STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON

2013 SUPPLEMENT

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DEDICATION

This Supplement is dedicated to my Grandfather David Wymisner and Grandmother Sally Wymisner, owners of Dave's Long Bar in Newark, NJ during the 1950s. As a child in the 1920s, Grandpa Dave helped earn money to support his family by delivering bottles of booze wrapped and hidden in newspapers for local Bootleggers. Sally was nothing less than incredible even at age 80 and spoke frequently about how Dave was the love of her life.

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In the first part of this book published in 2002, I wrote a short essay titled, "IN DEFENSE OF JUDGES." I consider it to be one of the most important chapters of the book. The essence of the essay is that most people don't realize how truly difficult it is to be a good Judge. They don't realize how much a Judge sacrifices in terms of personal lifestyle to fulfill their duties properly. Most of this book consists of sharp criticism replete with invective vituperation of the process of Judicial decision-making. I do not hesitate in the least to emphasize the cognitive infirmities of Judges coupled with their mental irrationalities as evidenced by the decisions they often make. But, it is equally important to recognize the difficulties that Judges face, along with the personal self-sacrifice required of their position.

Since the overwhelming portion of this book chastises the hypocrisy and multiple double-standards of the Judiciary, it seems to me the best way to sufficiently recognize the dedication of good Judges is give top billing to the section that revisits my defense of them. For this reason, my update to the section in the earlier publication titled "In Defense of Judges" constitutes this Introduction.

If you're a Judge you can freely listen to a CD of the country music group The Dixie Chicks sing "There's Your Trouble," just for the fun of it. But, you know what? You can't listen to that song in a wild country bar on a late Saturday night at two in the morning, while drinking scotch and beer and shooting pool all night. If any appellate Justice, or even most trial court Judges were to do so, it would probably be headline news in their local newspaper the next day and their career would be over. There is absolutely nothing illegal about getting rip-roaring drunk at a bar until two in the morning (so long as you don't drive). Nevertheless, Judges simply can't do it. I'm not even aware of an ethical rule of conduct expressly prohibiting it, but they all know it's an unwritten rule. Violating it would lead to enormous adverse publicity and the Judge's career would probably be done. Maybe, at best, a Judge could get away with it for a night or two. Certainly, not on a regular basis though.

The point is that when you're a Judge you give up freedoms most people take for granted. Your Judicial career does not simply affect your personal life, but rather becomes your personal life. The most liberal Judges are expected to lead a conservative personal lifestyle. They're allowed to express liberal views

in Judicial opinions, but they can not personally exercise the freedoms they win for others in those opinions.

It's really not much different than being a prisoner of your position with relatively lenient terms of confinement. At least, so far as the comforts of life go. Kind of what is commonly called a "Country Club Prison." You get to live in a nice house, drive a nice car, eat good food, attend the proper social gatherings and read books. But that's pretty much it. In so far as all the so-called rights and activities and freedoms that the average citizen can enjoy without concern, that's pretty much out of the question.

It is my belief the foregoing to a certain extent, contributes to development of an internal bitterness within certain Judges. The reason is as follows. Most Judges adopt this type of lifestyle early in their career when they begin working for a law firm or the government right out of law school. If you figure a person is age 25 when they graduate from law school, and have an early ambition to be a Judge, they tend to adopt the expected personal conservative lifestyle early on. This applies regardless how liberal there own political views may be. They know the big-whigs at the large law firm will look unfavorably upon them if they start hearing the new associate regularly goes to wild parties or bars until late hours of the morning. That's not what they want. They want the new associate to get married, have kids, and to need a lot of money to support his family. That way they've got a lock on him or her, and the associate will be dedicated to a life revolving around billable hours instead of fun.

Imagine that same ambitious associate attains their goal and becomes a Judge by age 35. Twenty years later, they're a well-respected Judge, perhaps even an appellate Justice. Now, they're 55 years old. They're hearing a case and it becomes relevant that one of the litigants regularly goes to country bars and gets drunk all night. Could be a divorce case, a personal injury suit involving a bar-fight, or maybe even a DUI. The bottom line is that the Judge who is going to decide the case doesn't have the slightest clue what it's like to go out for a wild night at a bar with a group of friends. Cause, they've been building their Judicial career for 30 years and as a result have largely been removed from the people in society whose conduct they judge.

Removal from exposure to the conduct of the average person in society occurs to at least two categories of people. Judges and prisoners. In many respects, they're one and the same. Both unavoidably lose contact with the practicalities of the real world. As a result, they develop their perspective solely from exposure to the other prisoners in the world they live in. It is unavoidable that will tend to give rise to a somewhat warped perspective. No doubt we should have sympathy for the unfortunate plight of each. But, assuming the convicted criminal in a prison is actually guilty of the act for

which they were convicted, one point is generally certain. Both the convicted criminal and the Judge voluntarily engaged in the conduct that gave rise to their imprisonment. One became a prisoner by violating the law. The other became a prisoner by their desire to interpret the law.

I believe many Judges reflect back on their life and wonder, what would it be like to do what the litigant in front of me did. I'm not talking only about bad things litigants do or laws they may have broken. I'm also not even talking about criminal cases necessarily. The Judge who has dedicated his life to the law since graduating from law school, and perhaps even beginning earlier than that in college or even high school, probably can not help but wonder what they missed out on in life by entering the prison they created for themselves.

They might ask themselves the following questions. What's it like to really get drunk? Is it all bad, or is there any good that comes out of it? How bad does it really feel to puke your guts out over the toilet the next morning? What types of friends would I have made? How does it feel to stumble down a street with friends while your totally drunk? What's it like to forthrightly tell an attorney he's a lying jackass? What's its like to go to a hard rock concert? What type of people go to concerts like that? How does it feel to beg for money so you have food to eat? What sense of internal satisfaction do you gain by telling a boss at work to jackoff without any concern about how it will impact your future career? What does the inside of a strip bar really look like? What's it like to get a lap dance? How does it feel to have debt collectors up your butt all the time? What's it like to take the last money you have and put it on the pass line at the craps table in a casino? How does it feel to dance on top of a table? What's it like to really go through a nasty divorce? Am I staying married to my spouse just to protect my judicial career? Or how do you feel when you write a book or essay laying it on the line about how stupid and unfair so many lawyers and Judges are, without holding anything back?

For the most part, it is my genuine belief that most, but not, all of the above listed experiences should be squarely rejected as a lifestyle. That said, I also assert if a person engages in any of the above experiences a few times it does tend to give you a better frame of reference. It allows you to intelligently choose the proper way to live, having experienced the other options. It also provides you with a better frame of reference to judge others. This is particularly the case if you engage in such conduct during early adulthood, although subsequent engagement is by no means foreclosed in its entirety.

The value of engaging in certain experiences, even those commonly accepted as immoral or unfortunate, is with respect to the basis of comparison such provides. For example, you can't fully appreciate the ability to buy any kind of food you like in the supermarket, if you've never been in the unfortunate

position (certainly not immoral) of lacking money to buy food. You don't fully appreciate a good job, if you've never lost a job. You don't fully appreciate the value of good credit, unless at some point, you've had bad credit. Many people (not all) don't fully appreciate the value of a good marriage, until they've had a bad marriage. Anyone who has ever recovered from any type of significant health ailment will readily attest to the fact that others don't appreciate their good health enough. One would be hard-pressed to find a cancer survivor who wouldn't tell a smoker they'd quit smoking immediately if they knew what cancer felt like. And of course, you don't fully appreciate the value of waking up early in the morning feeling great, until you've had a few puking hangovers.

The fact is that when you're not a Judge you can engage in any of the previously listed activities and no one in society could care less, so long as no laws are broken. But, you can't engage in most of these activities if you're a Judge. This causes some Judges to be bitter about what they missed in life. By age 55, when they face a litigant who's been doing what they could not do for thirty years, there's probably a tendency for some Judges to think, "well, since I can't do it, I don't want anyone else to be able to do it." In contrast, there are also Judges who adopt a thought process of, "it's not fair that I can't do it, but I can at least make sure other people are allowed to do it." If you're a litigant the success of your case may hinge on which of these two Judges decides your case.

Judicial decision-making is a product of the positive and negative individual life experiences of Judges. Yet, their limited life experiences attributable to their period of confinement as Judges impairs their cognitive ability to judge. It's the same as how life experiences affect anyone.

So as I now embark upon renewed examination of the cognitive disabilities, irrationalities and mental infirmities of many Judges, it is important to remember in their Defense that to a large extent these deficiencies are simply a product of their imprisonment on the bench. Prison affects everyone differently. Some positively and some negatively. And there are many different types of prisons in life. While criticism of the Judiciary is quite well-warranted, we must at the same time have sympathy for these Judges, because they are in fact prisoners of the bench.

So, if you really want to appreciate and have fun listening to the Dixie Chicks, while drinking a scotch and a beer at a country bar until two in the morning shooting pool, you better do it before you become an appellate judge. Do it when nobody could care less about you doing it. Do it when you still have the freedom to do it and are not bound by the terms of confinement of a Judicial prison. Cause if you become a Judge, you become a prisoner. And all prisoners lose a certain degree of freedom.

There's Your Trouble.

THE NEW U.S. SUPREME COURT - LEADER OF THE NATION'S LEGAL PROFESSION OR JUST A MERE PHILOSOPHICAL ADVISORY BOARD

Is the U.S. Supreme Court what it purports to be, or as a matter of substance if not form, has it become something else? Is it in fact substantively the "Supreme Court" of the United States? Does it decide cases, interpret the law, lay down the law, and issue legal dictates that are then complied with by State Supreme Court Justices, Federal Judges, trial court Judges, lawyers, legislators, law enforcement personnel and the general citizenry?

Or alternatively, has the Supreme Court become just a bunch of nice guys and gals who get together and engage in stimulating intellectual discussion similar to how people do at a family dinner table or a Friday happy hour. Do they then write a bunch of interesting, but essentially meaningless opinions under the misguided belief that what they say really means something, or that anybody will really do what they say?

This article asserts the Supreme Court is somewhere in between the two characterizations and moving toward the latter. For the most part, in many legal matters, Judges and law enforcement personnel probably do give some consideration to what the Supreme Court writes, although they certainly do not allow the Court's opinions to dictate their conduct entirely. Furthermore, there are certain narrow areas of the law such as the State Bar admissions process in which U.S. Supreme Court opinions are blatantly violated by State Supreme Court Justices on a regular and pervasive basis.

Before demonstrating how U.S. Supreme Court opinions are given short shrift it is important to note that the impact of State Supreme Courts failing to comply with U.S. Supreme Court opinions communicates a strong message to lower courts. It conveys a message that if the State Supreme Court can violate U.S. Supreme Court opinions, there is no reason for lower Courts to comply with State Supreme Court opinions. Lower court Judges, like children who watch their parents, see what's going on above them. They will assume the same prerogative as their superiors even if told to conduct themselves differently. They will act as those who regulate their conduct act, rather than as they are told to do. Just like a child who watches their parents do one thing and then tells them to do another. The speech takes a back seat to the conduct observed.

Attorneys then tend to assume the same prerogative and function with the understanding that they can get away with violating trial court rulings. It seems to make sense that if lower court Judges can get away with impunity when they violate appellate court holdings, then lawyers may expect impunity when they violate trial court rulings. Ultimately, the matter filters all the way down to the members of the general public. Citizens come to understand that there really is no steadfast rule of law for them to rely upon because they see the Judges and attorneys violating the written law.

Each person can then be expected to regulate their own conduct as they deem appropriate. The failure of State Supreme Court Justices to comply with the letter and spirit of U.S. Supreme Court opinions is causing a general deterioration of the rule of law in this nation on a wide-scale basis. At this stage, most intelligent people realize that to Judges and lawyers, the written law has become substantively a presentation of "good suggestions" that each gives consideration to complying with. Not much more. This carries with it the corollary rule that for "good cause" Judges and lawyers will often violate the written law. The phrase "good cause" is of course, subject to their own personal interpretation.

With the foregoing in mind, I present now a few of the most blatant, systemic violations of the express language or spirit and intent of U.S. Supreme Court opinions. These violations of the law by State Courts pertain to the State Bar admissions process and Unauthorized Practice of Law prohibitions. First, there is the U.S. Supreme Court's opinion in the Schware case discussed originally in the first part of this book on pages 195 - 196. The Court wrote:

> "A state can require high standards of qualification . . . but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. . . .
> . . .
> The mere fact that a man has been arrested has **very little, if any**, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense." [1]

A fair reading of the above passage would lead any rational individual to conclude that in the absence of a criminal conviction, the Court is asserting the mere fact a Bar Applicant has been arrested, has "**very little, if any**" probative value in determining whether he engaged in misconduct. That is what the express words of the opinion state. The inferential spirit is that since an "arrest" not resulting in a criminal conviction has "very little, if any" probative value;

then State Supreme Courts should not deny admission to the Bar based on an arrest.

Whether State Supreme Courts agree or disagree with what the U.S. Supreme Court wrote in Schware is irrelevant to the same extent it is irrelevant as to whether citizens agree or disagree with a particular law. Maybe you think the U.S. Supreme Court was wrong, and maybe you think they were right. Regardless of an individual's personal opinion, if we are to have a uniform rule of law it has to be followed by everyone. This includes most particularly State Supreme Court Justices and State Bars. It is untenable for State Bars and State Supreme Courts to deny admission simply based on arrests, when the U.S. Supreme Court has issued a strong opinion manifesting a condemnation of such.

Yet, as indicated in the Bar admission cases on pages 250 - 588 in the first part of this book, Applicants are regularly denied admission specifically due to an arrest. Currently, to my knowledge every single State Bar application inquires whether an Applicant has been arrested. That is wrong. If an arrest is not a valid ground for denial of admission based on Schware, an inquiry about arrests should not be on the application. Such an inquiry violates the spirit and intent of Schware.

Admittedly, the U.S. Supreme Court did not expressly mandate removal of the arrest question from State Bar applications. However, if an arrest is of "very little" probative value, and may not be of "any" probative value, compliance with the SPIRIT of the opinion mandates State Supreme Courts treat "mere arrests" as being of "very little, if any" probative value. The operative term used is SPIRIT.

There is a difference between the express mandate of a U.S. Supreme Court opinion and its SPIRIT. The express mandate determines precisely and exactly what is to occur. The SPIRIT however, is not an express mandate. Rather instead, the "SPIRIT of the Laws" determines the manner in which a rational individual should conduct himself based on the opinion taken as a whole. The notion of laws having a SPIRIT was expounded in the historic work "The SPIRIT of the Laws" written by the philosopher Montesquieu.

In Schware, any fair and rational reading of the express language in the opinion confirms that arrests must be treated as having "very little, if any" probative value. Yet, State Supreme Courts consistently decline to treat arrests as having "very little, if any" probative value. Their repugnant refusal to comply with Schware is manifested in their continuous treatment of arrests as having extremely high probative value. State Supreme Court bar admission opinions are replete with extensive and detailed analysis of arrests that did not result in a criminal conviction.

It is highly inappropriate for State Supreme Courts to decide whether an arrest not resulting in a criminal conviction, should be given close and piercing examination. The U.S. Supreme Court has already decided that issue. Rather instead, if citizens are to be expected to comply with the written law then State Supreme Court Justices need to become amenable to complying with both the express mandate and SPIRIT of U.S. Supreme Court opinions. Since they do not do so, they require an appropriate attitude adjustment.

Like any person who violates the law, State Supreme Courts try to justify their noncompliance. Their manipulative and logically infirm scheme to justify noncompliance of Schware is fairly well laid out in the Oregon case, Application of Taylor, 647 P2d 462 (1982). For the most part, this case presents the strategic course that State Supreme Courts have adopted to evade and frustrate Schware. In Taylor, the Oregon Supreme Court cites the Schware statement holding that arrests have "very little, if any" probative value. However, the Oregon Court then holds that dismissal of a charge after arrest does not preclude inquiry into whether an offense was committed. This deceptive manipulation resultantly opens the door for the State Bar to investigate underlying facts surrounding the arrest.

The obvious infirmities of logic associated with this convoluted theory are multiple. First, it results in State Bars determining innocence or guilt with respect to dismissed criminal charges. The impact is that the well-accepted doctrine that a person is "innocent until proven guilty" is totally demolished. Second, if the State Bar examines the facts and then concludes the offense was committed, they are inescapably also concluding that the Court which, dismissed the charge let a guilty man go free. This effectively undermines faith and confidence in the legal system. Third, by independently examining facts surrounding a mere arrest the State Bar is treating disclosure of the arrest as being of "highly probative" value. Otherwise, why would they ask? Since the Bar's determination of whether an offense was committed relies on an examination of the facts surrounding the arrest, which can only occur by an Applicant's disclosure of the arrest, it is irrefutable they are treating arrests as having highly probative value. This violates Schware's express mandate that mere arrests are of "very little, if any" probative value.

An interesting case on this issue is Louisiana State Supreme Court case No. 06-0B-0136 (2007). The Court's opinion is interesting, not for what it says, but for what it doesn't say. The Applicant was denied admission based on five arrests for driving while intoxicated. The Court's opinion does not mention any criminal conviction resulting from any of the arrests. The opinion also does not mention anything about the underlying facts of any of the arrests. Stated simply, in this most recent case, the Louisiana State Supreme Court didn't even adopt the

Oregon Court's "underlying facts" theory. Rather instead, the so-called opinion (if it can even be called an "Opinion") is about one page and just denies admission based upon five arrests.

There is another part of the Schware opinion equally significant to the arrest issue. Schware was decided in 1957 before the advent of the doctrine of Intermediate Constitutional Scrutiny. In addition, it was decided before the scope of Strict Scrutiny was expanded beyond race to include fundamental constitutional rights. As a result, the constitutional standard adopted in Schware for assessing Bar admission standards was understandably the lowest level of scrutiny, which is Rational Basis Scrutiny. The Court wrote (emphasis added):

> "A state can require high standards of qualification . . . but any qualification **must have a rational connection with the applicant's fitness or capacity to practice law**" [2]

Unsurprisingly, while State Supreme Courts tend to ignore the importance of Schware's holding about arrests because it limits State Bar power, they consistently emphasize the Schware statement indicating Rational Basis Scrutiny is appropriate. The reason is because that part of the Court's opinion appears to provide them with expansive discretion to render arbitrary decisions. By their interpretation it gives them precisely what they seek. Thus, what State Supreme Courts have done is to pick and choose those parts of Schware they like because it furthers their interests, and then ignore the parts they don't like. This communicates an incredibly disturbing message to the citizenry. It conveys a message that we should comply with those laws we like and approve of, and then use semantics and twisted logical reasoning to ignore those laws we don't like or which don't suit us.

Interestingly, the same State Supreme Courts that manipulatively contort the meaning of U.S. Supreme Court opinions to augment their self-interest, hypocritically assert without hesitation that their own opinions must be complied with both as to the express holdings and intent. Trial court Judges typically follow the same modus operandi. It is fair to say that when a litigant accused of violating a Court Order presents sophistical logical arguments they do not make out particularly well and are often held in Contempt by the Court. Yet, they are really just doing the exact same thing that State Supreme Court Justices do, to evade holdings of the U.S. Supreme Court. Trial court Judges constantly tell such litigants that they are being manipulative, deceptive and irrational by the manner in which they are interpreting the court's orders. Thus, the adopted rule

is as follows. Judges can be manipulative, deceptive and irrational when assessing opinions of courts that are above them, but litigants are precluded from using the same tactics. As the comedian George Carlin once said, "Pretty good deal, huh? How did it come about? We made the whole F---ing thing up!"

I turn now to a Second systemic example of State Supreme Court Justices violating the SPIRIT of a U.S. Supreme Court opinion. In the Konigsberg case discussed originally in the first part of this book on page 197 - 198, the U.S. Supreme Court wrote the following landmark statement regarding the so-called good moral character standard of admission (emphasis added):

> "Such a **vague qualification**, which is easily adapted to fit personal views and predilections, can be a **dangerous instrument** for **arbitrary and discriminatory** denial of the right to practice law." [3]

A rational reader of the foregoing statement would interpret it to mean three things based on its express language. First, the "good moral character" standard is a "vague qualification." Second, it can be a "dangerous instrument." Third, it can easily be used to effectuate the "arbitrary and discriminatory denial" of the right to practice law. These three express dictates considered in conjunction with each other indicate the Court is communicating a strong message to State Bars. The message is that utilization of the good moral character standard should be used extremely carefully and circumspectly, and not recklessly. The SPIRIT of the statement is that the standard should not be applied to deny an Applicant admission based simply on whether State Bar admission committee members like or dislike the Applicant. Yet, as indicated by the vast array of cases presented on pages 250 - 588 of the first part of this book, that is precisely what is occurring.

Essentially, there is virtually no reasonable restraint exercised during the investigative process by State Bars. The Bars ask about whatever they feel like asking on their applications. They then claim a virtually unlimited right to expand their investigation into the most personal aspects of an individual's life. Consider the following statement made by the Georgia Supreme Court in 282 S.E. 2d 298 (1981), discussed on page 337 of the first part of this book:

> "A hearing to determine character and fitness should be more of a mutual inquiry for the purpose of acquainting the court with the applicant's **innermost feelings and personal views** on those aspects of morality, attention to duty, forthrightness and self-restraint which are usually associated with the accepted definition of "good moral character." [4]

When you read such an incredulous statement by the Georgia Supreme Court you almost can't help but to conclude that when confronted by the express language in Konigsberg about the dangers of moral character assessment, the Georgia Supreme Court Justices simply said something like this to each other:

> "Wow. That's really good stuff. Now throw that Shit away, so we can get down to business and do whatever the Hell we want."

Then, once you realize that the foregoing was the SPIRIT adopted by the Georgia Supreme Court regarding U.S. Supreme Court opinions, you can't help but conclude to yourself:

> "Well, if the Georgia Supreme Court is going to treat U.S. Supreme Court opinions like such crap, then from now on I'm not going to give two craps about complying with what the Georgia Supreme Court says."

The foregoing would not only be a rational assessment by the citizenry, but also by lower court Judges in Georgia. Thus, it is easy to see how, the Georgia Supreme Court's disdainful treatment of the U.S. Supreme Court can be anticipated to lead to diminishment in respect for the rule of law by everyone. Such occurs nationwide precisely as a result of morally reprehensible conduct by those sworn to uphold the law in the highest Courts of each State.

This brings me to the "Catch-All" question, which has been added to numerous State Bar applications over the last several years. The "Catch-All" question typically makes a written inquiry as follows:

> "If there is any information (event, incidence, occurrence, etc) in your life that was not specifically addressed and/or asked of you in the application and/or in the instructions that could be considered a character issue, you are required to provide a detailed explanation for each event, incident/occurrence."

The foregoing inquiry is known in technical legal terms as "Crap." The question is totally vague. There is absolutely no way for any person to be assured they are answering it completely and honestly. The question is nothing more than a Trap for the public set by State Bar Hunters. The average rational individual would not have the slightest idea after reading the question as to what they must disclose. The inherent legal and moral infirmity of this type of question is discussed in greater detail on pages 33 - 34 of the first part of this

book. For purposes of this Supplement however, the interesting thing is what has occurred since 2002, when my book was first published. More and more State Bars that previously had abandoned using this type of question in the early 1970s have reverted back to using it again. That is an extremely disturbing trend. For purposes of this article, consider the nature of the "Catch-All" question in light of the U.S. Supreme Court's opinion in Shuttlesworth v City of Birmingham, 394 U.S. 147 (1969) where the Court wrote:

> ". . . the ambit of the many decisions of this Court over the last 30 years holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, **without narrow, objective, and definite standards** to guide the licensing authority is unconstitutional." [5]

This is a Third example of systemic maltreatment of U.S. Supreme Court authority by State Supreme Court Justices. The Catch-All question is neither narrow or objective. It is wholly indefinite, completely vague and nothing more than a wide subjective snare. Yet, State Bars with the blessing of their immoral State Supreme Court Justices, unhesitatingly use it. To them, it is just as if Shuttlesworth (or the many other cases cited in the Shuttlesworth opinion) didn't even exist. Shuttlesworth is literally being treated as nonexistent by State Supreme Courts. The disgracefully immoral treatment of Shuttlesworth by State Supreme Court Justices is positively the equivalent of a citizen upon being accused of violating a State statute responding as follows to the trial court:

> "Well yeah Your Honor, I violated the statute. But come on now, that thing doesn't apply to me. That's for everybody else. You didn't really think the law regulated my conduct in any manner did you Judge?"

A Fourth example of arrogant, immoral disobedience by State Supreme Court Justices of U.S. Supreme Court opinions concerns the issue of bankruptcies by State Bar Applicants pursuant to the Bankruptcy Act. In Perez v Campbell, 402 U.S. 637 (1971) the U.S. Supreme Court wrote quite strongly as follows (emphasis added):

> "Turning to the federal statute, the construction of the Bankruptcy Act is similarly clear. **This Court on numerous occasions** has stated that **"one of the primary purposes** of the bankruptcy act" **is to give debtors "a new opportunity in life and a clear field** for future effort**, unhampered by the pressure and discouragement of preexisting debt**." . . .
> **. . .**

> **. . .** We can no longer adhere to the **aberrational doctrine . . . that state law may frustrate the operation of federal law** as long as the state legislation in passing its law had some purpose in mind other than one of frustration. . . . such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy . . . . any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." [6]

The foregoing contains pretty strong language. The Court states in unequivocal terms that on "numerous occasions" it has held that one of the primary purposes of the Bankruptcy Act is give an individual a "clear field" that is "unhampered." The Court also stated unequivocally that it is not going to buy into any purported or alleged purposes adopted by State legislatures that frustrate the Bankruptcy Act. Yet, that is precisely what virtually all State Supreme Courts have done a wide-scale basis with respect to Bar Applicants. State Supreme Courts nullified Perez with respect to Bar Applicants by adopting the sophistical trickery outlined in the Minnesota case of In Re Application of Gahan, 279 NW 2d 826 (1979). In that case the Minnesota State Supreme Court abrogated its duty to uphold Federal law by writing:

> "**The fact of filing bankruptcy . . . cannot be a basis for denial of admission** to the bar of the State of Minnesota. **Any refusal so grounded would violate the Supremacy Clause of the United States Constitution** since applicable Federal law clearly prohibits such as result. . . .
> **. . .**
> **However, these constitutional limitations do not preclude a court from inquiring into the bar applicant's responsibility or moral character in financial matters**. The inquiry is impermissible only when the fact of bankruptcy is labeled "immoral" or "irresponsible," and admission is denied for that reason. . . . Thus, in the present case, Gahan's conduct . . . surrounding his financial responsibility and his default on the student loans may be considered to Judge his moral character. However, the fact of his bankruptcy may not be considered. . . ." [7]

The foregoing lame logic is essentially the theory that Supreme Courts throughout the nation have adopted to justify their immoral disobedience of Perez. I reiterate that the U.S. Supreme Court stated in Perez:

> "This Court on numerous occasions has stated that "one of the primary purposes of the bankruptcy act" is to give debtors "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." [8]

By requiring disclosure of bankruptcy on the Bar application, or by giving consideration to debts discharged in the bankruptcy, it is logically irrefutable that the debtor is not getting "a new opportunity in life and a clear field." The exact reverse is occurring. They are being penalized for their bankruptcy by denial of admission to the State Bar. Notably, the U.S. Supreme Court pointed out in Perez that its holding had been stated on "numerous occasions." Also notably, this issue is not one exemplifying a mere of violation of the SPIRIT of the Laws, but instead constitutes an overt, blatant violation of an express judicial holding by the U.S. Supreme Court.

The Fifth example of a systemic breakdown in the rule of law propagated by State Supreme Court Justices involves Unauthorized Practice of Law prohibitions, discussed on pages 35 - 42 of the first part of this book. UPL prohibitions are universally recognized by rational individuals as functioning in the current legal environment primarily to benefit self-serving economic interests of lawyers. Any incidental protection provided to the general public has regrettably become nothing more than a secondary effect to the extent UPL prohibitions are reasonable.

In South Carolina v McLauren, 563 SE 2d 346 (2002) the South Carolina State Supreme Court ruled it was the unauthorized practice of law for a prison inmate to help other inmates prepare applications for post-conviction relief. This was despite the fact the inmate was not paid for his work and never appeared in court on behalf of the prisoners he helped. The South Carolina Justices then affirmed the three-year prison sentence he received from the trial court for engaging in the unauthorized practice of law. He was a guy just trying to help out his fellow man for free and was sentenced to three years in prison for violating the UPL statute. The purpose of his prison sentence as it pertains to the unauthorized practice of law was to penalize him, for the purpose of safeguarding and promoting the monetary interests of South Carolina lawyers. Nothing more.

The McLauren case reflects adversely upon the moral character of South Carolina Supreme Court Justices when considered in light of U.S. Supreme Court opinions in Johnson v Avery, 393 U.S. 483 (1969) and Bounds v Smith, 430 U.S. 817 (1977). Johnson expressly held that unless the State provides some reasonable alternative to assist inmates in the preparation of post-conviction petitions for relief, it may not validly enforce a regulation barring inmates from furnishing assistance to other prisoners. The limitation of Johnson was conditioned upon the premise "unless the State provides some reasonable alternative." Subsequently, the holding of Johnson was explained further by the U.S. Supreme Court in Bounds where the Court wrote:

> "Since these inmates were unable to present their own claims in writing to the courts, we held that their "constitutional right to help" . . . required at least allowing assistance from their literate fellows. But, in so holding, **we did not attempt to set forth the full breadth of the right of access.** . . .
> . . .
> Moreover, our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts." [9]

Although the condition set forth in Johnson for the State to provide alternative means of assistance appears to remain intact even after Bounds, the Court also stated in Bounds that Johnson did not "set forth the full breadth of the right of access." The door was thus left open for holding in the future that prisoners have a constitutional right to provide legal assistance to their fellow prisoners, even if the State does in fact offer alternative means for such legal assistance.

The general SPIRIT of Bounds and Johnson is that the emphasis is on ensuring meaningful access to legal assistance for prisoners. The very essence of Johnson is that the provision of legal assistance by prisoners to their fellow man is often a good thing, not a bad thing. In neither opinion did the U.S. Supreme Court even faintly envision the prospect that their holding would become so perverted so as to treat provision of such free legal assistance by a prisoner as a Felony.

The South Carolina Supreme Court in McLauren turned the SPIRIT of Bounds and Johnson on its head. McLauren did not merely deny the right of one prisoner to help another relying on the limitation set forth in Johnson, by asserting that the State provided adequate alternative means of legal assistance. That would have at least been understandable. Instead, the South Carolina Supreme Court treated the provision of free legal assistance by one prisoner to another as a Felony. It was an absolute Spit in the face to the SPIRIT of Johnson and Bounds. Notably, the McLauren Court did not even address the issue of whether South Carolina provided adequate alternative means of legal assistance, as even Johnson's limitation required. In fact, the South Carolina Supreme Court didn't even have the guts to mention the Johnson case at all. As is often typical of State Supreme Court Justices, they preferred to just ignore the U.S. Supreme Court.

In rare instances, State Supreme Courts are not simply content to violate U.S. Supreme Court opinions, but instead prefer to flaunt their disobedience. It's like a teenager asserting himself. They don't just want to break the law, but also want everyone to know they did so. When such occurs, they are seeking to

establish as case precedent their practical ability to disobey U.S. Supreme Court authority. The following quote by the Oregon Supreme Court is a good example:

> "Thus, we are neither bound nor relieved of our own duty in the matter by the United States Supreme Court's prior estimation of the proper ethical course of action. . . ." [10]
>
> State v Balfour, 311 Or. 434 (1991)

Concededly, overt statements of defiance such as this one made by the Oregon Supreme Court are quite rare, as they are not particularly prudent. More often State Supreme Courts avoid direct confrontation with the U.S. Supreme Court and rely instead on their time-honored judicial practices of engaging in a sophistical manipulative twisting of logic and semantics. Like most teenagers they prefer to sneak out of the house to go to a party, rather than overtly disobey their parents.

