It has been and continues to be the position of the Respondent that there was a substantial purpose to the letter other than to violate any provision of the rule and therefore that he did not knowingly, wilfully, or maliciously violate any rule in question. He claims that he was diligently representing his client and his client's

interests. His position was supported at trial by two duly qualified experts.

The matter was tried before a referee appointed by this Court on March 25 and 26, 1999, in Bradenton, Manatee County, Florida. The referee submitted a report to this Court on May 12, 1999, recommending that the Respondent be suspended for a period of thirty (30) days and that he be placed on probation for two (2) years during which time he may not send religious materials in connection with his practice of law to any opposing litigant or witness or attorney and further that failure to abide by the restriction on sending religious materials shall result in an action for contempt. The Respondent timely filed an objection to the Report of the Referee.

STATEMENT OF FACTS AND NATURE OF CASE

On September 30, 1998, The Florida Bar filed their complaint against the Respondent based upon a letter sent by the Respondent to Ms. Lydia Gibas in Toronto, Canada, on June 25, 1997. Enclosed with that letter was the personal testimony of how the Respondent came to know Jesus Christ as his personal Lord and Savior and a Christian parable entitled "Who Are You Gonna Call?" The foundation of the complaint filed by The Florida Bar was that the letter and the two aforedescribed enclosures constituted a violation of the Florida Bar rules. The referee's findings were founded exclusively upon the content of the letter and

enclosures, the testimony of Ms. Gibas and the testimony of a prosecutor.

On June 7, 1997, the Respondent, Bradenton attorney Richard Lee Buckle, Esquire, was contacted by a female church friend of Donald Lavier Spaulding who was being detained in the Sarasota County Jail. He had been arrested by the Sarasota County Sheriff's Department on June 6, 1997. He was charged with false imprisonment, a felony of the third degree, pursuant to FSA 787.02(1)(a), and battery, a first degree misdemeanor, pursuant to FSA 784.03. His bond on each count was $50,000 for a total bond of $100,000.

The Probable Cause Affidavit (PCA) was faxed to attorney Buckle by a clerk in the sheriff's office in Sarasota on or about June 9, 1997. On that date attorney Buckle had his first telephone conference with his client. The PCA revealed that the alleged crime occurred on or about the late afternoon of June 1, 1997, on Mr. Spaulding's boat; the "Venture". The alleged victim was a 41 year old white female from Toronto Canada by the name of Lydia Gibas. She and Don Spaulding had met at a convenience store parking lot on Bradenton Beach on June 1, 1997. She initiated the conversation in the parking lot by asking him: "don't I know you from somewhere?" Her comment led to Mr. Spaulding inviting Ms. Gibas to dinner and later taking her to see his 28' cabin cruiser on which he resided. There he invited

her to spend the next day and possibly the next evening on board his boat at sea. She accepted his invitation. The following day Ms. Gibas voluntarily boarded his boat at the Bradenton Beach Marina just before noon. She was alone and knew that only she and Mr. Spaulding would be on the boat. She was dressed in a bikini covered with a loose top. The couple toured the local beach areas, went fishing, and later traveled along the Intercostal Waterway enroute to Coaster's Restaurant in Sarasota, Florida. At some point Mr. Spaulding tried to kiss her on the lips, but she asked him not to because she had a cold sore on her lip. They arrived at Coaster's Restaurant and docked the boat across a canal from the restaurant. Before they could walk a very short distance to the restaurant they were confronted by a woman and warned that they were trespassing on a private condominium dock. They were told that they would have to move their boat. They both spoke to a woman who demanded that they move their boat. Ms. Gibas had her purse, wallet, credit cards, and U.S. currency in the amount of approximately $200. She voluntarily reboarded the boat after Mr. Spaulding was unable to persuade the condominium tenant to allow him to dock his boat there while they ate. After they left the dock they traveled back out onto the Intercoastal Waterway. Soon it became dark and dangerous to navigate. Mr. Spaulding announced that he was going to put out the anchor and that they would be spending the night.

He then retired to the cabin below and was followed by Ms. Gibas who attempted to call the Coast Guard on her cellular phone. That upset Mr. Spaulding because his boat was not properly registered. He grabbed Ms. Gibas by the forearm and attempted to remove her phone from her possession. In the process she threw him to the floor and beat him over the head several times with her camera and then tried to get her camera strap around his neck in an effort to choke him. Ms. Gibas then demanded that Mr. Spaulding return to the third deck of his boat, pull up anchor, and drive her to shore. Mr. Spaulding followed her orders. As they were traveling along a sailboat was passing by them. Ms. Gibas shouted and screamed to the three occupants who with the assistance of Mr. Spaulding pulled up along side of his boat. Ms. Gibas then boarded the sailboat. She was taken to Bradenton where she reported the incident to the local police. During the day on the boat Ms. Gibas reported to Mr. Spaulding that she had come down to the Manatee County area to visit a male friend whom she used to work for in a tavern in Toronto. He had sent her a plane ticket. After she arrived in Sarasota she and her friend had a disagreement which resulted in her going her separate way. She rented a motel room on Bradenton Beach and later encountered Mr. Spaulding. Ms. Gibas was then approximately 5'5" tall with long brown brunette hair to her waist. She weighed approximately 125 lbs. Mr. Spaulding at the time was a white male, 48 years of

age, 5'7" tall weighing approximately 155 lbs. Mr. Spaulding acknowledged that he had sexual contact in mind after he took Ms. Gibas to dinner. He was especially encouraged when she accepted his invitation to go on his boat and spend the night. He perceived her acceptance of his invitation to be an acceptance on her part to desire to engage in sexual relations with him. He said that after they left Coaster's Restaurant that she voluntarily removed the top to her bikini and allowed him to take several photographs of her with her camera naked from the waist up. Ms. Gibas denied the same. That was the same camera with which she beat Mr. Spaulding about the head causing severe lacerations and bleeding. She later reported to the police that she removed the film from her camera after she got to shore and exposed it. She has never given a reason for doing so. During their trip Ms. Gibas reported to Mr. Spaulding that two years previously her sister had been murdered and raped in Toronto, Canada. She also told Mr. Spaulding that she had just put her mother in a mental institution as a result thereof. She stated that she had been living with her father and that she had financial problems.

