

 DUPLICATE

STATE BAR COURT
OF THE STATE OF CALIFORNIA

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING ON ADMISSION, COMPETENCE
AND DISCIPLINE PURSUANT TO BUSINESS
AND PROFESSIONS CODE SECTION 6095(a)
TUESDAY, DECEMBER 9, 2008

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1 notice on the State Bar's website, and distributing notice
2 to all local specialty and minority bars in California. The
3 notice specified the time, place and purpose of this
4 meeting.

5 We have a court reporter present to transcribe all
6 the oral testimony presented today. This testimony,
7 together with any written comments that are received, will
8 be made available to the full Board of Governors and to all
9 members of the Committee on Regulation, Admissions and
10 Discipline Oversight.

11 If you have any supporting documentation that
12 you're going to refer to, and which has not previously been
13 submitted for photocopying for the hearing, please provide
14 the material to Doug Hull or the court reporter so that
15 photocopies can be made and included in the public record of
16 this hearing.

17 We understand that some of you are here to discuss
18 your experience with a specific attorney. While it is not
19 the purpose of this hearing to register complaints as to
20 individual lawyers, we understand you've taken time from
21 your busy schedules to be here today with us. Therefore, we
22 respectfully request that if you discuss your experience
23 with a specific attorney, please refrain from using that
24 attorney's name.

25 This is because until a complaint is filed in the

1 State Bar Court, it is a confidential matter. Since the
2 transcripts from these hearings will be made available to
3 the public, we'd appreciate your cooperation by not
4 mentioning the attorney by name, but feel free to discuss
5 your experiences. Mr. Drexel, the Chief Trial Counsel, has
6 offered to make himself available after the hearing if you
7 wish to discuss your issue with him in a more confidential
8 setting.

9 If you've not previously signed in and want to
10 testify today, please see Doug Hull or one of the other
11 staff members in the room. I believe the sign-in sheet is
12 here.

13 We ask that you complete your testimony within no
14 more than 10 minutes. You'll be notified when your time is
15 up. Mr. Hull will call out names in the order in which
16 they've signed in.

17 To ensure that the court reporter is able to hear
18 clearly, please come to the front of the room to the podium
19 when your name is called. Begin by identifying yourself for
20 the record. The sign-in sheet will become part of the
21 record, and the court reporter will verify the spelling of
22 your name by checking the sheet.

23 Doug, would you please call the first name on the
24 list?

25 MR. HULL: Yes. David Cameron Carr.

1 MR. CARR: Thank you. My name is David Cameron
2 Carr for the record. I'm testifying here in my capacity
3 today as President of the Association of Discipline Defense
4 Counsel. The Association of Discipline Defense Counsel is
5 the bar association for attorneys who represent other
6 attorneys in disciplinary proceedings before the State Bar
7 of California.

8 Many of us also represent applicants in the
9 admissions process. Many of our members are former
10 employees of the State Bar, including discipline prosecutors
11 and former State Bar Court judges.

12 I myself am a former discipline prosecutor. I
13 worked for the State Bar of California for 12 years, first
14 as a staff attorney for the Complainants' Grievance Panel
15 and then seven years as a discipline prosecutor, and finally
16 approximately 18 months as a manager with the title of
17 Assistant Chief Trial Counsel running a trial unit in Los
18 Angeles.

19 You may know some of our members such as JoAnne
20 Robbins, a former State Bar Court judge; Ellen Peck, a
21 former State Bar Court judge. Another member, Michael Wine,
22 a former State Bar Court judge pro tem.

23 Collectively our members have several hundred
24 years' experience dealing with the discipline system on both
25 sides of the aisle. Some of our members are former members

1 of the State Bar Committee on Professional Responsibility
2 and Conduct. And many of us, such as myself, are active on
3 our local County Bar Association Legal Ethics Committees.

4 Our members practice in many other areas besides
5 discipline such as defending other professionals in
6 licensing proceedings, legal malpractice civil litigation,
7 and criminal defense.

8 Our Association has existed in some form since
9 approximately 1994. For many years, it was an informal
10 group. In the last few years, however, we have moved toward
11 formalizing our structure, becoming organized and becoming
12 more disciplined, if you will, in our approach to
13 disciplinary matters.