The five examples set forth above demonstrate that in the narrow area of the law most affecting self-serving interests of State Supreme Courts, the opinions of the U.S. Supreme Court are violated on a regular, pervasive and systematic basis. The three issues I consider now are First, why is this occurring; Second, what can the U.S. Supreme Court do about it; and Third, what will happen if this devolution of the rule of law by State Supreme Court Justices continues?

As to the First issue, the reason U.S. Supreme Court opinions are disobeyed by State Supreme Court Justices is largely attributable to the element of Fear. Stated simply, the U.S. Supreme Court is afraid to assert its authority over State Supreme Courts. Their Fear is quite well warranted. No one likes being told what to do. This is particularly the case when they believe they are right and I do not dispute that State Supreme Courts believe they are right, even if for the purpose of promoting their own self-interest.

Like anyone else with a rebellious tendency against proper legal authority, State Supreme Court Justices can be expected to respond offensively if relegated to their proper role of subservience to the U.S. Supreme Court. Whenever people are told what to do there is a natural inclination to oppose the authority attempting to regulate their wrongful, immoral conduct. Thus, the more the U.S. Supreme Court tries to ensure compliance with the law by State Supreme Courts, the greater is the likelihood of inviting opposition from those Courts.

Basic arithmetic plays a major role. The U.S. Supreme Court is comprised of nine Justices. The State Supreme Courts together are comprised of roughly 400 Justices. That's 400 against 9. In addition, the U.S. Supreme Court

has historically faced significant opposition to its authority from the Executive branch of government, which also tends to do as it pleases. Then there is the constant friction between Congress and the Court. Then pile on the fact that the Court itself has been a fractured and divided institution for the last few decades. This is evidenced by the multiplicity of 5-4 opinions rendering it difficult to conceive what the Court's genuine position really is on any given issue. Next, you need to consider the media and general public. Neither the media nor the public, provide much support to the Court.

All of the above considered in conjunction with each other lead to the fact that the U.S. Supreme Court for the most part has nowhere to turn and is understandably afraid. They deal with their fear by declining to take decisive authoritative steps to ensure their opinions are complied with by State Supreme Courts. Instead, they retreat into a submissive condition of being satisfied, so long as State Courts just decline to openly flaunt their disobedience. An unwritten gentleman's agreement has thus developed between the U.S. Supreme Court and State Supreme Courts. That understanding is predicated upon State Supreme Courts giving "lip-service" compliance to U.S. Supreme Court opinions as a matter of form, which for the most part they do. In exchange, State Supreme Courts are then allowed to frustrate the express mandates and SPIRIT of U.S. Supreme Court opinions so long as they make the effort to justify their disobedience with a manipulative crafting of logic.

In the historic work Leviathan published in 1651, during a period of immense friction between the British Parliament and Monarchy, Thomas Hobbes asserted many flawed propositions about government. The primary reason he did this was to promote his own self-serving interests consisting of improving his own standing and position with the existing monarchy. Nevertheless, Hobbes did expound some merit-worthy concepts in that work. For instance, applying his work to the modern world, he captured perfectly the manner in which State Supreme Courts have succeeded in achieving a tacit acceptance of their disobedience of U.S. Supreme Court opinions. That manner is as follows.

Hobbes asserted that men are prone to violate laws in three ways. First, by a presumption of false principles. Second, by false teachers who misinterpret the laws. And third, by erroneous inferences from true principles. That is essentially what the State Supreme Courts are doing. They're taking U.S. Supreme Court opinions and manipulatively twisting them in order to meet their own self-serving needs, interests and opinions. They presume false principles and combine such with erroneous inferences from true principles in order to justify their goal of misinterpreting the laws.

As stated, instances of State Supreme Courts expressly flaunting their disobedience of U.S. Supreme Court opinions such as in the Oregon Balfour case, are quite rare. In contrast, the standard accepted modus operandi is the type of defiance exemplified by In Re Application of Gahan, 279 NW 2d 826 (1979). In that case, the Minnesota Supreme Court made a disingenuous facial effort to justify obvious noncompliance with the law and abandonment of their duty to uphold Federal law. However, at no time did the Minnesota Supreme Court expressly state, "we're not going to comply with the U.S. Supreme Court's opinion in Perez" even though that was the precise substantive impact of what they did.

Another facet of this gentleman's agreement entails reluctance on the part of State Supreme Courts to disobey opinions written by current sitting Justices of the Court. This premise relies on the expectation that current U.S. Supreme Court Justices will be less offended when opinions written by U.S. Supreme Court Justices who are no longer on the bench are violated, than when their own opinions are disobeyed. It is obviously less personally offensive for a State Supreme Court to disobey what a U.S. Supreme Court Justice wrote 40 years ago, than it is for them to disobey one of the current sitting Justices. That is basic human nature. Of course, the concept has the impact of turning Stare Decisis on its head, because that judicial doctrine is purportedly predicated upon giving greater, not lesser credence to long-lasting judicial opinions.

Stare Decisis supposedly relies on the theory that the longer a case has been in existence without having been overruled, the greater is its legitimacy. For instance, the historic case of Marbury v Madison has been valid law for over 200 years. As a result, for the most part it is no longer challenged by anyone. The problem is that when State Supreme Court Justices have an increased propensity to disobey U.S. Supreme Court opinions written in the 1960s and 1970s, but exercise restraint in disobeying recent opinions they are diametrically reversing a major principle of Stare Decisis.

The impact is that recent U.S. Supreme Court opinions are embodied with greater authoritative weight than opinions, which have been in existence for decades. Older judicial opinions then have minimal authoritative weight and may be freely violated. The prime example is Shuttlesworth, described previously. Shuttlesworth held that licensing standards, which do not contain narrow, objective and definite standards are unconstitutional. It has been in existence since 1969. Yet, for the most part, it is treated as an opinion that nobody has an obligation to comply with. It is violated so pervasively on so many different levels. Shuttlesworth, although never overruled by the U.S. Supreme Court, as a matter of substance has been overruled by State Supreme

Court Justices simply by virtue of their massive disobedience to its dictates. That's a major power grab.

The ultimate impact of the U.S. Supreme Court's decision to not exercise its authority as a result of its Fear of opposition from State Supreme Courts, is a divestment of its power. Undoubtedly, judicial power should be used sparingly in order to maintain maximum effectiveness when it is used. However, there is a converse to this well-accepted maxim. That converse is that a power never used ultimately lapses into nonexistence by its nonuse. This is what has been in the process of occurring to U.S. Supreme Court authority for the last several decades.

In the last ten years, their have been several cases where the U.S. Supreme Court denied review in highly publicized cases, that dealt with incredibly important constitutional issues. I am sensitive to the difficulties the Justices face in deciding, which cases to grant review. But, there are certain times when you just get a sense that the reason review was denied was because they were simply too afraid of dealing with the issue. Such fear is not without justification. We all tend to be reluctant to deal with various issues in our lives because we are afraid of them. And when it comes right down to it, Justices of the U.S. Supreme Court are people. They have likes, dislikes, emotions, attitudes, positive personality traits, and negative personality traits just like everyone else. Just like a lawyer does not check his First Amendment rights at the State Bar door when he becomes a lawyer; a Judge does not check his humanity, personal feelings, or personal fears at the bench when he becomes a Judge.

There are three cases I've selected to briefly address, in which the U.S. Supreme Court irrefutably should have granted review and failed to do so out of nothing more than fear. Regardless of whether you believe the lower courts should have ruled as they did, these cases, positively should have been reviewed by the U.S. Supreme Court. I further submit the reason they declined to grant review was a result of their fear. The three cases are the reprimand of Michigan attorney Geoffrey Fieger; the Terry Schiavo case, and the Disbarment case of F. Lee Bailey. While I don't intend to get too deeply into the facts of any, I will briefly comment on two and then comment a bit more in depth regarding the Fieger case, which I believe to be the most egregious denial of review.

First, F. Lee Bailey. The guy was an American icon. Some people hated him. Other people loved him. I render no opinion on that matter, but simply note he was positively the best-known lawyer in the entire nation during modern times. He won numerous criminal acquittals (whether justifiable or not). He was willing to spend some time in jail himself at an elderly age on a charge of contempt of court prior to his disbarment. Like or dislike him, support him or

not, the guy had guts and an unbelievable reputation from both a positive and negative perspective. He was probably the only lawyer in the nation who grammar school kids knew the name of. He may have embodied everything bad about the legal profession or what is good about the profession depending on your perspective. But the bottom line is, he did embody the legal profession. You just can't disbar the most well known lawyer in the country without the U.S. Supreme Court addressing the matter.

A key facet of Bailey's disbarment was related to his acceptance of payment from a client whose money the government claimed was tainted. Yet, after he was disbarred, the New York Times reported that a Federal District Court Judge threw out $5 million in penalties that had been assessed against Bailey. The same Court also ruled that Bailey did nothing wrong when he accepted payment from the client whose money the government claimed was tainted. Thus, he was apparently cleared with respect to the main issue leading to his disbarment. The U.S. Supreme Court definitely should have granted review in his disbarment case.

Second, the Terry Schiavo case. The entire nation was as entranced and captivated by the Schiavo case, as they were by the 2000 presidential election. It involved conflicts between state and Federal judicial power, as well as conflicts between judicial and legislative power. Both Federal and State laws were enacted and then struck down by Courts specifically and precisely because of her. That's virtually unheard of. The legal issue dealt with the right to continue or discontinue life support of an individual and is one of monumental national importance. The case was all over the media. When you have a case getting so much publicity that it entrances the entire nation, involving significant legal issues pertaining to the powers and limitations of branches of government, calling into play the entire scheme of Federal versus State legal authority, and also addressing the immensely important legal issue of life support, it is my opinion the U.S. Supreme Court had an obligation to the general public to accept its responsibility to sort the mess out. Once again, I submit the reason they did not do so was a product of fear. Stated simply, denying review was the easy way out.

One of the most interesting aspects of the Schiavo case was what happened to Congressional House Majority Leader Tom DeLay as a result of it. I'm really not a fan of the guy, particularly considering the fact that I'm a registered Democrat. Nevertheless, the bottom line is that the collapse of his political career had nothing to do with the ostensible issue of funneling political campaign contributions. Tom Delay's political career was ended because he made the following public statement about the Schiavo case during the height of national emotion on the issue:

> "The time will come for the men responsible for this <Judges> to answer for their behavior. . . . <We need to> look at an arrogant, out-of-control, unaccountable Judiciary that thumbed their nose at Congress and the president." [11]

I still vividly recall thinking to myself when Tom Delay made the above widely publicized statement, which was before he was prosecuted ostensibly on a political campaign contribution issue:

> "Well, that pretty much takes care of his political career. He's a political goner. You can criticize anybody except Judges. How could the guy not have known that? If you criticize Judges, you don't have a chance. They'll quickly find a way to get back at and take care of him."

Subsequent to my having the above thought, the allegation that Delay had funneled campaign contributions came up. Totally unrelated. I'm sure. Not a doubt in my mind about it. A blind man could have seen his prosecution coming a mile away, as soon as he made his statement about the Judiciary. And like I say, I don't even like or support the guy. But, I know a set-up and payback when I see one.

The third case is the reprimand of Michigan attorney, Geoffrey Fieger. The denial of review in this case really ticks me off more than the others because it doesn't even involve a close issue. Instead it involves an incontestable violation of the First Amendment by the Michigan Supreme Court due to personal political considerations of the individual Justices on that Court. In this case, the majority opinion of the Michigan State Supreme Court just basically said, "Screw the First Amendment. We're nailing this guy." This is what occurred.

In July, 2006 in a 4-3 opinion the Michigan Supreme Court reprimanded attorney Geoffrey Fieger for twice appearing on Detroit radio shows and calling State Court of Appeals Judges jackasses and other names. He also compared the Judges to Nazis. Fieger quite correctly maintained that his comments were protected by the First Amendment because they were made after the case was completed and not in a courtroom. The imposition of professional discipline upon him specifically for exercising his constitutional rights involved one of the most serious abridgements of the First Amendment I've ever seen. To uphold Fieger's reprimand essentially nullified the First Amendment.

The State Supreme Court opinion in the Fieger case is remarkable because the Justices in the opinion did to each other exactly what Fieger did on the radio

show. To say the Court's opinion was split would be a mild understatement. Instead, the 4-3 opinion exemplified State Supreme Court Justices being totally vicious to each other. The following are some examples from the opinion:

> "With her dissent, Justice Weaver completes a transformation begun five years ago, when all six of her colleagues voted not to renew her tenure as Chief Justice of this Court. This transformation is based neither on principle nor on "independent" views, but is rooted in personal resentment. This transformation culminates today in irresponsible and false charges that four of her colleagues are "biased and prejudiced" . . . Justice Weaver's personal agenda causes her to advance arguments . . . that would lead to nonsensical results . . .
> . . .
> . . . This is a sad day in this Court's history, for Justice Weaver inflicts damage not only on her colleagues, but also on this Court as an institution. . . .
> . . .
> The people of Michigan deserve better than they have gotten from Justice Weaver today, and so do we, her colleagues." [12]
>
> **JUSTICES Clifford Taylor, Maura Corrigan, Robert Young, Stephen Markman**

Justice Weaver then writes as follows in her Dissent:

> "I write separately to dissent from the participation of Chief Justice Taylor and Justices Corriga, Young and Markman in this case.
>
> Statements made during their respective judicial campaigns displaying bias and prejudice against Mr. Fieger require . . . to recuse themselves from this case in which Mr. Fieger is himself a party. . . .
> . . .
>
> In their joint opinion, Chief Justice Taylor and Justices Corrigan, Young and Markman mischaracterize my dissent and motives. Further, their criticism and personal attacks in the joint opinion of the majority justices are misleading, inaccurate, irrational and irrelevant to the issues in this case. The majority appears to be attacking the messenger rather than addressing the genuine issue. . . ." [13]
>
> **JUSTICE Elizabeth Weaver**

The majority opinion of the Michigan Supreme Court was a shameful immoral violation of the First Amendment promulgated by a cabal of State Supreme Court Justices who apparently had records exemplifying the existence

of their bias and prejudice against Fieger during their own personal judicial campaigns. This assertion was clearly made by the dissenting State Supreme Court Justice. However, regardless of whether judicial bias was the driving force for the majority opinion, its holding positively violated the First Amendment. In addition, the vicious statements made by the Justices to each other, totally undermined the opinion's legitimacy. It was inexcusable for the U.S. Supreme Court to decline review in this case. It not only dealt with an issue of monumental importance, but in addition the State Supreme Court's opinion was a practical nullity because of the personal animosities between the Justices.

Notwithstanding the disgracefully pitiful nature of the Michigan Supreme Court's opinion in the Fieger case there is admittedly an amusing aspect about it. The Court reprimanded Fieger for being discourteous, but the Justices did the exact same thing to each other. Typically, the hypocrisy of judicial opinions is not quite so blatant. In this case, the hypocrisy was so blatant, that it was actually kind of funny.

Overall, the U.S. Supreme Court's trepidation of granting review in key cases involving the legal profession as a result of their fear of retribution from State Supreme Court Justices has had disturbing results. Lower courts, prosecutors and defense attorneys are starting to look at U.S. Supreme Court opinions as being primarily of advisory importance in their day-to-day activities. The prosecutors and defense attorneys are concerned only with what the trial court Judge thinks and pay minimal attention to Justices above the trial court. U.S. Supreme Court holdings on issues are starting to be viewed with a minimal degree of practical importance, since any of their opinions can be evaded through manipulation of logic. Attorneys have come to the realization that their only real professional responsibility is to comply with beliefs and local customs of judicial officials in their individual State, and most particularly the individual Judge they are in front of. They then leave it to State Supreme Court Justices to neutralize the U.S. Supreme Court. Concededly, that task is being accomplished quite effectively.

Thus, the failure of the U.S. Supreme Court to bravely and aggressively exercise its authority over the legal profession and State Supreme Court Justices is causing their power to increasingly move towards substantive nonexistence. As indicated in the first part of this book the last time the U.S. Supreme Court directly addressed the good moral character standard for bar admission was in 1971. It handed down three sharply split cases on the exact same day. It has now been almost 40 years since the Court addressed the issue. That is quite remarkable considering that the Court was so split on the issue in 1971 and no coherent stance was even adopted by the Court in the three opinions issued that day.

So essentially, you have a sharply divided U.S. Supreme Court that hasn't addressed the good moral character standard for Bar admissions in almost four decades out of fear, afraid of being opposed by State Supreme Courts, and receiving virtually no support from anyone. That is a major telegraph communication to State Supreme Court Justices. It conveys a message that they are basically free to do as they please and disobey U.S. Supreme Court opinions. Those State Supreme Court Justices, although immoral in many ways, are nevertheless smart enough to understand the vulnerability of the U.S. Supreme Court's political position and to capitalize on such.

Additionally, unlike the sharply disjointed U.S. Supreme Court, there is immense cohesiveness between State Supreme Court Justices of all the States. They have all as a matter of substance fully supported the disobedience of Schware, the Bankruptcy issue, Shuttlesworth, Konigsberg and UPL issues. They quite correctly consider themselves in possession of an absolute blank check to do whatever they please concerning matters affecting the legal profession. Why shouldn't they?

The U.S. Supreme Court has historically demonstrated a lack of ability to issue an understandable cohesive opinion on Bar admissions and also doesn't do anything when State Supreme Courts violate their opinions in other legal subject areas. The U.S. Supreme Court is tacitly moving towards acceptance of the fact that the best it can do is maintain a facade of authority. In this regard State Supreme Court Justices do their part encompassed within the gentlemen's agreement by at least humoring the U.S. Supreme Court and don't tend to flaunt their disobedience of Federal authority.

Of course, there is one rather significant catch to the foregoing. Or should I say "Catch-All" since that is the type of admission question the State Bars like to use. It is as follows. Although the U.S. Supreme Court has declined out of fear to actually exercise its authority to quell State Supreme Court disobedience of U.S. Supreme Court opinions, it has also quite astutely declined to give the irrational and cognitively deficient doctrines promulgated by State Supreme Courts their rubber stamp of approval. In fact, quite the reverse is true.

I have not come across one single U.S. Supreme Court opinion in the last 25 years that condones the arbitrary and capricious decision-making utilized by State Supreme Courts with respect to the Bar admissions process or Unauthorized Practice of Law prohibitions. Quite to the contrary, in Supreme Court of New Hampshire v Piper, 470 U.S. 274 (1985) the U.S. Supreme Court wrote (emphasis added):

> "The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "**fundamental right**." [14]

The impact of the foregoing statement was to set in place the precise, exact mechanism that would allow the U.S. Supreme Court to assume its proper role of control over the nation's legal profession. The reason is that it is now universally accepted that fundamental rights are subjected to Strict Scrutiny and not Rational Basis Scrutiny. Thus, at its leisure and discretion, the U.S. Supreme Court is now, and has been for more than two decades, perfectly poised to constitutionalize the Bar admissions process.

Arguably, before making its move, the U.S. Supreme Court may be strategically granting State Supreme Court Justices a wide realm of ability to engage in unconstitutional conduct with respect to Bar admission denials. This possible theory would be akin to the concept of "let them dig their political hole deeper and deeper, until they can't get out of it." Whether this is occurring or not, I am not entirely sure of. It is however, irrefutable that the U.S. Supreme Court has been declining to give State Supreme Courts the rubber stamp of approval they need to continue their unlawful practices. It is also irrefutable that the U.S. Supreme Court has concurrently set in place numerous opinions that establish a foundation of judicial precedent for them to assume the authority they have been denied. In turn, State Supreme Courts have given the U.S. Supreme Court ample justification to assume such power by their pervasive disobedience of U.S. Supreme Court opinions.

The open question is whether the U.S. Supreme Court will ever be able to summon the courage to take the risk of "stepping up to the plate" so to speak. Alternatively, it may just continue to defer to State Supreme Courts due to its concededly justifiable fear of State Supreme Court Justices. As stated, the State Supreme Courts are very well unified. The U.S. Supreme Court is not. It's my guess that if the U.S. Supreme Court grants review in a significant Bar admissions case and then issues a well-unified strong opinion, it will not be received particularly well by all 50 State Supreme Courts. If it's a splintered opinion, it won't stand a chance. Ultimately though, the U.S. Supreme Court like any person in life is going to have to make a decision. It will have to face its own moment of truth.

The U.S. Supreme Court is going to have to assume authority with respect to the legal profession to ensure State Supreme Court Justices comply with U.S. Supreme Court opinions. Or alternatively, the U.S. Supreme Court and general public will have to accept the fact that U.S. Supreme Court opinions really don't carry much authoritative weight, and can be disobeyed by State Supreme Court Justices by a simplistic manipulative use of semantics and legal sophistry.

I will say this though. As much as I'd like to see the U.S. Supreme Court take appropriate steps to educate State Supreme Court Justices about their duty to comply with the express mandate and SPIRIT of U.S. Supreme Court

opinions, if it decides to do so it better make damn sure the opinion is unified and decisive. One of those 5-4 fractured opinion deals just ain't gonna cut it. In such a sensitive subject area, a disjointed split opinion would probably make the authority of the U.S. Supreme Court ripe for finishing off by State Supreme Court Justices. If they can't take a definite and coherent stance on the issue (one way or the other I might add) then they'd be better off continuing to function from their current perspective of deferring to the State Supreme Courts out of fear.

Ultimately, the U.S. Supreme Court will either become the leader of the nation's legal profession or it will be relegated to nothing more than a mere philosophical advisory board by virtue of allowing its own power to lapse into practical nonexistence. A bunch of nice guys and gals who get together to engage in stimulating intellectual discussion similar to how other people do so at a dinner table or a Friday afternoon happy hour. This does not mean their opinions will ever become entirely worthless or totally ignored. People like me will probably still read them since they are enjoyable reading. Shuttlesworth and Schware are certainly entertaining to read. But, they're not worth much more than that anymore.

On November 13, 2006 the new Chief Justice of the U.S. Supreme Court John Roberts appeared on Nightline. The following exchange took place:

JAN GREENBURG (ABC NEWS): So, you can't tell Justice Scalia what to do?

CHIEF JUSTICE ROBERTS: I don't think anybody can tell Justice Scalia what to do. [15]

I actually like that theory. Although generally speaking, I consider myself a Warren Court liberal, I am wholly on board with Justice Scalia's theory as expressed by Chief Justice Roberts. I also like Scalia's writing style. He writes with acidic humor backed up by logic and law. He's also not as conservative as everyone thinks, particularly in the area of the First Amendment. I don't agree with a lot of his opinions, but I definitely love his writing style.

And it seems to me that if nobody can tell Justice Scalia what to do, then nobody can tell me what to do. Similarly as evidenced herein, State Supreme Court Justices throughout the nation have adopted the same approach. They've made it clear they're not going to be told what to do. Certainly, they've indicated in their opinions that they're not going to be told what to do by the U.S. Supreme Court.

So, notwithstanding my stern criticism of the approach to the rule of law adopted by immoral State Supreme Court Justices, we all appear to currently

have some common ground. Nobody's going to tell Justice Scalia what to do. Nobody's going to tell State Supreme Court Justices what to do. And nobody's going to tell me what to do. It's always nice when people on opposing sides of an issue find some points of common ground. Of course, if the U.S. Supreme Court wants to change this point of common ground, then I will eagerly be the first to relent on the matter. But, the bottom line is that it's going to be a lot tougher for the U.S. Supreme Court to obtain the consent and agreement of all the Justices sitting on Fifty State Supreme Courts.

I'm a pushover compared to them.

NO "ICKY" CASES

There is one category of litigation that is excluded from any extensive discussion herein. I have omitted any specific or detailed discussion regarding the "Icky" cases. The Icky cases are criminal cases dealing with acts of violence. My reason for omitting them is as follows.

The facts surrounding Icky cases tend to incite public passions more than any other type of case. When a person or group of people is alleged to have committed an act of violence the focus of the public is understandably upon whether they committed the act. This focus tends to disregard provisions of the written law. From the public's perspective, whether a court rule or judicial precedent is violated during the process of determining guilt or innocence is irrelevant. The public's only concern is whether the evidence made available to them indicates guilt or innocence. Generally, the public does not even know the specific statute a Defendant is charged under. Thus, it follows the public does not know how the statute has historically been interpreted or enacted.

Guilt or innocence is all the public is interested in when it comes to Icky cases. Aspects pertaining to allocation of power between the three branches of government (four if you include the media) in these cases do not concern the public. This creates an insurmountable problem if I were to address Icky cases in detail herein. The problem is rooted in the fact that this book addresses the "Fairness" of the legal system. Consequently, if I analyzed Icky cases in detail to fulfill the book's purpose I would have to focus on the fairness of the adjudication.

However, most regrettably, resolution of adjudicative "fairness" often does not correspond with the actual innocence or guilt of a defendant. Put simply, sometimes innocent people are found innocent, and guilty people are found guilty, even though the adjudicative process was unfair. By the same token, there are many innocent Defendants who are found guilty only because they can't afford an attorney. There are also many guilty Defendants who are found innocent only because they could afford a high-powered defense attorney. Although adjudicative "Fairness" maximizes the probability of an accurate determination of guilt or innocence, it does not guarantee such.

Consider the following hypothetical example, which occurs quite frequently. Assume a person is charged with a crime of violence. Further assume, fair consideration of the written law proves the trial court Judge violated the law to obtain a conviction. But, also assume the person did in fact commit the crime. Thus, under this hypothetical, if the Judge complied with the

law a guilty person may have gone free. That type of example subverts the purpose of this book.

If the average citizen is presented with the moral infirmity of a Judge's violation of the law, which results in obtaining the conviction of a guilty person in an Icky case, the citizen would conclude as follows. The citizen would conclude a guilty person was found guilty and it is irrelevant how many laws the Judge violated to obtain the conviction.

Now consider the hypothetical in reverse. Assume a person is charged with a crime of violence, but they are innocent of the charge. Further assume, fair consideration of the written law proves the trial court Judge violated the law to obtain a conviction. In this second scenario, the average citizen would only focus upon the innocence of the defendant. If the person's innocence is proven years later, it would function as a proper condemnation of the Judge's violations of the law during the course of the trial. But, the only reason the Judge would be publicly condemned is because the defendant was later proven to be innocent.

As these two examples demonstrate, the average citizen focuses only upon guilt or innocence of the criminal defendant in Icky cases. While the citizen makes this determination based on the limited and select evidence presented by the media, issues pertaining to the Judge's violations of the law only gain importance in the citizen's view if the defendant is later proven innocent. This dilemma precludes meaningful consideration of Icky cases herein.

Presentation of blatant violations of the law by a Judge when the defendant is truly guilty, relegates the Judge's unlawfulness to minimal importance. To the public, the Judge's illegal conduct is only condemnable if the defendant is truly innocent. Since the primary focus of this book is on the impact of irrational, illogical or illegal judicial decision-making, the Icky cases do not present particularly good candidates for consideration herein. This is notwithstanding that ultimately fair adjudication of Icky cases is probably the most important aspect of the justice system.

In contrast to the Icky cases, in litigations pertaining to judicial campaign contributions, the bar admissions process, unauthorized practice of law, bankruptcy, divorce, other civil litigations, or criminal cases not involving violence, the primary focus and burden is thrust upon the judiciary. If you prove to the public the Judiciary violated the law in a bankruptcy case, the average citizen condemns the Judge without hesitation. In cases like that, the average citizen works solely from the premise that the Judge was supposed to follow the law. If the Judge fails to do so, the citizen views it as a failure of the legal system. This is markedly in contrast to the case of a criminal defendant charged with a violent crime where the public's focus is not on judicial

compliance with the law, but rather upon the actual guilt or innocence of the defendant.

If you prove what John Locke would call "a long train of prevarications and abuses" with respect to the bar admissions process, enforcement of unauthorized practice of law prohibitions, discipline of attorneys, and unethical or illegal acts committed by State Supreme Court Justices, that functions as a strong indictment of the Judiciary. In these cases, the public will focus on the irrationality, illogic, cognitive deficiencies and mental disabilities of the Judges. Consequently, analysis of these cases promotes an improvement of the infirm moral character of Judges. It also helps improve the decision-making process. These cases are largely free from being prejudiced by passions of the average citizen. They focus almost exclusively upon effective moral character assessment of the Judiciary and the compliance or violation of written laws by Judges sworn to enforce the law.

A primary goal of this book is to improve the process of Judicial decision-making so that Judges may begin their road of recovery towards developing the proper degree of respect for the written law and principles of the U.S. Constitution. Currently, Judges demand such respect from litigants, but are not willing to give it themselves. If Judges want citizens to be rational, they need to demonstrate rationality in their Judicial opinions. The concept of simply asserting litigants are irrational, in order to allow Judges to continue writing a multitude of baseless, self-serving, self-adulating and excessively pompous opinions is unacceptable. To the extent the cognitive deficiency, mental disability and irrationality of Judges is proven, it allows for properly concluding Judges function with intolerable Hypocrisy. The focus then shifts to assisting them with their rehabilitation, so as to allow them to become productive, contributing members of society.

In short, the Icky cases are considered by the average citizen in light of human passions, which understandably focus on the guilt or innocence of the defendant to the exclusion of Judicial irrationality and Judicial law-breaking. Thus, I have excluded extensive detailed discussion of any Icky cases.

It is of course, a highly moralistic endeavor to expose State Supreme Court Justices who abuse their power, by demonstrating the nature of their cognitively deficient thought processes. However, by the same token it would be immoral to attain this noble goal at the expense of helping a guilty person who committed an act of violence being set free. So no extensive examination of the facts pertaining to Icky cases herein.

Rather, the focus is on basic Judicial stupidity.

THE POINT WHERE CITING CASES, PROOFS AND EXAMPLES BECOMES MEANINGLESS

This Supplement is different from the first part of this book published in 2002, and is largely a stand-alone book of its own. In the first part of the book published many years ago, I analyzed numerous State Supreme Court opinions and U.S. Supreme Court cases involving the State Bar admissions process. The focus of the analysis was upon the so-called good moral character requirement of admission. As I embarked on writing this supplement I considered updating the book for bar admission cases after that publication. Ultimately, I decided that would serve no purpose.

The infirmity of Judicial logic and cognitive disability suffered by State Supreme Court Justices was sufficiently proven by the first part of this book. To simply add on a bunch of additional cases demonstrating the same points would serve no purpose. The reason is that the concept of proving injustice and unfairness on a system-wide basis is initially buttressed by citing cases, proofs and examples. However, there is a point when something more is required.

It's kind of like trying to prove a lot of people drive their car five miles over the speed limit. Once you present a few hundred thousand people as examples, your assertion isn't helped all that much by presenting an additional few hundred thousand. It is common knowledge and a well-accepted facet of society that almost all people break speed limit laws occasionally. The matter has basically become "Res Ipsa Loquitur" (i.e. the thing speaks for itself).

Similarly, the arbitrary, capricious and immoral nature of the bar admissions good moral character requirement is now so well known that it really doesn't require additional proof. While presumably irrational individuals who support the immoral self-serving interests of the State Bars disagree with this assertion, I am well-satisfied the first part of this book presented enough cases exemplifying the irrational nature of the process to prove the point.

It's become like trying to convince the general public that a large proportion of lawyers are tricky, dishonest and immoral. Everyone knows it. So you don't have to prove it. Notwithstanding the disingenuous dicta contained within Judicial opinions asserting that the legal profession is a "time-honored profession," the public simply doesn't buy into what these Judicial scam-artists are selling. The average person knows the legal profession is hypocritical and immoral. They know it because they've personally experienced it or know people who had negative experiences with lawyers. You can read virtually any newspaper on any given day and find examples supporting the axiom that the

legal profession, Judges and lawyers should not be trusted. To assert otherwise, is the equivalent of saying politicians should be trusted, when everyone knows they're as immoral, if not more so than lawyers.

Upon deciding not to simply fill this supplement with analysis of a lot more immoral Judicial opinions pertaining to bar admission, I decided to do three things. First, I address more in-depth the legal strategy that should be employed to collapse the inherent hypocrisy and vagueness of the good moral character requirement.