In her deposition Ms. Gibas was asked every question addressed to her in the Respondent's letter dated June 25, 1997. She also admitted that she knew before she boarded Mr. Spaulding's boat that she may be spending the night with him

alone and also that she battered him and caused severe lacerations to his head and abrasions to his arms during their struggle. Between June 9, 1997, and June 25, 1997, the Respondent made numerous telephone contacts with the prosecuting attorney, Scott Van Ness. They had several telephone conversations about the pending case. Numerous times the Respondent asked Mr. Van Ness whether or not Ms. Gibas intended to pursue the charges for which his client was being detained. Mr. Van Ness continually told the Respondent that he had not had the time to contact Ms. Gibas to discuss the facts. His client was anxious to be exonerated and released from jail. During this period of time the Respondent spoke with more than a dozen adult women, his investigator, a retired clinical psychologist, and other lawyers who were all confirmed to him that in their opinion that Mr. Spaulding's invitation to go on the boat with him alone, all day and possibly all night, was an invitation to have sexual relations with Ms. Gibas and that her coming aboard his boat was an acceptance of that unspoken offer. Mr. Buckle's investigator is an experienced yachtsman who had confirmed to the Respondent the numerous and significant dangers involved in attempting to navigate the Intercoastal Waterway at night.

Between June 9 and 25, 1997, a substantial investigation was conducted by the Respondent and his investigator which included, visiting all of the places involved in the alleged offense,

photographing them, and interviewing witnesses. There was a serious question as to venue; i.e. whether or not this alleged offense occurred in Sarasota or Manatee County, Florida. Mr. Spaulding vigorously insisted that there was no merit to the claims of Ms. Gibas. The Respondent had many unanswered questions.

On October 22, 1997, Mr. Spaulding pled nolo contendre to the count of misdemeanor battery by virtue of his having grabbed Ms. Gibas by the forearm in an effort to stop her from using her cellular phone. He was sentenced to credit for time served and placed on eight months probation with the special condition that he have no further contact with Ms. Gibas. The felony charge of false imprisonment was nol-prossed or dropped by the State.

On June 25, 1997, the Respondent, Richard Lee Buckle, was in a position where he had exhausted all known possibilities of further investigation. The law provides that a defendant cannot be held for more than thirty (30) days without a formal charge being filed against him. On June 25, 1997, no formal charges had been filed and it appeared to the Respondent that prosecutor Scott Van Ness was dragging his feet and in no hurry to make a filing decision. Mr. Spaulding demanded that the Respondent do everything in his power to prove his innocence. The Respondent maintains that the letter which he wrote to Ms. Gibas dated June 25, 1997, had several substantial purposes other than to

embarrass, humiliate, disparage, or discriminate against her. He continues to maintain that the inclusion of his personal testimony and the accompanying Christian parable did not constitute a further effort or attempt to interfere with the administration of justice by attempting to intimidate, harass, or otherwise cause Ms. Gibas to withdraw her intent to prosecute Mr. Spaulding. He testified that his only intent was to share the Gospel and be obedient to the commandment of his Lord and Savior Jesus Christ to share God's love and fulfill the Great Commission (Matthew 28:16-20).

The burden of proof was on The Florida Bar to establish the Respondent's intent by clear and convincing evidence. The Respondent continues to maintain that The Florida Bar failed in that endeavor at the trial.

ISSUES OF LAW

ISSUE OF LAW NO. 1

Whether or not the referee's conclusions of fact and law are adequately supported by the evidence in the record by clear and convincing evidence?

ISSUE OF LAW NO. 2

Whether or not the Supreme Court of Florida has the power and authority to prohibit the Respondent from exercising his First Amendment rights by including Christian tracts or religious materials in his correspondence?

ISSUE OF LAW NO. 3

Whether or not Rule 4-8.4d of the Rules of Professional Regulation is constitutional as applied to the facts at issue?

ISSUE OF LAW NO. 4

Whether or not the discipline recommended by the Referee is fair, just, and reasonable under the circumstances?

RESPONSE AS TO ISSUES OF LAW

AS TO ISSUE OF LAW NO. 1:

In his Findings of Fact, contained in paragraph III, on page 2 of his report, the referee, stated, in the fourth full paragraph, that the letter which Mr. Buckle sent to Ms. Gibas dated June 25, 1997, was "On its' face, . . . objectively humiliating and intimidating to a reasonable person standing in Ms. Gibas' place." If his conclusion is true then it would make no difference if the letter had a substantial legal purpose. Such a holding is clearly contrary to the rule and the law. The referee goes on to state that "the letter's intent is obvious: Respondent is threatening to explore and exploit the most personal and important aspects and relationships in Ms. Gibas' life, to hold these aspects of her life up to public scrutiny, to expose her." Does not competent advocacy require the possibility of the same in a case based on such facts? He further notes that Ms. Gibas testified that she did consider abandoning her criminal

complaint against Mr. Spaulding as a direct result of receiving Mr. Buckle's letter and that a reasonable person in Ms. Gibas' place might well have considered abandoning the cause as well. Could it be that she considered abandoning her complaint because she had lied? All confrontation of victims in similar positions by defense attorneys is, by its very nature, embarrassing, humiliating, disparaging, and intimidating. The referee's skewed reasoning continues in the last paragraph on page 2 of his report when by his logic, he concludes: "Because the intent of the letter as written is obvious from reading it, it must be inferred that the Respondent intended its' affect on Ms. Gibas." That logical inference completely ignores the evidence presented by the Respondent without legal justification or consideration of the testimony of the Respondent and his two experts. He goes on to state and conclude that the letter had no substantial purpose other than to embarrass, intimidate, or otherwise burden Ms. Gibas. He further found, as a finding of fact, that: "Mr. Buckle's argument that he intended his letter to be an investigative tool, or a request for information, is not credible, in that no reasonable attorney would ever expect such a letter to be actually answered by the purported victim of a crime." Therefore he must, by logic, have reached the conclusion that the Respondent's two expert witnesses are not reasonable attorneys. That flawed reasoning is apparently based upon his

logical deduction that no reasonable attorney would ever expect such a letter to actually be answered by the receiver. The referee concluded that Mr. Buckle's testimony was not credible or believable because it must be based upon the standard or "test" of what a reasonable person might expect. The referee's deductions and logic are clearly in error. The issue is not, and never could be, what a reasonable attorney might expect the reaction to a letter to be to its recipient; i.e. "expectation" cannot be the test and is not the test under the rules or the law. The law clearly is that if such a letter has a substantial purpose other than to embarrass, humiliate, disparage, or discriminate against, then it is immaterial and irrelevant what the subjective reaction of the receiver is; i.e. even if it in fact embarrasses, intimidates, disparages, or discriminates against the receiver. The Respondent unequivocally testified that his intent was lawful and that he did not willfully or knowingly violate any provision of the rules. The only impeachment of his testimony was the opinion of the referee. The Respondent's credibility was supported by numerous character witnesses who were all distinguished and honorable persons in his community. His letter must therefore stand or fall upon its content and not the subjective reaction of Ms. Gibas. The opinion of an expert attorney with significant experience in the field of criminal law should weigh heavily in reaching a conclusion. If a

violation of these rules could be determined solely by the reaction of the receiver of a letter then there would be no way a lawyer could know what language is and is not permissible. Such a set of rules would absolutely result in an unfair interference with the administration of justice.

