ORAL ARGUMENT – 1/12/00
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IN RE BIRDWELL

ACEVEDO: The issue before the court is whether a conviction for conspiracy to defraud the IRS is an intentional crime as defined by our compulsory discipline statute. Meaning, is it a crime which requires proof of knowledge or intent and, if it is, is it a crime involving moral turpitude per se?

I'd like to take the court through some of the federal case law which talks about the nature of this crime, what the elements are, what is required for a conviction when the IRS is a victim, when the statute is used, and that the courts carefully examine both the concept and the evidence under 371 to ensure valid convictions. And hopefully then to convince the court that this is an intentional crime because it is a specific intent crime, and because it always involves moral turpitude as this court has defined it.

The nature of the crime is a conspiracy, which at its heart, is the concealment of income and assets in order to evade taxes. It is a tax conspiracy. It is commonly referred to throughout the federal jurisdictions of a client conspiracy. The elements which are required for the government to achieve a conviction are: the existence of an agreement to achieve an unlawful objective; an overact in furtherance of the objective of the conspiracy; and an agreement whose intent is to defraud the IRS.

GONZALES: Is that the element that constitutes moral turpitude?

ACEVEDO: In this case, because you have the specific intent, so then you move over to moral turpitude. It would be the intent to specifically defraud the IRS. You have to have that intent.

The *Atkinson* case out of the 11th circuit tells us that the government must prove beyond a reasonable doubt that each defendant had a deliberate knowing specific intent to join the conspiracy. There has to be a meaning of the minds. So it's not enough to merely be associated with members of conspiracy. Simple knowledge isn't enough, even acquiescence in the objective or the purpose isn't enough. Unless you have that intent and agreement to accomplish the specific illegal objective, you don't get there. And a purpose or objective of the tax conspiracy has to be the evasion of federal taxes. The *US v. Goldberg*, *Collins*, *Atkinson* and *Romer* tell you that the defendant must have the specific intent to defraud the IRS of tax revenues.

If the government can't show this they don't get a conviction. And the courts have even said that if your actions simply have the collateral effect of obstructing the IRS and its ability to collect or ascertain taxes, that's not enough. Even if it's foreseeable it has to be an

objective or the purpose of the conspiracy itself.

HANKINSON: Are you talking about looking at the nature of the offense by looking at §371, or are you talking about the underlying indictment and the facts of a particular case?

ACEVEDO: I think what you're asking me is knowing which agency is being defrauded is not going into the facts of the case. First of all, just the face of the judgment tells you that. You don't have to look at anything else to know that. Second, knowing which agency is defrauded is different from talking about what manner and means was set out in order to defraud the agency.

HANKINSON: And you agree that the *Duncan* case precludes us from looking at the underlying facts and we are required to just look at the nature of the offense with a ch. 8 proceeding?

ACEVEDO: That is what the *Duncan* case says. And in this case, you don't have to look at any facts because no matter how it turns out it's always going to involve moral turpitude. But I do want to say that the policy behind not going into the facts of a case in compulsory discipline didn't originate in the context of is this moral turpitude or not. Really the policy behind that and what the genesis of that was is that you didn't want the lawyer to come in and try to re-try the issue of guilt. And so while it's not necessary in this case just the general idea of looking at the judgment or the indictment, reading a plea agreement, is not going to destroy the summary nature of compulsory discipline. In fact if I recall correctly it's the position that both Justice Owen and Enoch took in the *Duncan* case. So even though it's not necessary in this case, that's what the origin of that was.

Probably most importantly is the defraud clause itself. And the case law also tells us if you look at *United States v. Caldwell*, *Jackson*, *US v. Collins*, and the *US SC* case of *Hammerschmidt* they tell you that it's limited to wrongs that are done by deceit and dishonesty. It's clear in the statute. That's part of the intent element of the crime is the intent to interfere with or obstruct the IRS's ability to ascertain and collect taxes by some dishonest means. So just making it harder for the government isn't going to get you there. It's only when you engage in conduct that's deceitful and dishonest.