Second, I did select a few isolated cases that highlight the nature of Judicial hypocrisy. These cases emphasize and demonstrate the existence of a psychological disorder embodied within the mindset of the Justices who wrote the opinions. It is my position the existence of this psychological disorder is demonstrated by the tendency of Judges to distort the meanings and definitions of words and terms beyond boundaries of reasonableness. Consequently, this supplement is in large part a work that examines the English language as used by the Judiciary. In addition, the limitation of language to communicate the meaning of laws is explored.

Since it is the function of the Judiciary to interpret laws, such necessarily requires that the words within the laws be assigned definitions by the Judges. It is the adoption by Judges of definitions for words and terms that are not in conformity with commonly accepted usage by the public that lays the foundation for the cerebral disturbance exemplified in many Judicial opinions. This then gives rise to an overall distortion in explication of moral principles by the Judiciary. Put simply, they express stupid ideas as a result of their deficient mentality.

The third aspect of this book intertwined throughout is a presentation of various principles of life, religion and human nature. This includes an examination of certain notable periods in history and prominent individuals.

This supplement deals with many topics ultimately for the purpose of convincing Judges that the good moral character standard is applied by State Bars and Courts in a manner that is not merely constitutionally impermissible. Rather, of greater importance it is being applied in a manner that is morally reprehensible. This assertion is supported not simply by the presentation of additional cases, which as stated, would not by itself add a lot to the prior publication. Instead, I attempt to focus upon how the infirm thought processes of Judges has caused the Courts to lose touch with their primary duty of serving the public. The result is a perpetual aimless wandering in the desert by Judges.

The conclusions reached in this supplement can be summarized as follows. Judicial opinion writing currently relies on a manipulative, deceptive utilization of semantics to arrive at hypocritical conclusions that the Judges

themselves are not willing to be bound by. Implied construction of terms is concededly necessarily to a limited extent when interpreting the U.S. Constitution. This is because the Constitution espouses "Principles," rather than dictates of conduct. In contrast, Strict construction of terms to the extent possible is the proper manner of analysis for legislative enactments. This is because legislative enactments are intended primarily to regulate conduct as precisely as possible, not simply express principles. With respect to interpreting the law the Judiciary has not been sufficiently aggressive when scrutinizing legislative enactments. This is because it has focused too much on ensuring its own ability to enjoy a hypocritical, double-standard. This foundation of hypocrisy is used by Judges to further the self-serving economic interests of lawyers and political ambitions of the Judiciary branch of government as a whole.

There is a point where the utility of citing cases, proofs and examples reaches a level of diminishing returns. When such occurs, it means the asserted point has already largely been proven and accepted as true, by all but those who profit from maintaining the status quo. The issue then shifts to a determination of the appropriate change required, which is presented herein. The process of change is typically met with embittered irrational stubbornness by those profiting from the status quo. They oppose change because it results in a loss of their ability to exploit irrational power and control over others, which they enjoy through maintenance of the status quo. But such State Bar officials and State Supreme Court Justices who oppose equality, fairness and an even-handed rule of law need to remember the following.

No one can help you until you're willing to help yourself.

THE JUDICIARY'S
"I'M MY OWN GRANDPA" LOGIC

The premise of this essay is the proposition that quite often the Judicial logic and ridiculous conclusions reached by Judges are as nonsensical as the logic used in the old country hit song "I'm My Own Grandpa." The song was originally sung by Ray Stephens several decades ago. Later, it was included in the hit comedy movie starring Tom Arnold called "The Stupids."

It was a very funny movie. In the movie, Tom Arnold plays a father and husband determined to find out who is stealing everyone's garbage. He concludes that everyone's garbage is being stolen because every night, people in the neighborhood place their garbage out on the curb and the next morning it's gone. In one scene, he sings the song "I'm My Own Grandpa." The words of the song are as follows:

"Many, many years ago when I was 23.
I was married to a Widow, who was pretty as can be.
This Widow had a grown-up Daughter who had hair of red.
My Father fell in love with her and soon they too were wed.

This made my Dad my Son-In-Law and really changed my life.
For my Daughter, was now my Mother, cause she was my Father's Wife.
And to complicate the matter, even though it brought me joy,
I soon became the Father of a bouncing baby boy.

My little baby then became a Brother-In-Law to Dad.
And so became my Uncle, though it made sad.
For if he were my Uncle, then that also made him Brother,
To the Widow's grown-up Daughter, who of course was my Step-Mother.

My Father's Wife then had a Son, who kept them on the run.
And he became my Grandchild for he was my Daughter's Son.
My Wife is now my Mother's Mother and it makes me blue.
For although she is my Wife, she's my Grandmother too.

Now if my Wife is my Grandmother, then I'm her Grandchild.
And every time I think of it, it really drives me wild.
For now, I have become the strangest case you ever saw.
As Husband of my Grandmother, I am my own Grandpa.

Oh, I'm my own Grandpa.
I'm my own Grandpa.
It sounds funny I know.
But, it really is so.
I'm my own Grandpa. [16]

The conclusion presented in the song, that a person can be there own grandfather is obviously ridiculous. Nevertheless, a careful analysis of the lyrics does present a workable logic. Segregating the superfluous words of the song from the applicable portions of logic presented, the premise is simple. If you marry a woman who has a grown daughter, and your father then marries that woman's daughter, you are your own grandpa. The reason is that your wife's daughter is simultaneously your step-daughter and your step-mother. This gives rise to the premise that your wife is simultaneously your wife and your grandmother, and that since you are married to her, you are your own grandfather.

Many judicial opinions purport to present logic, which falsely appears to work after careful analysis. The problem is that the conclusion reached is totally absurd. Judges and lawyers are such experts at twisting and contorting the meanings of words that it is not a particularly difficult task for them to present some justification for whatever conclusion they desire to reach. It's like a cheap magician's tricks. Once you know how the trick is performed, anybody can do it.

The cheap, amateurish tricks played by Judges with logical reasoning, often present justifications for illogical conclusions. This has been going on for thousands of years. Today however, Courts are faced with a brand new problem, which jeopardizes their ability to continue using such manipulative deception. They've never had to deal with this problem before.

It's called the Internet. The Internet has made Judicial opinions easily accessible to the general public, in a manner unparalleled since the human race began. In the United States, until around 1985 or so, judicial opinions were only easily obtainable by attorneys. Even then, for the most part, they were only available in written books containing judicial opinions. This made the process

of finding a case applicable to the legal subject an attorney was researching incredibly cumbersome. As for the general public, the books containing Judicial opinions were not even accessible to them. The books were generally held privately in the libraries of Courts and law schools, which the general public was not even allowed to use. You had to be an attorney to use the libraries.

The effect of this was that the illogic and irrationality of Judicial decision-making was essentially concealed from the average citizen. Beginning in the 1980s, large law firms gained access to Judicial opinions using expensive computer databases. These databases provided their attorneys with easy access to a wide spectrum of cases related to specific legal subjects.

Today, there are a number of very inexpensive computer databases available to any member of the general public, which can be used to research legal issues. Many Judicial opinions are available on the Internet without even the need to access a subscription database. This has never occurred previously in the history of the world.

As a matter of form, Judicial opinions in this nation have always been considered as "public information." But, as a matter of practicality, they've only become "public information" in the last 10-15 years. Prior to that time, they were hidden away and concealed in libraries that the average citizen was not even allowed to use. Thus, they were "public opinions," which for all practical purposes were not available to the public.

Today, virtually anyone can easily obtain Judicial opinions on any legal subject. This provides them with the opportunity and option of exposing the illogic and irrationality in any opinion.

This book is a prime example. I published the first part in 2002. But, I wrote the first part mostly during the late 1990s. When I began writing it, I easily obtained virtually every bar admission case from virtually every State in a short period of time. Prior to the internet, just the process of obtaining the applicable cases I needed would have taken fifty times or more what it took me.

So now we are approaching that glorious point in human history where to put the matter simply, the Judiciary has to face the rather discomforting fact that, the "Jig is up so to speak." The "cat is out of the bag" and the "sleight of hand" is now being exposed to everyone. And it's being exposed by everyone. People can now read and assess for themselves the manner in which the "Tricks" of the so-called "Magical Judges" and attorneys have been performed.
This is going to change the legal profession and have an impact upon our Courts in a way never before encountered. To put the matter simply, the Courts are going to be faced with a whole new dilemma. That dilemma is as follows.

Judicial opinions from this point forward are going to have to make logical sense and arrive at sensible conclusions that will be accepted not only by

fellow Judges and attorneys, but also by average citizens. Judges are going to be politically forced to start writing opinions that make sense to the average citizen. Their audience is no longer limited to lawyers whose economic livelihood they control. Rather, they are playing to a new audience, the general public.

And nobody buys tickets to see a show put on by a bunch of cheap magicians who present nothing more than a bunch of amateurish tricks. Once the secret to the trick is out, you have to come up with a much better show than just some "I'm My Own Grandpa" legal logic.

Otherwise, you might just as well be a Judge in the movie, "The Stupids." Then you could be addressed as "Your Stupid Honor."

"WHO'S" ON FIRST, AND "WHAT'S" ON SECOND, BUT THE OREGON COURT OF APPEALS DOESN'T KNOW THE MEANING OF "THIRD" BASE

Dick Smothers - Now did you hear me say "Take It" or not?

Tommy Smothers - I only heard you say it, Once.

Dick Smothers - Which time?

Tommy Smothers - Third time.

Dick Smothers - How do you know it was the Third time, if you only heard it Once.

Tommy Smothers - I started counting backwards from the first two times I didn't hear it.

The Smothers Brothers Comedy Act, singing "Boil that Cabbage Down" [17]

The Smothers Brothers are an incredibly funny comedy act. Tommy Smothers is one of the funniest men ever and Dick Smothers is a great straight man. That said, I would be reluctant to support Tommy Smothers to be a State Appellate Court Justice. However, apparently, his type of approach to logical reasoning has been adopted by the Oregon Court of Appeals.

This chapter can fairly be considered as an addendum to the prior essay, which addressed the Judiciary's "I'm My Own Grandpa" logic and the movie in which the song was sung called "The Stupids." I present herein a prime textbook example of Judicial "I'm My Own Grandpa" logic.

The case is Oregon v Rodriguez, Appellate Case No. A126339 (12/19/07). Frankly speaking, this appellate opinion is so absolutely freaking hilarious, it's unbelievable. While I sometimes have difficulty in ascertaining which appellate judicial opinion is more stupid than the next, and definitely find it almost impossible to ascertain the dumbest appellate opinion of all, this case is positively a prime candidate. I assert with forthright honesty, and not the least bit facetiously, that an elementary school student who got at least a "B" in basic

Arithmetic could do a better job than the majority opinion of the Oregon Court of Appeals in this case. So here it is. "I'm My Own Grandpa" logic at its "best."

The Defendant was convicted of Driving Under the Influence of Intoxicants in August, 2004. It was his **Fourth** DUII conviction. Oregon Law ORS 809.235(1)(b) provided that a court must revoke a person's driving privileges if (emphasis added):

> "the person is convicted of misdemeanor driving while under the influence of intoxicants under ORS 813.010 **for a third time**." [18]

It is obvious from just a basic reading of the above statute, that the Oregon Legislature screwed up big league when they enacted it. What the legislators should have done was written the statute to read:

"for a third or subsequent time" [19]

But, they didn't. The Banana-Brained Oregon Legislators stupidly limited the mandatory license revocation provision to only a "Third" conviction. So, the Defendant's attorney quite properly argued that the statute did not apply to the Defendant because its express language clearly indicates it applies only when a person has been convicted "for a third time." In this case, the DUII was the Defendant's "Fourth" conviction, not his "Third."

The Majority does not want to see the defendant get off simply because there is no enacted law addressing his situation. Rather, they choose to do their job as Judges incompetently, in order to supplement the legislative incompetence that gave rise to this ironic situation. This consists of the Majority utilizing "I'm My Own Grandpa" logic to assert the position that the term "Fourth" is actually incorporated within the term "Third."

The manner in which the Majority does this is by asserting that it could be construed that the sequence of convictions does not begin to count until after the first conviction. Their concept is that if you start counting after the number "One," then the "Fourth" is really the "Third." And no, I am not kidding. That is really what they did. The Majority opinion states as follows, quoted at length (emphasis added):

"On appeal, defendant renews his contention that the statute does not apply because this is his fourth -- and not his third -- conviction for misdeamnor DUII. According to defendant, the plain meaning of the reference to a "third" means that there must be two, and only two, prior convictions.

. . .

. . . we turn to the wording of the statute. . . .

. . .

In this case, the question is what the legislature intended by the reference to a person having been convicted of misdemeanor DUII "for a third time." More precisely, the question is -- at least initially -- whether there is more than one construction of that provision that is not "wholly implausible." . . . .

The answer to that question is straightforward. The statute is at least ambiguous. In ordinary speech, references to numeric sequences can mean a variety of things. According to the usual source of ordinary meaning . . .for example, **the adjective "third" may refer to** "**being number three in a countable series**," or "being next to the second in place or time," or "**being the last in each group of three in a series**," among other things. One of those definitions -- the middle one -- is consistent with defendant's proposed construction. But the other two are consistent with the state's.

That is not surprising, as the ambiguity of numeric references is a common feature of ordinary speech. To pick a silly example, when you tell your child, "if you do that one more time, you are grounded" -- that admonition does not necessarily mean that grounding will follow one -- and only one -- offense. . . . The precise meaning of the numeric reference depends on the context in which it is employed.

. . .

So, to return to the wording of ORS 809.235(1)(b), **there is nothing in the phrasing of the provision** referring to a defendant having been convicted of a misdemeanor DUII "for a third time" **that necessarily means that the statute applied to a third -- and only a third -- conviction.** Reading the statute to apply to a third and subsequent convictions is, in other words, not wholly implausible." [20]

A Dissenting opinion is written in the case by Justices, Sercombe and Wollheim. Apparently, unlike the Majority Justices Sercombe and Wollheim had not lost their minds. Their Dissent states as follows (emphasis added):

"**The majority's construction . . . robs the statute of its plain meaning through the guise of creating ambiguity from wordplay**. The license revocation sanction only applies to a person "whose third <DUII misdemeanor> conviction . . . occurs on or after" January 1, 2004. . . . The majority reads this limitation to include the exact opposite -- that the sanction applies to a person whose third DUII misdemeanor conviction occurs before January 1, 2004. That result is reached through a misapplication of the statutory principles set out in PGE v Bureau of Labor and Industries. . . .

> **The substantive questions presented are what "for a third time" means**. . . .
> . . .
>
> The majority construes the phrase "convicted. . . for a third time" . . . as ambiguous, in that it could refer to more than one occasion of conviction. **In the majority's view, a "third time" conviction could occur any number of times, when a person is convicted "for a third time," "for a fourth time," "for a fifth time," and so on**. According to the majority, the phrase refers to any one of several convictions. . . .
>
> I differ with the majority because I do not believe that the phrase can reasonably be construed to refer to more than one particular conviction. **In my view, a person can only be "convicted . . . for a third time" once**. . . . **To read the statute differently** -- i.e., to cover any number of convictions -- **distorts its plain meaning**.
> . . .
> . . . The statutory interpretation issue, however, is not the abstract meaning of "third." It is the meaning of "third time." **The obvious meaning of "third time" is "being next to the second in place or time."** In that context, "third time" does not mean "being number three in a countable series" or "ranking next to the second of a grade or degree" . . . .
>
> The ordinary meaning of "third time" as it refers here to the "third conviction," is the third conviction in time. **A person's fourth marriage** to a different person **would not qualify that person as being married for "a third time." "Third base" is the base that must be touched by a runner in baseball. No one would call home plate the "third base" because you could begin counting at first base. . . ."** [21]

Overall, it's a pretty good Dissent. As for the Majority opinion, which was signed on by eight Justices, it truly boggles my mind that people who write such ludicrous, irrational Crap could be paid out of public funds for their literal Trash.

Obviously, there was a serious problem with the statute. The crux of the problem was that the Legislators who wrote the statute were Imbeciles. Undoubtedly, if you're going to penalize a Third Conviction, you should similarly penalize a Fourth or subsequent Conviction. But, the bottom line is that's not what the Legislative Imbeciles wrote. They limited the law to a conviction for a "third time." For the Majority to include the Fourth conviction within the term "Third" even though they knew full well that there was no basis in the words of the enacted statute for doing so had the effect of the Court of Appeals enacting its own statute. They became Legislators and Judges simultaneously. And that is what this case was really about.

The power play made by the Oregon Court of Appeals Majority to assume Legislative responsibilities and authority was the reason the case involved all

Ten appellate Justices on the Oregon Court of Appeals. Typically, only three Justices decide a case on appeal. The Court of Appeals was making a transparent, amateurish and quite foolish attempt at a Judicial power-grab.

The Defendant was nothing more than a mere, irrelevant pawn in the power play taking place between the Judiciary and the Legislature. Everyone knows the Legislators were Imbeciles for the wording they enacted in the statute. That is incontestable. So, what the Justices were trying to do was send a "telegraph" message to the Legislature, so to speak, that their branch of government needs the Judiciary to engage in legislating to save poorly written statutes. The concept is basically that, "we of the Oregon Judiciary will save you Legislators from being exposed as morons to the general public." However, in order for us to help you, it is necessary for you to allow us to be Legislators as well as Judges."

Undoubtedly, the express language of the statute gives rise to an "Absurd" result. It penalizes a "Third" conviction, but not a "Fourth" conviction. But, to include the term "Fourth" within the meaning of "Third" is more "Absurd."

Here is what should have happened in the case. The Court of Appeals should have done the following. They should have bravely and aggressively pointed out how totally Imbecilic the express language of the Legislative enactment was. Then, based on the Imbecilic statute, they should have Reversed the trial court and indicated precisely why they were doing so. The effect of such a ruling would be as follows. The Legislature would be totally embarrassed in the eyes of the general public for writing a stupid statute that gave rise to a totally Absurd result. This embarrassment would have caused the Legislators to be a lot more careful when writing statutes. It would have provided a sufficient degree of encouragement for them to start competently reviewing the way they write laws. By slamming the State Legislators hard for their incompetence, the Appellate Justices would have been totally absolved of participation in any Absurd result, because the fault would lie squarely on Legislative shoulders. In contrast, the Justices would have simply followed the law as written. The Absurd result would have been totally the fault of the Legislators because they were the morons who enacted the statute.

Instead, the Judiciary ran interference on behalf of the Legislators. They felt they could take advantage of the situation by using it as an opportunity to seize a share of Legislative authority. But, the real impact of their ill-conceived strategy was that it resulted in the Justices substituting themselves as the guilty culprits giving rise to the Absurd result. This occurred because they included the term "Fourth" within the meaning of the term "Third."

In all likelihood, the Justices figured nobody would read the opinion and as a result, they'd quietly get away with their power play. Certainly, any

Legislators who read the opinion wouldn't make a fuss about it. Quite to the contrary. The Legislature would have no choice other than to be appreciative to the Judiciary for saving them from being exposed to the general public as Imbeciles. Thus, the Justices concluded it was a virtual certainty that this case would provide them with an enhanced ability to Legislate from the bench.

From the perspective of the Majority, the whole manipulative ploy probably seemed like a "Sure Thing." That's the reason why Ten Justices on the Court got involved in the case. At first glance, the case would seem to be fairly non-controversial. It certainly wasn't a high profile case. But, it did in fact involve very major issues pertaining to the allocation of governmental power between the branches. This case demonstrates how shifts in governmental power often occur totally and quietly behind the scenes.

The Majority of the Oregon Court of Appeals figured there was no political risk involved by writing an opinion using "I'm My Own Grandpa" logic. They did precisely that in order to justify a ridiculous and "Absurd" conclusion that the term "Fourth" is included within the term "Third."

But, the simple fact is that the eight Appellate Justices who signed the Majority opinion are each now exposed as having a greater probability of rendering a significant contribution to society by starring in a sequel to "The Stupids," rather than by being Appellate Justices. They could call the sequel "The Stupids II." Naturally, that means it's the "Third" in the series.

THE NEED TO INCREASE JUDICIAL SALARIES - IF YOU PAY FOR CRAP, YOU GET CRAP

There is no doubt you get what you pay for. Currently, in this country the salaries, which Judges earn do not even faintly compare with those earned by partners in successful law firms. If you are a skilled, competent lawyer with a family and children, becoming a Judge is not a realistic economic option. From a moral perspective there is no way you can fulfill your obligation to the general public, if you are unable to fulfill the financial obligations you have to care for your family. I do not suggest judicial salaries should be equal to amounts earned by lawyers at large firms. However, they should not be a paltry 25% in comparison. Judges throughout the nation depending on their position typically earn between $100,000-$160,000. Considering the immense responsibility they have that is a small amount.

A good Judge who is knowledgeable in the law can positively earn a substantially greater amount working for a law firm. Yet, when Judges as a group complain to legislatures about their abhorrently low salary levels, their arguments are generally not received too kindly. That is unfortunate and wrong. While this book makes clear I do not hesitate to criticize certain Judges quite harshly, the arguments in favor of higher judicial salaries are totally correct. They deserve more pay. It's simple as that.

The problem is that the average legislator or citizen when faced with Judges requesting higher salaries typically responds with the statement, "they shouldn't complain, I wish I made $125,000 per year." But, that citizen really needs to consider whether they "wish" they made $125,000 per year if it required living a life in virtual seclusion and loneliness, being detested by large numbers of people for the opinions written, and often worrying about the welfare of your family in countless ways. It's my guess the average citizen probably really wouldn't be willing to adopt all aspects of the judicial lifestyle for $125,000 per year or be willing to put in the work that is necessary to do the job properly. Instead, when people make such statements they're really saying, "I wish I made $125,000 per year, but still maintained all the freedoms of my life without being subjected to the difficult aspects of being a Judge." Of course however, it doesn't work like that.

This problem has created an interesting situation. Previously, it used to be that one would become a skilled lawyer and upon establishing their reputation make a distinguished step up in their career by becoming a Judge.

Now however, the exact reverse is true. Becoming a Judge is the means by which one establishes the valuable relationships that will guarantee a high-paying job as a partner in a law firm upon leaving the bench. Thus, the low salaries of Judges cause undedicated attorneys to seek judicial positions simply as resume builders.

Law firms, although typically dishonest and immoral are not stupid. They are aware Judges establish relationships with other Judges. They know that being a Judge make you part of a "Club within a Club." A good ol' boy network within a good ol' boy network. All lawyers who promote self-serving interests of the legal profession and State Bars are component elements of the main "Club." However, those who become Judges are part of their own separate "Club" as well.

All Judges are supposed to render judicial rulings on a fair and impartial basis. They are supposed to apply the rule of law evenly regardless of who presents the argument. It is supposed to be the legal validity of the argument, not the stature of the person presenting it, that is determinative of the Judicial decision. That means if a criminal defendant acting Pro Se asserts a valid legal argument it should be given the exact same precise degree of consideration by the Court as if, the argument were presented by a former Judge appearing in the same Court.

As we now exit Fantasyland and enter the secular world, the simple fact is that arguments presented to Courts by former Judges have a significantly higher probability of being accepted by current Judges than those presented by anyone else. The reason is twofold. First, it is a product of the personal relationships the former Judge developed with other Judges when he was on the bench. This is because people have an innate desire to approve of ideas presented by their friends. Judges are nothing more than humans with a propensity towards error. They are subject to the same frailties of personality and emotional influences as everyone else. The tendency of Judges to rule in favor of former peers, is improper and immoral, but it's also a cold hard fact. Second, former Judges are treated by Courts with more respect than other attorneys.

These are the reasons why law firms seek to hire former Judges. It gives them an unfair advantage in litigation. By doing so the law firm has a greater probability of obtaining favorable judicial rulings than if the exact same legal arguments were presented by other attorneys. Since the very existence of law firms is predicated on making money, and since making money is predicated on the law firm obtaining favorable judicial rulings, hiring former Judges equates to greater profits for the law firm.

And that is something law firms are willing to pay former Judges quite handsomely for. Although it is blatantly illegal for a sitting Judge to sell his

position for personal profit, it is quite acceptable for a "former" Judge to profit from a judicial position previously held. That is substantively what is occurring when Judges leave the bench to earn much more money with law firms.

The key dilemma is how to get qualified individuals to become Judges and then how to keep them on the bench. When salary levels for Judges are too low, it increases the probability a Judge will engage in judicial corruption. Low salary levels also result in a higher proportion of Judges who only seek to acquire power. This occurs quite simply because more ethical individuals do not compete for the position because they would not be able to support their families. Low salary levels cause attorneys to seek judicial positions as resume builders, with the intent from inception that they will leave the bench once they can obtain a high-paying position. Concomitantly, it causes competent, dedicated attorneys with a respect and love for the rule of law to decline seeking judicial positions. In their place, incompetent, greedy lawyers without the slightest degree of respect for the rule of law get the position instead. Roughly speaking, I'd say that if you have more than two kids approaching the expensive college years, there is no possible way you can realistically consider becoming a Judge.

So if you think judicial salaries do not need to be increased just ask yourself the following question. If you or someone you care for is facing a criminal prosecution, or has been victimized by a criminal, or is involved in a child custody battle, personal injury case, or any other type of litigation, do you want the Judge to be fair and impartial with a courageous respect for the rule of law? Or alternatively, is it okay with you if that guy never became a Judge because he wouldn't have been able to put his kids through college?

In his place, you got the guy who intends to be a Judge just for a few years in order to build his resume so that he can then leave the bench and enjoy the economic windfall characteristically provided by law firms to former Judges. That guy in order to secure his economic windfall is trying to render his judicial rulings in a manner, which will best foster personal relationships to serve his future economic interests. And coincidentally, the person that he's trying to develop the best relationship with right now is the lawyer on the opposing side of your case.

If you pay for Crap, you get Crap. And that's your current Judge.

STATUTORY RULES OF CONSTRUCTION PERTAINING TO PRAYER

I genuinely believe the power of Prayer is the greatest and most unlimited power available to man. Certainly, it is more powerful than any Court Order emanating from any Judge on any Court on Earth. It can assure the Probable and also attain what "appears" to be Impossible. Thus, the Impossible is merely Improbable and nothing more. There are no limitations of Subject Matter Jurisdiction regarding Prayers. And anyone is entitled to freely plead their case in any manner they please. It took me a lot of years (Decades) to realize this. I'm not necessarily the quickest learner in the world, but when I learn something, I learn it well. When a Prayer is answered affirmatively, it's just like winning the Jackpot. Much better than something as trivial as the lottery.

Although concededly, I often have difficulty ascertaining, which one of the statements I write is the most brilliant, I would have to say the above paragraph ranks right up there. The fact is that Prayer is a humanistic tool GOD has provided to humans, which is substantially underutilized. It really can accomplish virtually anything.

In utilizing the power of Prayer there are some basic rules that need to be complied with. Before addressing them, it is appropriate to note an important passage John Locke wrote in his Second Treatise of Government, which provides insight on the matter. He wrote:

> "And he that appeals to Heaven, must be sure that he has Right on his side; and a Right too that is worth the Trouble and Cost of the Appeal, as he will answer at a Tribunal, that cannot be deceived, and will be sure to retribute to every one according to the Mischiefs he hath created to his Fellow-Subjects; that is, any part of Mankind." [22]

The basic message conveyed by Locke's passage is to be very careful what you pray for. Alternatively stated using common everyday language, "be careful what you wish for, or it may come true." With these words of caution, at least so far as I can discern the matter, the following rules pertaining to Prayer may be helpful to the average person. They have certainly worked for me.

RULE #1 - DON'T PRAY FOR ATTAINMENT OF MATERIALISTIC THINGS

This can fairly be classified as the "Lottery Prayer." As many millions of people have learned, the so-called Prayer that goes, "GOD, please let me win the lottery" is not particularly effective. It's the equivalent of saying, "the only thing I really care about is my own material comforts." That is not a message you want to convey and it will not be received particularly favorably. Even if such a Prayer is answered affirmatively, that's probably more cause for concern. It is a known, historical fact many lottery winners have not fared well in life. This is especially the case if you use the money imprudently.

However, winning the lottery in the absence of requesting such in a prayer may be viewed as a reward for a life well led. It also may constitute a vote of confidence in your moral character by the Almighty with the expectation that you will use the money wisely. Thus, while you shouldn't pray to win the lottery, you also shouldn't be afraid of winning it. I use the lottery only as a common example regarding prayers for the attainment of materialistic things. The same premise applies to other prayers for economic comforts of the world.

RULE #2 - PRAYERS ON ANY MATTERS ADVANCING YOUR OWN SELF-INTEREST HAVE A LOWER PROBABILITY OF BEING GRANTED THAN PRAYERS MADE ON BEHALF OF OTHERS

There is certainly no prohibition on praying for things other than material items for yourself. Good health, happiness, a long life, friendship, or someone to love are clearly acceptable examples. But, it is a fact, that when you pray for anything on behalf of yourself, the prayer has a lower probability of being granted. A prayer for good health is a totally valid request. But, the bottom line is that praying for your own health is not as effective as praying for the good health of someone else.

RULE #3 - DON'T PRAY FOR ANYTHING BAD TO HAPPEN TO ANYONE

You definitely want to steer totally clear of what could fairly be called the "Revenge Prayer." Even if it were to be granted, you can be fairly certain it will come back to haunt you with even greater force. GOD wants us to get along with each other. GOD recognizes that we all view things differently and have different opinions on various issues. HE (SHE) also recognizes and understands that at times we will even treat each other wrongly or unjustly, which HE (SHE) will forgive us for doing. But, don't try to bring HIM (HER) into the game on your side regarding such matters. If you think someone's a Jackass, you're certainly free to inform them of such and state the reasons why. But, you definitely don't want to ask GOD to inflict any type of ill will on the person. The disputes we all have with each other are designed for us to resolve amongst ourselves in a peaceful manner. And of course, such resolution does not preclude the expression of reasonable, peaceful Passion, or the utilization of invective vituperation.

RULE #4 - PRAYERS OF GENERAL INTENT ARE ENCOURAGED, BUT DO NOT PROVIDE IMMEDIATE FEEDBACK

This can fairly be called the "World Peace Prayer." Obvious examples include, "Please let there be world peace, happiness, let's all get along, or I hope everyone has good health." These prayers do actually affect the world positively. They release positive energy into the Universe, which is to everyone's benefit. Consequently, they should be regularly expressed to GOD. Unfortunately though, there is a problem with these prayers. The problem is they don't generally provide us with sufficient timely feedback enabling us to ascertain whether GOD is answering the prayer affirmatively or negatively. On any given day, there are countless positive or negative things occurring in the world. Thus, you could say numerous prayers of general intent consistently and never experience the true feeling of the Power of Prayer.

Regrettably, the World Peace Prayer or any of its numerous variations are typically the prayers most religions focus on. When you go to Church or Temple, these are the types of prayers commonly said in one form or another. It is the absence of sufficient timely feedback regarding these prayers that causes many people to lack full appreciation for the existence of GOD. Going to a religious service then just becomes a mechanical and substantially irrelevant

exercise devoid of true feeling for the Almighty. Your relationship with GOD is designed to be much more personal in nature. Go to religious services if you enjoy them or skip them if you prefer. More importantly, take the time to genuinely converse with GOD on your own time at home.

RULE #5 - THE MOST EFFECTIVE PRAYERS ARE THOSE ADDRESSING SPECIFIC ISSUES TO FURTHER THE GOOD OF SPECIFICALLY IDENTIFIED INDIVIDUALS OTHER THAN OURSELVES, FAMILY OR FRIENDS

Okay, so no Lottery Prayers and no Revenge Prayers are bright-line rules. World Peace Prayers are commendable and encouraged, but don't provide us with sufficient feedback to fully appreciate the benevolence of GOD. Other prayers for own benefit or self-interest are acceptable, but will be considered with a "grain of salt" so to speak. This is because we are praying for ourselves. So, what does that leave you with?

It has been my experience that the most effective prayers are those we express for the good and well being of specifically identified individuals. The more attenuated our relationship with the individual is, the higher is the probability the prayer will be granted. Thus, a prayer for ourselves being naturally identified with Self, has the lowest probability of being answered positively. A prayer for the benefit of our children or parents would be the next level of consideration. This is because although prayers for our children or parents are not directly for the benefit of Self, they do indirectly benefit us if granted. When a benefit inures to our children or parents, it tends to impact positively upon us individually. This is naturally attributable to the closeness of the familial relationship. Following this line of reasoning, prayers on behalf of our brothers or sisters, then uncles or cousins, would be the next corresponding levels. Prayers on behalf of personal friends or their family members are generally quite effective. This is because our relationship with friends is not familial in nature and is typically characterized by sufficient attenuation justifying increased consideration of the prayer made on their behalf.