The Florida Bar's complaint against the Respondent contains several alleged violations none of which are supported by direct proof of his corrupt motive. The Respondent's letter to Ms. Gibas dated June 25, 1997, contained 88 sentences. The letter was broken down into 88 numbered lines and received in evidence as an exhibit. The Bar was unable to produce any testimony that any particular one of the 88 sentences constituted a violation. Instead, the argument was that the letter taken as a whole obviously constituted a violation. The Bar's position was that the letter or significant portions thereof had no substantial purpose other than to embarrass, humiliate, disparage, or discriminate against Ms. Gibas. That position was and is in great conflict. Furthermore the referee held that the letter or significant portions thereof constituted an attempt to interfere with the administration of justice by attempting to intimidate or harass Ms. Gibas into withdrawing her intent to prosecute. Those allegations were not supported in the record by clear and convincing evidence or a clear preponderance of the evidence against him. The Bar alleged that the insertion by the

Respondent of "religious materials" had no substantial purpose other than to further embarrass, humiliate, disparage, or discriminate against Ms. Gibas; i.e. that they augmented and thus exacerbated the effect of the letter. They further claimed that said "religious materials" were a further attempt to interfere with the administration of justice by attempting to intimidate or harass or otherwise cause Ms. Gibas to withdraw her intent to prosecute. The nature of the charges brought against the Respondent allege that the letter and enclosed religious materials had no substantial purpose other than to embarrass, delay, or burden third persons or knowingly use methods of obtaining evidence that violate the rights of such person pursuant to law. They allege that the Respondent engaged in conduct in connection with the practice of law which was prejudicially administration of justice by **knowingly** or through callous indifference, disparaged, humiliated, or discriminated against a witness. There was conflicting evidence introduced at trial that the letter and enclosed religious materials had no substantial purpose other than to violate the rules. Furthermore, there was absolutely no evidence introduced or presented before the referee to suggest or infer that the Respondent knowingly or through callous indifference violated any of the rules with which he was charged. Findings of the same by the referee were illogical deductions and conclusions made by him

on impermissible inferences from the facts and the law. The truth is that the disposition proposed by the referee constitutes a position of intolerance of the Respondent's religious beliefs. The only logical conclusion which can be drawn from the referee's findings are that the religious materials enclosed by the Respondent were in and of themselves a violation of the rules. Therefore any letter sent by the Respondent including such religious materials must by its very inclusion constitute a violation.

The comments to **Rule 4-8.4(d) of the Rules Regulating The Florida Bar** declare that the proscription contained therein includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connections with the practice of law. It states that "the proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute." **Rule 4-3.2 of the Rules of Professional Conduct** require a lawyer to make reasonable efforts to expedite litigation consistent with the interests of his client. The comment to this rule states that the true issue is whether or not **a competent lawyer acting in good faith** would regard the course of action as having a substantial purpose. Nowhere in the referee's findings of fact does he mention the fact that two expert witnesses testified on behalf of the Respondent to the effect that there was in fact a substantial

purpose to the Respondent's letter to Ms. Gibas other than to embarrass, humiliate, disparage, discriminate against, attempt to intimidate, or harass her. The same is strong evidence of his bias and the Respondent's belief that he made up his mind as to guilt before the trial. His deductions and conclusions of fact and law were erroneous. How could a fair and impartial referee make a finding of guilt without dealing with or mentioning the testimony of the Respondent's two legal experts? He could not! The only logical deduction from the referee's report is that he completely disregarded and discounted the testimony of the two imminently qualified ethics experts whose unimpeached opinions were presented to him at trial. The referee concluded in his report on page 4 that the Respondent has refused to acknowledge the wrongful nature of his conduct. Does the referee or this court expect the Respondent to admit to an untruth? Would a reasonable attorney admit to wrongdoing which two legal experts on ethics testify under oath is not wrong?

Beginning on page 99 of the trial transcript of the proceedings held before the referee begins the sworn, unimpeached, and uncontradicted testimony of Professor William McKinley Smiley, Jr. His testimony runs from page 99 of the trial transcript through page 124. Professor Smiley is a graduate of Manatee High School in Bradenton, Florida, a graduate of Duke University and Emory Law School. He holds a master's

degree in law with a specialty in International Law from the University of Miami. He has served as Chair of Scholars from Yale Law School and has been a professor of law at Stetson University College of Law in St. Petersburg, Florida, continuously since January of 1966. He is now their senior professor. Previously he had been qualified as an expert witness in the Circuit Court of the State of Florida and had significant involvement in criminal cases with his father who was the prosecuting attorney in Manatee County, Florida, for twenty-three years. He has run for State Attorney in the Twelfth Judicial Circuit. When he was diagnosed with terminal cancer and was told he would die he accepted a position as a law professor. Professor Smiley has received numerous distinguished awards from Trial Lawyers Associations, including, but not by way of limitation, the Pacesetter Award from the Florida Academy of Trial Lawyers, the Order of Merit Award from the Southern Trial Lawyers Association (named the Smiley Award), and the Board of Governors award of the American Trial Lawyers Association. Stetson University College of Law has for many years been considered one of the top law schools in the country with respect to trial practice according to U.S. News and World Report. Professor Smiley is directly responsible for that status. Attached as **Exhibit H** to the Respondent's Objection to the Report of the Referee was a copy of an article entitled The Strategist.

Exhibit I was also attached as an exhibit and was a copy of an article from Guideposts Magazine in September 1998 entitled Coaching Smiley's Renegades. How could any unbiased referee totally ignore and not mention his significant and unimpeached trial testimony? Professor Smiley testified at great length about his teaching of ethics as a professor of law over the past thirty-four years. He testified that he was interested in and familiar with The Florida Bar committee involved with professional responsibility especially because his former research assistant, nationally known and highly respected Florida attorney, Christian D. Searcy, is the chairman of that committee. Professor William McKinley Smiley, Jr., is a distinguished member of The Florida Bar whose compelling testimony should have carried great weight. The referee made no reference to his testimony or his opinion.