So what you have is you've got to know the liability for federal taxes. You have to knowingly voluntarily enter into the agreement whose objective it is to defraud the IRS. You have to knowingly and voluntarily participate in the conspiracy and you have to also agree to defraud the IRS by means which are deceitful and dishonest. There aren't any cases out there and almost every single federal jurisdiction has dealt with this crime, where an individual has been convicted and the conviction has been upheld where it didn't have the specific intent to defraud the IRS and when it didn't involve means that were deceit or that involved dishonestly. If you look at the cases, they virtually all follow the same kind of pattern. The facts almost always involve some kind of sophisticated scheme, some kind of complicated transactions in order to conceal the income and the assets, or the source of the income. You've got laundering of money, the setting up of sham

corporations, backdating documents, filing of false income reports, structuring transactions so that you can't tell or it's so complicated you can't tell how much money is actually there. And there's not a single case out there in which a lawyer's been convicted of simply just representing their client.

If you look at the lawyer cases that are out there, there's *US v. Craig* out of the 6th circuit, *US v. Hurley* out of the 1st circuit. It always comes down to the evidence in the case. Is there evidence to show that what the lawyer was doing, that he agreed to be part of this plan and voluntarily participated in the scheme, which was to try to shield their client's income and assets from the government? And it's these elements that you have that squarely fit within this court's definition of moral turpitude. It inherently involves moral turpitude because it requires a specific corrupt intent to fraud the IRS and because of the deceit and the dishonesty that's required in the commission of the offense.

O'NEILL: Can you distinguish *Touhey*?

ACEVEDO: Yes. *Touhey* first of all wasn't a conspiracy against the IRS, but it was a conspiracy to defraud. And second, what *Touhey* actually says is that this conduct may reasonably be given the label of fraud or moral turpitude. But in any case, fraud or moral turpitude are not elements of this crime.

O'NEILL: Doesn't that just establish your opponent's position, that language?

ACEVEDO: No, I don't think it does. Because what they were talking about is what are the elements the government has to show? They weren't talking about whether this kind of crime involves moral turpitude. They certainly weren't considering it in a lawyer context and they certainly weren't considering it in the moral turpitude definition that this court has developed. So that would be my response to *Touhey*.

This is a tax conspiracy. It's a revenue offense. This court has held both in *Humphreys* which actually was a tax evasion case personal to *Humphreys*, and in *Stevens* which was a bar admissions case in which the lawyer had failed to file income taxes for 14 years. This is the kind of conduct which adversely reflects on a lawyer's fitness to practice law.

Our own definition of serious crime includes the crime of conspiracy. The only other jurisdiction that I could find out there which has dealt with the issue head-on was the District of Columbia. And in that jurisdiction for the purpose of attorney discipline, it also held that it was a crime of moral turpitude per se.

I think that you will also find that the courts have addressed over and over again this language and they are very careful when they look at - they carefully scrutinize the indictments and the evidence. They construe the indictments narrowly. They say that government

has to allege and prove the fraudulent scheme. And so they are careful when they look at these cases to ensure that valid convictions are met.

In concluding, we would argue again that a conviction for this crime is always going to subject a lawyer to compulsory discipline, because it is a specific intent crime. It always involves deceit and dishonesty. It is a revenue offense and the nature of this offense with the goal being to defraud the IRS, implicates virtually every professional quality pertaining to the integrity needed of an officer of the court. It reflects a deep, premeditated criminal _____. We would ask this court to find that this crime is an intentional crime and then to render disbarment against Ms. Birdwell. As you will recall, Ms. Birdwell did receive a sentence of incarceration and therefore disbarment is mandated.

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RESPONDENT

LEE: I disagree with the bar's characterization of this case as even being an intentional crime case. Because due to the way the statute was written, I think erroneously, I think there is a typographical error that's been carried forward, she is not even eligible for serious crime consideration. If the court is to rule that this is an intentional crime, it would mean that a lawyer convicted of this offense placed on probation would automatically have to be disbarred. I don't think that's appropriate.

The real issue is whether this is a moral turpitude per se offense.

HANKINSON: Didn't the SC say that in the *Hammerschmit* case in 1924?

LEE: That this was moral turpitude?

HANKINSON: That this involved deceit, craft, trickery, dishonest means.

LEE: They are the catch phrases used but...

HANKINSON: And isn't that in fact what this court has then said, those particular items involve moral turpitude?

LEE: I would disagree. Because defraud is used in this statute as set forth in the authorities cited...

HANKINSON: Let's talk about moral turpitude. Did the SC in *Hammerschmit* characterize the 371 offense as a crime involving deceit, craft, trickery or dishonest means?

LEE: Yes.

HANKINSON: And hasn't this court said that those particular things involve moral turpitude?

LEE: No.

HANKINSON: We didn't say that?

LEE: No. This court has said that...

