

**OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: MARK H. ORING, Petitioner V. STATE BAR OF
CALIFORNIA

CASE NO: 87-1224

PLACE: WASHINGTON, D.C.

DATE: January 10, 1989

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IN THE SUPREME COURT OF THE UNITED STATES

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MARK H. ORING, :
Petitioner :
v. : No. 87-1224
STATE BAR OF CALIFORNIA :
-----x

Washington, D.C.
Tuesday, January 10, 1989

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 10:53 o'clock a.m.

APPEARANCES:
THEODORE A. COHEN, ESQ., Beverly Hills, Cal.; on behalf
of the Petitioner.
DIANE C. YU, ESQ., San Francisco, Cal.; on behalf of the
Respondent.

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1 PROCEEDINGS

2 (10:53 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 87-1224, Mark Oring versus The State Bar of
5 California.

6 Mr. Cohen, you may proceed whenever you're
7 ready.

8 ORAL ARGUMENT OF THEODORE A. COHEN, ESQ.

9 ON BEHALF OF THE PETITIONER

10 MR. COHEN: Mr. Chief Justice and may I
11 please the Court:

12 Mark Oring, a lawyer, was disciplined by the
13 State Bar of California for presenting a testimonial
14 radio communication which was never found to be false,
15 misleading, or deceptive. In fact, the State Bar of
16 California stipulated that the advertisement was true.

17 The basis for the discipline was a presumption
18 that testimonial advertisement is presumed to be false,
19 misleading, or deceptive. Under this Court's prior
20 decisions, such a presumption placing the burden on the
21 speaker to prove the protected nature of the speech,
22 thus effectively banning any testimonial advertisement,
23 is unconstitutional.

24 The constitutional ground rules governing this
25 area we believe to be crystal clear. Again last term in

1 Shapero versus Kentucky Bar, this Court reiterated the
2 well-established standard that state rules designed to
3 prevent the potential for deception and confusion may be
4 no broader than reasonably necessary to prevent the
5 perceived evil.

6 We feel that the State Bar itself has
7 recognized that its legitimate goal of preventing
8 deceptive advertising can in fact be met by a less
9 stringent and restrictive rule.

10 To bring the case up to date, in November, or
11 on November 28th of 1988, the California Supreme Court
12 adopted the State Bar's proposed rule, which we have set
13 forth in our briefs and in our appendix. So the
14 California Supreme Court has now formally adopted the
15 State Bar's proposed rule which removes that presumption
16 so long as the advertisement or testimonial
17 advertisement contains a disclaimer which states that it
18 is not a guarantee or prediction regarding the outcome
19 of the potential client's case.

20 QUESTION: In your view, is that a
21 constitutional rule? Does that comport with the First
22 Amendment?

23 MR. COHEN: Well, I would say that I think
24 that it at least meets the objections or, not objections
25 rather, but at least meets the standards that I think

1 this Court suggested in Bates and in R.M.J.

2 QUESTION: Well so, in your view, for purposes
3 of our argument we can assume that that is a
4 constitutional requirement?

5 MR. CHEN: I don't say at this point that I
6 think even requiring a disclaimer would be
7 constitutional, because I don't know that testimonial
8 advertisements should be treated any differently than
9 advertisements in general.

10 Apparently the Federal Trade Commission
11 doesn't feel that they have to be treated any
12 differently, and they feel sufficiently secure that they
13 can test each ad on its own merits.

14 QUESTION: You don't think the disclaimer ads
15 to the truth of the statement?

16 MR. CHEN: I don't. As a matter of fact,
17 there has been a law review article, I believe in the
18 Buffalo Law Review -- I hope we've set it forth in our
19 brief -- by Professor Devine indicating that disclaimers
20 may tend to be more confusing.

21 QUESTION: Why wouldn't it add to the truth of
22 the statement? I mean, it's surely true that if you had
23 somebody saying, this was one pleased client, of course
24 this doesn't necessarily mean that you'll be pleased or
25 that all clients are always pleased, that adds to the

1 truth of it, doesn't it?

2 I should think your argument is that you have
3 no right to require somebody to add to the truth. Isn't
4 that your basic argument, that you can't require
5 somebody to put in something he doesn't want to say?

6 MR. COHEN: Yes.

7 QUESTION: That the First Amendment prevents
8 making somebody say something, as well as preventing
9 somebody from saying something?

10 MR. COHEN: That is correct, Your Honor,
11 Justice.

12 QUESTION: Mr. Cohen, I hope before you're
13 through you will tell us why you haven't stipulated your
14 case away.

15 MR. COHEN: Yes, if I may address that, Your
16 Honor. I think very clearly -- and we've set these
17 forth in both our opening and reply briefs -- the
18 agreement initially made with the State Bar was for an
19 admonition. That is what we stipulated to, an
20 admonition.

21 What the State Bar imposed upon Mr. Oring was
22 a public reproof. Now, a public reproof is a more --

23 QUESTION: I thought your client stipulated to
24 take whatever discipline his partner got.

25 MR. COHEN: He agreed to take whatever

1 discipline. I think that was really a word of art that
2 we used during the State Bar hearings to indicate a lid
3 on what should happen to Mr. Oring.

4 The intention of everyone -- and I would like
5 to quote if I may from the actual reporter's transcript
6 here, where I think Mr. Markle, who represented the
7 State Bar, himself clearly understood that, in the event
8 that the entire stipulation were not accepted, that it
9 would be of no force or effect.

10 But I think that we placed a cap on the
11 discipline so that Mr. Oring's and Mr. Grey's case could
12 be litigated. And since they had been partners and
13 since it was just a single advertisement that had been
14 run by both of them, we didn't want one body or one
15 group of referees to perhaps impose one form of
16 discipline on Mr. Grey and then a different form of
17 discipline on Mr. Oring.

18 So I think it was everyone's intent that both
19 should receive the same discipline. However, the
20 discipline that was stipulated to was an admonition, and
21 our opening brief is wrong insofar as it sets forth that
22 we stipulated to a public reproof, because we did not
23 stipulate to a public reproof.

24 QUESTION: I suppose it might have been
25 implicit you stipulate to the same discipline, provided

1 it could be legally imposed.