Professor Smiley testified that he was familiar with the letter that the Respondent wrote in this cause together with its enclosures, that he had talked to him about the same, and that he had an understanding of the factual circumstances surrounding the letter. Professor Smiley indicated that he was familiar with the content of Rule 4-4.4 and 4-8.4(d) and that he had had the opportunity to review them in relationship to The Florida Bar's complaint against the Respondent. He also testified, on page 106, that for thirty years he had incorporated professional

ethics into the courses of evidence and other courses which he has taught at the law school. Professor Smiley testified that he has been involved in several criminal cases in the capacity of a strategist. He specifically testified about a criminal case entitled the State of Florida v. John Barnes. The same was an alleged rape case which occurred in Manatee County. Professor Smiley assisted the Respondent in defending Mr. Barnes who had previously been convicted of rape. Through the work of attorney Buckle with the assistance of Professor Smiley no charges were brought against him in a new substantive rape case because they proved to the prosecutor that the victim had lied about the facts. A copy of a newspaper article reflecting that case was attached to the Respondent's Objection to the Report of the Referee as **Exhibit J.** Beginning on page 111 of the trial transcript, Professor Smiley specifically stated (lines 5 through 8) the following: "applying my reading of that letter to the rule that he annunciated, Mr. Robinson, **I do not find the letter to be in violation of that rule.**" (emphasis mine). He went on to more specifically articulate that neither the Respondent's letter nor its enclosures, in his expert opinion, violated Rule 4-8.4(d). He testified that he was aware of the religious or Christian material enclosed in the Respondent's letter to Ms. Gibas dated June 25, 1997. Through Professor Smiley, Florida Bar advisory opinion 82-1 was received in evidence. The same involved an

attorney whose advertising included the words **"Jesus is Lord."** Therein it was held that an attorney had the legal right to so declare his religious beliefs in his advertisement. On page 113 beginning at line 12, Professor Smiley expressed his expert opinion that the inclusion of the Respondent's religious material had a purpose other than to embarrass, humiliate, discriminate, or to show any disparagement against Ms. Gibas. He specifically testified that: **"I do not know of a specific rule that it (the inclusion of religious materials) violated."** (emphasis mine). Professor Smiley went on to state that he thought that the same was controversial, but that he did not know of any specific rule that the inclusion of such materials violated. On cross examination by Florida Bar attorney Geer, Professor Smiley repeated his previously stated opinions without compromise. During his cross examination Professor Smiley began relating substantial purposes to the Respondent's letter other than those which would violate the rule(s). He stated that he thought that the letter in question was a good example of the Respondent trying to do what an ethical lawyer should do, which is to see if there was any way to resolve a case on a reasonable basis without charging a client an unnecessary law fee. Mr. Geer specifically asked Professor Smiley if he would admit that "**a**" purpose of the Respondent's letter would be to influence its recipient into not cooperating any further with the prosecution against his client.

Professor Smiley's answer was: "**no, sir, that's not my interpretation. My interpretation of it is that the letter could be deemed to have been sent, and in this case I think after talking with him it certainly was, to find out whether or not this was a case very similar to what we (the Respondent and Professor Smiley) had worked together on in the Barnes case.**" Professor Smiley then went on to relate facts about the Barnes case which involved a woman who had been lying about the allegations that she had made to the police against the defendant which formed the basis for the State not pursuing the case. Professor Smiley went on to state: (at lines 12 through 14 on page 119) "so I think Mr. Buckle - and I feel he **had an obligation to ferret out information, if he could do so in a reasonable manner.**" This was especially Professor Smiley's opinion under the circumstances that existed at the time that the Respondent wrote the letter at issue. He testified that given the facts of this case that the Respondent was confronted with a dilemma which created the need for some strategy which the Respondent elected to pursue. He was asked by Mr. Geer about whether he had an opinion about whether a letter from the Respondent which simply stated to Ms. Gibas "Hi, I represent the defendant in this case, I would like very much for you to please state for me the facts as you know them regarding the time you got on the boat until the time you called for help so that I can

attempt to substantiate or verify what my client has told me?" Professor Smiley answered: "that certainly would have been one option." And it would have been one option, but not the only one. On page 121, Professor Smiley went on to state that **he interpreted the rules such that any question which would have been reasonable for deposition purposes would therefore be reasonable under the circumstances of the case;** i.e. the content of the letter written by the Respondent to Ms. Gibas. Professor Smiley testified on page 122 that his understanding of the purpose of depositions was to gain facts and evidence that may lead to admissible evidence even though it may not be material. Not only did the referee make no reference whatsoever to the credible, unimpeached, and uncontradicted testimony of Professor William McKinley Smiley, Jr., he also made no reference in his report to the expert testimony of attorney Kent Wittemore, Esquire, whose testimony on behalf of the Respondent begins on page 82 of the trial transcript.

Mr. Wittemore testified that he has been a member of The Florida Bar since 1973, that he was at the time of his testimony on the Executive Committee and Board of Directors of the Florida Academy of Trial Lawyers, and that he was past president of the St. Petersburg Bar Association. He testified that he is licensed to practice law in Florida, that he had read the complaint that The Florida Bar filed against the Respondent, and that he is

familiar with the rules under which he was charged. While his practice is currently primarily civil, he began practicing law as an Assistant Public Defender and has handled a number of criminal cases since then in private practice, including, felonies, juvenile cases, and misdemeanors. His experience clearly dwarfs that of Assistant State Attorney Scott Van Ness, who prosecuted Mr. Spaulding. His testimony was that he had reviewed Rules 4-4.4 and 4-8.4(d) and that he had read the comments thereto. He testified that he had read the complaint and the attachments thereto. Additionally, he testified that he had reviewed some correspondence that was exchanged between the attorney for The Bar, Mr. Geer, and the Respondent. The referee allowed him to testify as an expert witness and give his expert opinion. It was his testimony and expert opinion that the letter and the enclosed religious materials which were submitted to Ms. Gibas by the Respondent had a substantial purpose and were not in violation of the rule(s). Mr. Wittemore went on to respond to the questions of Mr. Geer explaining his full knowledge of the circumstances surrounding the case prior to the submission of the letter to Ms. Gibas by the Respondent. Mr. Wittemore unequivocally testified on page 93 of the trial transcript beginning at line 21 that **it was his expert opinion that there was a substantial purpose to the Respondent's letter to Ms. Gibas other than to embarrass her.** He conceded that the letter could have been interpreted as being

embarrassing and that he could not report as to the subjective intent of the Respondent in sending the letter. He did, however, unequivocally testify that in his opinion there was a substantial purpose to the letter other than harassment, delay, and embarrassment. In further response to questions by Mr. Geer, **he declared that substantial purposes to Mr. Buckle's letter would be to find out facts unknown to the Respondent, to find out the position of the victim with respect to prosecution, and to discover if the victim intended to push the prosecution.** Mr. Wittemore carefully pointed out to the referee and Mr. Geer that in his expert opinion Mr. Buckle found himself in the position of having a prosecutor who was not giving him an indication of what was going to happen to his client and yet he was not at a stage of the proceedings where he could go through formal discovery since no information had been filed. It was his opinion that the letter sent by Mr. Buckle constituted an informal discovery process and asked questions which he had a right to ask Ms. Gibas in a deposition. He went on to note that Mr. Buckle's client had to make a decision about whether to spend his resources to pay him or to post bond. Clearly Mr. Wittemore took the position that a substantial purpose of Mr. Buckle's letter to Ms. Gibas was to gain information. Any prosecutor in America will acknowledge that they receive countless unfounded reports which are not prosecuted. On page 96 of the trial transcript, Mr. Geer