14 Part of the impetus to this reform has been our
15 observation that the discipline system toward punishment is
16 a de facto goal of the system. I say de facto, because the
17 long-established law in California is that the primary
18 purpose of discipline proceedings is not punishment but the
19 protection of the public.

20 Despite this, our view is the discipline system is
21 being driven to become a punitive system by these two
22 processes that we observed -- or have observed acting in the
23 last -- actually over the last two decades but accelerating
24 in recent years.

25 One of these processes is the continual ratcheting

1 up of the damage associated with being disciplined, damage
2 that is suffered by the disciplined attorney. We've had a
3 long series of proposals over the last two decades that have
4 gradually increased the consequences of being disciplined.

5 The most recent example is what we consider the
6 very poorly thought out proposal that was passed by the
7 Board of Governors to publish unproven allegations of
8 misconduct on the internet.

9 This comes on the heels of what we considered a
10 poorly thought out proposal to institute permanent
11 disbarment against attorneys, a proposal that wasn't based
12 on, as far as we could see, any valid public protection
13 reason. And we are gratified recently the California
14 Supreme Court appears to have agreed with us that that
15 proposal was not narrowly targeted enough and has returned
16 that proposal for revisions.

17 On top of that, we have the proposed changes to
18 the State Bar's Alternative Discipline Program. In their
19 initial form, those changes would, in our view, have gutted
20 the ADP and made it an ineffective program, despite the
21 legislative mandate that the State Bar run that program.

22 For two decades the consequences of being
23 disciplined have gradually become more dire. Whatever your
24 attitude toward the necessity or the wisdom of these
25 measures, it cannot be denied that the consequences of being

1 disciplined by the State Bar have become very grave, even if
2 that discipline is of a low order.

3 We bear some blame for this. In the past, we
4 haven't expressed the arguments against these proposals as
5 effectively as we should have expressed them. We believe
6 that the decision makers make the best decisions when both
7 sides of the issues are argued effectively. No matter what
8 your viewpoint on the issues, we believe decision makers
9 make a better decision when they hear arguments on both
10 sides.

11 In the past, we have been asleep at the switch
12 when many of these proposals have come up for discussion.
13 Part of the reason why we are organizing and speaking up
14 with more regularity is that we don't want this to go on.
15 We want there to be a full vetting of the issues surrounding
16 these proposals, including their impact on the attorneys
17 that are disciplined.

18 One of the goals of our organization is to make
19 sure that decision makers at all levels have the benefit of
20 a full discussion of differing viewpoints when these issues
21 are discussed.

22 We understand that many will disagree with our
23 viewpoints. All we are asking is a place at the table. A
24 well-known figure in Bar circles is reputed to have said,
25 "If you are not at the table, you are probably on the menu."

1 And that's true at the State Bar.

2 No one else speaks for attorneys in the discipline
3 system except for our group. We think they deserve a place
4 at the table, especially because they are so frequently on
5 the menu.

6 The other process that's driving the discipline
7 system is slow but in our view a seemingly inexorable march
8 toward punishment are the prosecutorial policies of the
9 State Bar prosecutor's office. We realize that's a delicate
10 subject because we are involved in adversarial proceedings
11 with the Office of the Chief Trial Counsel. And naturally,
12 the adversarial system influences the views of advocates
13 within the system.

14 Nonetheless, we feel there can be no doubt and at
15 least some of the professional prosecutors within the Office
16 of Chief Trial Counsel acknowledge that in the last few
17 years they have adopted a get tough attitude toward
18 discipline cases, especially in the wake of the Supreme
19 Court's decision In re Silverton.

20 We recognize that on many of these issues, we are
21 naturally going to be at loggerheads with the Office of
22 Chief Trial Counsel. But we don't -- that doesn't bother
23 us. We don't mind expressing our viewpoints. We don't mind
24 engaging in dialogue with the Office of Chief Trial Counsel.
25 And in fact the Chief Trial Counsel in our organization have

1 committed themselves to a quarterly meeting where we're
2 going to air these issues out, even if we don't achieve
3 progress on agreement. Even if we can only agree on minor
4 issues, we think that this process should go forward. And
5 even if we can only find a few things to agree on, we think
6 it's going to make the process as a whole work better, both
7 in terms of advocacy and in terms of policy setting. We
8 think finding common ground even on small issues is
9 preferable to having no dialogue whatsoever.