HANKINSON: What about *Duncan*?

LEE: You haven't said anything about craft or trickery. I've never seen any case by this court discussing those phrases or even attempting to define them. And secondly, fraud as used by this court in describing previous fraud offenses, have been where there's been the intention to deprive a person of property or money by deceptive means. In this case and in the IRS cases this is not the case.

HANKINSON: How has this court defined crimes of moral turpitude?

LEE: This court I think has struggled just like most people and most courts have with moral turpitude. Sometimes it's said that it's crimes involving deliberate dishonesty or deliberate violence. It is said that moral turpitude goes back to the _____ definition that Justice Jackson talks about in the *DeGeorge(?)* case of base, vile, depraved contrary to good morals. It has used the vague phrase as it reflects on a lawyer's fitness to practice law.

HANKINSON: And in *Duncan* we called it dishonesty or deceit?

LEE: Correct. But we have two other possible elements, which is craft or trickery. And this would be like in the *Caldwell* case, the example in which the court forced the US attorney's office to admit under their theory of prosecution the husband who asked his wife "would you buy me a radar detector" has engaged in a conspiracy to evade a lawful, federal function. That's what the bar has asked you to do in this case by the way is to hold as a matter of public policy that is moral turpitude per se under a statute which criminalizes conduct which says basically "don't allow yourself to be in a position where it looks like you agreed with someone else" even if it's a gov't agent who lures you into it to frustrate any purpose of any agency or department of the US gov't. Even if you never attempt to do what's discussed. Remember the cases say that neither the objective sought nor the so called overt act you are charged with has to be independently illegal.

HANKINSON: Would you respond to your opponent's argument that there is plenty of case law out of the federal circuits that impose an intent or knowledge requirement on a 371 offense?

LEE: Again, it is a vague and strange intent requirement. It says that you don't even have to know that you are violating a law. You don't have to intend to violate the law. The *Khalief*

case that they cited in which the court was trying to prosecute a fellow for violating the structuring laws. In other words, making bank deposits in cash of slightly under $10,000 to avoid the bank reporting it. But the federal prosecutors conceded "We can't prove that case. We can't prove these people even knew there is a statute prohibiting doing this." However, it says in *Khalief* "intent is not a requirement, that if you decide to charge them under the simple and so called defraud clause, in other words, attempt to frustrate any lawful governmental purpose, they don't even have to prove that that was what you were...

HANKINSON: What about the *Atkinson* case. How do you respond to her argument as to it?

LEE: It seems to me that was cited for a very general proposition of the way many courts have stated the intent requirements. But I don't recall it talking about a specific intent to engage in conduct that would be defined as fraudulent. In fact, the cases keep coming back to "we are not talking about the kind of fraud, the mental state that would apply to a mail fraud case or a bankruptcy fraud case." It's taking the *Hamerschmidt* definition through *US v. Dennis*, which then goes through *McNally* and *Tanner*. You find that they say fraud as used in this statute has a fundamentally different meaning than it does anywhere else in the law. And all it means is to agree, which can be found from circumstantial evidence to engage with another person, even if you don't do it, in conduct which would tend to frustrate any legitimate governmental function. That just doesn't sound like moral turpitude per se. I would admit, you could certainly engage in conspiracies that everybody would say are just vicious and absolutely improper. But it also means that this statute criminalizes conduct which is not vicious and not absolutely improper.

I don't know if you can narrow this to only what they call "revenue" offenses. One other case that is cited says this is not a revenue offense. This is the general conspiracy statute. Can we confine it to that? You notice that it's called "defraud the US," but the charge is impede or impair the IRS. But it could be impede or impair the ATF by faultily filling out an application to get a gun, a Brady application. It could be for two gentlemen agreeing when they cross the border in from Mexico, you know, "we're only supposed to bring in one bottle of whiskey each; let's put a couple in the trunk." They could make two trips and achieve the same result. They are just lazy. But they have impeded or impaired the custom service when they do that. That is the problem with this. The problem I think with this whole case is that the bar has tried to focus on irrelevancies. They tried to focus on was the IRS whose purpose was allegedly frustrated, but they admit that we can't look at the facts.

ENOCH: But Ms. Acevedo says, though that the courts have imposed on this statute a specific intent. You have to know that you're frustrating the agency. You're arguing well if you look at the statute, they can be convicted for not doing this. But Ms. Acevedo says, well wait a minute, if all they show is they had an agreement and they did this, they are not going to get there. They have to show that as a part of this agreement, the parties specifically intended to do it to avoid what ever the government was trying to...