asked Mr. Wittemore an important question. The question was: "whether or not Mr. Wittemore, not as an expert, but simply as a person, would seriously expect Ms. Gibas to respond to this letter as a request for information?" Mr. Wittemore's response was direct and extremely credible. He said: **"I would have expected her to respond probably by either contacting me or contacting the prosecutor, to indicate to somebody what she planned on doing. I don't think this is a letter that would have gone unanswered in some form. What that form of response would have been, I don't know."** He was right. The first thing Ms. Gibas did was to contact Mr. Van Ness. How could any unbiased and disinterested referee completely disregard such reasonable and credible expert testimony? In the fifth paragraph of the referee's report to this court under the heading III., Findings of Fact, on page 2, the referee stated that: "Respondent's argument that he intended the letter to be an investigative tool, or request for information, is not credible, in that no reasonable attorney would ever expect such a letter to actually be answered by the purported victim of a crime (Transcript Volume I, Page 168, Lines 19-25; Page 170 Line 25; Page 171). It now becomes abundantly clear why the referee never made any reference whatsoever to the testimony of Professor Smiley or Mr. Wittemore; if their opinions were valid The Bar had no case. The only logical conclusion one could reasonably infer from the referee's

omission of any reference to their opinions is that neither Professor Smiley nor Mr. Wittemore are reasonable attorneys and that their expert unimpeached opinions were of no weight or value. The significance of that conclusion is that both of the Respondent's expert witnesses were untruthful. There is absolutely no basis for such a deduction. The referee's opinion is contrary to logic, the rules, the evidence, and the law. Therefore the referee's conclusion and the foundation of his report that no reasonable attorney would ever expect such a letter to actually be answered is false and does not support the true facts or logic. To infer that Professor William McKinley Smiley, Jr. or Kent Wittemore, Esquire, were not truthful or credible or that their opinions were of no significance is outrageous. Again, on page 96 of the trial transcript, expert witness attorney Wittemore, states (at line 22) that in his opinion Mr. Buckle's letter would have been responded to by Ms. Gibas. On page 97 Mr. Wittemore was again asked if he would expect an ordinary reasonable woman to sit down and actually respond to Mr. Buckle's request for information. His response was that he was not an expert in human behavior. The Florida Bar did not present any evidence from any expert in human behavior.

Rule 4-1.1 of the Rules Regulating The Florida Bar requires a lawyer to provide competent representation to a client. Competent representation requires the legal knowledge, skill,

thoroughness, and preparation reasonably necessary for the representation. The background of the Respondent includes his twenty-six years of experience, during which time he was a prosecutor for almost four years. A review of the deposition of Ms. Gibas will clearly reveal to any competent criminal lawyer that the representation that Mr. Buckle provided to his client, Donald Lavier Spaulding, was in fact competent, skilled, thorough, and well prepared. The comments to the aforedescribed rule clearly shed some light on the situation before this Court. The case of the State of Florida v. Donald Lavier Spaulding was relatively complex and required a lawyer of significant experience in the field in question. The competent and thorough manner in which Mr. Buckle handled this case was outstanding. The result achieved is strong evidence of his competence. The manner in which he handled the case may have been controversial, but was not in violation of any ethical rule by clear and convincing evidence. There is a distinction between tax evasion and tax avoidance. One is legal and one is not. The Respondent may have drawn close to the foul line, but he did not cross over it.

Rule 4-1.3 of the Rules Regulating The Florida Bar requires that a lawyer shall act with reasonable diligence and promptness in representing a client. Attorney Richard Lee Buckle clearly acted promptly and with reasonable diligence in representing his

client, Donald Lavier Spaulding in the criminal case against him brought by the State of Florida on behalf of Ms. Lydia Gibas. The comments to said rule state that a lawyer **should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.** A lawyer should act with commitment and dedication to the interests of the client and with **zeal** in advocacy upon the client's behalf. The comment section to this rule goes on to state that: **"Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests can often be adversely affected by the passage of time or the change of conditions . . ."** Clearly in this case the Respondent acted with due diligence and zeal and did not procrastinate nor did he commit any violation of his ethics despite opposition, obstruction, or personal inconvenience to himself. He took what he believed to be lawful and ethical measures to protect his client.

Rule 4-3.1 of the Rules Regulating The Florida Bar require a lawyer for the defendant in a criminal proceeding which could result in incarceration to require that every element of a crime be established. In her deposition Ms. Gibas states that she voluntarily boarded Donald Lavier Spaulding's boat knowing that she and he would be alone on the boat all day and perhaps

overnight. People are accountable and responsible for their choices and must suffer the consequences thereof; i.e. we reap what we sow. The comments to the aforedescribed rule state that the law "**is not always clear and never static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.**" We are living in a pluralistic society where previously established and well-founded moral values have become skewed and eroded. A reasonable lawyer's perception of the precise limitations on ethical conduct when exposed to a situation such as this is unclear and ambiguous. The Respondent is a born-again Christian who believes that the Bible is literally and absolutely true. Mr. Geer and the referee obviously disagree. Each should be tolerant of the others views. It should not have been a surprise that the Respondent's paradigm of the facts of this case is different than their view. Common sense should cause any reasonable prosecutor to realize that a case with these facts should be examined closely and scrutinized carefully. The foul lines on a baseball field are still straight and ninety degrees apart just like they were over 100 years ago. Is the Respondent required to change his views simply because some members of society have changed their views on morality? Is relativism the new standard? Must the Respondent conform to political correctness or be disbarred?

In this case the prosecuting attorney, Scott Van Ness,

Esquire, seemed to the Respondent to have no interest in pursuing a determination of the veracity of the claims made by Ms. Gibas. Instead he procrastinated and from the date of Mr. Spaulding's arrest on June 6, 1997, to the date of the Respondent's letter, made no contact with and had no communication with Ms. Gibas notwithstanding numerous requests by the Respondent that he do so. Surely, as attorney Wittemore unequivocally and unimpeachedly stated in his candid and credible expert testimony before the court on behalf of the Respondent, a reasonable person would clearly expect that his letter would have drawn a response either to Mr. Buckle, the prosecuting attorney, a detective, or a rape crisis worker. In this case his letter did quickly draw the attention of the prosecuting attorney. It is fundamentally unfair and unjust for a prosecutor to take advantage of a situation and allow someone to remain incarcerated without actively and vigorously seeking justice; i.e. a prosecutor's duty is to seek justice and not convictions.