10 If you'd like to learn more about our
11 organization, I would invite you to visit our website at
12 www.disciplinedefensecounsel.org. Or if you wish, you can
13 contact me at dccarr@ethics-lawyer.com or you can telephone
14 me at (619) 696-0526. I'm happy to discuss these issues
15 with any member of the public, any member of the profession,
16 or any of the professionals involved in the discipline
17 system whenever you wish to.

18 And with that, I'll conclude my remarks. Thank
19 you.

20 MR. HEINKE: Thank you, Mr. Carr. I would just
21 like to note for the record that Howard Miller, another
22 member of the Board of Governors arrived just after your
23 presentation started. We appreciate your comments.

24 MR. CARR: Thank you very much.

25 MR. HEINKE: Mr. Hull?

1 MR. HULL: Okay. Next up is Kaveh Roshan.

2 MR. HEINKE: Mr. Roshan.

3 MR. ROSHAN: Good morning.

4 MR. HEINKE: Good morning.

5 MR. ROSHAN: My name is Kaveh Roshan and I'm not
6 an attorney. I was here last year and I spoke before you.
7 At that time, I had visited you for the first time to
8 determine whether my pursuit for justice in a case had a
9 fair chance.

10 I had a very bad experience with a law firm that
11 was in short a civil conspiracy involved. And at that time
12 I came here to speak to you regarding inappropriate
13 relationships between attorneys and judges. Since then and
14 throughout this year I have actually been working with the
15 FBI regarding my case. And I will be making a formal
16 complaint with your office in January.

17 The reason I wanted to visit you today is because
18 in last year's meeting, there were four attorneys that came
19 and spoke before me. And I was very shocked as a citizen, a
20 non-lawyer to be in the audience and hear four or five
21 attorneys at that time speaking about attorneys that had
22 drug abuse problems. I'm not sure whether these hearings
23 are topical and that was the topic for last year, but there
24 were four attorneys in a row that were talking about how
25 attorneys that had drug problems or convictions should be

1 helped rather than disciplined. And I just wanted this
2 Court to know that as a citizen that this system is for, so
3 to speak, I was very shocked to hear that in a disciplinary
4 hearing. At that time, I didn't make any comment because I
5 didn't know what approach the board had regarding attorneys
6 with these type of problems.

7 But to me it was just very shocking and I'm sure
8 that if you were to ask anybody out there that's not part of
9 the inside circle here, they would be very, very shocked as
10 I was. It's taken me a year just to relay this information
11 to you. At the time, when I was sitting in the audience
12 last year, I was just dumbfounded.

13 There was a lot of attorneys that were appealing
14 to you that these attorneys that have drug problems need
15 help, and I couldn't agree more. Absolutely they do.
16 However, as a consumer of the law system, I would be
17 horrified to know that my potential lawyer had any drug
18 issues, whether he was handling my money in a trust account
19 or the competency in my case.

20 So my suggestion would be, yes, help these persons
21 with drug problems the way you would help any other person
22 with a drug problem, and that's send them to a clinic or do
23 whatever is necessary. However, definitely remove them from
24 the legal process because I don't want my money to be held
25 in an account with someone with either a gambling problem or

1 a drug problem at all.

2 And I just have to remind you that we're talking
3 about fiduciary as far as a consumer is concerned. A
4 lawyer, we rely on them.

5 Would any of you be comfortable if you found out
6 that your doctor or surgeon had a drug issue, that the next
7 plane that you board on, that the co-pilot or pilot is a
8 drug addict? Hopefully that would concern you. And if it
9 does, just know that as a citizen that relies on the law
10 system we're talking about the same type of fiduciary
11 expectation or duty.

12 So if there are any attorneys that have problems,
13 whether it's gambling or drugs, yes, help them the way you
14 would any other person. But when it comes to the issue of
15 fiduciary, they must be removed from the system because the
16 consuming public will suffer as a result. So that's just my
17 opinion from last year's proceedings.

18 And as I said earlier, I came last year in order
19 to determine whether my pursuit of justice had a fair chance
20 because I learned the hard way that there are inappropriate
21 relationships between judges and attorneys. I was told this
22 when I was naive and when I was told this, I didn't
23 understand exactly what it meant. However, I've learned the
24 hard way exactly what it means.

25 I won't go into the specifics of my case. I will

1 be filing a formal complaint to pursue. At that point, you
2 can learn the specifics. But I just want you to know that
3 when I was here last year and what I witnessed with the
4 speakers ahead of me was very surprising. And this is
5 basically the second stage of me trying to pursue justice in
6 my case.