LEE: But is that moral turpitude to avoid what is purported to be a lawful gov't objective, but it doesn't even have to violate a civil statute or a criminal statute? The act that you undertake to do can be perfectly legal. So how can that be moral turpitude? In the *Caldwell* case, the court mentions that you could argue the threshold of dishonesty is so low under this doctrine that if someone had a final IRS lien against them and was other than that not bankrupt, so that that debt which is not dischargeable could not be discharged in bankruptcy to file a bankruptcy petition just to slow down the execution on that level could be considered sufficiently dishonest to reach within the purview of this statute. This is the kind of thing that business litigator lawyers do all the time. When they see a client who is having trouble and the IRS is coming down on them one of the first thoughts is let's file bankruptcy. The *Caldwell* court, the 9th circuit, the same circuit that Ms. Birdwell pled under was saying that the filing of petition under those circumstances could support a prosecution under the dishonesty requirement as enunciated in the cases.

I don't know that dishonesty is some benchmark that we can all hang our hats on because we also have to say that the statute involves conduct that involves craft or trickery.

GONZALES: Has there ever been a conviction under 371 where there wasn't a finding in deceit or dishonesty?

LEE: They don't submit it that way. You have to find that there was the use of deceit, craft, trickery or dishonesty. I don't see where it was presented the jury on a specific theory. And as Mr. Brown pointed out in his testimony before BODA, these are really vaguely defined terms. There is not a sound definition for any of those terms. It is again as pointed out in the *Goldstein* article, all manner of circumstantial evidence hearsay, co-conspirator, alleged testimony comes in and the limits of relevancy are stretched thin in these sort of cases because we are inferring agreements from conduct of people who are inferring intent from conduct or apparent manifestations of conduct.

From the point of view considering attorney discipline, I think it's a fine thing to say that attorneys who are convicted of crimes involving dishonesty ought to be sanctioned. But that is to me just sort of a broad ____ phrase. I mean discovery disputes, I don't think we can say lawyers ought to be disbarred over discovery disputes, but they frequently involve craft, attempts to construe the statute in such a way as to avoid revealing this, that, or the other, or to make it just a little tougher for the other lawyer to pry some information out of you. Is that immoral? Usually not, not unless you know of something and just flatly lie and claim it doesn't exist. But is it dishonest? I would say yes under the general theories of what discovery is, we are supposed to put the facts out there on the table, avoid controversies that don't _____, let the truth rule. But I would suggest to you that a lawyer might be disciplined for giving up information contrary to the client's advice if it wasn't a legal, ethical, criminal duty to make that disclosure.

I'm not suggesting necessarily that the ruling of this court would open the door to all manner of lawyers being prosecuted for federal crimes. But nonetheless, I would just like to

say that dishonesty is a phrase that doesn't have a standard fixed meaning. And the dishonesty described in the cases that I have cited in my brief is clearly of such a low threshold that again when the court tells me that a husband who asked his wife to buy him a radar detector, he's attempting to evade a lawful government function, detection of speeders by craft, trickery, maybe not dishonest, maybe deceptive, I don't know, that just can't be moral turpitude per se to me.

GONZALES: I'm more concerned about what happened in this case. What was the govt's best argument about intentional deceit by your client?

LEE: I have no idea, because we were told that - we are looking at whether the offense is per se moral turpitude, so I have not examined with her what were you exactly accused of, what were your defenses, what did you think, who did this, that or the other? If the bar had chosen to take her before a grievance committee claiming her conduct was unethical, I would want to know all of that. But that's the point. This process is so that people who end up getting convicted or who accept pleas will be dealt with similarly. If it's clear that in all circumstances what they did must involve moral turpitude, there's going to be a compulsory price paid. If, however, we need to look at the indictment to figure out well what is it exactly is it you are supposed to have done? What have you pled to her? Well then that's a factual determination. That's a determination best left to a grievance committee under the standard process. We argued that at trial. We told the bar beforehand. Instead they proceeded in this manner.

ENOCH: If we decide that craft and trickery is just the same thing as dishonesty, do you now lose?