To suggest that because of the content of the letter from the Respondent that Ms. Giles would abandon her claim is not reasonable. Common sense dictates that anyone who was the true victim of a crime and who had made a true and accurate report to a law enforcement agency would certainly not be dissuaded from pursuing their position by the content of the Respondent's letter and enclosures. In fact Ms. Gibas did contact the prosecuting

attorney upon receipt of the Respondent's letter. Her act in doing so supports Mr. Whittemore's opinion. It was reasonably attorney Buckle's suspicion that Ms. Gibas was not telling the truth about many facts in the PCA. Do we in America today need to struggle with the notion that people lie under oath? His client may well have been innocent of the felony charge of false imprisonment. These facts should have been quickly investigated by the State Attorney's Office.

Clearly the Respondent's action in writing the letter to Ms. Gibas constituted a strategy designed to accomplish several substantial and legitimate purposes, which are, but not by way of limitation, to gain additional information, to find out the position of the victim with respect to prosecution, and to discover whether or not the victim intended to pursue prosecution of the case. Even if you assume for purposes of argument that the Respondent's intent was corrupt and evil as The Bar alleged, the case against the Respondent should have still been dismissed because there were legitimate substantial purposes to the letter to Ms. Gibas other than to embarrass, harass, intimidate, discriminate, disparage, or humiliate her.

In his report, the referee relentlessly pursued the logical consequences of his paradigm of what he perceived the response of a reasonable victim in the position of Ms. Gibas would be under the circumstances. He consistently refers to her subjective

response and reaction to the Respondent's letter. Then he deducts and concludes that her subjective response and reaction was that of a reasonable objective person. Would a reasonable objective person get on a large boat alone with a male whom she had known less than twenty-four hours knowing that they would be out at sea for a substantial period of time? Would she have returned to and re-boarded his vessel after they docked at Coaster's Restaurant if she was in fear? The answers to those questions is obvious. The issue in this case has nothing to do with the reasonable objectivity or subjectivity of Ms. Gibas, but has exclusively to do with the intent of the Respondent and whether or not he acted in good faith. The only question should have been was there was any legitimate or substantial purpose to his letter to Ms. Gibas other than those proscribed by the relevant rules. It is beyond the law and beyond the evidence and testimony presented to the referee to conclude that there was no such legitimate or substantial purpose to the Respondent's letter. By clear and convincing evidence the Respondent established his innocence.

The record in the case of the State of Florida v. Donald Spaulding clearly reflects that attorney Richard Lee Buckle filed a demand for discovery pursuant to Rule 3.220 of the Fla.R.Crim.P. on behalf of his client on or about June 11, 1997. He was Mr. Spaulding's formal attorney of record on June 25,

1997. No response to his demand for discovery had been made by the State as of the date of June 25, 1997. No response was required by law because no indictment or information had been filed. Rule 3.220(i) of the Fla.R.Crim.P. is entitled **Investigations not to be impeded.** Said rule specifically states that **a prosecutor shall not "advise persons having relevant or material information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case."** The issue before the court is not whether or not the Respondent had a right to speak to or write to Ms. Gibas, but whether or not his communication violated any ethical rule. How can asking the alleged victim questions he would be allowed to legally ask her at a deposition and did ask her at her deposition be wrong? It cannot be! The Respondent was doing nothing proscribed by any rule or law when he contacted Ms. Gibas.

On September 26 and 29, 1997, the Respondent took the deposition of Ms. Gibas in Sarasota County, Florida. Before that date the presiding trial judge had signed an order permitting the Respondent to ask Ms. Gibas any question that was not privileged under Florida law. Her transcribed deposition was introduced as evidence at trial. It consists of 102 pages. In it Mr. Buckle addressed each and every item contained in his letter to Ms.

Gibas dated June 25, 1997. How can it be held that Mr. Buckle was outside the bounds of the rules when he asked her the same questions in a letter that he asked her at her deposition? Are his questions of her at deposition a violation of the rules too? The only argument that can be made in a light favorable to The Florida Bar on this issue would be that the distinguishing characteristic is that Mr. Buckle's letter was pre-indictment or pre-information and discovery depositions are post-indictment or information. The logical consequences of such an argument are troublesome. To take that position, as the referee did in his report to this Court, is tantamount to saying that had attorney Buckle waited until he took the deposition of Ms. Gibas and then asked all of the questions that he did in his letter of June 25, 1997, would have resulted in his being prosecuted for these same violations; i.e. the deposition could have been used as a substitute for and in place of the June 25, 1997, letter. To take such a position would not only be unfair and unjust, but it would bring the criminal justice system to a standstill. The Respondent did informally or pre-information what he had an absolute legal right and duty to do post-information. Anyone who has ever handled any kind of a criminal case involving alleged violence against a woman knows that the proceedings usually include depositions, trials, hearings, etc., all of which are by their very nature embarrassing, humiliating, disparaging, and

discriminating. Such proceedings almost always result in situations where victims, especially women, feel embarrassed, intimidated, and harassed. The legal issue before the referee at the trial of this cause should not have been the subjective reaction of Ms. Lydia Gibas, but the right and duty of Mr. Buckle, under the rules and the law to zealously and vigorously defend his client and his purpose in sending the letter in question. Surely it can be said that Mr. Buckle's letter to Ms. Gibas may have been distasteful or as Professor Smiley testified controversial. Perhaps the Respondent's letter could have been worded differently and more artfully drafted. The fact that the subjective result was the embarrassment, humiliation, disparagement, discrimination, and a feeling of harassment on the part of Ms. Gibas does not in and of itself make the conduct of the Respondent culpable. To subject every lawyer that is licensed to practice law in the State of Florida to a rule which would require discipline if the recipient of a letter subjectively found the same to be embarrassing, harassing, intimidating, or disparaging would be tantamount to placing lawyers in a position where no lawyer could ever write a letter without exposing themselves to possible punishment.

The referee further held as an explanation to his findings under aggravating factors that the Respondent has attempted to portray the complaint against him as being one of religious

persecution rather than a complaint concerning a substantial violation of the Rules Regulating The Florida Bar. It was the position of The Bar and the finding of the referee that the religious materials enclosed by the Respondent exacerbated or made worse the content of the letter in question. If that is true it therefore must be by logic the position and the holding of the referee that the religious materials in and of themselves were patently embarrassing, harassing, intimidating, or disparaging. The Respondent personally believes that the doctrinal position of the Jehovah's Witnesses is incorrect. Nevertheless the Respondent believes and the law has historically held that they have a right to pass out and distribute their literature anywhere and everywhere.