7 I would like you to know that in our court system,
8 at least in the Superior Court, I've attended maybe 20 or so
9 motions and hearings and stuff, and there's a lot of
10 dissatisfaction with either pro per's or attorneys with
11 cases when it's pretty much determined that whoever knows
12 the judge has the winning case. And I just want you to know
13 that that perception is out there.

14 I've attended enough of these and I've spoken with
15 enough people where I've determined, whether it's correct or
16 incorrect, that there is the problem out there with
17 inappropriate relationships with judges. And what's
18 surprising to me is that they act in an inappropriate manner
19 with total disregard for either your panel or -- or they
20 just act with impunity.

21 So I'm not sure if your panel is effective in
22 mitigating these type of relationships. This is a genuine
23 concern of mine because I've already learned the hard way
24 that it's not -- you know, justice is not readily available.

25 As a matter of fact, one of the FBI agents told

1 me, he said, "Are you prepared for justice to fail you?" In
2 other words, we can go through all the motions and at the
3 end of the day it may not be good enough. The truth may not
4 be good enough for you. And for an FBI agent to tell me
5 that, he wasn't preparing me; he was warning me that this is
6 what happens.

7 And just -- I just want to emphasize that as the
8 consuming public, it's surprising to learn this. Because
9 I'm a small businessperson and on a constant basis, I'm lied
10 to, people try to cheat me, and all kinds of things. I've
11 been offered to go down the wrong path many times. But I
12 never do because I know that no matter what, if I have a
13 problem, I can engage with the system and go through the
14 process and at least have a chance at the system to hear me.

15 But my experience is that, no, that's not the case
16 at all. And it's important that you understand that when
17 the public out there determines that there isn't a fair
18 chance out there, that's when I think we've got real, real
19 problems. So just please keep in perspective that our
20 expectation is that there's a higher level of stability and
21 that's what we expect.

22 And when we try to employ that system and we are
23 rebuffed it's very, very upsetting. And at one point, a
24 normal person will conclude, you know what, if you can't
25 beat 'em, join 'em or things like that.

1 I have fought very, very hard not to listen to
2 people that are older than me that have told me, "You are
3 naive. Why do you believe in these people, you're going
4 to -- life is too short to be a sucker. Don't have faith in
5 these people."

6 I'd like to tell you that it's very difficult for
7 me to ignore three people in my life. One is my father who
8 was a diplomat and he taught us certain things at a very
9 young age.

10 Another is actually a pro per -- I mean a pro bono
11 attorney that I'm working with.

12 And also another gentleman, his name is Michael
13 Josephson, which you may have heard of. I actually met him
14 20 years ago when I was working in my father's print shop
15 and we did printing for him. He has been a mentor of my
16 life, and he's really guided me in the path that I'm taking.

17 But I just want you to know it's very, very
18 difficult, you know, and this is based on people older than
19 me that have experience over me, telling me, that you know,
20 that I may be wasting my time. I hope that I'm not. But
21 please know that the expectation out there, we have a high
22 expectation from all of you. And I'd like you to please
23 enforce these things.

24 So when we're talking about drug dealers -- I mean
25 drug addicts and stuff, you have to understand how shocking

1 that is. Yes, they need help, of course, there's no doubt
2 about it. But when we're talking about fiduciary, they have
3 to be removed. And next time you board an airplane or a
4 train, or you visit your doctor, you know, just keep that in
5 mind. We're talking about fiduciary.

6 Thank you.

7 MR. HEINKE: Thank you for your comments.

8 Mr. Hull, is there anyone else?

9 MR. HULL: Yes. Ms. JoAnne Robbins.

10 MS. ROBBINS: Good morning.

11 MR. HEINKE: Good morning.

12 MS. ROBBINS: My name is JoAnne Earls Robbins, and
13 I've been practicing in the discipline system for almost 27
14 years. I initially was a part of the State Bar prosecutors'
15 office for seven years, rising to the level of senior
16 attorney. I was at one point in charge of training all the
17 new attorneys that came into the office.

18 I from there went to Chief Assistant Court
19 Counsel's Office and was later appointed as a State Bar
20 Court hearing judge where I served for six and a half years.