2 MR. COHEN: Yes, we certainly did not
3 stipulate that discipline which was not imposed
4 according to constitutional standards should just be
5 non-appealable and non-reviewable. As a matter of fact,
6 the State Bar in its letter of reprimand to Mr. Dring
7 not only enclosed a copy of the rules governing appeals
8 to the Supreme Court, but specifically stated that this
9 may be appealed to the Supreme Court.

10 QUESTION: But you didn't challenge the action
11 below on the ground that it exceeded the stipulation,
12 did you?

13 MR. COHEN: We challenged the action below --
14 that is in the petition to the California Supreme
15 Court?

16 QUESTION: Yes.

17 MR. COHEN: We challenged the action below on
18 the grounds that the statute was unconstitutional.

19 QUESTION: But not that the stipulation was
20 exceeded.

21 MR. COHEN: I don't believe that that was
22 raised in the brief. I do not believe that that was
23 raised in the brief. Because the California Supreme
24 Court --

25 QUESTION: You see, you put us in the position

1 of stipulating that you'll follow the other case, and
2 then the other case is one in which these issues are not
3 raised and it's not before us.

4 MR. COHEN: Your Honor, I think that what we
5 stipulated to was that no greater discipline should be
6 imposed upon Mr. Oring than upon Mr. Grey, because Mr.
7 Oring, having left the case, was not in a position to
8 participate in the Grey case, and we wanted to receive
9 no greater discipline.

10 If I may, I'll go to the record.

11 QUESTION: But essentially, you stipulated on
12 the merits that you'd be bound by the first case.

13 MR. COHEN: No, we did not. We stipulated on
14 the merits that we would be bound by the discipline,
15 degree of discipline that would be imposed. But a
16 stipulation as to degree of discipline or as to facts is
17 not a stipulation that we do not have rights to review.

18 QUESTION: Well, as you understand the
19 stipulations then, if the discipline had been the same
20 you would still have been entitled to bring an argument
21 on the merits here?

22 MR. COHEN: Yes, we would have been able to
23 bring an argument on the merits, because under
24 California law the stipulation as to facts, as to facts
25 only --

1 QUESTION: Is there some place in the record,
2 to which perhaps you were going, where we can actually
3 see what was stipulated to?

4 MR. COHEN: Yes. As a matter of fact, Your
5 Honor, in the reporter's transcript, which is -- it's
6 page 3, I believe.

7 QUESTION: The joint appendix?

8 MR. COHEN: Of the joint appendix.

9 At page 4, by Mr. Markle, if I may quote: "In
10 the event that the Hearing Panel makes a finding of
11 culpability" --

12 QUESTION: Where are you reading from?

13 MR. COHEN: I'm reading from on page 4 of the
14 joint appendix. It's a statement by Mr. Markle,
15 representing the State Bar.

16 QUESTION: Okay. Thank you.

17 MR. COHEN: "In the event that the Hearing
18 Panel makes a finding of culpability, then it's the
19 position of the parties, in particular the State Bar,
20 Mr. Cohen, and Mr. Dring, that the stipulation that we
21 would lodge tonight would then become effective as the
22 parties' stipulated recommended disposition, which
23 obviously the Hearing Panel can approve or disapprove."

24 And then he goes on: "In the event that this
25 Hearing Panel finds that there is no culpability, then

1 it's the parties' understanding that the stipulation
2 would have no force and effect whatsoever."

3 Now, the Hearing Panel found no culpability,
4 and we submit that therefore that stipulation is of no
5 force or effect. The three-member Hearing Panel found
6 that there was no culpability because the presumption
7 was unconstitutional.

8 And therefore, by the State Bar's own
9 statement, we submit that that stipulation was no longer
10 of any force or effect. As a matter of fact, the
11 preliminary hearing referee initially who first heard
12 this matter dismissed the matter on constitutional
13 grounds.

14 QUESTION: What you're saying to me, Mr. Cohen
15 -- you know, usually a stipulation, in fact usually any
16 contract, there's something in it for both sides. And
17 what you're saying, you've told us what was in it for
18 your client. That is, your client couldn't get any
19 sentence higher than the one given to the other
20 attorney.

21 MR. COHEN: Yes, Your Honor.

22 QUESTION: What was quid for that quo? Or
23 they just gave you that?

24 MR. COHEN: Well, I can say, and perhaps I may
25 be going outside the record, Mr. Dring just did not have

1 the wherewithal at that point in time to litigate
2 something that we felt would be litigated by Mr. Grey.

3 QUESTION: If that was the case, then he
4 simply wouldn't have litigated the second one. But a
5 stipulation usually means you have agreed to one thing
6 in exchange for the other party agreeing to something
7 else.

8 I read the stipulation to mean that you agreed
9 to be bound by the factual determination, in exchange
10 for which they promised, won't give you any higher
11 sentence.

12 MR. COHEN: By the factual determination, Your
13 Honor, not by the legal determination. Because under
14 California rules as I understand them to be, a
15 stipulation as to facts and discipline is always
16 reviewable by the California Supreme Court. We cannot
17 stipulate away the right to review, because Mr. Oring
18 did not know at the time of entering into this
19 stipulation what the discipline would be.

20 You see, we might have stipulated to nothing
21 higher than an admonition.

22 QUESTION: Well, maybe I misspoke. What were
23 the facts in dispute that you were stipulating to?

24 MR. COHEN: There were no facts in dispute
25 whatsoever.

1 QUESTION: So in fact, the other side got
2 nothing from this stipulation? Just out of the goodness
3 of their heart, they promised that your client wouldn't
4 get any higher? That doesn't make sense to me.

5 It seems to me you were --

6 MR. COHEN: Well, it was the same radio
7 advertisement that was involved, and really there was
8 nothing more to be added to the case --

9 QUESTION: Exactly.

10 MR. COHEN: By having two parties litigate
11 it.

12 QUESTION: So the stipulation makes no sense
13 to me unless you agreed to be bound by the outcome of
14 the earlier case, not just factual.

15 MR. COHEN: If I may, Justice Scalia, the
16 stipulation doesn't say that at all. It says that we
17 agree to be bound by the factual determination and we
18 agreed to an admonition.

19 Now, an admonition is not a matter of record.
20 It doesn't blemish the lawyer's record. It doesn't
21 prevent him from perhaps receiving a judicial
22 appointment later on.

23 Whereas, the State Bar ultimately did not
24 impose this admonition. It went further and it imposed
25 a public reproof, which is a blemish on Mr. Oring's

1 record.