AS TO ISSUE OF LAW NO. 2

Freedom of religion is a fundamental, natural, and absolute right, deeply rooted in our American constitutional system of justice. It is a right available to all. The free exercise of religion includes the right to believe and profess whatever religious doctrine one desires. The government may not compel any affirmation of religious belief, punish the expression of religious doctrine it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over

religious authority or dogma. The individual freedom of conscious protected by the First Amendment embraces the right to select any religious faith or none at all. Just as the right to speak and the right to refrain from speaking are complimentary components of a broader concept of individual freedom of the mind, so also the individual's freedom to choose a creed as the counterpart of his or her right to refrain from accepting the creed established by the majority. **Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah**, 508 U.S. 520 (1993), **State ex rel. Singleton v. Woodruff**, 13 So2d. 704 (1943), **Murdock v. Com. of Pennsylvania**, 319 U.S. 105 (1943), **Employment Division, Department of Human Resources of Oregon v. Smith**, 494 U.S. 872 (1990), **American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Board of Educ.**, 84 F.3d 1471 (3d Cir. 1996), and **Bradesku v. Antion**, 255 N.E. 2d 265 (9th Dist. Summit County 1969).

The Supreme Court has held that the term "religion" has reference to one's views of one's relation to his or her Creator and to the obligations these views impose of reverence for the Creator's being and character, and of obedience to the Creator's will. The same is often confused with the cultus or form of worship of a particular sect, but is distinguishable from the latter **Davis v. Beason**, 133 U.S. 333 (1890). If the belief asserted is philosophical and personal rather than religious, or

is merely a matter of personal preference and not one of deep religious conviction, shared by an organized group, it will not be entitled to First Amendment protection, i.e. if the appropriate focus is on corporate or institutionable beliefs rather than on individual members' beliefs **Wisconsin v. Yoder**, 406 U.S. 205 (1972). It is abundantly clear from the testimony of the Respondent and his other character witnesses that he is and has been distributing Christian tracts for many years as part of his business. He is a member in good standing of the West Bradenton Baptist Church in Bradenton, Florida. His pastor and an associate pastor of his church testified to the same. They furthermore testified that the Respondent has taught adult Sunday School at that church for many years. Clearly then the Respondent qualifies as a person entitled to exercise his First Amendment privileges under the United States Constitution and be free from any government interference restricting his right to exercise freedom of religion or speech.

In the case of **Joseph v. State**, 642 So2d. 613 (4th DCA 1994), the court held that "restrictions on religious practices are permissible only where the practice has threatened public safety, peace, or order. Therein the court cited the case of **International Society for Krishna Consciousness, Inc.v. Barber**, 650 F.2d. 430 (2d Cir. 1981), which requires that a subjective definition of religion should be applied and constitutional

analysis which examines the individual's inward religious attitudes. Surely from the facts of this case this court must concede that the Respondent's Christian tract was an expression of his individual inward Christian attitude.

In the case of **State ex rel, Singleton v. Woodruff**, 13 So2d. 704 (1943)this Court held that our legal system in Florida rests on Christian ethics. The Court further stated "a liberated conscience is as essential to a robust democracy as blood is to the human body. Enslave the conscience and democracy will perish as certainly as the body will perish when the blood ceases to circulate. In his opinion Justice Terrell goes on to quote from the Book of Acts in the New Testament Chapter 4:17-21 and noted that freedom of conscience is older than the declaration of rights or the common law. In his opinion he states "Peter and John first invoked it when they were commanded by the high priest and the Roman rulers to speak and teach no more in the name of God." He went on to adopt the position promulgated by the Supreme Court of the United States in the case of **Murdock v. Commonwealth of Pennsylvania**, 63 S.Ct. 870 (1943). There it was held that "spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age old type of evangelism with as high a claim to constitutional protection as the more Orthodox types." It would be clearly improper for the Supreme Court to

prohibit the Respondent from continuing to distribute Christian tracts in his correspondence, etc.

AS TO ISSUE OF LAW NO. 3:

It is a violation of the Respondent's State and Federal constitutional rights to prohibit him from distributing Christian tracts in his correspondence through his law practice. To hold that the Respondent's long standing practice of the same constitutes a violation of Rule 4-8.4(d) implies that The Florida Bar is not tolerant of the Respondent's First Amendment Rights and at least to that extent Rule 4-8.4(d) is unconstitutional.

AS TO ISSUE OF LAW NO. 4:

In the case of **Zachary v. State, 43 So. 925 (1907),** this Court reviewed a disciplinary proceeding for disbarment. Upon the testimony taken at trial the lower court rendered a judgment against Mr. Zachary. He was found guilty and disbarred and forever prohibited from practicing law. The nine errors alleged were not discussed separately, however, the court held that "the proof must be clear, both as to the act charged against the attorney and his corrupt motive. When the evidence is conflicting, there must be a clear preponderance against him. It is also true that charges proffered against an attorney for the purpose of disbarring him should be clear and specific and should

be stated with great particularity, that the attorney may be fully apprized of the nature of the charge he is called upon to meet, and may be enabled to prepare his defense." They further went on to state that: "An appellate court, in reviewing the proceedings of a lower court disbarring an attorney, should not interfere with the conclusions of the latter court upon the evidence, unless it is clear that the latter court, viewing its action in the light of the rule which requires clear proof of the act and of the bad motive of the attorney, has decided erroneously, in which case it is the duty of the appellate court to interfere. In other words, not only the act itself charged against an attorney in a proceeding against him for disbarment must be proved to have been committed, but the bad or fraudulent motive for the commission thereof must also be established, either from the act itself or from proof of other circumstances, and unless this is done, disbarment is not authorized." The Court went on to hold that the evidence against Mr. Zachary was insufficient to sustain the judgment.

In 1987 the Bar brought a complaint against attorney H. Eugene Johnson for writing three letters to a client expressing his religious beliefs as to what would happen to him as a result of his conduct in a legal fee controversy; **The Florida Bar v. Johnson**, 511 So.2d 295 (1987). In one of the letters Mr. Johnson wrote and threatened that if his client did not pay him that all

of the plagues that God put on Egypt when the Pharaoh refused to let Moses and the Israelites leave would fall on him. The referee found that the three letters did not constitute any threat that Mr. Johnson would in any harm or injure Mr. Himes, but that the letters expressed his beliefs as to what the Lord would do to Mr. Himes as a result of his conduct. The referee held in that case that while he did not understand the Respondent's religious views, that his views may well be in conformity with his religious beliefs. The referee recommended a private reprimand in light of his conclusion that the Respondent's behavior was conduct unbecoming a lawyer and that he made misrepresentations as to his contributions toward the partnership in a public document. This court imposed a public reprimand only. The discipline recommended by the referee in this cause is excessive and overbearing. Mr. Johnson was not placed on probation or ordered to comply with any other sanctions. Should the court in this cause find that the Respondent's correspondence violated the ethical rules, the maximum penalty should be a public reprimand.