21 I am now and have been for almost 12 years a
22 defense attorney for attorneys that are charged with
23 misconduct, or for applicants on occasion.

24 I know most of the people on this panel. In fact,
25 I know most of the people in this room because I have worked

1 closely with many of you. I have attended Board of
2 Governors meetings for the last 10 years or so, most of the
3 RAD Committee meetings for almost that period of that time,
4 although that's been winding down a bit.

5 And I believe that I have a perspective of the
6 discipline system that equals anyone in the state of
7 California. I have seen the discipline system from the
8 point of view of the prosecutors, the hearing judges and now
9 defense counsel. There are three sides to this system.

10 Unfortunately, one of those sides, the defense
11 counsel, has gotten shortchanged all of the time and now
12 apparently it is getting worse instead of better.

13 I am a member, a founding member of the
14 Association of Discipline Defense Counsel. I'm currently
15 first Vice President. But our President, David Carr, has
16 done very exceptionally in presenting the point of view of
17 that organization.

18 The remarks I'm going to make here today are my
19 own. They are personal remarks from my opinion and my
20 opinion only. However, I would urge this panel and anyone
21 who's going to be reading these remarks to please listen.

22 I'm going to be retiring in February after 27
23 years in the discipline system. This is perhaps my last
24 opportunity to speak to those of you that will be in charge
25 of the discipline system for many years to come. Because of

1 that, I'm going to be unusually candid in my remarks and ask
2 that you consider them very carefully.

3 Our discipline system in California is unlike that
4 in any other state. We have developed it over decades to
5 try to be the best system possible. In many ways, it is the
6 best system possible. And I applaud the improvements that
7 have been made in the last several years.

8 However, in the last few years, there has been a
9 trend accelerating after the last 20 years for the system to
10 be more and more strict. Not more and more fair. But more
11 and more strict. The principal purpose of the discipline
12 system is protection of the public. That and that alone is
13 the primary consideration.

14 The protection of the public does not require, as
15 the previous speaker indicated, removal of those attorneys
16 who make mistakes. It requires that steps be taken to
17 protect the people of California from ever having those
18 mistakes made again.

19 It has been my opinion for many, many years as a
20 prosecutor, as a judge and as defense counsel that the
21 primary protection of the public lies in probation for these
22 attorneys and conditions. Yes, attorneys are fiduciaries
23 when they handle other people's money and they handle other
24 people's life causes.

25 That does not require that they be removed from

1 the practice of law. Attorneys who have problems with trust
2 account violations have many requirements they have to meet.

3 They have to go to trust accounting school at the
4 State Bar.

5 They have to have quarterly audits.

6 If they have substance abuse problems, they have
7 to have random, sometimes weekly, drug tests.

8 They have to have counseling.

9 Any of these requirements, if they are satisfied
10 and if the attorney sticks to those requirements, will
11 remove the danger to the public. That does not mean you
12 have to remove the attorney from practicing law. It is a
13 statistical fact proven by the State Bar's own study that
14 most of the attorneys who are disciplined are sole
15 practitioners or in small firms, two to three people.

16 There are many theories about why this is, whether
17 they're more stressed financially and cut corners, whether
18 they have no one around to bounce ideas around with or watch
19 over their shoulder. Whatever the reason, these are the
20 people who get in trouble.

21 For those people who are sole practitioners, if
22 you suspend them for six months, they are out of business.
23 Even three months, they are out of business. For some, this
24 is required. For some, this is appropriate.

25 But actual suspension, especially in these

1 difficult economic times, is a death knell for most
2 attorneys' practices. If it's not necessary to protect the
3 public, then it shouldn't be done.

4 Probation conditions can last as long as five
5 years. They can include a probation monitor that meets
6 monthly with the attorney. They can include all manner of
7 conditions. There have even been cases approved by the
8 Supreme Court where the attorney has to have another
9 attorney co-counsel with him on every case, so there's
10 someone else watching over that client.

11 There are many requirements of probation and
12 condition that can be applied to each individual case that
13 do not require an actual suspension and the ruination of
14 that attorney's practice. I have seen it happen many, many,
15 many times.

16 I have the greatest respect for Scott Drexel. I
17 have known him for over 20 years, and I believe he has the
18 best of intentions. However, I disagree with him adamantly
19 in one area. The system has become more and more strict,
20 seeking to protect the public. But that is not necessary
21 and is not appropriate or just where it also leads to
22 unreasonably strict discipline of attorneys.