The matter then becomes even more acute regarding total strangers. These prayers are extremely effective. For example, let us hypothetically assume you read about a particular legal case of any nature addressing any issue in the newspapers. You have a strong belief and feeling regarding the matter. As a result, you express a prayer on behalf of the litigant. You don't even know the litigant and they don't even know you said a prayer on their behalf. This

type of prayer will be given an extremely high degree of consideration by the Almighty.

If your prayer is answered in the affirmative and the litigant who is a total stranger to you wins their case, you experience a sense of internal satisfaction from knowing GOD heard your prayer and answered it affirmatively. Of course, it is also possible HE (SHE) will answer your Prayer negatively and the litigant will lose their case. Nevertheless, it is a "Fact" that prayers you express on behalf of total strangers receive maximum consideration. Concededly, not all "Facts" can be proven. Many "Facts" are known only by "Belief" and "Faith."

Beyond the strong degree of consideration given to prayers we express on behalf of total strangers, there is only one greater level. That is when you express a prayer for Good on behalf of your political or personal enemies. There is little doubt in my mind that when you do so with a genuine and earnest intent that you want the prayer to be granted, you have either reached Heaven or at least are fairly close to it. Concededly, it's a pretty tough thing to do.

But, look at it this way. The entire reason a person is your political or personal enemy is because you believe they are wrong on a particular issue or with respect to the way they treated you, or someone you like, in some manner. Thus, the crux of the element, giving rise to the friction between the two of you is that you believe your position is "Good" and that their position is "Wrong." Thus, if you simply pray for GOD to bring "GOODNESS" to them, then what you're doing is praying for GOD to bring them over to your point of view. As I see it, while no human logic is infallible, this theory of logic is fairly strong.

From a personal standpoint, after many years of pondering the issue, I was only able to reach this level of prayer during the first two weeks of June, 2008.

It's a rather uplifting feeling.

THE MORAL OBLIGATION TO REPAY YOUR DEBT TO THE UNIVERSE

One of my favorite sayings is "to whom much is given, much is expected." I don't know who came up with it though. One of the definitions of the term "Debt" in Black's Law Dictionary is as follows:

> "In a broad sense, any duty to respond to another in money, labor or service; it may even mean a moral or honorary obligation, unenforceable in legal action." [23]

Typically, we think of a debt as a sum of money borrowed, which must be paid back. If borrowed from a family member or friend, interest is normally not required. However, if borrowed from a credit card company, interest is not only required, but imposed at an immoral rate. The concept of "debt" considered as a timeline may be stated as Borrowing, Repayment and/or Forgiveness.

We borrow because we have an anticipated temporary need of something we lack. Typically, it entails temporary use of someone else's money or other "thing." However, as indicated above, the term "debt" is not limited to money. Thus, what is "borrowed" is not limited to money. For example, if a friend helps us move into a new residence, we consider ourselves to "owe" them our assistance if they should move to new residence. This concept applies to any type of "help" a friend may provide to us.

When someone helps us, we often, but not always, incur a debt to them. Sometimes the help provided is not a borrowing, but rather a gift. A good friend will often assist you in moving to a new residence without the slightest expectation of receiving any type of repayment. However, even when this occurs, we internally tend to have a sense of obligation to them. The following type of conversation, which occurs quite frequently exemplifies this premise:

> Person #1 - Thank you so much for help. I owe you.
>
> Person #2 - You don't owe me anything. I just wanted to help.

The fact that person #2 expressly disclaims any liability regarding the help provided, does not internally relieve us from our sense of moral obligation to help them in the future. Consequently, it can fairly be stated that the more we help other people, the more other people have an internal sense of owing us.

This occurs even if we expressly disclaim any right to repayment. Alternatively, the more we accept help from other people the greater is our sense of owing.

Taking these premises to the extreme let us presume the average person has a genuine belief in GOD. While not all people are in this category, and although there are a wide variety of religions, most people I've met if asked directly, would say they do believe in GOD. Assuming you do, chances are you can reflect back on your life and recall some time when you said a prayer to GOD asking for assistance. If your prayer was answered affirmatively it is my position that at that point in time you incurred a Debt to the Universe.

The Universe may have provided you with the requested assistance as a Gift. Nevertheless, internally you have a moral obligation to view it as a Debt requiring repayment. In the same manner as when a friend helps you and says there is no need to pay them back, you have to decide the best way to repay GOD. HE's not looking for repayment. But, internally you know it's the right thing to do. The manner of repayment is your decision to make. Maybe it's giving to charity, helping your friends or family, praying, attending religious services, or a wide host of other alternatives. The important point is that from a moral perspective if GOD helps you by providing the assistance you requested, then you have to repay that debt. This applies even though from GOD's perspective it was intended as a gift.

Repaying any debt, including one owed to the Universe provides you with a sense of well-being. When we make the last payment on our home mortgage and feel that we own the residence free and clear, we feel a sense of relief. Similarly, the acts we take to repay our debts to the Universe also provide us with a sense of relief. This is because we know we have given something back to repay what was given to us. It results in a sense of general belonging, rather than alienation. It makes you a part of something that is worth being a part of.

In contrast to the foregoing, in everyday life, one of the most common types of borrowing is from a credit card company. Credit card companies can fairly be characterized as implementing a loan program that is antithetical to GOD's program. The reason is as follows. GOD's program is formulated as a gift without expectation of repayment, but which gives rise to an internal sense of owing by the borrower. In contrast, a credit card company loans us money pursuant to stringent terms in a written agreement. The agreement typically provides for repayment at an exorbitant rate of interest with substantial "penalties" to be imposed, such as late charges, if payment is not made on time. Thus, the credit card company does not rely at all upon one's internal moral sense of obligation. Instead, it seeks to extract repayment by threat of punishment in the event of nonpayment.

As to the issue of motivation, the credit card company does not loan us money for the purpose of helping us. Quite to the contrary. The credit card company is motivated solely by a desire to capitalize upon our temporary need to borrow, in order to gain an unfair profit from the transaction. It is therefore not the act of a friend helping another, but rather the act of one seeking to take advantage of another's need for help. The concept is basically, "we'll give you some help now, but we want a lot more in return later." A comparison of GOD's program with its antithesis (i.e. the loan program of a credit card company) makes apparent the following principles and rules of morality related to debt:

1. The greater the amount of repayment expected, the lower is the moral obligation to make payment.

2. The lower the amount of repayment expected, the higher is the moral obligation to make payment.

These two above principles are indicative of a moral ranking regarding the obligation to repay debt. GOD has the least expectation of repayment and therefore is owed the highest moral obligation of repayment. Family and friends who tend to lend money or help without expectation of any interest upon repayment, or sometimes without any expectation of repayment at all, are owed the next highest moral obligation for repayment. Employers, financial or other institutions that require repayment with interest, but at a fair rate, are owed the next highest moral obligation of repayment. Credit card companies, which utilize the loan to extract as much as they possibly can from the borrower with substantial penalties and punishment if payment is not made, are owed at best a most minimal moral obligation of repayment.

Applying these principles to State Bar admission standards results in the following conclusion. The good moral character requirement for admission should not result in denial of admission to any State Bar Applicant based upon a failure to repay credit card debt. The reason is that at most, there is a very minimal moral obligation to repay credit card debt. The credit card company chose to adopt a written agreement containing substantial provisions to protect its interests. Most of those provisions are in small print for the purpose of keeping the debtor unaware of what they are agreeing to and allowing the credit card company to maximize its financial profit from the transaction.

The credit card companies have selected and imposed their manner of expected repayment upon unfortunate borrowers. Accordingly, that is what the transaction is limited to. Aspects of good moral character are in general for the

most part, not an appropriate subject for consideration as regards unpaid credit card debt.

So remember the following. When GOD helps you, you owe the Universe in a big way. Presented to you as a gift, it should be viewed by you internally and morally as a debt, which you have an obligation to repay. You have a moral obligation to repay the Universe and its participants when they help you.

As for the credit card companies, I'm tempted to say they should just go to Hell. However, since I only believe Heaven exists and don't believe Hell exists, I guess they should just go to Court. That's the deal they wanted. They drafted the terms and that's the deal they imposed on the debtor. So they are entitled to absolutely nothing more. Having chosen to distance themselves from morality and ethics, they are willingly alienated from the moral obligation related to repayment of debt. Such is reserved for GOD, the Universe and people who have a general sense of morality.

CURRENT DISSENTING STATE SUPREME COURT JUSTICES WILL SOON LEAD THE MAJORITY

Generally, although not always, when State Supreme Courts rule unanimously on an issue, they are right. However, when one or more of the Justices Dissent there is a high probability they are correct and the majority wrong. In some States, the concept of a dissenting opinion in favor of a Bar Applicant, even being written is a total oddity. Specifically, the Justices on State Supreme Courts in Ohio, Florida, Louisiana, and Georgia have become so indoctrinated into a group thought mentality and function so cohesively that the individual Justices have been divested of the cognitive ability to think and reason for themselves. In these States there is almost no such thing as a dissenting opinion in cases pertaining to the legal profession. This is because the mere possibility that a particular Justice might dissent is considered to be a virtual offense against the other Justices.

It is important to understand what a dissenting opinion really is. The concept applies to all appellate Courts, as well as the U.S. Supreme Court. When a Justice writes a dissenting opinion they are basically saying the other Justices in the majority are violating the law. That's a pretty strong charge.

As indicated in Chapter 19, page 25 of the first part of this book the mere existence of dissenting opinions cannot sustain scrutiny under the State Bar's moral character admission standard for the following reason. To justify their position, dissenting Justices typically accuse the majority of misstating the law, misinterpreting the law, or failing to disclose (nondisclosure) material facts or aspects of the law. Since it is logically impossible for two diametrically opposing positions to be correct, whenever the majority and the dissent disagree on a particular issue it is inescapable that at least one of the sides must be stating a falsehood. The quintessence of the admissions process is the character trait of "truthfulness." Such being the case, the fact that some Justices in split opinions must be stating a "falsehood" would mandate denial of a law license to them if the good moral character standard of admission were applied to them.

Consequently, it is easy to see that when a Justice writes a dissenting opinion they assume an immense professional risk. The reason is that the dissenting opinion they write gives rise to an ideological alienation between themselves and their peers. It effectively erects a wall between the Justices on the Court. The best example I've come across, demonstrating this concept is the

Fieger case discussed previously. Justice Weaver stood alone in her dissent. Her dissent was predicated upon the assertion that the other Justices should have disqualified themselves. The impact of her dissent was to cause the Justices in the majority to band together like a street gang, which then lambasted her. If ever there was a case clearly exemplifying the plight of a Justice alienated from her Court, it was in that case. No doubt what she did was incredibly brave. Her dissent was a testament to the fact that there are State Supreme Court Justices who are aware of the immoral nature of what is transpiring. These State Supreme Court Justices know how manipulative and deceptive the other Justices are. These dissenting Justices are the guardians of the Constitution who the public should provide unwavering support to.

It can fairly be anticipated that since Judges are nothing more than humans, they are subject to the emotions, weaknesses, frailties, personality flaws, and irrationalities that all humans are characterized by at various points in their lives. Furthermore, the essence of being a Judge and the most important aspect of their career consists of the opinions they render. In accordance, it should be anticipated that Justices in the majority will conduct themselves defensively when one of their peers attacks their opinions. Ultimately, it becomes a matter of professional self-preservation. Historically, it has been demonstrated that defensive postures in any context often manifest themselves through imposition of offensive action.

The most effective offensive action available to State Supreme Court Justices in the majority, who find their opinions being subjected to well-grounded rational attack by dissenting Justices is to impose judicial discipline upon their dissenting peer. One Justice in the majority acting alone cannot accomplish this. Instead, since the members of the Judiciary strive to function as a cohesive unit rather than through promotion of individual spirit, imposition of discipline upon a dissenting peer requires Justices in the majority to join together to neutralize a dissenting Justice.

Once the decision to impose discipline upon a dissenting Justice is made by a judicial cabal, the implementation of such is wholly simplistic. All it involves is finding some aspect of the dissenting Justice's conduct that justifies imposition of judicial discipline. That's the easy part because everybody engages in some type of conduct in their professional or personal life, which can be subjectively determined as demonstrative of a lack of good character. The reason is that no one is perfect and as stated, Judges are human. Certainly, they're also quite far from being perfect. Thus, the tough part for any Justice in the majority seeking to impose discipline upon a dissenting Justice is to convince the other Justices. He needs to get the gang together so to speak. Once the gang is assembled and on board with the plan, the task of finding some

aspect of the dissenting Justice's conduct, which purportedly justifies imposition of professional discipline is a foregone conclusion.

Of course, this situation is unfortunate for the general public. The public tends to mistakenly, albeit understandably, believe that when a State Supreme Court Justice is disciplined, they have really done something wrong. In fact however, quite often the reverse is true. It is often the dissenting Justice who has engaged in the bravest and most moral conduct, and those who imposed the discipline are the ones who acted immorally.

Notably, it is not only fellow Justices on a State Supreme Court who have an incentive to neutralize the professional career of a Justice who dissents. Judges are a very closely-knit group, except in the most populous States. State Supreme Court Justices fraternize with Court of Appeals Justices and trial court Judges and they even associate with the ignorant attorneys comprising the rest of the State Bar. Thus, any State Supreme Court Justice whose record demonstrates a propensity toward making Judges on the lower courts look bad with his opinions (whether he is in the majority or dissenting) can be expected to make political enemies of those lower court Judges. This is particularly the case if that Justice's opinions are logically formidable in a legalistic sense. People tend to become more annoyed when proven wrong compared to when they are simply told they are wrong. The result of this is often a tendency for lower court Judges to band together to bring down a State Supreme Court Justice who continuously makes them look unfair or unethical. Typically, this requires the lower court Judges to enlist support of other State Supreme Court Justices to their cause, but such is not always the case.

There are also a few States where imposition of judicial discipline upon State Supreme Court Justices is taken out of the hands of the State Supreme Court itself and the power vested in lower court Judges. That is obviously the most stupid system imaginable because it ignores the essence of human nature. There is more incentive for lower court Judges who regularly have their illegal conduct exposed to the public in a judicial opinion to impose discipline upon those responsible for exposing their immorality, than the incentive that exists for a State Supreme Court Justice in the majority to impose discipline upon a dissenting Justice. The reason for this disparity is that State Supreme Court Justices can always respond to allegations of the dissent concurrently in their majority opinion. In contrast, a lower court Judge is helpless to comment on the issue once the case is out of his court. Unable to respond to a Supreme Court Justice whose opinions expose their irrationality, immorality or illegality, the lower Court Judge's only recourse is an attempt to impose judicial discipline on the State Supreme Court Justice.

The point is that any Justice who writes a stinging dissent that makes the majority look bad, or who writes an opinion as either the dissent or majority that makes lower court Judges look bad, can be expected to incur the wrath of those lower Court Judges. Just like litigants get mad at Judges, the Judges get mad at each other. One or two dissenting opinions won't do it. But, the more opinions a Justice writes making others look bad, the more he is treated by his peers as a traitor to self-serving interests of the Judiciary and legal profession. This has the impact of functionally increasing the probability he will be neutralized by his judicial peers through imposition of judicial discipline, even though in fact he is probably the best Justice on the bench. He's the one the general public can rely on.

It is undeniable that writing dissenting opinions carries great professional risk whereas simply "going to get along" with the majority; or rubber-stamping irrational lower Court opinions by affirming them is the easiest route to a successful judicial career. Ultimately, it becomes clear that a Justice who writes dissents (whether he is liberal or conservative) risks his own professional standing in favor of a belief in justice. Conversely, a Justice who is consistently in the majority may or may not be correct on the issue, but he definitely minimizes personal professional risk by his opinion.

Since the writing of dissenting opinions carries an element of professional risk that is markedly absent when joining majority opinions, it can be anticipated that basic principles of Risk-Reward analysis provide greater reward to dissenting Justices who ultimately prove the majority wrong. This does occur. When a Justice who has been in the dissent ultimately has his viewpoint adopted in a majority opinion years down the road, he is recognized by virtually everyone as a Hero.

Arguably, the best example of this was the lone dissent in Plessy v Ferguson in 1896 written by U.S. Supreme Court Justice John Harlan. His position became the majority in Brown v Board of Education in the 1950s. Of course, that didn't do him a lot of good in his life because he was dead by the time Brown was published. But, it probably did play a role in getting his Grandson John Marshall Harlan appointed to the Court. And it definitely won him a place of acclaim in American history. In contrast, Chief Justice Roger Taney who wrote the Court's opinion in the Dred Scott case that led to the Civil War is now pretty much universally recognized as a Judicial Dog.

In honor of those who have the courage to write dissenting opinions at the State Supreme Court level, I have selected three cases dealing with Bar admissions to briefly review. I then comment upon a related fourth case that raises a disturbing eyebrow with its unfortunate twist. The first three cases are

not even close calls. I submit that any rational person must conclude the dissent was absolutely correct.

The first case actually consists of two judicial opinions involving the same Bar Applicant in the cases In Re Paul Thomas Demos II, 564 A2d 1147 (1989) and 579 A2d 668 (1990). Mr. Demos case is discussed in detail in Chapter 20, pages 302 - 304 of the first part of this book. Demos had one conviction for contempt of court. It was apparently a product of his admirable sense of justice and a lot of "attitude", which was improperly perceived by the majority as warranting denial of admission to the District of Columbia Bar. The two Justices in the majority on the three Judge panel denying admission to Demos had previously granted admission to three Bar Applicants who were a murderer, bank robber and drug pusher. In light of such there is really no way those two Justices can fairly be perceived as rational. To deny admission to one Applicant due to his "attitude" and one minor contempt conviction, yet grant admission to a convicted murderer, bank robber and drug pusher, is the equivalent of those Justices formally requesting recognition as imbelic buffoons. Such recognition is hereby granted. More importantly, the lone courageous slam-dunk correct dissenting opinion of Justice Terry included the following statement:

> "I think the contempt conviction is too unimportant to stand in the way of his admission - especially when this court (over two dissents, including mine) saw fit to admit three convicted felons - a murderer, a bank robber, and a drug pusher. . . . What the court is doing is plainly at odds. . . . If we admitted the three petitioners in that case to our bar, I cannot understand why we deny admission to <Applicant>. . . ." [24]

The second great dissent is in the Washington State case of In the Matter of Petition of Jimi Wright, 690 P2d 1134 (1984) discussed in Chapter 20, pages 541- 542 of the first part of this book. The majority denied admission to the Applicant for multiple reasons. The reasons included the Applicant's criminal conviction for second-degree murder, a conviction for heroin possession, and also for engaging in the Unauthorized Practice of Law by preparing articles of incorporation. The dissent written by Chief Justice Williams addresses the lame allegation that the Applicant engaged in the Unauthorized Practice of Law as follows:

" . . . the question I must ask is, is the majority really denying <Applicant> admission to practice based on this fact? I cannot believe that it is.

. . . The bar association has been involved with this case for over 4 years, and not one member of that organization has ever charged that <Applicant> illegally practice law. The counsel for the bar association never notified <Applicant> that this would be an issue. <Applicant> had no opportunity to rebut charges that he was not qualified to practice based on this incident. The Board of Governors made no finding on this issue. . . . The majority has raised this issue for the first time on appeal, and then decided it without a fair hearing." [25]

The third great dissent is the Nebraska case of In Re Gary M. Lane for Admission, Case No. S-34-950002 (1996) discussed in Chapter 20, pages 417-421 of the first part of this book. This case is one of the increasingly pervasive "attitude" cases that have become characteristic of admission denials in recent times. The majority denied admission on the ground that the Applicant was obnoxious. Justices Wright and Connolly state in their dissent:

". . . Until today . . . being obnoxious . . . and being hard to get along with were not grounds for the extreme sanction of denial of admission. . . . The majority reaches far beyond the current rules governing admission. . .
. . . there are no bar admission rules for excluding an applicant on such grounds.
• • •
. . . <Applicant> . . . has practiced law in a number of states since being admitted to practice in 1977. Whatever interpersonal problems <he> . . . may have, they apparently have not led to injury to his clients." [26]

This case is particularly important for an unusual reason. The dissent was written by Justices Wright and Connolly in 1996. Their opinion is a courageous testimony to constitutional freedom. It's phenomenal. Yet, three years later in 1999 both Justices Wright and Connolly sold out. They adopted a "Converse" position to the one they had stated previously. Remarkably, the case was even called Application of Converse, 258 Neb. 159 (1999). It's yet another of the "attitude" cases and is discussed in greater detail on pages 422 - 425 of the first part of this book. In the Converse case the Nebraska Supreme Court rendered a unanimous opinion, which included Justices Wright and Connolly, and that relied on the majority opinion in the Lane case where Wright and Connolly had dissented.

The Converse case basically nullifies the First Amendment. As I pointed out on pages 422-425 of the first part of this book when describing the case, the Court in Converse engaged in a deceptive and dishonest misrepresentation of the U.S. Supreme Court's opinion in the Wadmond case, which was decided in 1971. The Converse opinion written in 1999, just three years after the Lane case, is one of the most constitutionally repugnant State Supreme Court opinions I've come across. Converse substantively establishes a blanket exemption for the State Bar from complying with the First Amendment.

But, the real question applicable to this chapter is why did Justices Wright and Connolly sell out? Why did they abandon the brave opinion they wrote in Lane? It is positively irrefutable that they changed their opinion within just three years. They joined the majority in Converse, which relied on Lane, and they had dissented in Lane. Admittedly, I don't know the answer giving rise to their sellout. But, I can speculate that it is possible their peers got to them. Not a certainty, but definitely a possibility.

This exemplifies the difficulty of being a dissenting Justice. You become a target of your peers on the bench. You're placed in a position where either you change to become part of them, even if it means writing what you don't believe constitutes the law. The alternative is that they get you as occurred to Justice Weaver in the Fieger case in Michigan.

It is for this reason that dissenting State Supreme Court Justices (meaning those who stick to their opinions whether such be liberal or conservative) need the public's support. They are up against a lot. The pressure is intense and without public support not all of them can be expected to withstand it. Ultimately, many of the dissenting Justices will lead the majority and when such occurs it will constitute an actualization of a true rule of law.

But, until that time arrives, they are merely the greatest hope for the rule of law and America.

THE DIMINISHING LEVERAGE OF GOVERNMENT UPON THE ELDERLY

From a basic perspective of mathematics the government and Judiciary have diminished leverage to control a person's conduct as they get older. The reason is simple. As a person ages, the government has fewer years available of that individual to place in jeopardy.

When a person is 23 years old, government has the ability to ruin their entire life. Setting aside the issue of whether a person is innocent or guilty of an offense charged (since many guilty people go free and many innocent people go to prison), the simple fact is that if a person is found guilty at age 23 of a particular offense, the person will probably lose all or a substantial portion of enjoyment in their life that they otherwise would have had for the next 45 years or so. That's good leverage. Roughly speaking, the government gets about a 2 - 1 payoff on such a prosecution, since the individual loses about 46 years and has lived only 23. That's a 200% return for the prosecution on its investment.

In contrast, if a person is 90 years old and found guilty of an offense, there's really not much the government can do. They can put the person in prison, perhaps beat them or starve them, but the bottom line is they are helpless to ruin the 90 years the person has already lived. Chances are if they're 90 and sent to prison, they'll probably die pretty quickly. Assuming a 90 year old person convicted of an offense dies one year after going to prison, which is a reasonable assumption, that means the government gets a 1- 90 payoff from its prosecution. It's slightly more than a 1% return on the prosecution's investment.

It is thus clear that government has minimal leverage to control the conduct of a 90 year-old person. Of course, an individual's accountability to GOD is a different story. That may result in a person enduring punishment beyond anything the government could conceive of. That aspect however, is beyond the scope of this short article, which focuses only on the practical limitations of the government's ability to control a person's conduct by leveraging the remaining years in their life.

In between the ages of 23 and 80, the government's leverage and thus its ability to control a person's conduct decreases slowly bit by bit each year. Maximum effective leverage exists between the ages of 23 and 50. By the time a person is 50, while they still may have many good years ahead of them, they also have a good bank of years behind them. Therefore, I'd say that's about the breakeven point.

This theory gives rise to several interesting situations. First, as a matter of practicality it creates an exemption for elderly people to violate the law in any manner they please. The reason is simply because there's not much the law can do to get back at them if they're caught. But, on the other hand, it also creates in favor of the government an inordinate ability to unfairly penalize people in their twenties. Practically speaking, it provides governmental power to control virtually every aspect of a young adult's conduct. This leverage allows implementation of the power to control conduct to an unreasonable degree regarding young adults. In contrast to an elderly person who has their bank of years behind them already, young people have too much to risk if they violate the law.

Yet, since individuals in their twenties are embodied with the passion, energy and rebellion that is characteristic of youth, they are more prone to resist governmental control. In contrast, the elderly being understandably more tired from the rigors of life are more prone to submit to governmental control. This may in fact be a coherent result. The reason is that the people most likely to comply with the law (the elderly) are given the greatest opportunity to break the law. In contrast, the people most likely to violate the law (the passionate, energetic, rebellious youth) suffer the greatest penalty for doing so.

The 20s and 30s of a person are age brackets constituting prime years for the government to grab. In contrast, the 70s, 80s and 90s don't provide government officials with nearly as great satisfaction. The bottom line is that by the time you make it to 90, perhaps even only 70, there's not much the government can do to you no matter what law you break. Consequently, if you make it to that age, the positive law of man may fairly be regarded as nullity in regards to regulating your conduct.

There is an old saying that the world is controlled by people over 50, challenged by people between the ages of 25 - 50; and owned by those who are under 25. People over 50 being the ones who control the world function substantively as "trustees" for those who are under 25 and the rightful "owners" of the world. But, the gap between 25 and 50 is so great, that the trustees often do not do what is in the best interests of the rightful owners. When such occurs they are violating their fiduciary duty to the owners. Thus, there is the need for those between the ages of 25 - 50 to help protect the interests of the owners (those under 25) from their own trustees (those over 50) because those trustees often tend to invade trust principal for their personal benefit. Those within the ages of 25 - 50 can protect the rights of the owners (those under 25) by keeping a close tab upon the functions of the trustees. When they do so, those between the ages of 25 - 50 are basically functioning as the auditors of the books of the trustees.

I appear to be on the back end of the "challenging" age bracket, and as a CPA I do have auditing experience, which is why I like the trustee analogy above. On the other hand, I became 50 in June, 2010. So based on average actuarial life expectancies, I'd have to concede the Judiciary still has pretty good leverage over me. But, it sure ain't as much leverage as they had on me when I was 34.

THE NEW AMERICAN LEGAL DICTIONARY

Words and terms can mean so many different things to different people. U.S. Supreme Court Justice Oliver Wendell Holmes summed the matter up best in Towne v Eisner, 245 U.S. 418, 42 (1918) writing:

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in color and content, according to the circumstances and time in which it is used." [27]

More recently, U.S. Supreme Court Justice Stephen Breyer wrote in FCC v NEXTWAVE Personal Communications, 537 U.S. 293 (2003) (emphasis added):

> "That, the majority writes, is what the statute says. Just read it. End of the matter.
>
> It is dangerous, however, in any actual case of interpretive difficulty to rely exclusively upon the literal meaning of a statute's words divorced from consideration of the statute's purpose. That is so for a linguistic reason. General terms as used on particular occasions often carry with them implied restrictions as to scope. "Tell all customers that . . . " does not refer to every customer of every business in the world. . . . "No vehicles in the park" does not refer to baby strollers or even to tanks used as part of a war memorial. . . .
>
> . . . General terms should be so limited in their application as not to lead to injustice, oppression, **or an absurd consequence**." [28]

On the following pages, I present numerous words, terms and phrases. Many, but not all, are legal terms. I then provide suggested definitions for each word or phrase. Many, but not all of the suggested definitions lead to an "absurd consequence" as Justice Breyer would characterize the matter. But, the problem is that to the extent some of these definitions lead to "absurd" consequences there are at least one or more real-life cases, in which Courts or other prominent individuals have in substance defined the term precisely as stated herein.

Many of the terms presented have been substantively defined as a result of Conduct engaged in by Judges or government officials. Sometimes their immoral Conduct has supported the presented definition on so many occasions,

that the definition I present cannot even be considered "absurd," because it is the "norm." Regrettably, this has caused some of the definitions presented to become the true and correct definition, even though it is an immoral definition.

Numerous appellate opinions have recognized the difficulties associated with defining words. Most Courts at least try to give proper recognition to the circumstances involved in defining words. However, I am unaware of any appellate opinion, which properly recognizes that the legitimacy of any adopted definition is also largely dependent upon the Conduct engaged in by the Judges who define the word. It's the old adage of "do as I say, not as I do." But, if Judges don't hold themselves to the same moral standards they apply to others when defining words, the legitimacy of their definitions must be rejected.

In many regards it can fairly be stated that Judicial Speech is not necessarily independent of Judicial Conduct. Instead, the two are inextricably entwined with each other. Since Judicial Conduct often exemplifies the true meaning of words, Judicial Conduct can be considered as Judicial Speech itself. Not always, but sometimes.

Also, many of the definitions presented, although supported by a multitude of real-life cases and judicial opinions convey a message that is precisely opposite to how the average citizen would define the word. Whether you consider the presented definition to be the True meaning of the word, or whether you believe it to be Precisely Opposite to its True meaning depends on your individual point of view. So each reader must decide whether the definition presented is Always True, Sometimes True, or Never True. Everything in life is in large part a matter of one's perspective.

Lastly, some of the definitions presented are intended to be humorous, while others are just a pitiful indication of how our legal system has degenerated. In fact, the impact of judicial interpretation of words has caused some of the terms to mean absolutely nothing at all. This is because Judges have changed the definitions of certain words so often and so drastically, that the term can mean anything at all.

When words can mean anything, they mean nothing. When all is regulated, nothing is regulated.

Sect - (1) A small group of moral individuals with a strong belief in GOD who are treated like criminals by State governments due to their unique beliefs. (2) A group the general public should Pray for to be protected from aggressive illegal State action.

Religion - A large group of people with a strong belief in GOD, who assert in error that they are moral as a group and who are intolerant of the unique beliefs of others.

Priest - Synonymous with Rabbi. An individual with correct, but incomplete knowledge of the non-secular world who seeks to utilize such knowledge for the purpose of exercising power and control over the lives of others in the secular world.

Rabbi - See Priest.

National Defense - A state of affairs imposed by the government upon its citizenry for the purpose of depriving them of their constitutional rights.

Income Tax - A tax imposed disproportionately on poor people to the advantage of the wealthy.

Tried As An Adult - The labeling of Children as Adults in order to impose stricter penalties on them by law.

Unauthorized Practice of Law - The rendering of competent free legal advice to poor people by individuals possessing a greater degree of knowledge than licensed attorneys and State Bar officials.

Absolute Right - A right that may be exercised, but only if certain specific conditions exist. See Marrama v Citizens Bank of Massacusetts, 127 S. Ct. 1105 (2007)

Sex - Not a Blowjob according to the Federal District Court Judge who defined the term for Bill Clinton.

Settlement Negotiations - The process by which a Federal District Court Judge incarcerates an individual for wanting a trial in a civil suit. See Federal District Court Judge Richard Smoak's handling of the Joe Francis case.

McCarthyism - A 21st century political movement supported by State Bar Admissions Committees.

Irrational - The perspective of an individual who does not agree with a Judge on any issue.

Rational - The judge's perspective on any given issue.

U.S. Constitution - A historic document providing numerous privileges to certain selected citizens of the United States who earn a sufficient amount of money.

Rule of Law - The process whereby State and Federal judges substitute their personal preferences, predilections, biases and prejudices for written statutes and court rules.

Faith and Confidence in the Judiciary - Characteristics bestowed by the Judiciary upon itself for the purpose of instilling Fear in the general public.