In the case of **The Florida Bar vs. Sayler**, 721 So.2d 1152 (1998), this court was confronted with a letter and enclosure sent by attorney Sayler to another attorney. In that case Mr. Sayler represented a client in a workers' compensation case. The respondent sent a letter to the complaining witness who was an

attorney representing the other party. Said attorney at one point in the litigation had accused the respondent of stalking her and placing her in fear of him. Thereafter the respondent sent her a letter which referenced the recent murder of an attorney who represented employers and servicing agents in workers' compensation cases. In the letter the respondent quoted the news headlines used in the Palm Beach Post to announce the story and attached a print out of the subject articles. The respondent maintained that the newspaper articles were relevant evidence in his client's case because they demonstrated the abuse of workers' compensation claimants' rights. The referee found by clear and convincing evidence that the newspaper article had no specific bearing upon the case at issue and that the respondent knew or should have known that opposing counsel had misgivings about him and even felt frightened of him. It was the position of the referee that the included newspaper article exacerbated the situation and constituted inappropriate unprofessional action. The referee further held that the respondent failed to provide any acceptable explanation as to why he sent the letter in question as to its direct relationship to the merits of the case in litigation. Also it was held that the respondent knew or should have known that the letter with the attached newspaper articles would only embarrass, frighten, or otherwise burden opposing counsel. In this case the referee further found as

aggravating factors the fact that the respondent refused to acknowledge the wrongful nature of his conduct and that he had substantial experience in the practice of law. In conclusion, the referee recommended that the respondent receive a public reprimand and be placed on six (6) months probation with several conditions. For this Court to impose greater sanctions to attorney Richard Lee Buckle would be a miscarriage of justice.

SUMMARY OF ARGUMENT

The media has worked hard to shape within us the belief that the highest good is tolerance rather than truth. Indeed the whole question of truth has been turned upside down by an emerging politically correct world view that claims truth is relative. What this means is that no such thing as truth exists apart from human existence. One result of this attempted destruction of truth and the evaluation of tolerance is that many Christians are confused about what to believe and whether their beliefs are worth sharing with others. Although the Great Commission makes explicit that Jesus' followers are to share His Gospel with the world, many Christians are confused. Many are reluctant to share God's message of salvation with anyone else. They especially have difficultly telling the good news of salvation in Christ to people who do not belong to their race, class, or background. While they accept God's love and forgiveness for themselves and for people who are like them, they

refuse to share it for many reasons. Often it is due to a lack of love for others. God's love transcends all boundaries. His message of salvation is for all people. This is not a new message. From the beginning God has been seeking ways to bring the world to Him who made Himself known specifically to a people called the Hebrews promising to work through them to bless the whole world. Yet God's people as a whole merely wanted to enjoy for themselves the blessings of God's love. They do not want to share it with others. One Jewish profit who specifically ran from God's call was Jonah. There are consequences to the same which the Respondent seeks to avoid. He believes that he has an obligation and a responsibility to share the message of salvation with all people.

In summary it is clear from the facts and the law that the referee erred in his conclusions of law and fact. As Professor William McKinley Smiley, Jr., of Stetson University College of Law stated in his testimony before the referee, the Respondent's letter may have been controversial, but it does not violate any provision of the ethical code. The proof offered by The Florida Bar in this case did not meet the legal burden required. The proof is not clear as to the act(s) charged against the Respondent nor of any corrupt motive. The evidence was conflicting and there was not a clear preponderance of evidence against the Respondent. In reviewing the proceedings held before

the referee, this Court should not interfere with his conclusions unless upon the evidence it is clear that the referee, viewing this action in the light of the rule which requires clear proof of the act and the bad motive of the Respondent has decided erroneously. For the reasons stated herein the report and findings of the referee must be reversed.

CONCLUSION

In his report the referee concluded that the Respondent has attempted to portray the complaint against him as being one of religious persecution rather than a complaint concerning a substantial violation of the Rules Regulating The Florida Bar. The referee went on to state that he was concerned that the Respondent has not been able to "see the bigger picture in this case"; i.e. how his actions affected Ms. Gibas and the administration of justice in Florida. The Respondent sincerely believes that without Christ as one's personal Lord and Savior and the indwelling of the Holy Spirit that getting the "big picture" is like trying to put together a 3,000 piece jigsaw puzzle with the wrong picture on the box top for guidance. There are three purposes to disciplinary proceedings before this Court. First, the judgment must be fair to society both in terms of protecting the public from unethical conduct and at the same time not denying the public the service of a qualified lawyer. Reversing the findings of the referee would be fair to society

and would not subject the public to possible further unethical conduct by the Respondent. It would also allow the public to continue to receive the services of the Respondent who is clearly a qualified and experienced lawyer. Secondly, the judgment must be fair to the Respondent. To punish the Respondent as proposed by the referee based upon the facts before this Court would not be fair or just. Thirdly, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. While the actions of the Respondent may have been close to the line, they were not a violation; e.g. just as tax avoidance is legal, but tax evasion is not. Nothing which the Respondent did involved an act of moral turpitude or dishonesty and his actions were clearly not detrimental to the public, his profession, or the administration of justice in the courts. Here, the evidence did not establish the charges with that degree of certainty necessary to warrant to finding of guilt and consequential disbarment. The record in this case discloses evidence that is not free of substantial doubts or inconsistencies and conflicts. The testimony of the Respondent and his witnesses clearly established his innocence. The Respondent is not asking this Court to substitute its judgment for that of the trier of fact, but asking this Court not to sustain the referee's findings because they are not sustained or supported by competent substantial legal evidence. To allow a

finding such as this to stand based on inference, innuendo, and assumptions would be a miscarriage of justice.

WHEREFORE, the Respondent, **RICHARD LEE BUCKLE**, hereby respectfully prays and requests that this Court will reverse the findings and recommendations of the Referee and declare him to be totally innocent or in the alternative to impose a private or public reprimand with no further sanctions.

RESPECTFULLY SUBMITTED on this the 8th day of November, in this the Year of Our Lord and Savior Jesus Christ, 1999.

BECAUSE OF CHRIST,

RICHARD LEE BUCKLE, ESQUIRE
Attorney for Respondent

LAYON F. ROBINSON, II, ESQUIRE
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the **original** of the foregoing has been furnished to **THE SUPREME COURT OF FLORIDA**, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, by U.S. Mail, and that a true **copy** of the foregoing has been furnished to **COUNTY JUDGE G. KEITH CARY**, Lee County Justice Center, 1700 Monroe Street, Ft. Myers, Florida 33901; **BRETT ALAN GEER, ESQUIRE**, Assistant Staff Counsel, The Florida Bar, Tampa Airport Marriott Hotel, Tampa, Florida 33607, and **JOHN ANTHONY BOGGS, ESQUIRE**, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, by U.S. Mail, on this the 8th day of November, in this the year of Our Lord and Savior Jesus Christ, 1999.

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