23 It also clogs up the system. The State Bar Court
24 has many more filings than it needs to have because we have
25 an excellent procedure in place which requires a

1 negotiations meeting with the prosecutor and the attorney
2 charged, and if requested an early neutral evaluation
3 conference by a judge.

4 We have three judges in Los Angeles, all of them
5 are excellent.

6 When we as defense attorneys go to an early
7 neutral evaluation conference with a judge, the very purpose
8 of which is to try to settle cases before they get into the
9 formal system, there have been numerous occasions when I as
10 the defense counsel, my client in tune with me, even the
11 prosecutor and the judge all agree on an appropriate
12 discipline and the management of the Office of Chief Trial
13 Counsel will not agree.

14 That completely ties the hands of the judges in
15 early neutral evaluation conferences and it's a waste of
16 time at that level. It also wastes the time of the whole
17 system and it increases the costs when those cases get into
18 the formal State Bar Court system.

19 And I'm not asking you to take my word for it. I
20 would invite, ask, request that the State Bar Board of
21 Governors or the RAD Committee talk to the three individual
22 judges here in Los Angeles. Most of them have actually
23 expressed the opinion verbally to us that the Office of
24 Chief Trial Counsel is much more unreasonable than they used
25 to be and much less willing to compromise.

1 There seems to be an attitude among many of the
2 prosecutors at the State Bar now -- and I've done this
3 defense for 12 years -- it's far more prevalent now in the
4 last two years to get the most discipline possible and not
5 get a reasonable and just compromise.

6 They're too concerned with winning and less
7 concerned with doing justice, and that's not the proper role
8 of the prosecutor.

9 There's one area -- another area in which Mr.
10 Drexel and I disagree adamantly. He has made statements
11 numerous times to the Board of Governors, to the RAD
12 Committee that his office is concerned with protection of
13 the public whereas our organization is only concerned with
14 protecting our clients. That's not true.

15 Just as any defense system, whether it be in the
16 federal courts, the criminal courts, the state courts, a
17 good defense is necessary to protect the system from abuse.
18 In most judicial councils -- I know in the Ninth Circuit and
19 in many federal courts, when there are councils proposing
20 new rules or rewriting the rules, there are institutional
21 defense attorneys, the federal public defenders, the state
22 public defenders. They have a place at the table because
23 they have a point of view that's necessary to hear.

24 And I think that in all fairness and in the
25 interests of a better system and a more fair system, that

1 the Board of Governors should seriously consider appointing
2 a member of the Association of Discipline Defense Counsel as
3 an ex officio member of the RAD Committee, non-voting, but
4 to offer the opinions and the attitudes that we have
5 hundreds of years' experience dealing with.

6 I'm very passionate about this discipline system.
7 This may be my last opportunity to ever have any effect on
8 it. When I retire, it will be with some sadness and
9 disappointment that I will no longer be working with the
10 State Bar of California. It has been my career for 27
11 years. And I'm pleading with you to please take seriously
12 the plight of attorneys who made a mistake, screwed up, did
13 something wrong, but they're not bad people. And the public
14 can be protected without completely devastating their whole
15 career.

16 Thank you.

17 MR. HEINKE: Thank you.

18 Mr. Hull, is there anyone else?

19 MR. HULL: Yes. The next up is Robert Klepa.

20 MR. KLEPA: Good morning.

21 MR. HEINKE: Good morning.

22 MR. KLEPA: My name is Robert Klepa. I've been a
23 California attorney for almost 20 years. I worked the first
24 10 years as a civil litigator. I now work for the federal
25 court doing criminal sentencing, helping the judges with

1 criminal sentencing. It just happened to work out that in
2 the order of presentation that the passionate young lady who
3 just sat down was talking about my area, federal criminal
4 sentencing. And I will say this, while I agree with the
5 young lady's comments, that we certainly need to treat
6 attorneys fairly, it has been my experience, both as a
7 practitioner and working in the federal court, that there
8 are certain attorneys who should not be practicing.

9 And I think the State Bar needs to still be aware
10 of that and still focus on disbarments when necessary. And
11 part of my job is to ensure that we impose fair punishments
12 on individuals who are criminally convicted.