Debtor Prison - A place where judges provide free lodging to non-custodial parents.

Contempt of Court - A showing of respect for the written law rather than a Judge's personal irrational prejudices.

Reprimand - A compliment given by a Judge to a litigant or attorney who has a strong sense of justice.

Motion for Judicial Disqualification - Synonymous with "buying a lottery ticket." But hey, somebody's gotta win.

Court Rules of Procedure - A set of rules designed to create an uneven playing field in the courtroom. Also see, "Liberal Rules of Construction" - the nullification of court rules of procedure for local licensed attorneys.

Right of Appeal - A privilege granted by discretion of an appellate court.

Good Moral Character Assessment - The process by which State Bars ensure that licensed attorneys are immoral.

Bankruptcy Act of 2005 - A Federal statute designed to ensure that credit card companies are paid late charges and over-limit fees by poor people.

Attorney Debt Collector - An individual licensed to commit violations of the law who is supported by unfair rulings of State court judges in order to collect late charges and over-limit fees for credit card companies from poor people.

Court Order - A legal document containing requirements, which litigants should give consideration to complying with.

Appellate Review - The process of affirming trial court judgments.

Trial Court Judge - An individual lacking knowledge of the written law who decides legal issues.

State Supreme Court Justice - A good politician.

Attorney - An individual who compromises moral principles and inflicts harm upon people to make money.

Pro Se Litigant - An individual who will lose a litigation because the Judge doesn't want the ignorance of licensed attorneys exposed.

Judicial Corruption - A legalized process allowing Judges to commit criminal acts with impunity so long as they maintain their personal friendships with other Judges.

DUI - The process of destroying the life of a person who has harmed no one for drinking one small glass of wine. See District of Columbia blood alcohol level of anything above ZERO.

MADD - A group of individuals suffering from cognitive disability and mental impairment, who are nevertheless legally entitled to drive motor vehicles. The name speaks for itself.

Newspaper - A publication that controls the judiciary branch of government and renders rulings on legal issues, which Courts comply with.

Rules of Criminal Procedure - A set of rules designed to nullify constitutional privileges.

Rules of Discovery - A set of rules designed to effectuate the transfer of financial assets from the general public to lawyers.

Fair and Impartial Trial - A trial that proves a person is guilty.

Gag Order - A Court Order signed by a Judge for the multiple purposes of protecting government interests, protecting the political standing of the Court and ensuring that injustice is kept secret.

Balancing the Interests - The process whereby the interests are weighted in favor of the government to the detriment of the citizenry.

Sovereign - Also known as "the people." A group without any power or authority.

Hearing Date or Trial Date - A time specifically set aside by the Court designed to ensure that no legal issues are heard, but the attorneys get paid for doing nothing.

Legal Rights - A set of Privileges to be provided to certain selected litigants at the discretion of the Court.

Dispassionate Trial Court Judge - Sociopath.

Public Defender - An individual who provides assistance to the Prosecuting Attorney.

Prosecutor - An individual sworn to apply the law equally to everyone except for his friends and other people that he likes.

Statute - A legislative enactment granting Judges the power to make laws, but only regarding the particular issue addressed. The term "particular" is to be construed liberally.

Equal Protection Clause - A propaganda component of the U.S. Constitution. Serves a minimal purpose in the modern world.

Due Process Clause - The part of the 14th amendment granting Judges the power to apply the law in an arbitrary manner.

Cruel and Unusual Punishment - A phrase contained within the Former 8th Amendment to the Constitution. Effectively repealed by the U.S. Supreme Court in Bell v Wolfish, 441 U.S. 520 (1979).

Nazi - A term describing individuals who work for Child Protective Services or Prosecutors in certain States. See State of Oregon taking of Christine children. Also see Oregon Diane Downs case. Prosecutor forces her young daughter to live with him during case to control child's testimony.

First Amendment - One of the most important provisions in the Bill of Privileges to the U.S. Constitution, this amendment grants any individual who supports the Judiciary the privilege to speak their mind freely.

Fourth Amendment - An administrative provision in the U.S. Constitution designed to ensure that the homes of all citizens may be searched freely.

Right to Remain Silent - The freedom of every individual to decide whether they prefer to confess or be beaten up.

U.S. Supreme Court Opinion - An opinion deciding a legal issue on a nationwide basis with the understanding that it may be ignored by State Supreme Court Justices.

Justice System - Definition Unknown.

Ruling by Case Precedent - The process whereby judges select those cases, which support their personal preferences in rendering a decision.

Judicial Discretion - The ability of a judge to decide an issue based upon the law or their personal preference. Thus, if they choose the law it is because such is their personal preference anyway.

Child Kidnapping - A State funded legalized process whereby State officials kidnap helpless children from their loving parents by force.

Child Protective Agency - A State agency vested with legal authority to kidnap and inflict harm upon children.

Charitable Association for Patient Transport - The government agency vested with authority by Adolf Hitler in WWII to transfer patients from State hospitals so they could be euthanized. See Ingo Muller's book, Hitler's Justice, "The Euthanasia Program" page 127.

Protecting Your Children - An Illegal act whereby loving parents attempt to stop State officials from kidnapping their children.

Child - (1) An individual over 19 years of age with divorced parents who is legally entitled to have their noncustodial parent pay for their beer each weekend. See Crocker v Crocker, 332 Or. 42 (2001). (2) Someone who does not exist, but who is advertised to exist. See U.S. v Williams, 128 S. Ct. 1830 (2008).

Adult - A 12 year old individual who a Prosecutor seeks to put in prison for the remainder of their life.

Respect for the Law - The conformance of one's conduct to a Judge's personal views and prejudices out of Fear.

Prejudicial to the Administration of Justice - Highly moral conduct engaged in by an attorney that is detrimental to the accumulation of judicial power and which harms financial interests of other attorneys in a given State.

Obstruction of Justice - A misguided attempt by an individual to exercise Constitutional Privileges based on the mistaken belief they are Legal Rights.

Waterboarding - A form of Torture, but only if done to a U.S. government official.

F.B.I. - Freaking Bureaucratic Imbeciles

Disbarment - The highest honor that can be bestowed upon an Attorney. Also see "Resume Builder." Functions as an affirmation of high morality.

Marbury v Madison - A seminal U.S. Supreme Court case firmly establishing the legal doctrine that a Judge will be more successful in his own professional career if he decides cases he is personally involved with.

Dred Scott Decision - The successful implementation of the Civil War by the U.S. Supreme Court.

FISA - A congressional enactment designed to supplement Presidential power. The Act requires the President to violate it, in order to fulfill its legislative purpose.

State Bar Disciplinary Counsel - An individual entrusted by the State Bar to foster financial interests of all attorneys in a given State. Also charged with the duty of circumventing Constitutional Privileges in furtherance of State Bar interests.

State Bar Admissions Committee - A group of people nobody really likes.

"No Nonsense" Trial Court Judge - Asshole.

Freedom of Religion Clause - The freedom provided to all U.S. citizens to believe in any mainstream religion.

Freedom of Association - The freedom provided to all U.S. citizens to participate in the licensing process required for association. Said licenses to be granted based on discretion.

Right to Vote - A privilege granted to certain selected citizens.

U.S. Incarceration Rate - Best in the world.

U.S. Prison - A place where many fine people meet and live with each other.

Criminal Conviction - An official judicial determination that there is a possibility a person committed a crime.

Prison Conditions - Torture, Yes. Punishment, No. See Bell v Wolfish, supra.

Probation and Rehabilitation - The process of breaking one's will and spirit.

Third Conviction - Actually means "Fourth Conviction." See Oregon v Rodriguez, CA126339 (2007). Discussed in separate chapter of this book.

Oregon - A foreign country that may one day become a U.S. State. Oregon is known for its beautiful landscape, corrupt judges, scenic rivers, corrupt judges, majestic mountains, corrupt judges, good citizens, corrupt judges, ocean views, corrupt judges, metropolitan beauty, corrupt judges, and fine restaurants. Oregon also has corrupt judges.

Oregon State Bar Professional Liability Fund (PLF) - A clandestine organization firmly in control of the government of Oregon including its "Puppet" judiciary and "Puppet" State legislature. See also "Corleone Family."

Violating the Public's Trust - An illegal and immoral act that may be committed by a State Bar with impunity. See Oregon State Bar Letter of Apology to General Public - PLF.

Oregon State Bar Admissions Committee Moral Character Assessment - A Committee included within a State Bar, which confessed in writing to having "Violated the Public's Trust" that assesses the moral character of State Bar Applicants. Also see, "Amusing Little Concept" and "State Supreme Court with a Good Sense of Humor." See PLF essay in original publication of this book pages 649 - 688.

Illinois Supreme Court - A group of people who assist each other in funding their retirement plans by suing citizens who exercise Free Speech rights for personal financial damages. See Justice Robert Thomas Defamation Lawsuit Against Chronicle Newspaper (Discussed herein in separate chapter).

Nebraska Supreme Court - The highest Court in the nation vested with specific legal authority to misrepresent U.S. Supreme Court opinions. See In Re Application of Converse, 258 Neb. 159 (1999) Discussed on Pages 422-425 of first part of this book.

Frivolous Motion - A legal document based soundly upon case precedent and written law that jeopardizes the financial interests of attorneys or the political standing of a judge.

Meritworthy Defense - A defense that is worthless to the litigant and which involves no risk to the attorney who presents it.

Jeffersonian Judge - A Judge who applies rules of strict construction or implied construction of statutory terms to a legal issue depending upon which best serves his immediate purpose.

Schware v State Bar of New Mexico - A seminal U.S. Supreme Court opinion dealing with the licensing of attorneys, which has been interpreted in modern times by State Bars and Courts to stand for the premise that the term "Rational" means "Insane."

Bill Clinton - A former U.S. President whose greatest accomplishment was demonstrating that you can have more fun in life after you're Disbarred as an attorney.

George Bush - A former U.S. President whose greatest accomplishment was establishing the doctrine that citizens may have a moral obligation to violate the written law. His doctrine establishing such was given the judicial seal of approval by the Sixth and Ninth Circuit Courts of Appeal. See FISA.

Law - A legislative advisory enactment that citizens should give consideration to complying with in the same manner as members of the Judiciary, but which is secondary in importance to personal moral principles of both the citizen and the Judge alike.

Governor - An elected official who pays prostitutes for sex. See former New York Governor Spitzer.

U.S. Senator - An elected official who pays prostitutes for sex. See Louisiana Senator.

Congressman - An elected official who solicits sex from male pages, but without being required to pay for such. Aspires to be a Governor or Senator notwithstanding the added cost involved.

Opposing Counsel - Your lawyer's friend.

Justice is Blind - The legal doctrine that the Judge's decision will be based on how you look and how you generally appear to the Court.

Jury - A group of people who render the verdict that the trial court Judge guides them towards based on his evidentiary rulings.

Harmless Error Doctrine - The doctrine that critically important erroneous decisions of a Trial Court Judge, which specifically cause a Defendant to be convicted of a crime they did not commit, should be ignored by an Appellate Court upon review.

Ineffective Assistance of Counsel - The accepted Judicial standard of legal representation, which an Attorney is required to provide to a criminal defendant.

Self-Discovery - The process of discovering the essence of who you are and your purpose in life. Can only be accomplished successfully with the assistance of family, friends and enemies.

Faith - Belief that can only be clarified by Mathematics.

Mathematics - Logical truth that can only be proven by Faith.

Criminal Defendant - A dead man.

STREET GANGS AND OTHER MEMBERS OF THE JUDICIARY

The problem of how to deal with street gang members is a pervasive and serious problem throughout the entire nation. Some street gang members are not even judicial officials, but this short article deals only with those who are.

The fact is that the Judiciary and its lawyers, as a matter of substance do in fact function just like Street Gangs. Like street gangs, they place paramount importance on the trait of loyalty, above and beyond anything else. It is unequivocally demanded and violation of such is not tolerated. A Judge or a lawyer is expected to have unswerving loyalty to political and economic interests of the Judiciary and the legal profession. Violation of this predicate means expulsion from the Gang, and expulsion from the Gang means personal ruin.

Lawyers are expected to be loyal and supportive of Judges in their State, and similarly, the Judges are expected to be loyal to the lawyers appearing before them. The interests of litigants, is negligible in comparison. However, this concept does mandate that litigant interests be given maximum lip-service importance as a matter of form in official judicial opinions, and public statements of the Judiciary and State Bar. However, as a matter of practicality and substance, litigant interests are of minimal importance. In truth, litigant interests are of utilization primarily only to the extent they function as a tangible benefit to the Gang. First, I will address the functioning of the Gang within the context of civil litigation and then within the context of criminal prosecutions.

Regarding civil litigation, a litigant with money represents a potential Gang asset. That money must be taken by the Gang. The manner of accomplishing this depends on the nature of the civil litigation. In a matrimonial case, a rich litigant must be persuaded by their attorney about how right they are and how wrong their spouse is. Lawyers representing both spouses are expected to do what is necessary to accomplish this. Chances are it won't be difficult, since in light of the fact that the two spouses are getting a divorce, they will eagerly give their ready agreement and money to anyone who opposes their spouse in any manner.

The rich litigant going through a divorce may take comfort in the fact that so long as the money flows, their lawyer will pursue their interests most zealously and aggressively. The lawyer will do this by filing lots of paperwork with the court, sending lots of letters to opposing counsel and will do everything legally possible to satisfy the litigant's desire to attack the other spouse in the

most vicious and acrimonious nature. However, once the money runs out both lawyers are expected to promptly advise their clients they are being unreasonable and irrational and that the case should be settled. At that time, both lawyers are expected by the Gang to promptly abandon the interests and positions of their client and instead stress the merits of the opposing spouse's positions to their client. The sole intent when the money runs out is to bring the case to a rapid conclusion.

Thus, the fulcrum for the Gang to effectively utilize the lives of people going through a divorce to benefit the Gang is twofold. Maximize conflict while the money to pay legal fees exists, and then betray their client's position when the money runs out. The ultimate goal of both members of the Gang is to shift monetary assets from the marriage to the legal profession. The Court's primary role in divorces is to assist the attorneys in effectuating this transfer of assets. The Judge's assistance will consist of delaying rulings, delaying hearings, promoting extensive discovery and requiring full briefing on all legal issues. The purpose of such is to drive the legal fees higher.

However, once the marital assets have been successfully transferred to the Gang in the form of legal fees and once the money runs out, the trial court Judge must then adopt a different role. He must then issue rulings immediately, preclude further discovery, and deny extension requests regarding hearings or trial. The Court's goal at that point is to bring the case to a rapid conclusion without regard to the interests or future of the families involved. The reason is simple. Since the money is gone, the case is no longer a Gang asset, but instead becomes a liability. The Gang requires that all liabilities be discharged immediately.

Often, a matrimonial case does not involve only financial issues, but also involves matters pertaining to children, such as custody and visitation. From the perspective of the Gang this is not a bad thing, but rather a good thing. The Gang considers Children to be extremely valuable commodities who can benefit the legal profession immensely. Gang members are expected to utilize children in a manner that maximizes their economic and financial efficiency. They do so in the following way.

So long as marital assets exist to pay legal fees, children can be effectively utilized by the Gang to indefinitely prolong the proceedings. The Gang will want the children subjected to extensive psychological examinations, counseling sessions and perhaps judicial monitoring. The goal of the Gang members is to effectuate an emotional break down of the children to the maximum extent possible for the purpose of prolonging the litigation until such time as the marital assets are expended upon the attorneys. Naturally, for public propaganda purposes the Gang must ostensibly and vigorously assert the best

interests of the children require that such steps be taken. The Gang will sanctimoniously contend that the interests of the children are of primary importance beyond anything else, even though such is of minimal concern to them. To the Gang, the children are a means to effectuate the conveyance of marital assets to the legal profession.

However, once the marital assets are fully expended, the children are no longer of worth to the Gang. At that time, the goal of all Gang members including both attorneys and the Judge is simply to end the litigation. From their perspective, this means that the children must be legally disposed of in any manner. This is because, to the Gang, the children at that time have become nothing more than a wholly expended commodity. Multiple alternatives exist at this time. If the parties settle, the children can be taken care of by the settlement. Alternatively, if the parties don't settle, the Court can give the children to the mother, the father, or the State. Whichever decision is made regarding that matter is meaningless and irrelevant to the Gang. The bottom line is that once the money is gone, and the marital assets successfully conveyed to the legal profession, the case must end. It's simple as that.

So long as marital assets continue to exist, the Gang will adopt the position that all appeals and motions for reconsideration should be promoted and encouraged to the maximum extent possible. But, once marital assets are expended, it is the job of the Gang members to lie to the losing litigant by telling them that all meritworthy legal appeals are meritless.

If either spouse decides to not use an attorney, but instead decides to proceed Pro Se, that is perceived by the Gang members as a public statement that they refuse to make the appropriate financial protection contribution to the Gang. It's essentially the equivalent of a store owner who refuses to pay protection money to a local gang and then finds his store destroyed by them. In consequence, the Judge is expected to rule against a Pro Se spouse on all issues without regard to the law, assuming, the other spouse is represented by an attorney.

If both parties decide to proceed Pro Se then from the perspective of the Gang they are doing nothing but infringing upon the Court's time. Such a case must be concluded particularly expeditiously by the Court, since it is doing nothing more than wasting Gang resources from inception. All legal arguments from both sides are to be ignored by the Court and the Judge is expected to simply render any decision that is quick and easy.

Turning now to another type of civil litigation, I examine the personal injury case. In these cases, the plaintiff normally does not pay their lawyer out of their pocket. Instead, the lawyer gets a contingency fee, based upon a percentage of the monetary damages recovered from the defendant. Typically,

although not always the defendant in a personal injury case is a corporation. Unlike plaintiff's attorney, the defense attorney will not be paid on a contingency basis, but rather on an hourly basis. For every hour they spend on the case, the defense attorney will be paid.

Gang goals in a personal injury case are designed to effectuate transfer of corporate assets to the legal profession. This requires that the case must ultimately be brought to trial or settled, but not too quickly. The reason for this is that since defense attorneys are paid on an hourly basis, they only benefit if the litigation is prolonged extensively. The Court is expected to ensure defense attorneys receive their "fair" share of corporate assets by delaying any trial, preferably for several years. The Judge will accomplish this by strategic scheduling of hearings, briefings and filing requirements. This fulfills the trial court Judge's duty of loyalty to the defense attorneys.

However, both the trial court Judge and the defense attorneys have a concomitant duty of loyalty to the plaintiff's attorneys. After all, they are fellow members of the Gang and entitled to their "fair" share of corporate assets. The trial court Judge and defense attorneys will fulfill this duty of loyalty to their peer by ultimately allowing the case to go to trial or getting it settled. It's only fair. The defense attorneys made their money as the beneficiaries of a prolonged litigation. It allowed them to be paid at their hourly rate for substantial hours worked. Thus, Plaintiff's attorneys are similarly entitled to have their crack at the corporate assets. So ultimately, most personal injury cases will probably proceed to trial, or settle, but not for a long time. In this manner, the defense attorneys appropriate their share of corporate assets and plaintiff's attorneys will have an opportunity to appropriate their share at trial or through the course of settlement. And in fact, if the plaintiff litigant wins at trial, it is not impossible or inconceivable that even the Plaintiff will end up with a little bit of money after deducting the contingency fee, and related "costs." Not too much though. The big bucks are reserved for the Gang.

I now address the Gang's functioning in the criminal law context. First and foremost, is the necessity for prosecutors and defense attorneys to work well together. The last thing the Gang needs in the context of a criminal case is an adversarial proceeding. The bottom line is that defense attorneys can only subsist economically if prosecutors charge people with crimes. Prosecutors are thus valuable sources of revenue for defense attorneys. The more prosecutors charge people with crimes, the more people defense attorneys have to defend. Thus, there exists an ironically disturbing financial incentive for defense attorneys to encourage prosecutors to charge people with crimes.

Similar to matrimonial cases, there are two types of criminal defendants. Those who have money and those who don't. The latter is more common than

the former. Criminal defendants with money constitute an economic windfall for defense attorneys. Faced with the prospect of incarceration, such defendants will willingly relinquish all their financial assets to escape imprisonment. In these cases, prosecutors will be expected to assist defense attorneys with effectuating a transfer of the defendant's assets to the defense attorney. This constitutes a fulfillment of the prosecutor's duty of loyalty to his fellow Gang member, the defense attorney. This prosecutorial duty of loyalty to the Gang continues to exist so long as sufficient financial assets of the defendant continue to be transferred to the Gang. In accordance, criminal defendants with substantial amounts of money, in all but the worst types of cases, can be expected to enjoy acquittals and lenient sentences as a reward for making substantial financial contributions to the Gang.

Since prosecutors fulfill their duty of loyalty to their fellow defense attorney Gang members with respect to criminal defendants who have money, defense attorneys are similarly expected to fulfill their concomitant duty of loyalty to prosecutors when defending people who don't have money. Such defendants typically have their defense paid for by the State. In some States, private attorneys represent them and in other States public defenders represent them. The difference is irrelevant.

Criminal defendants without money, whether innocent or guilty of the alleged offense, represent nothing more than a financial liability to all members of the Gang. And all liabilities must be expeditiously discharged. Like people going through a divorce who don't have money, these defendants whether innocent or guilty must be quickly disposed of in any manner. The defense attorney in these cases fulfills his duty of loyalty to the Gang by waiving important objections, declining to investigate facts, failing to interview witnesses and giving their brethren prosecutors the quick and easy criminal conviction they seek.

After all, fair is fair. The prosecutors help the defense attorneys out when dealing with criminal defendants who have money, so the defense attorneys must ensure that criminal defendants without money be convicted quickly and easily. This makes the prosecutors look good.

Lastly, I note the following predicate, which applies in any case. Whether civil litigation or criminal, the litigant or defendant needs to understand that at the trial court level they are dealing with multiple Judges. Each one of these Judges is a member of the Gang. The attorney representing the litigant is a Judge of the litigant. Opposing counsel is a Judge of the litigant. And of course, the trial court Judge even has a nominal role as a Judge.

As a result of this, the outcome of cases that don't settle will be decided before they go to trial. Before the litigants set foot in the courtroom on the day

of trial, the matter will have already been decided. The trial itself is nothing more than window dressing. The decision will have been made based on phone calls and conferences between the attorneys, and meetings between the attorneys and the Court. The litigants will be excluded from knowing with certainty what really went on during these meetings and phone calls.

Throughout the meetings and phone calls, each of the various Judges of the litigants (the attorneys and the Judge) will decide how the case is going to proceed if it goes to trial. The discussions will be largely determinative in deciding which attorney will sell out their client, the extent of the sell out, and the manner in which the sell out is to be effectuated. If the case is to be tried before a jury, these unwritten off-the-record understandings will largely determine how evidential rulings are to be made at trial by the Court. In this manner, the jury will be effectively neutralized and blindly guided to render a decision in conformity with the Gang's decision made long beforehand.

Because the last thing the Gang needs is to have its whole master plan of asset acquisition frustrated by a jury. Too much work goes into the thing to allow something that outrageous to occur.

THE LUXURY OF BEING THE LOSING LITIGANT

This chapter might more appropriately be titled, "GOD Shines HIS Brightest Light on the Losing Litigant." It is probably fair to say when a person is involved in a civil litigation, they want to win. I present here the novel proposition that a person often gains more by losing, than by winning. In Montesquieu's historic work "Spirit of the Law" in the chapter, "On the Corruption of the Principles of the Three Governments," he writes:

> "When I was rich I was obliged to pay court to slanderers, well aware that I was more likely to receive ill from them than to cause them any. . . Since becoming poor, I have acquired authority; no one threatens me. . . . I used to pay a tax to the republic, today the republic feeds me; I no longer fear loss, I expect to acquire." [31]

Or as the singer Bob Dillon wrote, "When you ain't got nothing, you got nothing to lose." [32]

For purposes of this article, when I apply the term "lose" or "win" to litigation, it refers to a case conclusively decided by a Court with no appeal pending. Thus, any litigation resolved by settlement is excluded.

When you lose, presumably the opposing side views itself as winning. In the immediate aftermath, the winner assumes justice has prevailed and experiences an initial euphoria. In contrast, the loser is dejected and feels a personal injustice has been done to them. This feeling is coupled with a loss of faith in the legal system.

For the most part, other than close friends and family, no one cares or worries about the loser. The winner tends to feel their interests have been adequately protected because the loser has been neutralized by the Court. As a result, in the early aftermath, generally the loser does not represent any further financial or ideological threat to the winner. A prudent winner will not engage in the infliction of further misfortune upon the loser. To do so, would be poor strategy. This is because it would raise substantial doubt in the minds of those who supported the winner regarding their true intentions. It would make them question whether the winner was really seeking justice as they purported in Court or alternatively just seeking to inflict harm upon someone else. It is a general characteristic of human nature that we admire benevolent and humble winners, who exhibit a sense of compassion for those they conquer. In contrast, we tend to hold in disdain winners who are perceived to be mean people. It is a

correspondingly similar trait of human nature that we tend to feel sorry for those who lose, even if we believe their loss was justified. This is attributable to the human emotion of compassion most people possess.

The foregoing principles lead to the premise that in most situations the loser of a civil litigation obtains the luxury of being left alone. In contrast, the winner bears the burden of having to be careful about the manner in which they conduct themselves after the win. So to a large extent, the loser gains in terms of personal freedom and the winner loses some freedom. This of course presupposes that just as the winner would be foolish to try and inflict further harm upon the loser, the loser must be sufficiently prudent to accept the immediate consequences of their loss.

Nevertheless, no one likes to lose. You would be hard-pressed to find someone who says, "I'm glad I lost, because I gained freedom." Undoubtedly, the first inclination of anyone who loses an important civil litigation, is to conceive of an action that will undo the injustice. In its basest terms, this is called "revenge." To embark on such a course however, in the immediate wake of the loss is an endeavor almost certainly doomed for failure.

The more prudent course for a person who has lost a case is to take maximum advantage of the "Luxury of Losing," it provides. This can encompass many different routes. The freedom from further attack by the winner that is generally provided to the loser who does not act precipitously gives rise to a "Luxury of Time" for the loser. The loser generally has an ample degree of time to determine the next course of action to be taken, if any. Whereas, the winner will be on guard for an immediate counter-attack, the level of caution dissipates as time passes. The more time passes, the less concern the winner has about any reprisal from the loser.

This does not mean the loser should use the element of time to simply plan a legal counter-attack. In fact, quite the reverse may be the case. Positively, the first course of conduct the loser should engage in is to assess the reasons giving rise to the loss. This mandates honest self-examination. Unfortunately, although this is the first course of conduct that should be taken by the loser, it really can't be successfully accomplished in the immediate after-math of litigation. The emotions run too high immediately following the end of a case. These emotions preclude a fair and honest self-assessment. A sufficient passage of time is necessary for self-examination to be genuinely productive.

Proper self-examination requires the losing litigant to determine whether they were genuinely right or wrong in the positions taken during the case. We tend to believe we are correct in the heat of a moment. However, the dispassionate reflection required for true self-assessment may lead to a different conclusion. In most cases each party, each attorney and the trial court Judge are

rarely entirely right or wrong. To allow for such a preposterous presumption would mandate a correlative conclusion that humans can be perfect, which we cannot. The loser needs to isolate and reflect upon those aspects of the case where they were wrong and those where they were right. This analysis should be performed not only within the context of applying positive law, but also upon application of general moral principles.

Questions the loser should reflect upon include, but are not limited to the following. Each individual question below is essentially two questions, as it should be asked from both the perspective of positive law and also from the perspective of morality.

1. Should I have won the litigation?

2. Why did I lose the litigation? What specific individuals, groups of individuals or organizations were most responsible for my loss? Was I the one most responsible for the loss, or was it someone else or some other group of people?

3. What did I gain by losing the litigation? Are there other people who are aware I lost and was untreated unjustly? Does a degree of support now exist for me from those people? Are those people contemptuousness of those who won or those who assisted the winners?

4. What things did I do correctly and what things did I do wrong?

5. What things did the opposing party, their attorney, my attorney and the Judge do that were right, and similarly what did they do that was wrong?

6. How strong is my sense of injustice as to what occurred?

7. Should I launch a legal counterattack, and if so why? Against who should a legal counterattack be launched? What person or organization is really responsible for what occurred?

8. If I decide to launch a legal counterattack, what is my true purpose for doing so? Is it to vindicate my own case? Is it to achieve an overall social justice that will be helpful to others? Or is it just to immorally inflict harm through legal process upon the individuals that committed an injustice upon me?

9. Should I just accept the loss and move on and try to lead a good life?

10. What are the Risks/Rewards of launching a legal counterattack?

11. How do other individuals who were not involved in the litigation, but who were aware of its existence view the conduct of everyone involved?

12. If I do decide to launch a legal counterattack, what should be the nature of it? What type of preparation is necessary? How much time will it take to prepare? How do I avoid making the same errors I made in the litigation that I lost?

A losing litigant who decides to embark upon the risky business of launching a legal counterattack, needs to balance the degree to which they will be sacrificing other aspects of their life and future in order to proceed upon such a course. Once a losing litigant makes the decision to proceed with a legal counterattack in the future, they instantaneously lose the freedom gained by losing the litigation. Cause, effect and time are zero sum games. No matter what decision is made on any issue in life, something is gained by taking a chosen path and something is lost. Simply stated, by selecting one option, we foreclose the option of taking a different path. Thus, to a certain extent no matter what decision a person makes on any issue, it is simultaneously both the right and wrong decision. To make matters worse, declining to select any option is a choice in and of itself, because it leaves a person precisely where they are.

A losing litigant deciding to pursue legal action as a result of losing a case, and who does not act precipitously, generally has ample time and freedom to prepare. As stated, first they need to perform an extensive process of self-examination. The next step is learn everything possible within legal contraints about their opponents.

Everybody has strong points and vulnerable points. By researching matters quietly and legally, and without drawing attention to yourself, you can learn about both aspects of your opponent. Who supports them? Who are their political enemies? Ultimately, you may determine that your real opponent was not even the litigant you originally opposed in the case you lost. It may not even be the attorneys who were involved in the case or the trial court Judge who ruled against you. After careful research you may determine their conduct was nothing more than a product of an unfair system, which even they were victims of. If you reach that conclusion, basic principles of morality mandate that your legal counter-attack should focus on the system, rather than any individuals.

The converse of the rule that a losing litigant gains a "Luxury," by losing, is that a winning litigant becomes burdened by, a "Poverty of Winning." A person cannot win a case exclusively by their own efforts. Even a Pro Se litigant who wins, needs the Judge to rule in their favor. The mere fact that winning a case at trial requires a decision by the Judge in favor of the winner, or a jury decision in their favor, or is based upon judicial rulings that allowed for a jury verdict leading to victory, or is a result of zealous representation by an attorney, means that the winner comes out of the litigation with Moral Debt.

Not necessarily financial debt, but a more onerous liability. They owe their victory to the actions of other people. In contrast, the loser does not owe anybody anything. In fact, since other people may feel internally guilty about their contribution to an unjust victory, they may feel they owe something to the loser.

The Debt incurred by the winner is coupled with the knowledge that the loser may launch a legal counterattack, thereby jeopardizing the win. Consequently, whereas the loser gains freedom and time, the winner loses freedom and time. Prudent winners generally lack the freedom to pursue further matters against the loser, since there is a high probability others would view them as ungracious, mean winners. Freedom is also lost to the extent winners expend time and effort to protect against possible countermeasures by the loser.

Similar to the loser of a case, prudence mandates that the winner should also engage in a process of self-examination and analysis. However, unlike the loser, the winner generally lacks sufficient incentive to do so and most often does not. The loser will ponder the loss endlessly and therefore has the opportunity to develop his mental faculties as a result of the loss. In contrast, the winner will tend to simply adopt a perspective of, "Well, I won, so therefore I was right," and then just leave the matter at that. By such a perspective, the winner increases his vulnerability.

In conclusion, there is positively a "Luxury of Losing" associated with losing a civil case that maximizes the prospect for human development. There is also a "Poverty of Winning" associated with winning a case that diminishes the prospect of such development. The world and universe are filled with doctrines of opposites. We often gain more by losing and lose more by winning. If the goal of human existence is attainment of Freedom, it can fairly be said the goal is achieved to a greater degree by losing a case, than by winning it.