2 QUESTION: In any event, whatever the
3 stipulation meant, it disappeared once the Hearing Panel
4 found no culpability.

5 MR. COHEN: That's my understanding, because
6 that was even Mr. Markle's statement to the Hearing
7 Panel, that the stipulation was going to be of no force
8 or effect if the Hearing Panel found no culpability.
9 And indeed, the Hearing Panel found no culpability.

10 QUESTION: Yes, but it wasn't just a
11 stipulation of facts. It was a stipulation as to
12 recommended discipline.

13 MR. COHEN: As to recommended discipline,
14 which was not followed by the State Bar. And we submit
15 that therefore on that ground also --

16 QUESTION: There's another thing that puzzled
17 me about this. I don't have it in front of me, but I
18 thought the Hearing Panel at some stage of the case,
19 they'd advised your client that the case was over and
20 that they would just stipulate to dismiss it, and your
21 client insisted, or maybe it was his partner, that the
22 matter be reviewed at a higher level.

23 MR. COHEN: No, I don't know that that was the
24 case, Justice Stevens. Initially it came before Referee
25 Craig, who dismissed it on constitutional grounds. The

1 State Bar did nothing for about 20 months.

2 QUESTION: Right.

3 MR. COHEN: And then Mr. Grey went to the
4 California Supreme Court, and the court ordered that the
5 bar either proceed or dismiss.

6 QUESTION: But who initiated that request
7 after 20 months?

8 MR. COHEN: Mr. Grey.

9 QUESTION: Mr. Grey is the partner of your
10 client?

11 MR. COHEN: Yes, former partner of Mr. Dring.

12 QUESTION: So he was the one that was not
13 satisfied with the victory. He was a total victor at
14 that point.

15 MR. COHEN: Well, no. He was -- you see, the
16 sword was hanging over his head for 20 months. He
17 didn't know whether he could go ahead with advertising
18 or not go ahead with advertising, apparently. In other
19 words, the case --

20 QUESTION: He kind of wanted a declaratory
21 judgment.

22 MR. COHEN: It was still lying there and,
23 yes, he wanted to know whether it was over or not; and
24 apparently not being able to get any definitive word on
25 that, asked the California Supreme Court, who then

1 ordered the bar to either proceed or dismiss.

2 See, that preliminary hearing determination
3 was not binding. As a matter of fact, the State Bar
4 contended, I believe in the Grey case --

5 QUESTION: Well, it was binding in the sense,
6 as I understand you, that's what terminated the
7 stipulation, the fact that he prevailed at that
8 hearing.

9 MR. COHEN: Well, no. What we feel terminated
10 the stipulation was the three-member panel which found
11 no culpability, because it was before that three-member
12 panel that Mr. Markle on behalf of the State Bar stated
13 that that stipulation would be of no force or effect if
14 that panel found no culpability, and they did find no
15 culpability.

16 We feel that equally offensive to the First
17 Amendment principles that this Court has elaborated in
18 cases which we feel are analogous to this one is the
19 presumption under the regulation that communications are
20 false, misleading, or deceptive.

21 The general rule from Speiser versus Randall
22 and Friedman versus Maryland, under those cases the
23 speaker may not be allocated the burden of proving the
24 protected nature of the communication.

25 QUESTION: Mr. Cohen, do you agree that it is

1 possible under the First Amendment for the State Bar to
2 prohibit advertising that it believes is misleading?

3 MR. COHEN: That it believes is misleading. I
4 think, yes, I think of course the State Bar has an
5 obligation, and I think that we lawyers expect the State
6 Bar to prohibit advertising that is misleading. Indeed,
7 this Court --

8 QUESTION: Do you think that a testimonial
9 which focuses, of course, as it did here, only on one
10 client's experience, without explaining the nature of
11 the cause of action or the fact that it was just her
12 individual experience under a bad faith claim -- it
13 wasn't even explained that it was a bad faith claim,
14 apparently -- was somehow misleading --

15 MR. COHEN: I don't, Justice O'Connor.

16 QUESTION: -- to the average listener?

17 MR. COHEN: If I may, number one, I don't
18 think that the general public would -- I think it would
19 be more misleading to use the word "bad faith" in an ad
20 addressed to the general public. We lawyers may know
21 what that means, but I don't think the public does.

22 I think that what this ad did, and I think why
23 an ad in this type of a case differs from a general
24 advertisement, is that the advertisement here did not
25 seek retention of the law firm. And unlike an ad for

1 the sale of a product, it didn't ask the listener or
2 viewer to go to the store and buy the soap or makeup
3 without further --

4 QUESTION: But the ad didn't further explain.
5 The testimonial did not explain the nature of the claim
6 for which relief was obtained or the circumstances, just
7 a broad statement that, I got relief and I'm happy.

8 MR. COHEN: No, if I may, Justice O'Connor,
9 the ad said specifically: "I was rear-ended on the San
10 Diego Freeway and my medical bills were piling up." So
11 it did, I believe, state the nature of the cause of
12 action and what had happened to this individual.

13 QUESTION: Well, my impression is that it may
14 have been quite misleading in not explaining the nature
15 of the cause of action and the relief. And I wonder
16 whether the First Amendment doesn't permit a state bar
17 to just prohibit testimonials in general.

18 MR. COHEN: In general? We feel that the
19 Federal Trade Commission -- and we've cited those
20 matters in our brief -- the Federal Trade Commission
21 doesn't feel that testimonials ought to be treated any
22 differently than any other form of advertising.

23 We believe that the public is not --

24 QUESTION: Do you think that attorneys occupy
25 any special role in the professions and in the

1 hierarchy, and so that we ought to be a little more
2 concerned --

3 MR. COHEN: I think so.

4 QUESTION: -- about their advertising?

5 MR. COHEN: Yes, and I think lawyers have
6 always been regulated perhaps a little more strictly
7 than the other businesses.

8 QUESTION: Wasn't there a finding here that
9 this advertisement was misleading?

10 MR. COHEN: Never, sir. There was never a
11 finding anywhere in this case that the ad was
12 misleading, false, or deceptive.

13 QUESTION: Was there some indication that it
14 was not?

15 MR. COHEN: I believe that a stipulation that
16 the ad was truthful would at least lend some inference
17 to the belief that it was not false or misleading. I
18 think that once an advertisement has been shown to be
19 truthful, what more could the lawyer establish?