LEE: I don't know. That is the thing that I suppose is scary about a case like this, is that we are dealing with phrases, even the phrase fraud itself in the standard definition of actually trying to cheat somebody out of money or property, there's been a lot of law review articles written on the vagueness on that. But here where fraud is used in a term that most of us are not generally familiar with so that the statement intent to defraud really doesn't mean what we would think it might mean, and where dishonesty doesn't appear to mean sort of a - I would think that if you find that craft, trickery, and deceit are co-extensively dishonesty, and you find that dishonesty is used under 18 USC 371 is exactly in the same context as described in the *State Bar v. Hurd* case, then I think discipline would have to lie.

HANKINSON: I'm having a hard time understanding your argument. The US SC talked about - you keep talking about having to be all these things. *Hammerschmidt* says deceit, craft or trickery or at least by means that are dishonest. You're making it sound like we've got to define craft - you've got to have all those things present in order to have that.

LEE: No. I am saying it could be any of them, and when they submit it as 4 possible metal(?) states, you don't know which one's been chosen. And if you look at the *Hammerschmidt* thing, I've always found this unusual, they put deceit first, craft next, trickery, and then they throw

in dishonesty like an afterthought, or at least dishonest. Well in sort of my own moral world view, craft and trickery are less than dishonest.

HANKINSON: They say to conspire to defraud the US means primarily to cheat the gov't out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. Why is that hard to understand?

LEE: That's several statements at once. It says that it can be the intent to cheat the gov't. But it can also mean just the attempt to frustrate a governmental function. And it can be by any of 4 metal(?) states they described: deceit; craft; trickery; or at least conduct which would be described as dishonest. And then we have cases describing the threshold of dishonesty as being not what I think most people think of as dishonest, just knowing what the truth is and flat lying about it, but filing a bankruptcy petition where you can't get the relief that you are seeking in the pleading, where the objective is to slow down the IRS so we can marshal some money to pay off this levy. Well if that is your debt that put you into bankruptcy and it is not a qualifying bankruptcy debt, then theoretically that is a dishonest filing. That to me stretches the meaning of dishonesty so thin as to make it difficult to call that moral turpitude. As Justice Frankfurter said, that it's everyone's right to try to avoid the payment of taxes. It's when you cross the line into evasion that you criminalized it. Well here, we've got avoidance criminalized if it in any regard is construed as impeding or impairing the lawful function of the IRS.

Again, I want to remind you that unless this court can hold that this - nobody knows such offense as impeding or impairing the IRS. We all concede that. There's only the offense of conspiring to do it. So we have this notion you can conspire to do something, which in and of itself, is not a crime. And so it's the conspiring which is the crime. And it is a crime to conspire to impede or impair in any regard any governmental function. And you've got to remember what the breath of the federal governmental functions are from the FEC in election filings, the FTC in advertising, and the Bureau of Indian Affairs and the National Park service. I just don't see how a crime that describes - you don't have to violate a criminal statute, you don't have to violate a civil statute, you don't even have to know that what your object is is illegal. None of the conduct you engage in has to be independently illegal, but nonetheless, it's moral turpitude per se in all instances - the only way you can get a conviction is if you are an immoral person. I just don't believe that.

I have to refer you back to the brief. My feeling on this is that this is important not only to Ms. Birdwell personally and her livelihood, but to any other lawyers who might find themselves similarly situated. The Goldstein article I've cited is exhaustive and much better than anything I could create. Mr. Goldstein's quality as a lawyer and his scholarship are outstanding. If I have not been able to convey what I am trying to get across, I hope that will not be held against Ms. Birdwell because I sincerely believe that this is not an offense involving moral turpitude per se as those of us involved in the Texas attorney discipline system have come to understand that term.

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REBUTTAL

ACEVEDO: I would just like to respond to a couple of items raised by Mr. Lee. The first is, is that this court's definition of moral turpitude is pretty specific in *Duncan*. I think initially when the court took up the compulsory discipline cases as in the *Humphrey's* case it recognized that there were a lot of different definitions out there and it made an effort to narrow that down and to define it, and it does include acts that involve deceit and dishonesty.

The other thing I want to talk about is that there is this statement that keeps being repeated that you could have a lawful objective and carry it out by lawful means and still be convicted of this crime. And that's an absolute misstatement of both the general conspiracy law and the 371 conspiracies that we are looking at today.