Few people have any concern about the loser except in the immediate aftermath of the case. In contrast, the loser will endlessly ponder the matter. The process of self-reflection will lead to varying results amongst different individuals. By the time it is completed, the winner and direct supporters of the winner may not even be of faint concern to the loser.

Rather instead, the loser will have progressed to an understanding of the real reasons that gave rise to the loss. Those reasons may not involve specific individuals, but pervasive systemic injustices effectuated by organizations and policies. With proper preparation, it is at that point a well-coordinated and planned legal counterattack is then launched. Not for personal gain or vindication. But instead, to help other totally unrelated individuals, who neither the loser or winner of the original litigation ever even met. Those unrelated people then become the beneficiaries of fairness and justice.

So, it can fairly be said that individual, particularized litigations do not by themselves give rise to winners or losers at all regardless of the result. Losers win certain things, and winners lose certain things. The extent of such is predicated upon how they each conduct themselves after the case.

Ultimately, the only real winners may be people who we don't even know, but who are helped by us, due to our sensitized concern for them. They become the winners because they receive fair and impartial adjudications in other cases. We become winners by being better people who helped strangers. The loss of an individual litigation if addressed properly can potentially give rise to profound human development for the ostensible loser. In contrast, the winner typically wins nothing more than the immediate outcome of the case.

It is specifically and precisely for these reasons that it can be said in all fairness, GOD shines his brightest light on the losing litigant.

SOME GOOD NEWS FOR THE AVERAGE CITIZEN

The political philosopher Rousseau writes in his historic work "The Social Contract" as follows regarding the laws of a society:

> "As soon as man can disobey with impunity, his disobedience becomes legitimate. . . .
> . . .
> In any case, frequent punishments are a sign of weakness or slackness in the government. . . .
>
> . . . In a well-governed state few are punished, not because there are many pardons but because there are few criminals. In a decaying state the multiplicity of crimes assures impunity." [33]

One of the basic themes of this book has been the prevalence of State Bars and State Supreme Courts to deny admission to Bar Applicants, not because of acts constituting illegal conduct, but instead due to Applicant "attitudes." Typically, an Applicant who has engaged in a lot of civil litigation is branded by State Bar committee members with a presumption that he does not possess sufficient good moral character to be an attorney. This of course simply functions as an indictment of the committee member's lack of morality since engagement in civil litigation is a constitutional right. Taking the matter further, an Applicant who litigates to challenge immoral State Bar rules or judicial conduct is almost always denied admission. This of course brings into question the moral fitness of the State Bar to even administer the admissions function.

Civil litigation engaged in by Applicants is assessed by State Bars not based upon the merits of a litigation, but instead by who they institute suit against. The Bar's illegal concept is simply, "if you sue us, then you don't have good moral character." Applicants who sue State Bars are almost universally denied admission based upon the Bar's irrational and illegal conclusion that the lawsuit indicates their "attitude" mandates denial of admission. Ironically, from a perspective of truth, these lawsuits generally indicate the Applicant has a sense of morality and justice exemplified by many of the finest individuals in human history.

Similarly, an Applicant accused of engaging in the unauthorized practice of law by communicating truthful words containing legal information to help others is typically branded derogatorily by immoral Bar committees. This of course is understandable since the Judges supporting these irrational conclusions render judicial decisions for the purpose of promoting the economic interests of their lawyer friends. The concept is basically, "since you helped me become a Judge, I will render an irrational decision that falsely labels the Applicant has lacking good moral character. You will make more money and I will continue to have your political support."

It is an ongoing and endless thread in judicial opinions that State Supreme Court Justices provide legal support to people they like. They will not hesitate to violate the law or disregard U.S. Supreme Court opinions in order to rule against people whose attitudes they dislike. The mechanism for accomplishing this requires only a deceptive manipulation of the meanings of words and terms, built upon a foundation of subjective judicial self-interest.

After all, judicial opinions are just that. They are opinions of particular men and women who are no more special, nor intelligent than the average person. The only real distinguishing characteristic between a judicial opinion and the opinion of any citizen such as one formulated by an eight year old child, is that the judicial opinion carries with it immediate consequences. In contrast, the opinions of most citizens do not. Coupled with this is the fact that Judges have been trained as attorneys to skillfully misrepresent logic, morality and rational principles. In contrast, the average citizen generally does not possess nor desire attainment of this contemptible judicial skill.

The propensity of Judges to apply the law harshly to people whose attitudes they don't like is of course, not limited to Bar admission cases. Judges are mere humans and nothing more. Consequently, they are understandably handicapped by the personal emotions, irrationalities, cognitive deficiencies and mental imbalances afflicting all people at one time or another in their life. Thus, it can reasonably be expected as evidenced by the existent proofs in the Bar admission opinions, coupled with any cursory reading of a newspaper on any given day, that the law in the U.S. like all other nations is largely predicated upon whether someone is liked or disliked. The application of law tends to focus primarily upon how a person's attitude is perceived by the Courts, prosecutors, attorneys and governmental agencies involved. If they like you as a person you'll come out fine. If they don't like you, then you're screwed. The impact of the written law may play a role in the decision, but the ultimate outcome is generally based primarily on how well you are liked or disliked.

The foregoing gives rise to a simplistic premise. People with unlikable attitudes or unappealing personality traits will be treated more harshly in the

criminal law system than those with likeable attitudes. The focus of Courts, prosecutors and Judges, has shifted from whether a person committed an alleged illegal act, to whether the law should punish them for doing so because they are unlikable. Or alternatively should the Court let them get away with their illegal act because they are likeable and have the right attitude.

Of course, this premise exemplifies a deterioration of the rule of law, upon which our society supposedly rests. Nevertheless, for the average citizen it can fairly be said that "every cloud has a silver lining," so to speak. The "silver lining" associated with the aforementioned premise is as follows. It is a basic principle of economics that resources of any nature are limited. Consequently, the more Courts allocate judicial resources to punish those possessing bad attitudes without regard to whether the alleged illegal act was really committed, the fewer resources remain to punish those with "good attitudes" who actually commit illegal acts. This is an inescapable economic axiom.

The utilitarian rule this gives rise to for the average citizen is that if you want to commit an illegal act, make sure you do it with a "good attitude." For purposes of applying the phrase "illegal act" to this theorem, I exclude crimes of a violent nature. This is because I do not believe degeneration of the sacred rule of law has progressed to such an extent that people can expect to commit violent crimes and get away with them. The reason is that although principles of self-interest are firmly ingrained within the limited mentalities of Judges, prosecutors, defense attorneys and State Bar officials, there remains a stronger countervailing human sense of decency inherent within the souls of most people. This general sense of human decency will normally not be trumped by the financial or political self-interest of Judges or attorneys, regarding commission of violent crimes, except in rare instances.

But other than violent crimes, the bottom line is that the average citizen can get away with breaking a wide multitude of laws, so long as they are sufficiently astute to adopt an attitude that will be viewed favorably by law enforcement officials. They won't always be able to get away with breaking the law, but often they will. This is because just like there are some State Supreme Court Justices (typically, dissenting justices currently) who respect the law, there are also some trial court Judges and prosecutors who have a deep and genuine respect for the rule of law. However, since the greater proportion of Judges and attorneys do not have a genuine respect for the rule of law, the adoption by a lawbreaker of what will be perceived by the government to be a "good attitude" dramatically increases the lawbreaker's ability to escape penalty.

The majority of State Supreme Court Justices have made it imminently clear in their opinions that exhibiting a bad attitude is significantly worse than breaking the law. The latter may be forgiven. The former will be punished.

MY CASE IS THE MOST IMPORTANT ONE EVER (Just Like Everybody Else's Case)

In 1994, I lost custody of my only son in an unfair trial before a biased judge, who lacked respect for the written law. There is no doubt in my mind this was the greatest travesty ever perpetuated by any Court in this nation's history. So forget about the Iraq War. Forget about the decades of slavery that led to the Civil War. Forget about the presidential election of 2000. Forget about our nation's tax structure, innocent people who are sentenced to death, crime victims, racial discrimination, international policy, the Cold War, health care reform, unemployment, wrongful death lawsuits, religious rights, labor unions, free speech rights, the economy, immigration issues, and every other topic that we read about in the newspaper each day.

What we need to do is to get everyone in this country working to correct the injustice that was done to me over 15 years ago. We need to get the President to devote his full attention to this matter. All Senators and Congressmen should spend all their time on it to the exclusion of every other piece of legislation. All of the lawyers, judges, politicians and every member of the general public needs to make it their chief priority. I want the media on this full time. There should be no newspaper articles written about any other matters until the injustice that was done to me is corrected. Because the bottom line is that there is nothing more important in the world or the entire universe than correcting the injustice that was done to me. The reason is that my case was the most important one ever to occur since the world began thousands of years ago.

The foregoing is true and correct. At least, sometimes to me it is. As for the other four or five billion people in the world, I think it is fair to say that nobody's lost too much sleep over the fact I lost a child custody trial in 1994. In fact, I don't even recall the matter coming up in the 1996 presidential election. Neither the Democrats, nor the Republicans addressed it. By the same token, there have been so many injustices done to so many other people that I am not even aware of, I think it is fair to say I did not lose much sleep over their cases.

The fact is that we all tend to believe our own case is more important than any other. It doesn't matter what issue or dispute is being litigated. While most people believe their case is more important than any other, the rest of the world generally doesn't even know your case existed. To the average person engulfed in their own dilemmas of paying bills, going to work, raising their children, attending weddings or funerals, dealing with the pleasures and tragedies of life,

getting their car fixed, or buying a house, the issue of whether you received a fair trial or not is a nonexistent concern.

In the first part of this book beginning on page 635, I wrote about the gross injustice perpetuated during the Confirmation Hearing of U.S. Supreme Court Justice Clarence Thomas. During the hearing, he made many public statements about how unfairly he was being treated, which I believe were quite correct. One statement he made to the U.S. Senate was as follows:

> "I think the country has been hurt by this process. . . . We are gone far beyond McCarthyism. This is far more dangerous than McCarthyism. . . ." [34]

There is a key statement missing in the above passage. The missing statement is one that was never even spoken by Justice Thomas. I think maybe he just forgot to say it. The missing statement is, "Because it's being done to me, instead of somebody else." What Thomas actually meant when he testified was that the events transpiring were:

> far more dangerous than McCarthyism **because it's being done to me, instead of somebody else.**

Justice Thomas has not been a bad U.S. Supreme Court Justice. By the same token, he certainly hasn't been particularly stellar either. Suffice it to say, he's no Bill Douglas or Thurgood Marshall. I have not seen the compassion, kindness and caring for the underdog exhibited by the Great Warren Court in his opinions. Nor, have I seen the appealing acerbic wit included in Nino Scalia's opinions. By the same token, he did write an exceptionally fine opinion in Rubin v Coors Brewing Company, 514 U.S. 476 (1995). In Rubin, he gave vitality to the First Amendment doctrine that there is little chance a statute can directly advance a governmental interest, if other provisions of the same statute directly undermine and counteract the statutory provisions at issue. He also does tend to at least give words a reasonable construction as exemplified by his joining in the fine Dissent of Justice Alito in Marrama v Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007).

Certainly, I had hoped for more from Thomas considering the grossly unjust manner in which he was treated at his own confirmation hearing. That however, is the essence of human nature. And Thomas is human. Injustice was his most important concern in 1991 when it was being done to him. After that, it became more or less an ancillary concern. Nevertheless, it is not impossible that he still may develop into a noteworthy Judge.

The main point is that people naturally view injustices perpetuated upon themselves as more important than injustices done to others. There is a propensity of people to regularly make offhand negative statements about the legal system in a social setting. Notwithstanding, deep down most people would probably profess a genuine (albeit dubious) belief that they will be treated fairly by a Court of law. At least, when their litigation begins. By the end of the case, if they have lost, chances are they will have a markedly different opinion. On the other hand, if they win, they will be the first to state assuredly that justice was served and the legal system works. Thus, we have a clear, bright line rule to rely upon. If you win, the justice system works, and if you lose, it is unfair.

The problem with this bright line rule is that winning does not furnish any more proof that the justice system is fair, than losing demonstrates it is unfair. Consider the average person who regularly makes sarcastic negative comments about the legal system in a social setting. That same person has an expectation that the Court will treat them fairly if they are involved in litigation.

Yet, if they genuinely believe the system is unfair as exemplified by their constant proclamations condemning the legal system, how can they reasonably justify being a Plaintiff in any legal action? Admittedly, if they are hauled into Court as a Defendant they don't have a choice in the matter. But, there are many people who regularly make negative statements about the legal system and then proceed to institute suit in some matter against others. It would seem to be irrational to seek justice in a system that you lack faith in. There are at least four reasons why people do this, which are as follows.

The First reason is that although we tend to believe other people have been treated unfairly by the Courts, we think that our case will be an exception. The concept is, "it won't happen to me." This belief is rooted in our instinctive tendency to view ourselves as special and unique individuals in the universe. Although we know the Courts are unfair to other people, we think the Court will be sufficiently astute to recognize how truly special we are, and thus will treat us fairly. Regrettably, while we are all undoubtedly unique and special in GOD's eyes, such is not quite the case in the eyes of the Judiciary. To most trial court Judges, your litigation is nothing more than an administrative nuisance he needs to get off of his desk. People who think the Court will treat them any more fairly, than any of the other litigants the Court treated unfairly, will be quickly educated to their error by the end of the case.

The Second reason why people who justifiably lack trust in the Courts may voluntarily interject themselves into the system, is their belief that even if the Court is unfair, it is not as unjust as the person they are suing. The concept here is that "I know the Courts are unfair, but they can't be as bad as the

Defendant." People in this category seek to remedy an injustice wrought upon them by one unjust entity, by seeking assistance from another unjust entity.

The Third reason why people who lack trust in the Courts may voluntarily interject themselves into the system, relies on economic self-interest tempered with a willingness to compromise one's ethical principles. People in this category know exceptionally well how unjust the Courts are. However, they also have sufficient financial resources to utilize the Court's injustice to their own self-advantage. Good examples of people or entities in this category are greedy landlords, debt collectors, insurance companies, credit card companies, banks and large corporations. They do not have the slightest degree of reluctance to enter into the legal system because they are precisely the ones the system is intended to benefit. They are the ones who made the Courts what they are. They pour a lot of money into the legal system by paying the right high-priced attorneys large legal fees on a regular basis. In turn, they are rewarded for their dedication to the system by legal rulings, which allow them to continue perpetuation of illegal acts.

Before addressing the Fourth reason, it should be noted that when the average person is treated unjustly by a Court it functions as a rude awakening in their life. They become sour on the entire government. They tell their family and friends about it. This perpetuates an overall societal increase in negative, sarcastic comments about the legal system by more people in new social settings. Judges do not sufficiently comprehend how far-reaching the impact of their intentional perpetuation of injustice in many instances will be. While this is partly due to their inferior intellect, it is also somewhat derivative of how sheltered they are from the rest of the world.

Judges need to realize that their rulings affect a lot more people than just the particular litigants involved in a case. When Judges render rulings they know are incorrect for the purpose of rewarding friendships with local attorneys, they are guilty of wreaking immense havoc upon this nation's government. And it happens a lot.

My basic qualm is not the fact that Judges make wrong legal decisions. That is understandable. Judicial decision-making is extremely difficult and the law immensely complex. It is inevitable that incorrect legal decisions are going to be made. There are many good Judges and it is unavoidable that even the most trustworthy, hard-working, ethical judge is going to make errors. However, it should not be equally anticipated that many Judges <u>intentionally</u> render incorrect legal decisions when they are fully aware the decision is wrong. These are the decisions causing damage to our government. When Judicial decision-making becomes a process of rewarding friendships with local attorneys, it causes an absolutely massive diminution of faith in the Courts by

the general public. Similarly, the same effect inures when Judges willingly abandon the written law in favor of their personal preferences, to reward or punish litigants they like or dislike.

The essence of being a good Judge is to allow application of the written law to trump your personal preferences, likes and dislikes. That means if a Judge totally detests what he perceives to be the arrogance of a litigant standing before the Court, but he also knows they are 100% correct on a legal issue based upon the written law, he must rule in their favor. It's as simple as that.

Yet, there are so many judges who render their decisions precisely based on their personal preferences, likes and dislikes. The written law is then used only as a supplement to justify their personal preferences. Not all Judges do it, but there are a lot who do. For Judges who engage in this contemptible treatment of the written law, the phrase "justice is blind" is effectively defined as follows. It means the Judge's decision will be based on how you look, who you know, and how you generally appear to the Court. In conjunction, the phrase "rule of law" comes to mean the process whereby a Judge substitutes their personal preferences and biases for written statutes and court rules. And "case precedent" becomes nothing more than the process by which judges select those cases, which support their personal preferences.

For whatever reason, many people lacking either trust or faith in the legal system voluntarily interject themselves into the system. They think the Court will treat them fairly, even though they know others before them were treated unfairly. They enter the system willing to trust it, but dubious from inception about doing so. When they come to realize the error of placing their trust in a system they were dubious about trusting from the start, the rest of the world might just as well come to a stop. The reason is that there is no case more important than your own. At least to you. But, the rest of the world is not going to stop because of your case.

Oh, I almost forgot. The Fourth reason why litigants who don't entirely trust the legal system voluntarily interject themselves into it. It is the rarest reason of all. Undoubtedly, it is also the most risky. They seek to change the system. I kind of like that one.

A COMPARATIVE ANALYSIS OF STATE SUPREME COURTS IN THE 21st CENTURY AND THE GERMAN JUDICIARY IN THE 1930s

NOTE: The Description of the German Judiciary in this essay is based on INGO MULLER's book, "Hitler's Justice The Courts of the Third Reich," Harvard University Press (1991).

"The people should not be deceived. While the present Court sits, a major, undemocratic restructuring of our national institutions and mores is constantly in progress.
. . .
The Court must be living in another world. Day by day, case by case, it is busy designing a Constitution for a country I do not recognize." [35]

Board of County Commissioners v Umbehr, 518 U.S. 668 (1996)
Justices Scalia and Thomas, Dissenting

Every now and then a litigant who feels they are being treated unjustly refers to a Judge or other law enforcement official as a Nazi. Jack Kevorkian did it. Geoffrey Fieger did it. Litigants sometimes do it quite justly. Other times, they are just "shooting from the hip" so to speak because they are angered about judicial rulings, which are not in their favor. The litigant's concept and sometimes the media (which also periodically compares a Judge to a Nazi) is to convey a message that unless someone curbs that Judge's unlawful conduct, America will become like Hitler's Third Reich. Stronger criticism of the legitimacy of a government could not exist. That does not mean however, such criticism is always correct.

Hitler's Germany is widely considered to be the most despotic, ruthless, criminal and unfair government that ever existed. Consequently, to the extent it is proven that elements exist which, are common between official judicial conduct in the U.S. and the Third Reich, such conduct by U.S. Judges must be viewed circumspectly. If the commonality is genuine, rationality mandates that strong consideration must be given to eliminating those elements in the American Judiciary.

The purpose of this article is to provide an even-handed comparison of those elements, which exist in the American Judiciary and also existed in the

Judiciary of the Third Reich. This includes certain techniques and methods of judicial opinion writing and decision-making, which are common to both. In addition, I examine those elements that differentiate the two Judiciaries. To accomplish this undertaking, the nature of the German Judiciary and the limitations it faced under Hitler must be understood.

While there have been countless books written about Hitler and World War II in general, not nearly as much has been written specifically addressing the German Judiciary. The best book, I have come across regarding such was written by INGO MULLER, a German lawyer, law professor and official in the German Justice Department. It is titled "Hitler's Justice The Courts of the Third Reich." It was published in 1991. The Introduction to the book is written by Detlev Vagts and is an exceptionally good summary itself.

Muller explores the reasons why Judges and lawyers of Nazi Germany succumbed to a lawless regime. In addition the book probes into the issue of whether Nazi statutes actually constituted "law" since they were passed under the 1933 Enabling Act. Hitler had obtained that enactment through exclusion of Communists from the legislature and the imposition of enormous pressures and threats upon voters and deputies. The concept is that if the law giving rise to other laws was illegal then the Nazi statutes did not constitute law. [36]

When Hitler assumed power there was in existence a German Constitution, which provided substantial constitutional rights to the citizens. The theoretical legal linchpins that Hitler used to justify negation of those constitutional rights were the necessity for "defense of the state," and "emergency powers." These doctrines assumed full argumentative force in the Reichstag Fire Decree enacted immediately after the Reichstag fire. The fire that was set to the German legislative building occurred during the German elections that would take place shortly following Hitler's appointment as Chancellor. The theoretical underpinnings of the German experience set forth a strong example of the reasons why citizens should be particularly circumspect and wary of governmental negations of constitutional rights predicated on the need for the Executive to assume "emergency powers" in order to "defend" the State. [37]

While Hitler predicated his assumption of uncontrolled power on the need for "defense" and "emergency powers," the German Judiciary predicated its neutralization of the legal profession on the grounds of morality, character, ethical standards and professional standards. Essentially, as will be demonstrated in this article, countless German judicial opinions held certain conduct, which was objectively moral, to be immoral under German law. That which was ethical was falsely categorized as unethical. That which demonstrated good character was falsely labeled to constitute bad character.

Significant differences existed between the basic structure of the American Judiciary and that of the German Judiciary in the 1920s. Detlev Vagt's introduction to Muller's book points out that German courts have always functioned without a jury. [38] In contrast, the Anglo-American system is predicated upon jury trials. In Germany, law students begin attending law school directly from high school, whereas in the U.S. a college education is required. There is no such thing as prosecutorial discretion in the German system. [39] Instead, a German state's attorney who receives convincing evidence that a crime has been committed is required to institute proceedings. Unlike trials in the U.S., a trial in Germany, is kept under tighter control by the Judge. The Judge does most examining of witnesses, instead of functioning primarily as an umpire as in the American system. [40]

A brief history of the German Judiciary is presented by Ingo Muller and includes the following. After 1878 upon his promotion to Chancellor, Bismarck initiated a series of ultraconservative measures to purge the German Judiciary of its progressive members. Whoever aspired to a seat on the bench had to undergo an 8 - 10 year probationary period. The effect of this was that only one type of man could typically last in the German legal profession. Namely, highly conservative individuals with an extreme loyalty to authority. [41] Muller cites Leo Kofler's "History of Bourgeois Society" to characterize the behavioral type of individual that fit this mold:

> "A formalistic emphasis on duty, a false concept of honor . . . spinelessness combined with a tendency to heroic posturing, rationalized sentimentality, and a Prussian haircut." [42]

During the late 19th century, German Judges remained formally independent of the government, notwithstanding their characteristic submissiveness toward state authority. [43] The German Empire established in 1871 came to an end with the conclusion of World War I. In February, 1919 the Weimar Republic was established in defeated Germany. It was a fragile, fractured government, which lasted until Hitler assumed power in 1933. During the Weimar Republic criminal convictions for treason were widespread. Muller asserts that twice as many people were convicted of treason during each year of the Weimar Republic as during the entire 30 years preceding World War I. [44]

The German Supreme Court during the Weimar Republic alerted legal experts by writing opinions that held "defense of the state" was a valid justification and defense for committing a crime. [45] The effect of this was to place the interests of the state above the law. By implication even the most

heinous crimes were not punishable if committed in the interests of the state. [46] Keep in mind, these are judicial opinions written BEFORE Hitler assumed power under the preceding government. These types of decisions however, demonstrate how a Judiciary widely perceived as legitimate can cause the decay of the rule of law, thereby setting in place the foundation for someone like Hitler to assume power.

On January 30, 1933 the aging President Hindenburg appointed Hitler as Chancellor and requested him to form a coalition government. A day later, Hindenburg gave Hitler authority to dissolve the German Reichstag (Legislature) and call for new elections. Five days later, Hitler issued his "Decree for the Protection of the German People." It required all political organizations to report all meetings and marches in advance and allowed the police to forbid meetings, demonstrations and distribution of pamphlets at will. This all occurred in the midst of the so-called election campaigns. Three weeks later on February 27, 1933 when the political campaign was at its height, the Reichstag building where the legislators met went up in flames. [47]

Nazi leaders proclaimed that Communists set the Reichstag fire. But, it was clearly the Nazis who benefited from the fire, since it allowed them to consolidate their hold on power. One day after the fire on February 28, 1933, the Reichstag Fire Decree ("Decree for the Protection of the People and the State") was published. It became the main legal foundation for Nazi rule. It gave the government at the height of the election campaign, the power to shut down presses of left-wing parties, forbid publications by the opposition, and to arrest political opponents at will. It effectively annulled all basic constitutional rights guaranteed by the German Constitution. The mere spreading of any rumor that Nazis had set fire to the Reichstag became a treasonable offense. [48]

Paul Vogt, a Judge on the German Supreme Court in 1933 was placed in charge of investigating the cause of the Reichstag fire. He carefully followed his instructions not to search among Nazis for any conspirators. The legal defense of Communists who were charged with setting the fire was taken over by court-appointed attorneys who had the full confidence of the Judges, if not their clients. [49] At the trial Nazi leader Hermann Goring stated in regards to the Communists:

> "Your Party is a Party of criminals which must be destroyed. And if the hearing of the Court has been influenced in this sense, it has set out on the right track." [50]

Responding to the Defendant's assertions that the Reichstag fire had been the work of the Nazis the German Judges held as follows regarding the Nazi Party:

> "<their> ethical principles of restraint preclude the very possibility of such crimes and actions as are ascribed to them by unprincipled agitators." [51]

Predictably, the Nazis won the elections of March 5, 1933 through their coercive tactics. Eighteen days later on March 23 1933, they enacted the Enabling Act of 1933, which was titled as the "Law to Remove the Danger to the People and the Reich." It gave the government emergency powers to circumvent the legislature.

It is easy to see that the titles used for the German laws, as well as the German Judiciary's characterization of the "ethical principles" of the Nazi Party are intended to communicate positive moral character traits along with attributes of "justice," and "defense." A law labeled "Law to Remove the Danger to the People" conveys a positive message. This is notwithstanding that it is well known the Nazi government was guilty of precisely the opposite. The lesson to be learned from an analysis of the German judicial experience is that words used by Courts or governments cannot simply be accepted at face value. Rather instead, the "Real Essence" of the government and the underlying character and intent of the Judges must be examined, rather than blindly accepting their purported "Nominal Essence." Only in this manner can the true intent of such government officials be revealed.

On April 1, 1933 as part of a concerted action against Jews, the German ministries of justice suspended all Jewish Judges, public prosecutors and district attorneys. On April 7, 1933 a decree was issued called the "Law for Restoration of the Professional Civil Service." Once again, the name of the law conveys a positive message. In fact though, the law was designed to permanently remove all government officials who were Jewish, Social Democrats or otherwise characterized by the Nazis as "politically unreliable." [52] Coordination of attorneys and Judges continued in October, 1933 at the German Supreme Court building when 10,000 German lawyers swore with their right arms raised in a Nazi salute that they would strive as German jurists to follow the course of the Fuhrer to the end of their days. [53]

Muller tells the story of Erwin Bumke, born in 1874 to affluent parents. He was politically conservative and became President of the German Supreme Court in 1929. When the Nazi takeover occurred, Bumke was deeply concerned

and thought about resigning from the Court. In a letter to the State Chancery he threatened to resign writing:

> "It is almost more than I can bear to think that my name will be connected with a period of history of the Supreme Court which means its downfall." [54]

Supreme Court Justice Bumke's protest however, was not based upon moral indignation about the dismissal of his Jewish colleagues. Nor was his protest related to the many murders being committed by the Nazi regime. Rather instead, the crux of Bumke's protest focused on the plan to limit the pensions of retired German Supreme Court Judges. Ultimately, Bumke decided to remain in office. He played a key role in implementing Hitler's Race Laws by utilization of so-called "time-honored" and "well-respected" techniques of judicial interpretation. Bumke would enjoy Hitler's full confidence. Bumke's professional activities included his participation in a meeting of leaders of the German legal system to discuss procedures to be used for the mass murder of the handicapped. [55]

German legal scholarship at the time included Carl Schmitt's essay, "The Fuhrer as the Guardian of Justice." This so-called "scholarly" work presented the regime's legal and moral justification for Nazi murders committed in 1934. Muller notes it as a prime example of the depths to which legal scholarship could sink. [56] Schmitt became the Nazi's main legal theorist to present justification for the "State of Emergency." It was the burning of the Reichstag that provided the Nazis with the excuse they needed for declaring a State of Emergency. [57]

On page 337 of the first part of this book, I discuss the Georgia Bar admissions case of In Re Lubonovic, 282 SE2d 298 (1981), in which the Georgia State Supreme Court asserts that the State Bar has a right to inquire into the "innermost feelings" of an Applicant. The Georgia Court's cognitively deficient assertion in that case is frighteningly reminiscent of what Carl Schmitt wrote on behalf of Nazi Germany, when he stated:

> ". . . I cannot see into the soul of this Jew and that we have no access at all to the **innermost nature** of Jews. We are aware only of the disparity between them and our kind. Once you have grasped this truth, then you know what race is." [58]

Under Hitler's laws "political opposition" was a crime. However, as is often the case with terminology used in a law, it was left to the Courts to define the scope of the term "political." In doing so, the German Courts decided that the term applied to almost everything. This contribution of the German

Judiciary demonstrates the vast societal dangers caused by judicial application of the doctrine of Implied Construction of terms. It could in fact, happen in any country, including the U.S. On March 21, 1933, "Special Courts" were created with jurisdiction over all crimes listed in the Reichstag Fire Decree. Muller characterizes the style of judicial decision-making in Nazi Germany as follows:

> "The decisions . . . continued to be couched in the traditional language of the higher courts - that is, in a dispassionate and impartial tone largely free of Nazi polemic. Nonetheless, this should not disguise the fact that the Court of Appeals made a substantial contribution to legitimizing the persecution. . . ." [59]

Muller also points out that the Judiciary "repeatedly expressed the view that the illegality of the Communist Party was proven by the mere fact that Communists were being prosecuted." [60] German Bar associations began to announce new guidelines for membership. Muller writes:

> "The Bar Association of Berlin declared that establishing or maintaining a law firm with partners of both "Aryan" and "non-Aryan" descent was **unethical**." [61]

Note the emphasis above on "ethics" when the true purpose is to justify unethical government conduct. The Dusseldorf Bar Association decreed it was a violation of professional standards to employ former "non-Aryan" attorneys or to take over their clients. It further decreed that:

> "Every professional contact with . . . non-Aryan attorneys is a violation of standards." [62]

Defense counsel was required to undertake an entirely new role in the Third Reich. In a "Letter to Lawyers" the minister of justice notified the legal profession that defense counsel:

> "As counsel for the defense, the attorney has taken up a position closer to the state and the community. . . He has become a member of the community of guardians of the law and lost his earlier position as a one-sided representative of the defendant. . . . " [63]

It was the legal profession's own disciplinary committees that brought about the full coordination of the status of attorneys and their role as state servants. The Bar disciplinary committees and Bar admission committees in

Nazi Germany became the tools through which Hitler exercised his control over the legal system. Everything was done in the name of "Ethics" and "high professional standards," even though it was clear the exact, precise opposite was what was transpiring. However, everything the German Judiciary did was couched in the most positive terms imaginable. This is similar to how State Bars in the U.S. today publicly praise their own unethical programs and immoral conduct as being in the public interest, even though what they are doing is totally adverse and inimical to the public interest and U.S. Constitution. The following statement made by Nazi "Defense" Attorney Dr. Alfon Sacks could almost just as easily be made by State Supreme Court Justices in the U.S. today, which is a quite disturbing fact. Dr. Sacks stated that Judges, prosecutors and defense attorneys should be:

> "comrades on the legal front . . . fighting together to preserve the law. . . The coordination of their tasks must guarantee their practical cooperation and comradeship. . . Just as the new trial no longer represents a conflict between the interests of an individual and the state, now the legal participants should regard their tasks no longer as opposed to one another, but rather as a joint effort infused with a spirit of mutual trust." [64]

Ostensibly, the above statement sounds moralistic though it was designed to foster evil. Look at the words that these supporters of the German Judiciary used. Concepts of working "together," "cooperation," "joint effort," and "mutual trust." The German Judiciary didn't promote its program by overtly saying, "we're going to render unfair trials and kill a lot of innocent people." They used the most dispassionate and benevolent terms imaginable to characterize what they were doing. The most unconstitutional State Bar programs and State Supreme Courts in the U.S. today, utilize the exact, same precise methodology.