20 QUESTION: But in any event, there was no
21 finding that it was misleading or that anybody else
22 thought it was?

23 MR. COHEN: At no time, and it did not arise
24 out of a complaint by any consumer. This was a State
25 Bar-initiated complaint.

1 I feel also that what this --

2 QUESTION: Excuse me. There was no finding
3 that anything special about this testimonial made it
4 deceptive. But isn't there inherent in the State Bar
5 decision that all testimonials are deceptive? That was
6 the basis of their decision, right?

7 MR. COHEN: The basis for creating the
8 presumption was the belief that all testimonials were
9 inherently misleading.

10 QUESTION: So they effectively find that this
11 is deceptive because it's a testimonial.

12 MR. COHEN: They have found all testimonials.

13 QUESTION: That's right. So it's no more
14 deceptive than all testimonials. But they have found
15 this, being a testimonial, is deceptive.

16 MR. COHEN: That is correct.

17 QUESTION: And that's sort of the issue, isn't
18 it, whether testimonials are deceptive?

19 MR. COHEN: I may say that that finding --
20 there has been absolutely no basis shown for that
21 finding. It was in our opinion just a bald conclusion,
22 not based upon any evidence at all.

23 QUESTION: But that finding, if that's the
24 basis for their rule, it's also a finding that there
25 can't be any testimonial that is not misleading.

1 MR. COHEN: Yes, that is correct, Justice
2 White.

3 QUESTION: As part of your answer, I believe,
4 to Justice O'Connor, I thought you had indicated that
5 there was no recommendation here that this firm be
6 retained. Is that what you were about to say?

7 MR. COHEN: Yes. Well, if I may say it this
8 way, what the ad said is that there is no fee for a
9 consultation. So I think that we have to take the
10 conduct --

11 QUESTION: Well, but it concludes by saying:
12 "If I had any legal problem, car accident or anything, I
13 would definitely go back to Greg & Oring. I certainly
14 do believe that." And they give the phone number
15 twice.

16 You can't really tell us that this wasn't
17 intended to be used to solicit the firm. Otherwise,
18 they were wasting their money.

19 MR. COHEN: Well, of course it was meant to
20 solicit the firm, surely, surely, Justice Kennedy. I
21 think --

22 QUESTION: Didn't this rule really mean that
23 anybody who is using a testimonial has the burden of
24 showing that it is not misleading?

25 MR. COHEN: That is correct.

1 QUESTION: And wasn't the ultimate conclusion
2 that your client failed to prove that it was not
3 misleading?

4 MR. CCHEN: That is correct, Justice.

5 QUESTION: And you say, I suppose, that
6 shifting the burden like that violates the First
7 Amendment.

8 MR. CCHEN: Yes.

9 QUESTION: Is that your argument?

10 MR. CCHEN: That is our position, Justice,
11 that it ought to be the one who seeks to regulate the
12 speech to have the burden of proof.

13 I think that when the client or potential
14 client is advised that they may come in for a free
15 consultation, I think that it is at that point that the
16 lawyer has the obligation to answer any questions, to
17 explain the law fully.

18 And it is at that point when time can be taken
19 to go into the facts of the case and go into the law of
20 the case. I don't believe that any type of an
21 advertisement can completely tell all there is to tell.
22 And so because this ad did not solicit retention
23 immediately -- when I say it did not ask them to come
24 into the office and then they would be charged for the
25 consultation, it was a free consultation.

1 And I think at that point the client could ask
2 any questions that they wanted to, and the lawyer I
3 think was obligated as a lawyer to give truthful and
4 full answers and supply full information. I think if
5 following that the lawyer did not act professionally,
6 then he or she should be subject to discipline, but not
7 by the mere fact of the ad itself.

8 Unless the Court has any further questions --

9 QUESTION: May I ask one other question that I
10 may have missed earlier. Under the rule they recently
11 adopted, which requires a disclaimer in this kind of
12 announcement, what exactly does the disclaimer have to
13 say?

14 MR. COHEN: The new rule, it says: "A
15 communication which contains testimonials about or
16 endorsements of a member, unless such communication also
17 contains an express disclaimer, such as 'This
18 testimonial or endorsement does not constitute a
19 guarantee, warranty, or prediction regarding the outcome
20 of your legal matter.'"

21 If it doesn't contain that, it is presumed,
22 just as the old rule presumed, that the ad is false,
23 misleading, and deceptive.

24 QUESTION: Thank you.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

1 Cohen.

2 Ms. Yu.

3 ORAL ARGUMENT OF DIANE C. YU, ESQ.

4 ON BEHALF OF RESPONDENT

5 MS. YU: Thank you, Mr. Chief Justice, and if
6 it may please the Court:

7 Before I begin, I'd like to correct or clarify
8 a few of the comments that have been raised in the
9 context of this last discussion with my opponent. First
10 of all, the Federal Trade Commission, contrary to what
11 he indicates, does in fact have a special standard for
12 endorsements and testimonials.

13 Their regulations, Regulation No. 255.1 and
14 255.2, which are cited in our brief, do clearly indicate
15 that they understand "that an advertisement employing an
16 endorsement reflecting the experience of an individual
17 or a group of consumers on a central or key attribute of
18 the product or service will be interpreted as
19 representing that the endorser's experience is
20 representative of what consumers will generally achieve
21 with the advertised product in actual, albeit variable,
22 conditions of use."

23 Therefore, unless --

24 QUESTION: What are you reading from?

25 MS. YU: I'm reading from the Federal Trade

1 Commission Regulation No. 255.2, which indicates they
2 state that the advertiser, unless he or she can
3 adequately substantiate these representations, should
4 either clearly and conspicuously disclose what the
5 generally expected performance would be or clearly and
6 conspicuously disclose the limited applicability of the
7 endorser's experience to what consumers may generally
8 expect to achieve.

9 So in fact the Federal Trade Commission does
10 recognize that testimonials and endorsements carry with
11 them special risks in terms of misleading or deceiving
12 the public, and the answer is disclosure and disclaimer
13 in order to solve that problem and eliminate the
14 deceptive or misleading content. That is what we have
15 been saying all along.

16 A second point that was raised were the
17 stipulations, and I can certainly understand some of the
18 confusion. We contend that the two stipulations should
19 be read in context with the colloquy which is found in
20 the joint appendix, pages 4 to 6.