What you see in the cases is this language that says neither the conspiracy's goal nor the means used to achieve it need to be illegal. If you actually look at what the origin of those statements are in the context in which they are given what the cases are actually saying is two things. One, that the government doesn't have to refer to another part of the criminal code other than §371, because the substantive defense defrauding the US is contained within the statute. So you don't have to refer to another part of the criminal code. And so the objective is always illegal because the objective is always to defraud the IRS. Second, nor does the government have to prove and plead a violation of the criminal law independent of 371. And you see that in *Collins, Jackson,* and *Canner.* Usually the way that that comes up is again in one of two ways. The first is, the gov't will plead a 371 conspiracy and they will use in describing what the manner and means are, the filing of false income tax returns. And the defendants will say, Well you didn't plead the tax fraud provisions or you didn't prove all the elements under the tax fraud provisions. And the courts say, you don't have to prove some other violation of the criminal code. This is being used to show what manner and means was used, what deceitful and dishonest means were used in order to consummate the conspiracy. And that's the context in which you see it arise.

The other context is when the means is not illegal. And the two cases that I've seen this come up with is money laundering didn't use to be illegal. And so the means and method that were used to carry out the conspiracy was laundering the money. And they said, Hey, what I was doing was perfectly legal. And they said, well you don't have to prove that money laundering is illegal. It's simply to show that these are the means that you used to carry out your objective which was to defraud the IRS.

ABBOTT: Let met get you to comment on the opposing counsel's argument that if we decide the case in your favor the way you would like us to decide it it would have potentially much broader impact. As one hypothetical example: if I were to go to Mexico and bring back 2 bottles of tequila, then I would be subject to disbarment. That is one of many examples he raised.

ACEVEDO: And where is the conspiracy? Who have you agreed with?

ABBOTT: The buddy I was with.

ACEVEDO: And let's just set aside for now that has nothing to do with defrauding the IRS.

ABBOTT: It would be defrauding the customs?

ACEVEDO: Okay, you're defrauding. And so what you would have to show is that you had the specific intent to defraud the custom service. And you agreed to do so and that you used dishonest or deceitful means to keep them from knowing that you had used bottles of tequila.

O'NEILL: Which you could do by just not declaring it.

ACEVEDO: I don't know if that would get you there or not. I'm not sure that - you know the cases that talk about this say like, merely failure to disclose income isn't enough to get you convicted of defrauding the IRS. And they go through these examples about how dishonesty and deceit - like the radar detector thing. The *Caldwell* case says, you have to have this element of deceit and dishonestly, because otherwise - I mean what they say is that you wouldn't get convicted under that radar detector.

ABBOTT: But the point perhaps that he has made and the point that it doesn't seem like you are capable of responding to right now is that - arguably I could see different levels of deceit or different - some deceits seem to have greater impact than other deceits, and perhaps deceits of - I'm not sure if bringing 2 bottles of tequila in without declaring it would amount to an offense subject to causing someone to be disbarred or not. I'm not sure. But it seems like you have no answer to that that if in fact they were stuck in the trunk and you didn't declare anything, then you're going to be doing something else for the rest of your life other than practicing law.

ACEVEDO: And I guess that the only response I really have is where are those cases? Where are they? That's why I think you can't ignore the federal law that's out there on how these statutes are actually used. There isn't a case out there where you're coming back from across the border and that's what they've done and you've been convicted of that crime. And I think that that's the only real I guess fall out from the *Duncan* case is that we of course spent no time actually looking at what the nature of this crime is. But you end up spending your time _____
up fact situations for which nobody has ever been convicted much less a lawyer...

O'NEILL: It doesn't mean they couldn't be.

ACEVEDO: I don't think that they could be in the situation that you have, but again, I'm not really sure if that should be the focus of what it is that we're looking at. The federal law has taken this statute and it has delineated what is required and you look at the fact situations and this

one in particular which has to do with defrauding the IRS and they all involve the specific intent, they all involve deceit and dishonesty. In this situation, I have not heard any fact situations in which somebody could be convicted of defrauding the IRS where it is not going to involve the specific intent required, and where it's not going to involve sufficient level of deceit and dishonesty if you can actually make some sort of levels of dishonesty out there.

O'NEILL: As a policy matter what would be wrong with finding that this is not per se moral turpitude and letting the grievance process weed that out based on the particular facts of each case? It's not like they got off scott free.

ACEVEDO: Well actually I don't think that the grievance process would be available. The grievance process has a 4-year statute of limitations. And just looking at the part of the indictment which she pled to, I think that the act started in 1987 and ended in 1996. And it would depend on which act I guess that that was. That's what happened in *Duncan*. In *Duncan* we were beyond the statute of limitations. And so *Duncan* did get off scott free.