The foregoing modus operandi is uncannily characteristic of what State Bar admission committees and State Supreme Courts in the U.S. do. They couch immoral decisions in terms of "good moral character," "ethical standards" and "professionalism." In truth though, their sinister intent is disguised in formalistic legal terms and appealing language.

Muller points out that the German Judiciary "interpreted every appearance of coolness toward the regime as a breach of professional standards." [65] One attorney who "refused to vote in the Reichstag elections of March, 1936 as a protest against Gestapo persecutions was . . . disbarred." The Court held that the:

> "special duty of loyalty to the Fuhrer . . . raises the expectation that attorneys will show themselves to be loyal followers of the Fuhrer. . . Through his failure to participate in the election . . . he did give evidence of his own lack of loyalty to other members of the community. . . ." [66]

Note the emphasis above on "loyalty" and "community" when the true purpose is to subjugate the citizenry and crush political dissent. One German Court emphasized it had no reservations about violating the principle of secret elections writing as follows:

> "Once the attorney's vote had become known, "nothing stood in the way of scrutinizing his conduct with regard to **professional ethical standards**." [67]

Muller characterizes many aspects of the German Judiciary in the following paragraph:

> "The recognition of "defense of the state" as a justification for breaking the law made it possible for the courts to let the most serious crimes up to and including political assassinations go unpunished. The emphasis on motives, general tendencies, previous convictions, and character of a defendant - rather than the objective and verifiable circumstances of a particular act - made the criminal justice system flexible. . . ." [68]

One civil servant who refused to participate in the Nazi's "Winter Relief Fund" was disciplined and the Supreme Disciplinary Court wrote as follows:

> "Freedom to him means the authority to refuse to carry out all duties not explicitly prescribed by law, as he himself sees fit. He has refused to participate in a community undertaking, because he wishes to show that no one can compel him to; however, precisely **this attitude signified a reprehensible abuse of the freedom granted him by the Fuhrer** in his reliance on the German spirit." [69]

Note the emphasis above on the "freedom" purported to be "granted by the Fuhrer." We see here how effective the Judiciary can be at divesting the citizenry of freedom by falsely stressing its existence. In 1923, Germany had

adopted "Principles of Criminal Punishment." Paragraph 48 read as follows at that time:

> "Prisoners are to be treated . . . justly and humanely. Their sense of honor is to be respected and strengthened." [70]

The foregoing Paragraph was changed under Hitler's Judiciary in 1934 to read as follows:

> "The restriction of the prisoner's liberty is a penalty through which he shall atone for the wrong he committed. The conditions of imprisonment shall be such that they represent a considerable hardship. . . . Prisoners are to be . . . **strengthened in character.**" [71]

Note the emphasis above on strengthening character, when the true purpose was to simply justify the infliction of vicious physical punishment. The emphasis of the German Judiciary on "character," ethical standards, and professional standards is eerily frightening and unsettlingly reminiscent when considering contemporary State Bar admission opinions and disciplinary actions in the U.S.

A Court in Konigsberg, Germany held that a registry official could lawfully refuse permission to allow mixed marriages between Jews and Aryans. The Court determined that the application of such a legal principle was justified not because of the existence of a valid law prohibiting such marriages, but instead based on generally held beliefs about what is "right." The Court stated:

> "No one can be in any doubt that marriage between a Jew and an Aryan woman is contrary to the German **understanding of what is right**." [72]

Note the Court's use of the phrase "No one can be in any doubt." This is a standard judicial opinion writing technique used by a vast array of Courts in the U.S. today. Judges do not hesitate to contend that certain points are incontestable when in fact they are abjectly false. The German Court's opinion in this case was praised by Carl Schmitt as a "model of truly creative legal practice" and an "example" for every "Nationalist Socialist upholder of the law." [73] In a different case, the German Court of Appeals in Karlsruhe stated:

> "Today it has been recognized that the Jewish race differs considerably from the Aryan race with regard to blood, **character, personality**, and view of life, and that a connection and pairing with a member of this race is not only undesirable for a member of the Aryan race, but also **injurious . . . and unnatural**." [74]

The German Judiciary often used sexual offense allegations to justify the incarceration of Jews. Muller writes as follows:

> "The chief public prosecutor in Karlsruhe, for example, had notified the Ministry of Justice in 1935 that "within the jurisdiction of the Karlsruhe Court of Appeals, quite a large number of Jews . . . <have been> taken into preventative detention" for sexual offenses with "Aryans." [75]

Notably, it is quite common for Judges and politicians in any country to utilize and hide behind the Flag, Sex, the Bible and children to conceal their immorally detestable goals of subjugating the citizenry. A Hamburg County Court found that the romantic love affair of two young people who had written daily letters to each other during a five-week separation was "so grave and vile, that no mitigating circumstances can be found." The Court sentenced the male partner to six years in the penitentiary stating:

> "It is a prime example of Jewish effrontery, Jewish contempt for German laws . . . and Jewish unscrupulousness." [76]

Typically, when a Jewish man had a romance with a German woman the Courts held they had "seduced innocent girls of German blood." [77] In contrast, when a Jewish woman had a romance with a German man they were determined to be prostitutes.[78] In one case involving a Jewish woman who had a romance with a German man, the Court wrote she was:

> "a lascivious, morally depraved Jewess who used her unchecked sexual appetite and ruthlessness to acquire a strong influence over the defendant." [79]

The German Judges wrote opinions regarding Contract law and the reasons why it was logically inapplicable to Jews. The Court of Wanne-Eickel upheld the refusal of a German to pay a Jewish merchant on the ground that National Socialists "refuse in principle to enter into commercial transactions with Jews." [80]

A good example of how Judges regularly hide behind children to mask their diabolical political goals occurred when the Berlin Court took custody of legally adopted Aryan children away from their Jewish parents. However, at the same time the Court also "stipulated that the parents must continue to provide financial support for such children." In divorce cases of mixed parents, "the Aryan parent was always given custody of the children." [81]

In 1927, before assuming power Hitler had proposed a plan for killing newborn infants who had physical or mental defects. In 1933, a law was passed titled the "Law for the Prevention of Hereditary Diseases." It provided for mandatory sterilization in cases of genetic disorders. Note the title of the law. This essentially is how governments often function. The title of the law does not convey a message of murder. Rather instead, the title conveys a message that the government is doing a good and righteous thing. It would seem to any average person that preventing hereditary diseases is a praiseworthy objective. But, the essence of the law is clearly diabolical.

This modus operandi was not at all unique to Hitler, nor is it absent in the U.S. today. We have countless laws in existence in the U.S., which depending on who you ask are either "good" or "evil." Whether such laws are actually good or evil, it is irrefutable that almost universally the title of the law conveys a positive message. While I do not necessary believe the Patriot Act in the U.S. is an entirely bad law, there are parts of it that are. In any event, it is irrefutable that the name "Patriot Act" conveys a positive message. In contrast, if the Patriot Act had been titled, "A Law to Place U.S. Citizens Under Surveillance" chances are it would not have been received too well by anybody, which would have jeopardized its passage.

Defining what constituted a "hereditary disease" under Germany's "Law for the Prevention of Hereditary Diseases" naturally became subject to application of the Judiciary's manipulative doctrine of Implied Construction of terms. This resulted in an over-expansive and irrational construction of the phrase by German Courts. Ultimately, it was determined that the phrase "hereditary disease" included feeblemindedness, manic depression, epilepsy, blindness, deafness and alcoholism. [82]

Thus, we can see that it is not only the title of a law that is often deceptive. The "definitions" and scope of what is covered by a law often do not comport with a rational understanding of what is incorporated by the title. Hitler's plan for killing those with physical or mental defects relied in part on a book co-authored by law professor Karl Binding and psychiatrist Alfred Hoche. The book had been published in 1920 and was titled "Sanction for Destroying Lives Not Worth Living." Binding and Hoche, who were praised as so-called

German legal and medical scholars wrote as follows regarding the possibility of misdiagnosing what constitutes a hereditary disease:

> "For family members the loss is naturally very severe, but the human race loses so many members to errors that one more or less hardly matters." [83]

Moral condemnation by the German Judiciary was particularly directed at alcoholics. Alcoholism was regarded by the German Judiciary as the mark of an "unstable character." This is quite similar to how U.S. State Supreme Courts treat the consumption of alcohol by State Bar Applicants. In fact, in the German Courts when an alcoholic sought assistance to cure his alcoholism that became a point of reproach itself. [84] One German "Hereditary Health Court" stated:

> "Z is incapable of dealing with the consequences of alcoholism on his own. He is able to manage only with the support of his wife and teetotalers' groups. Thus, a condition of severe alcoholism . . . is present." [85]

As emphasized herein, governments typically do not assign evil names to laws or institutions that carry out their evil inclinations. Hitler's euthanasia program for inmates of state hospitals included their transfer to institutions where they were then murdered. They were transported by an organization that was named the "Charitable Association for Patient Transport, Inc." [86]

In the U.S. today we have seen a marked increase of States taking custody of children away from their parents. This typically occurs on the ground that the parents are purportedly "abusing" their children. As a result, the State asserts that the "best interests" of the child purportedly require they be put into custody of the State. Often however, the State takes custody of a child not because there is objective evidence the child is being abused, but instead because the parents are falsely labeled by Judges as being "uncooperative" with State officials. The Nazi experience demonstrates how the granting of too much leeway to the State to determine what constitutes "abuse" is a dangerous instrument. The Wilster Court in Nazi Germany took state custody of German children whose fathers had not sent them to join the Hitler Youth writing:

> "anyone keeping his children out of the Hitler Youth . . . is abusing his parental authority."[87]

A Berlin-Lichterfeld Court held that:

> "the danger posed to children by a Communist or atheist upbringing warrants their removal from their parents." [88]

German Courts also held sufficient grounds to take custody of children from parents existed when the children refused to give the Hitler salute at school. [89] Muller writes as follows regarding the general modus operandi of German Courts:

> "Even though the courts were playing an active role in supporting the injustices occurring every day, they nonetheless went to great lengths to defend their reputation. The **slightest reference to the high-handed breaches of law that were constantly occurring could result in criminal charges**. . . ." [90]

Note the indication above in Muller's statement that German Judges would respond to criticism by subjecting the critics to criminal charges. This is not much different than State Bars, which deny admission to Applicants who institute civil suits against them. And one does not need to go far in the U.S. to find any attorney who will not hesitate to tell his client that the main thing is to not piss off the trial court Judge who will be deciding their case. The simple fact is that whether the place is Nazi Germany, or the United States, or anyplace else, Judges tend to have a vindictive streak within them. Many (not all) respond to constructive rational criticism of their irrational conduct by inflicting harm upon the critic. Ostensibly, they use legal means. But in practicality, all they're doing is seeking revenge against those who don't agree with them.

In conclusion, there were numerous objectively similar characteristics in the methods used by the German Judiciary and legal profession to espouse their evil programs and plans, with those used by State Supreme Courts and other Courts in the U.S. today. Both use the most benevolent and innocent terminology to conceal the true nature of what they are doing. Most particularly, the public needs to be extremely wary and cautious of State Supreme Courts that twist the meaning and definitions of the terms "ethics," "professionalism," and "morality."

Like laws labeled by governments, close examination often reveals that the words used by Judges are intended to accomplish the exact opposite of what they ostensibly assert. They do this in order to help State Bar officials win public approval for immoral programs and an immoral course of conduct.

When this occurs the Judiciary's deceptive intent is to falsely portray immoral conduct in a positive light through the use of appealing terminology. Otherwise, if the proper words that truly define what is occurring were used, the State Bars would be subjected to public contempt, condemnation and legal opposition.

Like U.S. Supreme Court Justices Scalia and Thomas said, "a major, undemocratic restructuring of our national institutions and mores is constantly in progress." [91]

THE IRRATIONAL NATURE OF SO-CALLED RATIONAL BASIS SCRUTINY IS PREDICATED UPON THE JUDICIARY'S FEAR AND GANG MENTALITY

> "Much as Caesar had his Brutus, Charles the First his Cromwell," Congress and the States have this Court to ensure that their legislative Acts do not run afoul of the limitations imposed by the United States Constitution. But this Court has neither a Brutus nor a Cromwell to impose a similar discipline on it." [92]
>
> Orr v Orr, 440 U.S. 268 (1979)
> Justices Rehnquist and Burger, Dissenting

There are two types of people in the world. People who like to fight and those who don't. Within the former, there are two subcategories as follows. People who like to fight others weaker than they are and people who like to fight others who are stronger.

Those who like to fight stronger people possess this affinity because they perceive the outside chance of winning as an achievement and personal advancement. The concept of conquering someone stronger is internally perceived as an act of courage and bravery. More often than not, the courage inspiring a person to challenge those stronger can rationally be classified as a foolish and reckless act. Notwithstanding, I concede that for someone small and weak to take on a stronger person who can pummel them with certainty, while undoubtedly a foolish act, does in fact require a certain degree of courage. It's stupid courage, but courage nevertheless.

In contrast, those who like to fight weaker people lack any degree of courage. They are typified by the character trait of cowardliness. As a society, most people do not admire others who fight weaker individuals. They're considered bullies. However, we do tend to admire people who fight stronger individuals even if we believe they are stupid for doing so. Hence, the phrase so often used in Country Bars late on a Friday night after an argument over a game of Pool, "Man, he was an moron to do that, but I gotta admit it took a lot of guts. That guy could have kicked the crap out of him."

People who like to fight weaker individuals have a personal belief that they can validate their strength and power by subjugating those who are weaker.

They will avoid fights with people who are stronger, because the inner essence of such cowards is an insecurity of their own strength and power. They fear those who are stronger. They seek to conquer that fear by subjugating those who are weaker. Thus, it is precisely their fear of stronger individuals that causes them to bully weaker people. This is because a fight against someone stronger entails a risk, perhaps a certainty, they will be even more insecure when the fight is lost. Instead, these individuals attempt to eradicate their insecurity by fighting weaker people. The concept is that victory against a weaker person is a certainty and will function as a validation of their sense of self-worth. A prime example of people who like to fight weaker individuals are criminal gangs. It obviously requires no courage for three men to rob an elderly couple or for five high school students to beat up one.

Turning now to the manner of effectuating a fight, there are many alternatives available. Fighting can be physical, but does not have to be. Fighting can manifest itself in verbal conflict, writing letters, sending e-mails, litigation or a wide variety of other options. The conflict giving rise to fighting in any instance is at its most rudimentary level, a competition for Energy. A person seeks to maximize their own Energy by taking Energy from other people. They do so by physical force, strategy or manipulation.

The competition for Energy is related in the best-selling novels by James Redfield, "The Celestine Prophecy," "The Tenth Insight" and "The Secret of Shambhala." [93] Redfield's novels provide the best depiction of how the world and universe function that I have ever read. In "The Celestine Prophecy" he writes as follows (emphasis added):

> ". . . How humans compete for energy is the Fourth Insight.
> . . .
> **. . .** eventually humans would see the universe as comprised of one dynamic energy, an energy that can sustain us and respond to our expectations. Yet we would see that we have been disconnected from the larger source of this energy, that we have cut ourselves off and so have felt weak and insecure and lacking.
>
> In the face of this deficit, we humans have always sought to increase our personal energy in the only manner we have known: by seeking to psychologically steal it from others - an unconscious competition that underlies all human conflict in the world.
> . . .
> **. . . When we control another human being we receive their energy. We fill up at the other's expense and the filling up is what motivates us. . . .**
> . . .
> **. . . We want to win the energy that exists between people. It builds us up somehow, makes us feel better**." [94]

These basic principles of human nature now bring us back the Judiciary branch of government. The Judiciary is comprised primarily of people who like to fight weaker individuals. The Judiciary tends to avoid battles against those who are stronger. As I have emphasized repeatedly, there are some courageous Judges who render rulings against those politically stronger. These brave Judges often issue dissenting opinions against the powerful Judicial cabals comprising the majority. The rulings, opinions and actions of such dissenting Justices, while undoubtedly brave, courageous and righteous may also be characterized by some as reckless and foolish acts in light of the associated personal professional risk they inure.

Lamentably however, most Judges only have an affinity for fighting those who are immensely weaker. Prime examples are how so-called "No-Nonsense" Trial court Judges (i.e. Assholes) are quick to punish Pro Se litigants when they attempt to exercise constitutional rights. They know the Pro Se litigant is helpless, prone and vulnerable in their courtroom. That's what these Judges like. Yet, the exact same Judge who will viciously trounce a Pro Se litigant's due process rights, will be wholly reluctant to punish a State Bar official or high-powered local attorney who attempts to exercise constitutional rights. In such instances, they're not quite so "No Nonsense," but in fact thrive on Nonsense.

Trial court Judges tend to tread lightly and fearfully when dealing with litigants represented by high-powered, well-connected attorneys. But, they do not hesitate to swing what may fairly be characterized as a "Due Process Baseball Bat" at Pro Se litigants seeking due process. This pathetically sad state of judicial affairs is largely a by-product of the Judge's own emotional insecurity, lack of self-worth and cognitive infirmities. It is rooted in the Judge's self-realization that he has an immoral character.

One of the most damaging developments in American jurisprudence, demonstrating the fear inherent within the insecure persona of the Judiciary is the application of modern day Rational Basis constitutional scrutiny. The reason it is a damaging development is because the phrase is falsely labeled as "Rational," when in fact it is precisely the opposite. It is Irrational. It is a legalist concept rooted in the desire of Judges to validate their sense of self-worth by subjugating those who are weak. They adopt this political posture because they are afraid of challenging those who are stronger. More specifically, Judges are terrified of legislators.

Since Judges are afraid of legislators, they pacify them by applying so-called Rational Basis scrutiny to constitutional analysis of enacted laws. The fear of legislators causes Judges to be insecure in their authority. It gives rise to a feeling of internal resentment founded upon an inferiority complex attributable to the Judiciary's subservience to the legislative branch. Judges then seek to

conquer their inferiority and validate their sense of self-worth by directing their conflicts against those who are weaker. Namely, they punish indigent or Pro Se litigants who attempt to exercise their rights. It's really all founded upon the same psychological deficiency that causes street thugs to pick their fights against weaker people.

The crux of Rational Basis scrutiny is the element of "Deference" to legislative power. Since Judges fear legislators they "Defer" their judicial duty to carefully scrutinize legislation, no matter how irrational enacted laws may be. The historical development of modern-day Rational Basis scrutiny proves its foundation is built upon judicial fear.

In 1905, the U.S. Supreme Court in Lochner v New York, 198 U.S. 45 (1906) determined that the "liberty" interest of the 14th amendment included a right to contract and that right was infringed by a New York statute. Thus, Lochner took an aggressive substantive due process approach to judicial review of a legislative enactment. It did so in order to justify striking down a statute. The aggressive approach adopted by the Lochner Court can fairly be regarded as the absolute antithesis of modern-day Rational Basis scrutiny. Lochner became the leading substantive due process case providing justification for invalidating numerous economic statutes until the 1930s. It represented an attempt by the Judiciary to assert its legitimate power of reviewing legislation. However, it did so for the purpose of protecting wealthy corporate interests, rather than economically disadvantaged citizens, who were basically thrown to the dogs by the Court's opinion.

In response to Lochner, opponents of the Judiciary charged that the opinion effectively made the U.S. Supreme Court a Superlegislature. This was because under Lochner, statutes were subjected to a close and piercing review. Minimal deference was given to legislators who enacted statutes. Lochner's approach towards substantive due process would last for about 32 years, until its collapse in 1937. During its' now defunct heyday, Lochner was criticized sharply by many Justices of the Court including Holmes, Brandeis, Stone, Cardozo and the so-called "tenth" Justice " Learned Hand (Hand was a Federal Court of Appeals Judge, but his opinions were given almost as much respect as those of a U.S. Supreme Court Justice). [95]

It is important to distinguish between "Modern-Day" Rational Basis scrutiny and the original formulation of "Rational Basis" scrutiny. As originally formulated, Rational Basis scrutiny is a very sound methodology for reviewing legislative enactments. The problem is that the element of judicial fear since 1937 has resulted in a perversion of its original formulation that results in judicial review today being tantamount to no review at all. This is because "Modern Day" Rational Basis scrutiny is predicated upon an overly extreme

deference to the inferior intellect of legislators. This fear came into existence as a result of FDR's Court Packing Plan of 1937. However, before addressing the specifics of the Court Packing Plan, the manner in which Rational Basis scrutiny was formulated after Lochner needs to be further explained.

The original formulation of Rational Basis scrutiny was set forth in 1920 after Lochner in the case of F.S. Royster Guano v Virginia, 253 U.S. 412 (1920). Royster Guano was in conformity with the approach Lochner adopted to review the legitimacy of legislation. In Royster Guano, the Court held that **a legislative classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced must be treated alike**. Furthermore, under Royster Guano, a legislative classification could not be sustained if the classification itself was illusory. Thus, Royster Guano presented a very sensible approach to review of legislative enactments that subjected them to a close and piercing review. Under Royster Guano's approach to Rational Basis scrutiny, legislators could not simply do as they please.

However, as will be demonstrated herein, in today's judicial world, the requirement of Royster Guano that legislative classifications have a "substantial relation" to the object of the legislation has essentially been thrown into the trash bin. Today, the immoral judicial practice of sustaining illusory legislative classifications is the norm rather than an aberration. The Court's transition from the sensible Rational Basis scrutiny of the Royster Guano approach, to its posture of fear and timidity under "Modern Day" Rational Basis scrutiny occurred primarily as the result of one event. That event was the 1937 Court Packing Plan. Some of the background is as follows.

The Lochner theory and its corollary Royster Guano approach to scrutinizing legislation had provided the Court with the means to declare economic reforms of Franklin D. Roosevelt unconstitutional. By taking on FDR, the Justices of the Court at that time could fairly be classified within the category of those who exhibit bravery by fighting with others who are stronger. FDR was extremely popular and much stronger than the Court.

As a sidenote, I point out that I favor many of the programs proposed by FDR and enacted by Congress. However, the issue is not whether one supports or opposes FDR's programs. The point is that by taking on FDR the Justices were exhibiting courageous conduct. But, when the Court caved into FDR like a bunch of chickens it was never really able to regain its self-esteem. It was humiliated under FDR and cowered before him. It is irrefutable FDR put the Court to shame. He gave the Justices a lesson in humility they have never forgotten or recovered from. Stated bluntly, he politically kicked the crap out

of them. The political beating they took caused the Judiciary to become intensely fearful of other government officials. This fear over the years caused the U.S. Supreme Court to abandon its duty of properly reviewing legislative enactments as "Modern Day" Rational Basis Scrutiny continued to develop.

Here is what happened. Legislation FDR supported, that was validly enacted by Congress was being struck down by the Court using the Lochner and Royster Guano basis for review. As a result, FDR's entire economic reform program in the 1930s was in danger of being invalidated by the Court. To combat this, FDR came up with the 1937 Court Packing Plan to neutralize the U.S. Supreme Court. His plan was driven by the fact that six of the nine U.S. Supreme Court Justices were in their seventies.

The Court Packing Plan began when FDR shocked the entire country on February 5, 1937 with his proposal to reorganize the Judiciary. His plan included a provision that for every Supreme Court Justice who did not retire after age 70, the President would be empowered to appoint a new Justice, up to a total of six. The transparent effect of the plan would be to dilute the voting power of the Justices by expanding the number of Justices on the Court, up to a potential total of 15. The fight to gain approval of the Court-packing plan was bitter. [96]

Almost as soon as the political battle started, the Justices of the US Supreme Court (Justice Owen Roberts particularly) caved into the pressure. They compromised the honor, integrity and conscience of the Court in favor of their own self-preservation and self-interest. They did so by holding that the National Labor Relations Act, which was strongly supported by Roosevelt was constitutional. While I personally support the NLRA myself, the concept of the Supreme Court diametrically reversing course on a vast economic program simply for purposes of self-preservation makes the process of judicial review a mockery. The U.S. Supreme Court came out of the mess looking like nothing more than a bunch of impotent political chickens.

More specifically, it was one particular Justice who caused the Court's humiliation. It was Justice Owen Roberts. Until the NLRA case, Roberts had been consistently voting against FDR's legislation along with the conservative block of the Court. Yet, in March, 1937 immediately after Senator Wheeler began public hearings on the Court Packing Plan, Justice Roberts switched his vote in favor of FDR's programs. This betrayal of his personal conscience gave the liberal wing of the Court a 5-4 majority in favor of FDR. Since the Court handed down its NLRA opinion on March 29, 1937 precisely after the Senate hearings began, Justice Roberts vote switch must be interpreted as a switch attributable to fear. In fact, Justice Hughes told Justice Roberts that by switching his vote, he had "saved the Court" [97]

The Justices came to the realization that if they didn't start upholding FDR's legislation, they were going to lose the Court packing plan battle. This would have the concomitant effect of individual Justices losing personal political power. So the fear of FDR caused the Court to start validating the programs he proposed. The impact of Justice Roberts vote switch was that from that point forward legislative enactments proposed by FDR were for the most part upheld. The Court packing plan was defeated as part of the unwritten deal.

After suffering this humiliating defeat, the U.S. Supreme Court ceased to engage in a close and piercing review of legislative enactments. Instead, the Court just started presuming statutes were constitutional. And that is how the modern day version of so-called "Rational Basis" scrutiny came into being. It is what caused the more sensible test of Royster Guano to be substantively abandoned. As a matter of form, Royster Guano continued to be recognized and still received "lip-service" even decades later. But, the Lochner doctrine was wholly discredited and abandoned. Royster Guano was continuously modified and its application today is a skeleton of its original formulation.

To this point, I have addressed the development of "Modern Day" Rational Basis scrutiny, focusing on its typical application to legislative enactments. However, the Judiciary also applies the test to determine the constitutionality of regulations affecting the legal profession. By doing so, the Judiciary is engaging in a very underhanded and sneaky course of immoral conduct. The reason is as follows. "Modern Day" Rational Basis scrutiny is totally predicated upon the concept of the Judiciary giving "Deference" to the power of the legislature. But that element is completely absent when the Judiciary reviews its own rules and regulations. Stated simply, the Judiciary can not "Defer" to itself. Additionally, although opponents of the Lochner approach may have been correct that it caused the Judiciary to fail to give sufficient deference to legislative judgments, it did positively result in a close and piercing examination of legislation.

Since the element of "Deference" is markedly absent when the Judiciary reviews its own rules and regulations, by adopting Modern Day Rational Basis scrutiny as the review approach, the Judiciary has effectively insulated itself from any meaningful review. Put simply, regarding the issues most affecting its own self-interest the Judiciary gets to do as it pleases without regard to constitutional limitations. The Judiciary gets to engage in illegal conduct. It transgresses beyond the proper boundaries of its power because Judicial rules and regulations are subjected to a lower degree of scrutiny than any legislation. The reason this occurs is as follows.

Any proposed legislative enactment is considered by elected legislative officials. In contrast, Judicial regulations are typically enacted by officials who are not elected. Additionally, legislation is typically enacted after an open public debate and a vote on the issue by legislators. In contrast, Judicial rules and regulations are just adopted by Judges. The public doesn't get to see any part of the process. The rules just suddenly "appear" one day. Most importantly, the legal legitimacy of any legislative enactment is potentially subjected to review by a different branch of government (i.e. the Judiciary). In contrast, the Judiciary is the only branch that gets to review the legitimacy of the rules that it enacts for its own benefit.

Thus, as indicated above, legislative enactments are subjected to at least three levels of review. Two are openly exposed to the general public (i.e. the debate and the vote), and the third is performed by a different branch of government. In contrast, by subjecting Judicial enactments to toothless "Modern Day" Rational Basis scrutiny, there is only one level of review. And it is a worthless review. It is flaccid scrutiny by the same Judiciary that enacted the regulation in the first place. In technical legal terms, this is known as what is called a "Crock of Shit."

By allowing judicial rules, policies and regulations to be subject to mere Rational Basis scrutiny, where the element of Deference is markedly absent, and when that element is the precise justification for Rational Basis scrutiny of legislative enactments, the Judiciary jeopardizes its legitimacy. It is engaging in blatant hypocrisy by allowing its own enactments to be subjected to less review than legislative enactments. The Judiciary does so in a transparent and amateurish self-serving quest to allocate power to itself. It wants its own rules and regulations to be subjected to less scrutiny than statutes. This is notwithstanding the fact that with respect to both, the final level of review (judicial review) uses the phraseology "Rational Basis scrutiny." It is anything but, Rational. The concept correlates wholly with the theory that due to the fear of challenging legislators (the stronger), the Judiciary shifts to subjugating those who it can more easily control with its own rules and regulations (the weaker).

History irrefutably demonstrates that the primary justification for Rational Basis scrutiny is to give deference to the powers exercised by another branch of government. That was the focus of the conflict involving the 1937 Court Packing Plan. Where the element of deference does not exist, Rational Basis scrutiny should not be applied, since "deference" is the definitive characteristic. It is logistically impossible to "defer" to one's self. The Judiciary cannot defer to itself and therefore so-called Rational Basis scrutiny is entirely inappropriate with respect to regulations pertaining to the legal profession, adopted by the Judiciary.