21 QUESTION: There are two written stipulations

22 --

23 MS. YU: That's correct.

24 QUESTION: -- somewhere in the record?

25 MS. YU: They're in the jurisdictional

1 statement, appendixes D and E. If you read those two
2 stipulations together, nowhere, contrary to what
3 Appellant says, does it say, if the Hearing Panel finds
4 no culpability, Mr. Oring is scot-free or he is off. In
5 fact, what it says, it understands that these
6 stipulations are subject to approval by the review
7 department, which is our appellate level in the State
8 Bar court, and also the California Supreme Court.

9 Moreover, in the discussion before the Hearing
10 Panel, which Mr. Cohen himself participated in and in
11 fact was active in producing the stipulations that are
12 before you, he states in page 5 of the joint appendix:
13 "In other words, our intent is that whatever happens to
14 Mr. Grey would happen to Mr. Oring."

15 And he later goes on to say that he
16 understands there is a possibility that the discipline
17 might be increased, because he says: "For example,
18 supposing, which this doesn't apply, but supposing there
19 were a situation where it was a stipulated suspension of
20 30 days. What we're saying is that would not go into
21 effect with respect to Mr. Oring any sooner than it
22 would go into effect for Mr. Grey."

23 He later says: "In other words, we will leave
24 Mr. Grey and his able counsel to litigate."

25 So in response to your question, Justice

1 Scalia, what the State Bar got out of this, we thought,
2 was that he -- we were closing the case against Mr.
3 Oring, and we were going to let Mr. Grey and the State
4 Bar litigate.

5 In other words, Mr. Grey was going to be the
6 designated litigator, Mr. Oring would take a back seat,
7 and when discipline was officially and finally imposed
8 against Mr. Grey, if any, it would be imposed against
9 Mr. Oring.

10 QUESTION: That's how I read it, too. But now
11 do you explain the colloquy on page 4, the statements of
12 Mr. Markle on page 4 that Mr. Cohen brought to our
13 attention?

14 MS. YU: It's definitely true there are a
15 number of confusing and somewhat irregular items in this
16 particular record. That's an understatement, I'm sure.

17 With respect to what Mr. Markle is stating, he
18 understood that the Hearing Panel was going to rule in
19 effect on the constitutionality, and that is what the
20 parties believed was going to happen in the Grey
21 matter.

22 I think it's clear that the intent,
23 notwithstanding his comments about the culpability
24 aspect, is not borne out at all by the stipulations
25 themselves, but that the comments of Mr. Cohen, who

1 drafted the stipulation as to force and effect of the
2 first stipulation -- it's very clear that he understood
3 that his client would, if disciplined at all, would not
4 receive a greater discipline than Mr. Grey, and that he
5 was backing out. They were leaving the case to Mr. Grey
6 to take over.

7 So that is -- It is somewhat --

8 QUESTION: But where does that leave us in
9 terms of the stipulation? What do we have before us
10 now?

11 MS. YU: Well, under California law --

12 QUESTION: Is the Petitioner out of court?

13 MS. YU: Under California law, our position is
14 that the stipulations take him out of the as-applied
15 category and that all he has is a facial attack. It is
16 somewhat unusual, and we understand that the California
17 Supreme Court in denying him review in effect has upheld
18 the decision in the State Bar and is holding him to the
19 stipulations.

20 And we would certainly urge this Court not to
21 free him from his obligations, because that would have
22 impact far greater than this one discipline case, if
23 parties can so readily back out of agreements they make
24 and other parties have relied upon in good faith.

25 QUESTION: You don't think it's a permissible

1 reading of the stipulation that he would simply accept
2 the discipline imposed by the State Bar, but retain
3 leave to appeal perhaps to the Supreme Court of
4 California or at least to this Court if he thought it
5 were unconstitutional?

6 MS. YU: That was not our understanding. The
7 understanding was Mr. Grey was going to take the ball
8 and run with it. Mr. Grey did. He lost. The
9 discipline was imposed against him. And Mr. Oring, we
10 understood and thought, was also going to accept that.

11 QUESTION: Mr. Grey I take it could have
12 appealed to this Court had he so chosen.

13 MS. YU: That's correct. He did file and
14 certiorari was denied as to his case.

15 QUESTION: Ms. Yu, let me take one more stab
16 at it. I don't want to prolong this thing too long, but
17 it is sort of a jurisdictional problem.

18 That statement of Mr. Markle on page 4, "In
19 the event that this Hearing Panel finds" -- this is the
20 problematic one -- "this Hearing Panel finds that there
21 is no culpability, then it's the parties' understanding
22 that the stipulation would have no force and effect
23 whatever, and that whatever decision the hearing Panel
24 reaches, that decision would apply, if the decision
25 included a finding of no culpability, that decision

1 would apply to both Mr. Oring and Mr. Grey."

2 MS. YU: Right. That is irregular, because
3 Mr. Markle I guess we should say should have understood
4 -- everybody understood, although it's not expressed
5 here, that the Hearing Panel is not the final word on
6 the discipline of an attorney. It goes automatically
7 from the Hearing Panel to the review department.

8 QUESTION: Even if the Hearing Panel finds no
9 culpability?

10 MS. YU: That's correct. The review
11 department has authority to review the matter on its
12 own, which in fact it did. And in this case, the State
13 Bar did apply to the review department for review. And
14 the decision of the Hearing Panel was overruled there
15 and the decision later of the California Supreme Court
16 in denying review upheld the review department's
17 determination that there was culpability and there ought
18 to be discipline imposed.

19 QUESTION: Thank you, Ms. Yu. I give up.

20 QUESTION: Did you say a while ago that there
21 is some part of this case that is fairly before us or
22 not?

23 MS. YU: We understand before us would be the
24 constitutionality of the presumption.

25 QUESTION: Well, why is that even before us?

1 MS. YU: Well, that is actually a question we
2 have wondered about. But we've briefed it. We
3 understand that there is some concern on the part of the
4 Court with respect to lawyer advertising and where it's
5 going.

6 In fact, we welcome this opportunity to urge
7 the Court to draw a line.

8 QUESTION: So you say at least the facial
9 validity of this rule is before us, is that it?

10 MS. YU: That would be correct.

11 QUESTION: Well, but I really don't understand
12 that. If this man has stipulated to the discipline and
13 the ultimate outcome is giving the discipline regardless
14 of what we decide on the constitutionality, it's just
15 like somebody walking in off the street and saying, I'd
16 like to have you rule on the facial validity of this
17 rule.