13 Clearly, a State Bar conviction is not a criminal
14 conviction. But there are certain people that I run into in
15 practice, many of you have in here, who may really have
16 deserved the higher penalties that could have been imposed
17 in the criminal system, but were simply civilly dealt with
18 through the State Bar or other system.

19 And one of the issues I came here today to talk
20 about is the reinstatement of disbarred attorneys. When
21 this organization goes to the great trouble of disbarring an
22 attorney, it is of concern to me many times when I see that
23 attorney get reinstated, what appears to me in a somewhat
24 summary fashion.

25 There's one particular attorney, I won't mention

1 him now, who I dealt with in civil practice. He was the
2 most unethical attorney I had ever seen. He destroyed
3 evidence, ruined a trial in a civil court. Because of his
4 actions, he was disbarred by the State Bar and then I found
5 out later reinstated by the Bar, though I saw no notice of
6 this.

7 Had I received notice as a member of the Bar, I
8 would have commented and I would have moved strongly to keep
9 this man away from the public, because I considered him to
10 be a danger. But he is now practicing law again.

11 MR. DAVIS: Excuse me. Do you remember how many
12 years he was -- before he was reinstated?

13 MR. KLEPA: The difference? I think it was
14 approximately five years when he was out of practice.

15 I was very happy when I saw in the newsletter that
16 he was disbarred. I was quite distraught when he was
17 reinstated, and I had no opportunity to participate in
18 either proceeding. And I wish I would have had that
19 opportunity.

20 My suggestion to the Bar is that when all this
21 effort is taken to disbar someone and I see the horrific
22 facts that usually lead to a disbarment, that we should take
23 extra care in reinstating someone and possibly we should
24 send a special notice to members of the Bar indicating
25 whenever someone is going to be reinstated so that those

1 members can comment. Because there was a reason that person
2 lost their license to begin with.

3 Now, the fact that the reinstatement is allowed at
4 all is another issue. And I won't go into that. I don't
5 have the time. But regarding reinstatement, if we're going
6 to do it, I think we should let the Bar members who
7 participated with this individual, who have firsthand
8 knowledge of the harm they've done in the community, come in
9 and speak to that harm. Therefore, that they are not
10 allowed to come back in and possibly by showing a little bit
11 of -- what can you say? -- sorrow, basically, at getting
12 caught and convicted, suddenly they are reinstated and
13 inflicting more harm on the general public.

14 The second issue that I came here to talk about is
15 foreign attorneys practicing here in California with
16 California firms. I had a particular experience not too
17 long ago where I was dealing with a California firm that had
18 brought in a New York attorney. The New York attorney had
19 not been licensed to practice in California, was not
20 admitted pro hac vice to do any action in the state and was
21 practicing for that firm.

22 I contacted the State Bar and they said, "There's
23 nothing we can do." They said, "That individual is not
24 California licensed. They are practicing law without a
25 license but we have no option, no one to contact to deal

1 with this issue. And you're on your own and good luck with
2 it."

3 And I couldn't figure out for the life of me why
4 the firm that was employing that attorney could not be taken
5 to task because they were a California firm, they had
6 California attorneys hiring them and overseeing that
7 attorney. Yet no action could be taken by the State Bar.
8 At least that's what I was told.

9 And that greatly concerned me. Because I can't go
10 to New York and practice; they can't come here and practice.
11 And yet they're basically allowed to do so because there's
12 no problem if they do.

13 So those were the two issues I came here to talk
14 about, the disbarment and the bringing in a foreign
15 attorney. So if no one has any questions, that's all I
16 have.

17 MR. DAVIS: Can I ask Scott a question?

18 MR. HEINKE: Sure.

19 MR. DAVIS: Scott, can you explain -- can you
20 respond to that?

21 MR. DREXEL: On both of them?

22 MR. DAVIS: On the second issue.

23 MR. DREXEL: Okay.

24 Well, let me just tell you first, Mr. Klepa, on
25 the first one, that we do actually, when someone applies for

1 reinstatement, we publish that fact in the California Bar
2 Journal so that anybody with information about that can come
3 forward. We have a special unit that investigates these
4 reinstatement petitions, and they're really quite thorough.
5 I'd be happy to talk to you.

6 I'd like to find out after the hearing is over if
7 you can stay for a minute and find out who that individual
8 is.

9 MR. KLEPA: I can. That's fair.

10 MR. DREXEL: On the second issue, I don't know
11 which office of the State Bar that you talked about. It is
12 true that we do not have authority to go after the out-of-
13 state attorney that's practicing here, that their engagement
14 in unauthorized practice of law is a crime.