18 MS. YU: As I said, we feel he doesn't have
19 the right personally to benefit from whatever ruling
20 might come from this Court.

21 QUESTION: It's a classic case of no case or
22 controversy.

23 MS. YU: Well, I hesitated to raise that, but
24 we did have some concern about how this case and why
25 this case is here. But as I said, we are prepared to

1 answer any questions that you have about it.

2 I did want to also --

3 QUESTION: Are you standing on the
4 stipulation? You're not waiving the stipulation?

5 MS. YU: No, we're not waiving the
6 stipulation, and we certainly are not conceding any of
7 the factual points that he raised, including the fact
8 that we think this testimonial is misleading and
9 deceptive, as all testimonials are, although the State
10 of California does have a provision that, if you can
11 show the testimonial is not deceptive and misleading,
12 that the attorney may run it.

13 We think that's a fair balance between the
14 competing interests at stake. We think it's a
15 reasonable and constitutional way to get at the very
16 serious problem of deceptive and misleading advertising
17 in the lawyer context.

18 There was another point I believe Justice
19 Scalia raised with respect to whether the State Bar
20 could require an attorney to present more information
21 than he or she might be inclined to do. And I would
22 understand that the ruling the Zauderer case would
23 suggest that in some instances even truthful statements
24 may carry with them inherently deceptive or misleading
25 impressions or connotations with them, such that the

1 State may permissibly require them to disclose more than
2 they might initially be inclined to state.

3 QUESTION: Do you take the position that all
4 testimonial ads are inherently misleading?

5 MS. YU: Yes. We also believe that the
6 reasons for that are well-known and sound. They have
7 four components that make them inherently misleading and
8 deceptive. They constitute claims as to quality, which
9 this Court in Bates has indicated is not protected -- is
10 not something that can be verified or measured in any
11 real way.

12 They also constitute promises or inferences
13 that certain results will obtain, and that's what the
14 FTC regulations are aiming at. This particular ad also
15 contains material omissions of fact, half-truths, in it,
16 such that you have a truthful statement which is
17 nonetheless --

18 QUESTION: Yes, but what if it didn't? What
19 if it just said, what if the testimonial merely said
20 that they have a very fine-looking office and a polite
21 receptionist who answers the telephone courteously and
22 you will receive courteous treatment if you come into
23 our office, and everybody who ever went to the office
24 qualified that way?

25 What would be misleading about that?

1 MS. YU: Those sort of client satisfaction
2 testimonials would be unlikely to produce the kind of
3 investigation that this one did.

4 QUESTION: Yes, but it would be a violation of
5 your rule.

6 MS. YU: But we have the presumption that says
7 an attorney may show that those statements are in fact
8 not just true, but also not deceptive or misleading. In
9 that case, if he could meet his burden fairly readily,
10 he would be allowed to run that type of advertisement,
11 because those are the kinds of things --

12 QUESTION: But isn't the presumption
13 irrational as applied to that kind of a testimonial?

14 MS. YU: No, we feel that the form of
15 advertising itself carries with it such inherent
16 capabilities for abuse that --

17 QUESTION: Even the ad I described?

18 MS. YU: Pardon me?

19 QUESTION: Even the ad I described?

20 MS. YU: Well --

21 QUESTION: It gives very limited information,
22 but everything it says is easily verifiable, 100 percent
23 true, and experienced by every client or potential
24 client who ever went into that office.

25 MS. YU: My response would be simply that the

1 form of advertising itself is what is dangerous, because
2 it has an emotional appeal and it is not relying on the
3 content of the message, but the credibility of the
4 speaker.

5 So I think we would say the presumption would
6 fairly operate there. But we also would concede in that
7 particular case, where the client is testifying as to
8 things he or she can observe and can in fact be
9 verified, that we don't have the same problem we do
10 here, where the testimonial misrepresents entirely the
11 basis of a cause of action for bad faith.

12 We find it quite amazing that --

13 QUESTION: Well, why does it misrepresent? It
14 said the insurance company was giving her a hard time,
15 was harassing her, bills were piling up. That's the
16 elements of bad faith.

17 MS. YU: Not entirely. We find it quite
18 amazing that he does say he's trying to educate the
19 public, because never once in the ad are the words "bad
20 faith, "insurance bad faith claim," "breach of covenant
21 of good faith" --

22 QUESTION: Well, the words "tort" and
23 "contributory negligence" aren't used, either, because
24 those put people to sleep.

25 [Laughter.]

1 MS. YU: Well, in this particular instance
2 mere harassment or not liking the way your insurance
3 company treats you may not at all form the basis for a
4 bad faith claim.

5 What is misleading here in addition to the
6 failure to mention those items is the fact that the
7 double recovery doesn't come from the auto accident,
8 even though that keeps being stressed, as, if I have a
9 problem with an auto accident, if you have an auto
10 accident you need a lawyer.

11 The clear intent of this particular
12 testimonial is to imply that from a simple fender-bender
13 you may get a double recovery if you don't happen or
14 your lawyer, this lawyer, doesn't happen to like your
15 insurance company. And that simply is not true.

16 QUESTION: But in any event, if you want to
17 publish any testimonial you have to get consent in
18 advance.

19 MS. YU: Well, we don't have a procedure for
20 pre-screening, if that's what you --

21 QUESTION: So you just have to take your
22 risk?

23 MS. YU: That's correct in some respect,
24 although we think in this case that is an important
25 point to make, because here he seems to make a virtue of

1 the fact --

2 QUESTION: So there's no way, there's no way
3 for him to get permission in advance, or not?

4 MS. YU: We don't currently have the resources
5 to do that. With 120,000 lawyers, it's somewhat
6 difficult. But we do have, as I was going to say, we do
7 have here the representation that it is somehow a virtue
8 that he didn't --

9 QUESTION: Well, would you be making the same
10 argument if, instead of this being a testimonial ad by
11 some client, the lawyer himself said, I had this case
12 where there was this, one of my clients had this kind of
13 an experience? He just said the same thing on his own
14 behalf.

15 Would you still be making this kind of an
16 argument, that it was misleading?

17 MS. YU: Well, it certainly could be, because
18 it could still be truthful and yet deceptive. I could
19 tell you in all candor, I have never lost a drunk
20 driving case. But if the facts were I had only tried
21 one and fortunately won, it would be true, but it would
22 be very misleading.

23 QUESTION: Would you think a State Bar rule
24 that says that every ad like this, where it's the lawyer
25 himself saying what happened, is misleading, would that

1 be constitutional, the lawyer advertising?

2 MS. YU: It's not entirely before you. I
3 would imagine that it may have some of the same
4 problems. In fact, the American Bar Association
5 condemns most of these self-laudatory ads, whether the
6 lawyer said it or whether the client is saying it.

7 QUESTION: Well, it may be the American Bar
8 did, but how about the constitutionality?

9 MS. YU: If it has the same elements of deceit
10 and misleading information in it, it would still violate
11 our rule. So I would say that we would believe it would
12 be constitutional to regulate that type of speech.

13 It is important that in this particular case
14 the Appellant says almost as a virtue that he didn't
15 have anything to do with the writing of this ad, that it
16 was his client's statements.

17 Well, that belies his contention that he was
18 trying to educate the public. If he were trying to
19 educate the public about the nature of bad faith claims,
20 he wouldn't have a lay person try to explain what had
21 happened to her. That simply doesn't make sense.

22 In other words, he abdicated his role as a
23 professional to try to ensure that the information that
24 got out to the public was truthful and not deceptive.
25 We feel that this particular advertisement by itself is

1 misleading under any context, and that it is inherently
2 misleading because of these results that are being
3 promised, the misrepresentations as to information about
4 the basis of the cause of action, the quality claim that
5 she's not in a position to judge and cannot be
6 measured.

7 QUESTION: You seem to be arguing it as an
8 as-applied challenge. I thought you said all that was
9 before us was the facial challenge.

10 MS. YU: We are prepared to argue on all of
11 these bases. We do feel, though, that the stipulation
12 takes him out. But should the Court be entertaining a
13 view that it may wish to look at the presumption and its
14 validity, we felt that we had to prepare for any
15 questions that you had.

16 QUESTION: But why in dealing with the
17 presumption would we distinguish between an as-applied
18 challenge and a facial challenge?

19 MS. YU: Well, it would be entirely with
20 respect to the facts that he claims or the situation
21 that applies to him in terms of any relief he may get.
22 I mean, if the statute, which we believe ought to be
23 accorded proper deference, is in fact constitutional,
24 then he obviously has no recourse or relief.

25 QUESTION: But do you see the stipulation as

1 distinguishing between as-applied and facial?

2 MS. YU: Yes.

3 QUESTION: Why?

4 MS. YU: Because he himself, he and the State
5 Bar have already negotiated and settled whatever their
6 agreements and understandings were about how his case
7 was going to be handled. We feel that he doesn't now
8 have the opportunity to bring it before you on the
9 merits.

10 QUESTION: But why should he have any more
11 opportunity to bring a facial challenge before us on the
12 merits than an as-applied challenge?

13 MS. YU: Because of some of the unusual
14 aspects of the case, which the record may reflect in
15 terms of the challenge he brought in the California
16 Supreme Court and then coming here on appeal, it does
17 create a somewhat irregular context for the case. But
18 we were prepared, as I said, to deal with it.

19 As we said, we feel that this presumption is a
20 reasonable accommodation between the competing interests
21 that the Court has indicated, the need for the public to
22 get appropriate, informative information -- this
23 advertisement does not give that type of informed
24 information.

25 It has half-truths in it, it has omission, and

1 therefore It has a misleading impression for the public,
2 who is not going to understand the difference between a
3 bad faith claim and how that could produce a recovery,
4 let alone a double recovery, and a simple car accident
5 claim.

6 We also feel that the advertisement by itself
7 standing alone, with or without the presumption, is
8 misleading and ought to have been regulated. And we
9 feel that certainly the stipulation should take him out
10 of this case altogether.

11 Finally, we would like to make an argument
12 that the professionalism and public needs of the
13 community do demand that a strong stand be made with
14 respect to the types of forms of advertising, such as
15 this testimonial, which have inherently misleading and
16 deceptive qualities to them.

17 This is a time when the public is demanding
18 more and not less truth and candor, more and not less
19 ethical behavior on the part of lawyers. With 120,000
20 lawyers in California and a very serious discipline
21 problem, we take our job, we take it very seriously.
22 And we do hope that the ruling that comes from this
23 Court will speak out in favor of allowing misleading and
24 deceptive advertising in the form of testimonials to be
25 regulated in a reasonable way.

1 QUESTION: But you just a minute ago told us
2 we didn't have anything.

3 MS. YU: Well, as I said, this is an unusual
4 case, and the situation as to how it got here is quite
5 exceptional.

6 QUESTION: May I ask one other question about
7 the amended rule that now requires a disclaimer. Is it
8 your understanding that that was adopted in more or less
9 a contingent fashion, depending on the outcome of this
10 case? Or is that part of the rule no matter what we
11 do? Do you know?

12 MS. YU: It has been adopted by the California
13 Supreme Court. It would be operative on May 27th of
14 1989. Obviously, a ruling from this Court that had a
15 direct bearing on it would cause us to revisit it. But
16 it will otherwise go into effect.

17 QUESTION: So that are there a whole backlog
18 of discipline cases that are backed up awaiting the
19 outcome of this case, or is this the only one that
20 really is pending under the old rule?

21 MS. YU: We don't have a real specific count
22 on the number of testimonial cases.

23 QUESTION: See, what seems to me is we may be
24 deciding the facial validity of a rule that doesn't
25 apply to anybody except for the litigant here, who has

1 no interest in the outcome because he stipulated the
2 case away.

3 MS. YU: Right. That in fact has occurred to
4 us.

5 QUESTION: It's really a big case, in other
6 words.

7 MS. YU: Right, a very weighty case. Well,
8 that has occurred to us. In fact, this new rule doesn't
9 even help the Appellant, because he didn't have a
10 disclaimer of any kind.

11 QUESTION: I understand.

12 MS. YU: In short, I appreciate your attention
13 and thank you.

14 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Yu.
15 Mr. Cohen, you have six minutes remaining.

16 REBUTTAL ARGUMENT OF
17 THEODORE A. COHEN, ESQ.
18 ON BEHALF OF PETITIONER

19 MR. COHEN: Thank you. May it please the
20 Court:

21 At the outset, I'd like to say that I don't
22 take credit for the creation of that stipulation at
23 all. I think it occurred before Ms. Yu was employed by
24 the State Bar and I don't take credit for the creation
25 of that.