15 We do make referrals to prosecuting agencies about
16 those sorts of things, but I can tell you that it's
17 extremely rare if not virtually nonexistent that a District
18 Attorney would go after an attorney for unauthorized
19 practice under those situations.

20 We do, however, have authority over law firms and
21 the individuals in law firms if they knowingly allow an
22 attorney who is not admitted to the practice of law in
23 California to practice law. There is a rule of professional
24 conduct that makes it a disciplinable offense to aid the
25 unauthorized practice of law, which is what this is.

1 Now, recognizing that we do have multi-state, kind
2 of multi-jurisdictional type practices, we have a process by
3 which attorneys from out of state can register if they're
4 working for a firm or company and not basically appearing in
5 court, but working within the state, that they can register
6 and practice within certain confines here in California.

7 But if it goes beyond that, that is an issue.

8 MR. KLEPA: Well, for the record, in this
9 situation, they did not register.

10 MS. MURPHY: And just as a side note too, that
11 type of person may be applying to take the bar exam in
12 California, so we're always interested to find out in
13 Admissions whether someone is -- if there's an allegation of
14 unauthorized practice of law, because there are several
15 applicants over the years who have had their moral character
16 held up because it was found that they were practicing law
17 without a license in California.

18 So we're always interested in receiving
19 information and it would be put into a pending file if that
20 person has not applied. But if they've applied, then that
21 information would be put in the file.

22 MR. KLEPA: Okay. Well, if you're further
23 interested in the situation, I'll be happy to resubmit the
24 letter I previously submitted to the State Bar that was
25 rejected.

1 MR. DREXEL: Okay. Well, I'll give you my card,
2 and if you could send me that letter, I'd be interested in
3 it.

4 MR. KLEPA: I'd be happy to do that. Thank you.

5 MR. HEINKE: Thank you very much.

6 Mr. Hull, is there anyone else?

7 MR. HULL: At this point, I don't believe there's
8 anyone else who wishes to address the panel. And I might
9 offer up that we go off the record for 15 minutes to allow
10 anybody who might be late and we'll go back on at 11:00 if
11 no one appears.

12 MR. HEINKE: We'll go back on the record then at
13 11:00 o'clock to see if there's anyone else who would like
14 to make a comment.

15 Thank you all for coming.

16 (Proceedings recessed briefly.)

17 MR. HEINKE: It's, according to my watch, about
18 11:03. No one else has signed in to speak. Mr. Hull has
19 walked outside and checked the waiting area and the
20 hallways, and there's no one else here to speak.

21 In light of that, we want to thank all of you for
22 coming. And this public hearing is completed. Thank you.

23 (Proceedings concluded.)
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CERTIFICATION OF TRANSCRIBER

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I, Holly Martens, do hereby certify that the foregoing 30-page transcript of proceedings, recorded by digital recording, represents a true and accurate transcript of the Public Hearing on Admission, Competence and Discipline Pursuant to Business and Professions Code Section 6095(a) held on December 9, 2008.

1/8/09
Date

Holly Martens
Transcriber

COPY

ANNUAL PUBLIC HEARING
pursuant to Business and Professions Code 6095(a)
December 9, 2008
10:00 a.m.

State Bar of California
Board Lounge
1149 South Hill Street
Los Angeles

Chair: Rex Heinke/George Davis

TIME	NAME (Please Print)	AFFILIATION (circle one)	CITY	TOPIC
	George Davis	Speaker Press <u>Panelist</u> State Bar		
	Rex Heinke	Speaker Press <u>Panelist</u> State Bar		
3:57	Colin Wong	Speaker Press <u>Panelist</u> State Bar		
	Scott Drexel	Speaker Press <u>Panelist</u> State Bar		
4:40	Randy Difuntorum	Speaker Press <u>Panelist</u> State Bar		
	Gayle Murphy	Speaker Press <u>Panelist</u> State Bar		
	Doug Hull	Speaker Press <u>Panelist</u> State Bar		
4:55	DAVID CARR	Speaker Press <u>Panelist</u> State Bar		
4:55	Ronald Wenzel	Speaker Press <u>Panelist</u> State Bar		
4:55	Patsy (C/O)	Speaker Press <u>Panelist</u> State Bar		