1 What Mr. Oring bargained for was an
2 admonition, and he received something more horrendous.
3 Supposing he had bargained for an admonition and the
4 review department determined to disbar him.

5 QUESTION: Well, but the stipulation said the
6 Supreme Court of California can increase the
7 discipline.

8 MR. COHEN: Exactly, and that is why exactly
9 one cannot -- we claim that one cannot stipulate away
10 the right to review before we even know what is going to
11 happen.

12 QUESTION: I don't know why you can't. I
13 don't know why you can't agree you'll be bound by
14 somebody else's outcome. It happens all the time.

15 MR. COHEN: I think that the intent of
16 everyone, and it's evidenced by Mr. Markle's statement,
17 was that this would be a cap, so that, in other words,
18 there would not be different discipline imposed upon Mr.
19 Grey than was imposed on Mr. Oring. That was at least
20 the intention as I understood it to be.

21 QUESTION: If we rule the way you want, what
22 benefit will that be to the law in California, the
23 United States, or anyplace else?

24 MR. COHEN: Well, I think, Your Honor, what it
25 would say is that the State Bar must use the least

1 onerous means. This Court has said that.

2 Now, I think that the claim that the State Bar
3 makes that it doesn't have the resources to permit
4 pre-submission of this ad as the Kentucky Bar did is
5 really not well-founded. The State Bar of California to
6 my understanding is spending \$35 million for discipline
7 this year. Their dues I believe are the highest in the
8 country.

9 I'm sorry, Your Honor.

10 QUESTION: That doesn't speak too well of the
11 bar.

12 MR. CCHEN: It doesn't, Your Honor.

13 And I don't argue with the fact that they need
14 to do those things. I think all of us in the legal
15 profession are concerned with the quality of --

16 QUESTION: Will this case stop that?

17 MR. CCHEN: Pardon me, Your Honor?

18 QUESTION: If we rule with you on this case,
19 will that stop what they're doing now?

20 MR. CCHEN: Well, I hope it would. I hope
21 that the State Bar of California would --

22 QUESTION: Will this decision in this case
23 benefit anybody but your client?

24 MR. CCHEN: I think it would, Your Honor.

25 QUESTION: How?

1 MR. COHEN: Well, of course I don't know what
2 the Court is going to hold or what dicta may be in the
3 Court's opinion. But I think that any decision from
4 this Court, of course, benefits all of us in the legal
5 profession because we get guidance on how to proceed,
6 and I think that the State Bar would receive guidance
7 from this Court.

8 QUESTION: What in particular would it do?

9 MR. COHEN: In this case?

10 QUESTION: Yes.

11 MR. COHEN: As to anyone except Mr. Oring?

12 QUESTION: Yes.

13 MR. COHEN: I suppose that it would determine,
14 and I hope it might determine, whether or not a
15 disclaimer would be permissible, or whether there was
16 some less onerous method of dealing with this
17 situation.

18 QUESTION: That would deal with the procedure
19 in California?

20 MR. COHEN: Yes, or whether a testimonial may
21 be --

22 QUESTION: Which doesn't interest us at all.

23 MR. COHEN: I would say, Justice Marshall,
24 that perhaps the decision would determine whether
25 testimonials might be treated differently than any

1 other.

2 QUESTION: But you feel that you have been
3 aggrieved and you just want to have something done about
4 it.

5 MR. COHEN: Well, that is the reason that Mr.
6 Oring is here.

7 QUESTION: And I just don't know what you
8 want.

9 MR. COHEN: I think what happens is that we
10 have a man who bargained for an admonition which does
11 not affect his record publicly and he received something
12 which now is a blemish upon his record. I think that's
13 why he came here, of course.

14 But I think that the State Bar's position
15 really doesn't meet with the requirements that this
16 Court laid down in its previous lawyer advertising
17 cases, to use the least heinous means available.
18 California could have provided for pre-submission of
19 this ad.

20 I don't feel that a lawyer ought to risk his
21 license without knowing ahead of time whether what he is
22 doing is permissible.

23 QUESTION: Is that involved in this case?

24 MR. COHEN: I believe it is, I believe it is,
25 because, they had to run the ad.

1 QUESTION: He's going to lose his license?

2 MR. COHEN: Well, it's not lose his license,
3 but he --

4 QUESTION: That's what you said.

5 MR. COHEN: Yes, but Your Honor, under the
6 presumption as it existed a lawyer could risk losing his
7 license, because we don't know what discipline would be
8 imposed. So the lawyer must risk the discipline in
9 order to find out whether the ad is permissible or not.

10 QUESTION: I still don't know what you want.

11 MR. COHEN: Well, of course we would want a
12 reversal of the case, Your Honor, and a determination
13 --

14 QUESTION: Just say the case is reversed,
15 period? We have to write an opinion, do we?

16 MR. COHEN: I suppose so, Your Honor, if you
17 choose to.

18 QUESTION: Or could we dismiss it as
19 improvidently granted?

20 MR. COHEN: Yes, I suppose this Court could do
21 that.

22 QUESTION: You think we could do that?

23 MR. COHEN: I think this Court could do
24 whatever it chooses to do, Your Honor.

25 [Laughter.]

1 MR. COHEN: We would feel that the issue
2 before the Court is not a question of whether the state
3 can prohibit or punish false and misleading
4 advertisements by lawyers. Of course it can. But we
5 feel that the issue here is whether the state can
6 relieve itself of the burden of showing that an ad is
7 constitutionally protected, by enacting a presumption,
8 as it did here, that all testimonials are presumed to be
9 false and misleading and thereby making the person
10 exercising the right of free speech to bear the burden
11 of proving that the speech is in fact constitutionally
12 protected.

13 QUESTION: It says that in First Amendment
14 cases you can't shift the burden to the defendant to
15 prove a justification?

16 MR. COHEN: Well, I believe the Speiser versus
17 Randall case indicates that, Your Honor, and the
18 Friedman case.

19 QUESTION: Are those your closest cases?

20 MR. COHEN: Those are some of them, Your
21 Honor.

22 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
23 Cohen.

24 The case is submitted.

25 [Whereupon, at 11:45 a.m., the case in the

1 above-entitled matter was submitted.]

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CERTIFICATION

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NO. 87-1224 - MARK H. ORING, Petitioner V. STATE BAR OF CALIFORNIA

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BY alan friedman

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