After the Court Packing Plan debacle, some of the developments of Rational Basis scrutiny into its "Modern Day" good for nothing version were as follows. In 1966, Justice Harlan, Dissented in Katzenbach v Morgan, 384 US 641 (1966) writing:

> "It is suggested that a different and broader equal protection standard applies in cases where "fundamental liberties and rights are threatened," . . . which would require a State to show a need greater than mere rational policy to justify classifications in this area. No such dual-level test has ever been articulated by this Court. . . ." [98]

Four years later, after such a dual-level test was adopted by the Court, Justice Harlan Concurring in Williams v Illinois, 399 US 235 (1970) wrote:

> "The "equal protection" analysis of the Court is, I submit, a "wolf in sheep's clothing," for that rationale is no more than a masquerade of a supposedly objective standard for subjective judicial judgment as to what state legislation offends notions of "fundamental fairness." . . . .
> . . .
> The matrix of recent "equal protection" analysis is that the:
>
> > "rule that statutory classifications which are either based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny equal protection unless justified by a "compelling governmental interest." Shapiro v Thompson at 658 [99]

Thus by 1970, there were basically two levels of scrutiny. There was Rational Basis scrutiny, which applied to everything other than suspect criteria or fundamental rights, and Strict Scrutiny that applied to suspect criteria and fundamental rights. The standard for Strict Scrutiny was that the classification had to be necessary to serve a compelling state interest. Shortly thereafter in Carey v Brown, 447 U.S. 455 (1980) it was held that to survive Strict Scrutiny the classification also had to be:

> "finely tailored to serve substantial state interests and the justification offered for any distinctions it draws must be carefully scrutinized." [100]

The Strict Scrutiny standard became that the classification had to be "necessary to serve a compelling state interest and narrowly drawn to achieve that end." Perry Education Assn. v Perry Local Educators Assn., 460 US 37, 45

(1983). All classifications other than those applied to suspect criteria such as race, or fundamental rights were subject to Rational Basis scrutiny. The impact of this was to immunize most legislation from judicial review. As Justice Marshall correctly pointed out:

> ". . . except in cases where the Court chooses to invoke strict scrutiny, the Equal Protection Clause has been all but emasculated." [101]
>
> Marshall v U.S., 414 YS 417 (1974)

Recognizing that the modern day version of Rational Basis Scrutiny rendered meaningful judicial review a virtual nullity, Justice Marshall began pushing hard for a third level of review in a series of Dissenting opinions. For example, he wrote in Massachusetts Bd. of Retirement v Murgia, 427 U.S. 307 (1976):

> "If a statute invades a "fundamental" right or discriminates against a suspect class, it is subject to strict scrutiny. If a statute is subject to strict scrutiny, the statute always, or nearly always . . . is struck down. Quite obviously, the only critical decision is whether strict scrutiny should be invoked at all. . . .
>
> But however understandable the Court's hesitancy to invoke strict scrutiny, all remaining legislation should not drop into the bottom tier, and be measured by the mere rationality test. For that test, too, when applied as articulated, leaves little doubt about the outcome; the challenged legislation is always upheld. See New Orleans v Dukes . . . (the only modern case in which this Court struck down an economic classification as irrational.) It cannot be gainsaid that there remain rights, not now classified as "fundamental," that remain vital to the flourishing of a free society, and classes, not now classified as "suspect," that are unfairly burdened by invidious discrimination unrelated to the individual worth of their members. Whatever we call these rights and classes, we simply cannot forego all judicial protection against discriminatory legislation bearing upon them, but for the rare instances when the legislative choice can be termed "wholly irrelevant" to the legislative goal." [102]

Shortly after Marshall's Dissent in Mass. Board of Retirement, the Court in Craig v Boren, 429 US 190 (1976) set in place the groundwork for an "Intermediate" level of scrutiny that would apply to classifications based on gender. It did not formally become labeled as Intermediate Scrutiny until the early 1980s. Under Intermediate Scrutiny, a classification had to:

"serve important government objectives and be substantially related to achievement of those objectives." [103]

Thus, by the early 1980s, there were three levels of scrutiny, which were Rational, Intermediate, and Strict. Chaos then came to be when multiple levels of Rational Basis scrutiny developed. In 1981, Justice Powell wrote as follows:

"The Court has employed numerous formulations for the "rational basis" test. . . . Members of the Court continue to hold divergent views on the clarity with which a legislative purpose must appear . . . and about the degree of deference afforded the legislature in suiting means to ends." [104]

Schweiker v Wilson, 450 U.S. 221 (1981); Justice Powell - Dissenting - Footnote 4

The amusing fact is, that not only is so-called Rational Basis scrutiny Irrational, but the opinions clearly indicate the Justices of the U.S. Supreme Court do not even really know what it is. Kind of makes it hard to take their opinions seriously. This is because the Justices are wholly unable to agree on a uniform definition of Rational Basis Scrutiny. The following quotes demonstrate the haphazard, chaotic nature of the worthless and irrational standard of review called Rational Basis scrutiny. These quotes confirm the contemporary existence of a multitude of sub-levels of Rational Basis Scrutiny thereby rendering it unworkable. For ease of reference, I have labeled the various Sub-Levels to the best of my ability based on the following quotes from U.S. Supreme Court opinions (emphasis added):

1. LEVEL ONE - RATIONAL BASIS SCRUTINY

". . . classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a **fair and substantial relation to the object of the legislation**, so that all persons similarly circumstanced shall be treated alike." [105]

Eisenstadt v Baird, 405 U.S. 438 (1972); Justice Brennan - Lead Opinion - Citing Royster Guano Co. v Virginia, 253 U.S. 412, 415 (1920)

". . . . we have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances, we have sought the assurance that the classification reflects a reasoned judgment . . . whether it may fairly be viewed as **furthering a substantial interest** of the State." [106]

Plyler v Doe, 457 U.S. 202 (1982); Justice Brennan - Lead Opinion

2. LEVEL TWO - RATIONAL BASIS SCRUTINY

"The term "rational," of course, includes a **requirement that an impartial lawmaker could logically believe** that the classification would serve a legitimate public purpose that **transcends the harm to the members of the disadvantaged class**." [107]

City of Cleburne v Cleburne Living Center, Inc. 473 U.S. 432 (1985); Justice Stevens - Concurring

"A legitimate state interest **must encompass the interests of members of the disadvantaged class** and the community at large, as well as the direct interests of the members of the favored class. It must have a purpose or goal independent of the direct effect of the legislation, and one "that we **may reasonably presume to have motivated an impartial legislature."** [108]

Nordlinger v Hahn, 505 U.S. 1 (1992) Justice Stevens - Dissenting

3. LEVEL THREE - RATIONAL BASIS SCRUTINY

"In determining whether a challenged classification is rationally related to achievement of a legitimate state purpose, we must answer two questions: 1) does the challenged legislation have a legitimate purpose? and 2) was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?" [109]

Western and Southern Life Ins. Co. v Board of Equalization, 451 U.S. 648 (1981); Justice Brennan - Lead Opinion

"The State may not rely on a classification whose relationship to an asserted goal is so attentuated as to render the distinction arbitrary or irrational." [110]

City of Cleburne v Cleburne Living Center, Inc., 473 U.S. 432 (1985); Justice White - Lead Opinion

". . . . the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn **have "some relevance to the purpose for which the classification is made. . . ."** [111]

Estelle v Dorrough, 420 U.S. 534 (1975); Per Curiam,

"The rationality of a statutory classification . . . turns on **whether there may be a sufficiently higher incidence of the trait within the included class than in the excluded class to justify different treatment."** [112]

Craig v Boren, 429 U.S. 190 (1976); Justice Rehnquist - Dissenting

"The central question in these cases, as in every equal protection case not involving truly fundamental rights . . . is **whether there is some legitimate basis for a legislative distinction** between different classes of persons." [113]

Plyer v Doe, 457 U.S. 202 (1982); Justice Burger - Dissenting

4. LEVEL FOUR - RATIONAL BASIS SCRUTINY

"The constitutional safeguard is offended only if the classification rests on **grounds wholly irrelevant to the achievement of the State's objective.** . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." [114]

Williams v Rhodes, 393 U.S. 23 (1968); Justice Stewart - Dissenting

"we will not overturn such a statute unless the varying treatment of different groups or persons is **so unrelated to the achievement of any combination of legitimate purposes** that we can only conclude that the legislature's actions were irrational." [115]

Vance v Bradley, 440 U.S. 93 (1979); Justice White - Lead Opinion

"In areas of social and economic policy, a statutory classification . . . must be upheld against equal protection challenge if there is **any reasonably conceivable state of facts** that could provide a rational basis for the classification." [116]

FCC v Beach Communications, 508 U.S. 307 (1993) Justice Thomas - Lead Opinion

The foregoing quotes demonstrate that at a minimum there are at least four different Sub-Levels of "Modern Day" Rational Basis Scrutiny, and each level has its own set of varied formulations. Level One Rational Basis Scrutiny is quite similar to Intermediate Scrutiny, and correlates well with the sensible time-honored case of Royster Guano. As stated previously, that case does still receive some "lip-service," by the Court if nothing else. Level One requires that the classification have a "substantial relation" to the object of the legislation. That is a valid and meaningful test, but regrettably it is not followed anymore.

At the other end of the spectrum, Level Four Rational Basis Scrutiny is tantamount to no scrutiny at all, or "toothless" scrutiny as properly referred to by Justice Marshall. The following quotes pertaining to Level Four Rational Basis Scrutiny are applicable (emphasis added):

"I suggest that the mode of analysis employed by the Court in this case virtually **immunizes** social and economic **legislative classifications from judicial review**." [117]

U.S. Railroad Retirement Baord v Fritz, 449 U.S. 166 (1980); Justice Brennan - Dissenting

"Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a nonpunitive purpose, this exercise is, at best, a formality. . . . Yet this **toothless standard** applies irrespective of the excessiveness of the restraint or the nature of the rights infringed." [118]

Bell v Wolfish, 441 U.S. 520 (1979); Justice Marshall -Dissenting

"The court states that a legislative classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification,". . . . In my view, this formulation sweeps too broadly, for it is difficult to imagine a legislative classification that could not be supported by a "reasonably conceivable state of facts." **Judicial review under the "conceivable set of facts" test is tantamount to no review at all."** [119]

FCC v Beach Communications, 508 U.S. 307 (1993);
Justice Stevens - Concurring - Footnote 3

"the Court stated in United States v Salerno, 481 U.S. 739 (1987), that a "facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that **no set of circumstances** exists under which the Act would be valid. . . . **I do not believe the Court has ever actually applied such a strict standard**, even in Salerno itself. . . ." [120]

Washington v Glucksberg, 521 U.S. 702 (1997); Justice Stevens - Concurring

In 1995, in City of Cleburne, Texas v Cleburne Living Center, Inc., 473 U.S. 432 (1995) the Court arguably established yet another level of scrutiny that was between Rational Basis scrutiny and Intermediate Scrutiny, for classifications based on mental retardation. Justices Marshall, Brennan and Blackmun, Concurring and Dissenting wrote as follows (emphasis added):

"To be sure, the Court does not label its handiwork heightened scrutiny, and perhaps the method employed must hereafter be called **"second order" rational basis review**, rather than "heightened scrutiny." [121]

Then, in 1996 in U.S. v Virginia, 518 U.S. 515 (1996), the Court arguably established yet another additional level of scrutiny that was in between Intermediate Scrutiny and Strict Scrutiny, for classifications based on gender. Justice Scalia, Dissenting wrote as follows (emphasis added) :

> "I shall devote most of my analysis to evaluating the Court's opinion on the basis of our current equal protection jurisprudence, which regards this Court as free to evaluate everything under the sun by applying one of three tests. . . . It is my position that the term "fundamental rights" should be limited to "interests traditionally protected by our society," . . . but the Court has not accepted that view, so that strict scrutiny will be applied to the deprivation of whatever sort of right we consider "fundamental." **We have no established criterion for "intermediate scrutiny" either, but essentially apply it when it seems like a good idea to load the dice."** [122]

In summary, it appears to me that as a matter of practicality there are now at least eight different levels of constitutional scrutiny in existence. It is an absolute, total categorical irrational mess. Four levels of so-called Rational Basis scrutiny, one level of "second-order" Rational Basis scrutiny, one level of Intermediate Scrutiny, an unnamed level of scrutiny that is above Intermediate and below Strict, and one level of Strict Scrutiny. The inability of the U.S. Supreme Court to rationally, clearly and understandably delineate appropriate standards for constitutional review creates a total blank check for State Supreme Court Justices and legislators to substantively ignore U.S. Supreme Court opinions. It immunizes an immense amount of unconstitutional legislation and unconstitutional conduct by State Supreme Courts from any meaningful judicial review. This occurs because it is impossible for any rational person to discern what the U.S. Supreme Court really is saying the law is, or what it requires.

Fundamental Rights are supposedly subjected to Strict Scrutiny. The letter of the law on this particular point seems quite clear as a matter of form, but once again as a matter of substance such really does not occur. The stated positive law of the U.S. Supreme Court is thus not in conformity with the law as applied by State Supreme Courts. Justice O'Connor wrote quite clearly for a Unanimous Court in Clark v Jeter, 486 US 456 (1988):

> "Classifications based on race or national origin . . . and **classifications affecting fundamental rights . . . are given the most exacting scrutiny**." [123]
>
> Clark v Jeter, 486 U.S. 456 (1988); Justice O'Connor - Lead Opinion for Unanimous Court

Notwithstanding the clarity of this statement, which is wholly unambiguous and written by a Unanimous Court, the law is simply not applied in conformity with the dictate. Classifications that "affect" fundamental rights

are consistently not given the "most exacting scrutiny" as the mandate clearly requires. Classifications pertaining to Bar admission standards, irrefutably "affect" fundamental rights at a minimum, but they are currently given virtually no meaningful scrutiny whatsoever. At a maximum, the right for a qualified individual to engage in the practice of law is itself considered a "fundamental right," as indicated by the U.S. Supreme Court in New Hampshire v Piper, rather than a privilege as State Supreme Courts continue to falsely assert. Yet, Bar admission standards and classifications are consistently subjected to Level Four "toothless" so-called Rational Basis scrutiny.

In conclusion on this issue, so-called Rational Basis scrutiny as a matter of truth is wholly Irrational. The modern day version of it came into existence as a result of the Judiciary's fear of FDR. In practice today, it immunizes most legislation from any meaningful review because Judges fear legislators. The result is that the Judges choose their fights with others, namely litigants who are weak and others, such as Bar Applicants, who they can more easily control. This effectively provides the fragile egos of insecure Judges with a false sense of self-worth. They would not be able to attain this image of self-importance if they possessed the courage to engage in a real fight with someone stronger than they are, namely the legislative branch of government.

The application of "Modern Day" so-called Rational Basis Scrutiny by Courts is nothing more than a form of Judicial Cowardliness. The Courts are too afraid of the legislators to properly scrutinize their statutes. It is characteristic of the moral character traits exemplified by Street Gang members who prey upon an elderly couple. The only difference is that the nature of the Street Gang's cowardly conduct is at least clear, apparent and easily defined. With all of its varying levels and divergent formulations, Rational Basis Scrutiny isn't even that.

THE INTERSECTION OF THE FIRST AND FOURTEENTH AMENDMENTS

Prohibitions against the Unauthorized Practice of Law (UPL) rely on the dubious, if not outlandish assertion that the practice of law encompasses greater elements of "conduct," as opposed to "speech." Based on this classification UPL prohibitions are held by State Supreme Courts to be exempt from protections of the First Amendment. The classification of communications regarding legal information as "conduct," rather than "speech," allows State Bars to evade Strict Scrutiny review of UPL prohibitions.

Unsurprisingly and quite correctly, virtually every attack against UPL prohibitions relies on First Amendment protections. Although State Supreme Courts consistently uphold the prohibitions to protect the earning power of lawyers in their States, the U.S. Supreme Court has adopted a more balanced and rational approach. In NAACP v Button, 371 U.S. 415 (1963) the U.S. Supreme Court held that under the "guise" of professional regulation, States may not escape constitutional constraints.

In that case, the Court held that Virginia's UPL prohibition against solicitation by the NAACP violated the First Amendment right of political expression. Notably, Virginia had adopted its UPL "scheme" as part of a massive illegal plan of State resistance directed at violating the U.S. Supreme Court's opinion in Brown v Board of Education.

Subsequently, in Railroad Trainmen v Virginia State Bar, 377 U.S. 1 (1964) the U.S. Supreme Court again invalidated UPL prohibitions adopted under the "guise" of professional regulation. In that case, the Virginia Bar dishonestly asserted that the UPL regulation being review was enacted for the purpose of protecting the public. The dishonest assertion that UPL prohibitions are enacted for the primary purpose of protecting the public is a common thread among all State Supreme Courts. Protecting the public is an ancillary purpose of these prohibitions, but the primary reason the State Bars adopt them is to enhance the earning power of lawyers by eliminating more competent competition.

Notwithstanding State Supreme Courts' false assertions that the practice of law is "conduct" rather than "speech" it is clear from the U.S. Supreme Court cases that the validity of UPL prohibitions ultimately hinges upon whether they sustain scrutiny under the First Amendment. Similarly, the State Bar admission cases heard by the U.S. Supreme Court of Schware, Konigsberg, Anastaplo,

Stolar, Baird, and Wadmond , were all addressed within the context of the First Amendment.

There has not yet been a U.S. Supreme Court case addressing the moral character review process from the perspective of the intersection of the Equal Protection Clause to the 14th Amendment, and the First Amendment. Both State Bar admission standards and UPL prohibitions at a minimum "affect" the exercise of First Amendment rights, and at a maximum fall squarely within its purview. This is because the existence of the so-called good moral character admission standard and UPL prohibitions both result in the complete and total exclusion of speakers from communicating information that contains legal "content." Since they foreclose speakers from engaging in communication regarding an entire subject matter, they are "content-based" restrictions.

When a case deals with the intersection of both the First Amendment and the Equal Protection Clause of the Fourteenth, the U.S. Supreme Court has held that it is subject to the standards of scrutiny required by both the First Amendment and the Equal Protection Clause.. The seminal case is Police Department v Mosley, 408 U.S. 92 (1972), where the Court wrote (emphasis added):

> ". . . Of course, the equal protection claim in this case is closely intertwined with First Amendment interests. . . . As in all equal protection cases, however, the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment. . . .
>
> . . . But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content . . . .
>
> Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. . . .
> . . .
> . . . because of their potential use as instruments for selectively suppressing some points of view, this Court has condemned licensing schemes that lodge broad discretion in a public official to permit speech-related activity. . . .
> . . .
> . . . these justifications for selective exclusions from a public forum must be **carefully scrutinized**. Because picketing plainly involves expressive conduct within the protection of the First Amendment. . . .
> . . .

> . . . Therefore, under the Equal Protection Clause, Chicago may not maintain that other picketing disrupts the school unless that picketing is clearly more disruptive than the picketing Chicago already permits. . . .
> . . .
> **The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives**. . . ." [124]

Footnote 8 of the Court's Opinion in Mosley then reads as follows (emphasis added):

> "In a variety of contexts, we have said that,
>
> > "even though the governmental purpose be legitimate and **substantial**, that purposes cannot be pursued by means that broadly stifle **fundamental personal liberties** when the end can be more narrowly achieved.
>
> . . . This standard, of course, has been **carefully applied when First Amendment interests are involved**. . . ." [125]

The Court makes it clear in Mosley that the mere "involvement" of First Amendment interests in an Equal Protection Clause (EPC) claim mandates a higher level of scrutiny, than required in the typical EPC case. Since the right to express one's self under the First Amendment is the quintessence of a fundamental constitutional right, and since the communication of legal information at a bare minimum "involves" the First Amendment (even if one accepts its' classification as "conduct," rather than "speech"), the practice of law applying the Mosley standard, must be considered a fundamental constitutional right. It is also irrefutable that under Mosley, restrictions on the ability to engage in the practice of law should be subject to much more than Intermediate scrutiny due to the intersection of the First Amendment and Equal Protection Clause. See also, R.A.V. v City of St. Paul, 505 U.S. 377 (1992); Justice Scalia - Lead Opinion, Footnote 4 stating:

> ". . . This Court itself has occasionally **fused the First Amendment into the Equal Protection Clause** in this fashion, but at least **with the acknowledgement . . . that the First Amendment underlies its analysis**. See Police Dept. of Chicago v Mosley, 408 U.S. 92, 95 (1972) . . . Carey v Brown, 447 U.S. 455 (1980)." [126]

THE PRACTICE OF LAW IS A FUNDAMENTAL CONSTITUTIONAL RIGHT

The most straightforward support for holding that the ability to engage in the practice of law is a Fundamental Constitutional Right is simply to rely on what the U.S. Supreme Court said in the following cases (emphasis added):

> "The attorney and counselor . . . clothed with his office, does not hold it as a matter of grace and favor. The **right** which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence, revocable at the pleasure of the court or at the command of the legislature." [127]
>
> Ex Parte Garland, 4 Wall. 333, 379 (1866)

> "As the Court said in Ex parte Garland, 4 Wall. 333, 379, the **right** is not "a matter of grace and favor." [128]
>
> Willner v Committee on Character and Fitness, 373 U.S. 96 (1963)

> "The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected **rights**." [129]
>
> Johnson v Avery, 393 U.S. 483 (1969), Lead Opinion, Footnote 11

> "The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "**fundamental right**." [130]
>
> Supreme Court of New Hampshire v Piper, 470 U.S. 274, 281 (1985)

> "In *United Building & Construction Trades Council v Mayor & Council of Camden*, 465 U.S. 208 (1984), we stated that "the pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause." . . . [131]
>
> Supreme Court of New Hampshire v Piper, 470 U.S. 274 (1985); Footnote 9

"In C*orfield v Corvell*, 6 F.Case. 546 . . . Justice Bushrod Washington, sitting as Circuit Justice3, stated that the "**fundamental rights**" protected by the Clause included:

> "The **right** of a citizen of one state to pass through, or reside in any other state, for purposes of . . . **professional pursuits** . . . .

Thus, in this initial interpretation of the Clause, "professional pursuits," such as the practice of law, were said to be protected." [132]

> Supreme Court of New Hampshire v Piper, 470 U.S. 274, (1985); Footnote 10

"I do not mean to suggest that the practice of law, unlike other occupations, is not a "**fundamental**" interest. . . ." [133]

> Supreme Court of New Hampshire v Piper, 470 U.S. 274 (1985); Justice Rehnquist - Dissenting - Footnote 1

"The **practice of law is** not a matter of grace, but **of right** for one who is qualified by his learning and moral character." [134]

> Baird v State Bar of Arizona, 401 U.S. 1, 8 (1971)

It is quite remarkable that in light of the foregoing express statements by the U.S. Supreme Court, that certain incorrigible State Supreme Court Justices and State Bars persist in classifying the practice of law as a "Privilege." On the other hand, there are many State Supreme Court Justices who have fulfilled their legal duty to classify the ability to engage in the practice of law as a fundamental constitutional right. Yet, even most of them do not treat it as such. Instead, their intractable mentality causes them to irrationally persist in applying so-called Rational Basis scrutiny to the moral character issue.

It is important to point out that all of the U.S. Supreme Court Bar admission cases occurred prior to expansion of Strict Scrutiny to categories beyond race. They also all occurred prior to adoption of Intermediate Scrutiny for certain other classifications. Stated simply, any reliance placed by State Bars

and State Supreme Courts upon some language in Schware that does concededly suggest Rational Basis scrutiny is appropriate, has been completely and totally outdated and refuted by the Court's later opinions expanding the types of classifications warranting application of stricter standards of scrutiny.

There is little doubt that no fundamental constitutional right of any nature can be assured of protection without the competent, zealous and brave assistance of an attorney who is unwilling to yield except to the administration of true justice. Without brave attorneys, all constitutional rights succumb to injustice. Consequently, the ability to engage in the practice of law encompasses every single other fundamental constitutional right. This type of premise is elucidated in Footnote 15 of Plyer v Doe, 457 U.S. 202 (1982), where Justice Brennan who wrote the lead opinion writes as follows (emphasis added):

> ". . . With respect to suffrage, we have explained the need for strict scrutiny as arising from the significance of the franchise **as the guardian of all other rights**." [135]

Yet even the protection of voting rights, held by the U.S. Supreme Court to be subject to Strict Scrutiny specifically because it is the "guardian of all other rights," is in certain regards dependent on the ability of individuals to engage in the practice of law. This is because lawyers are the ones who secure the right to vote for citizens through institution of relevant litigation. It may be fairly stated that the "guardian" of voting rights is the ability to engage in the practice of law. In Harper v Virginia Board of Elections, 383 U.S. 663 (1966), the Court held that classifications, which might impinge on fundamental rights and liberties must be "closely scrutinized." The Court wrote:

> "Long ago, in Yick Wo v Hopkins, 118 U.S. 356, 370, the court referred to "the political franchise of voting" as a fundamental political right, because preservative of all rights." [136]

Similarly, in Reynolds v Sims, 377 U.S. 533, 561-562 (1964) the Court wrote:

> ". . . Especially since the right to exercise the franchise . . . is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." [137]

The ability for a qualified person to engage in the practice of law must be considered a Fundamental Constitutional Right with restrictions upon such being subjected to Strict Scrutiny for the following FIVE reasons. FIRST, Rational Basis Scrutiny is particularly inappropriate because the critical element of giving deference to legislative judgments upon which it is predicated, is lacking in regards to licensing standards established by the Judiciary. The Judiciary cannot defer to itself, so application of that "de minimus," "negligible" and "toothless" scrutiny standard to Bar admission qualifications is wholly irrational. As demonstrated herein previously, "Modern Day" Rational Basis Scrutiny is tantamount to no scrutiny at all. It relegates judicial review to nothing more than a complete waste of time and resources. If Courts are going to apply Rational Basis Scrutiny to Bar admission standards, they might just as well openly hold that the State Bars can do as they please without regard to the law and have unlimited discretion. Presumably, some citizens might then adopt the same perspective regarding their course of conduct.

The SECOND reason to apply Strict Scrutiny to Bar admission standards is that the ability for a qualified person to practice law protects all other fundamental constitutional rights. There is little doubt that no fundamental constitutional right of any nature can be assured of protection without the competent, zealous and brave assistance of an attorney. Without brave attorneys, all constitutional rights will succumb to injustice.

THIRD, there is an Inverse Relationship Between State Bar Admission Standards and UPL Prohibitions. In accordance with this inverse relationship, reasonable UPL prohibitions are justifiable only if State Bar admission standards are fair and narrowly tailored to avoid excess discretion and subjectivity on the part of State Bar admission committee members.

The legal profession cannot survive without prohibitions against the Unauthorized Practice of Law. Despite my reservations about them and the fact that State Supreme Courts have exempted them from meaningful constitutional review, I do believe that reasonable UPL prohibitions can potentially serve a vital and useful public purpose. The key to justifying reasonable UPL prohibitions and winning the general public's support for them is to ensure the profession does not keep its' doors unconstitutionally closed by basing admission to the Bar on subjective moral character assessment of State Bar admission committee members. The key to avoiding excess discretion and overly subjective moral character assessment is to require Strict Scrutiny of moral character assessment questions, restrictions and qualifications. In this manner, the protection of the public will no longer be an ancillary purpose of UPL prohibitions, but instead will be the prime purpose.

FOURTH, as indicated previously, restrictions on the ability of a qualified person to engage in the practice of law involve the "intersection" of the First and Fourteenth Amendments. The overwhelming majority of legal attacks upon UPL prohibitions and State Bar admission standards have been predicated upon the assertion they violate the First Amendment Free Speech Clause. This is attributable to the fact that the practice of law involves significant communicative elements. There is a close nexus between UPL prohibitions and State Bar admission standards due to the fact they both function to curtail the right of individuals to engage in the practice of law. As the U.S. Supreme Court has indicated when both First and Fourteenth Amendment protections are at issue, closer scrutiny is required.

FIFTH, Strict Scrutiny should be applied to State Bar admission qualifications because the modern day State Bar admissions process was adopted to effectuate a discriminatory purpose against minorities. It has also had a discriminatory effect upon minorities. It is a product of the Depression era of the 1930s. That was the time when State Bars seized the opportunity to capitalize upon and exploit the economic weakness of the average American.

The National Conference of Bar Examiners (NCBE) is the organization responsible for formulating the modern day State Bar admissions process. It held its first meeting on September 16, 1931 and began publishing a magazine called "The Bar Examiner." The early issues of the magazine irrefutably confirm that the purpose of the so-called "good moral character" standards was to promote racial and gender discrimination, along with enhancement of the economic interests of attorneys at the general public's expense.

The following quotes from the NCBE's "Bar Examiner" magazine were presented at length in the first part of this book published in 2002. They are so important since they reveal the true intent of State Bar admission committees, that they warrant repeating here. These quotes expose the "Real Essence" of the State Bars, in stark contrast to its purported benevolent "Nominal Essence." They function as conclusive evidence of the discriminatory intent of State Bar admission committees. Many of these quotes could, just as easily have been written by the German Judiciary in Nazi Germany.

"The voice of the clan, the force of its dictates, is strong in every situation in life. When an individual lawyer struggled with an ethical question . . . the picture of how the group demanded that . . . question should be answered had to be dealt with. . . .The struggle itself was a protection to the group. It retarded the formation of anti-group habits. . . .But in order to insure that the struggle would take place the group idea had to be kept alive and active in the mind of each lawyer. It was kept alive by his being made to feel that he "belonged." Only through membership in it could he become part owner in the economically valuable franchise. . . . Thus, when group consciousness is strong the ordinary lawyer can not easily separate ideal values from economic values." [138]

IDEALS AND PROBLEMS FOR A NATIONAL CONFERENCE OF BAR EXAMINERS, Bar Examiner, November 1931 (Pages 4-17)

"In performing his duties, the bar examiner wields vast powers in that . . . he may to some extent determine the destiny of the nation. . . ." [139]

THE FUNCTION OF BAR EXAMINERS, Bar Examiner, Dec. 1931 (Pgs.27-42)

"First, there is the very easy case, the case of the man whose father or uncle has been known to the Board, etc. He, of course is immediately passed. . . .The most difficult question that the County Board has come up against is as to whether they should reject a man because of his appearance, his manner or general surroundings. . . ." [140]

CHARACTER EXAMINATION OF CANDIDATES, Bar Examiner Magazine, January 1932 (Pages 67-70)

". . . the bar should seek to develop a consciousness, permeating its whole membership, that whatever is done primarily concerns it and its welfare. . . ." [141]

LIGHTS AND SHADOWS IN QUALIFICATIONS FOR THE BAR, Address delivered by Albert Harno at second annual meeting of the NCBE October 10, 1932

"If one opportunity among the many that are open to you were to be singled out . . . it is that of regarding yourselves . . . as informed propagandists . . . as ministers, if you like, of the true professional gospel." [142]

THE OPPORTUNITIES OF A BOARD OF BAR EXAMINERS, Bar Examiner Magazine, December 1932 (Pages 31-49)

"You have legal power to make any law school go through the forms of teaching anything that you want." [143]

> THE OPPORTUNITIES OF A BOARD OF BAR EXAMINERS, Bar Examiner Magazine, December 1932 (Pages 31-49)

"But I think that the place to draw social and racial lines of this sort, if anywhere, is at the portals of the bar associations." [144]

> THE OPPORTUNITIES OF A BOARD OF BAR EXAMINERS, Bar Examiner Magazine, December 1932 (Pages 31-49)

". . . there is a solidarity within the profession . . . . Its members address each other as brothers, and adopt for the benefit of the outside world the pretense of a collective obligation. The insinuation is, that immediately upon entrance to this brotherhood, young lawyers will either be found to possess complete capacity, or else . . . be afforded adequate shepherding. . . ." [145]

> LAW SCHOOLS, BAR EXAMINERS AND BAR ASSOCIATIONS, Bar Examiner Magazine, April 1933, (Pages 151-163)

"We do not necessarily have the feeling that we should keep the door partly open . . . for another Lincoln." [146]

> Address by George Baer Appel, Secretary of Pennsylvania Board of Bar Examiners at third annual meeting of NCBE

"I have spoken of the "superiority of lawyers." It is not for the purpose of being facetious. . . . we have a constitutional acceptance of the superiority of lawyers. . . ." [147]

> THE PRIVILEGE OF REEXAMINATION IN PROFESSIONAL LICENSURE, Bar Examiner April 1934 (Pages 123-128)

"In all cases where the candidate is not known personally to one or more members of the character committee. . . inquiries should be directed to all his references and past business connections. . . ." [148]

A STUDY OF CHARACTER EXAMINATION METHODS, By Will Shafroth, Secretary NCBE, Bar Examiner Magazine, July –August 1934 (Pages 195-231)

"It would be possible. . . for a board to decide readily that where there is present such obvious deficiencies as want of directness, shiftiness, evasiveness, bad background and the one hundred and one other things which would satisfy a fair mind that the applicant is not going to make a proper lawyer, to reject him. . . ." [149]

IMPRESSIONS OF TEN YEARS, Bar Examiner Magazine, October 1935 (Pages 467-473)

". . . It would seem to me that in regard to those border-line cases it would be necessary to give the Committee of Bar Examiners an arbitrary discretion, that the Committee. . . should not be required to give any reasons . . . upon which their decision . . . was made. . . ." [150]

COOPERATION WITH LAW SCHOOLS AND THE SUPREME COURT, Bar Examiner Magazine, January 1936 (Pages 37-41)

". . . a person who sought admission to the bar without having enough knowledge to pass a bar examination was not of the good moral character required by the constitution." [151]

INDIANA AND OREGON RAISE STANDARDS, Bar Examiner April 1936 (Pages 95-96)

"If the interviewer . . . has been swindled by some one with a hooked nose, he feels that persons with hooked noses should not be trusted; and if a man of the Jewish race has double-crossed him in the past, he tends to place less confidence in other members of that race." [152]

PSYCHOLOGY POINTS WAY TO NEW CHARACTER TESTS, Bar Examiner, October 1936 (Pages 165-173)

"A proper regard for the public interest must cause the members of our profession grave concern where it is apparent that many lawyers are not making a decent living." [153]

> EDITORIAL, CONDITIONS IN THE PROFESSION, Bar Examiner, Dec.1936 (Pgs.25-28)

". . . an investigation among the applicant's friends, or in the neighborhood in which he lives may disclose that his habits are bad. . . ." [154]

> CHARACTER AND FITNESS, By William James, NCBE Chairman, Bar Examiner, March 1938 (Pages 37-41)

"In the case of an applicant who is the son or other close relative of a reputable member of the . . . Bar . . . not a great deal of examination is required. . . ." [155]

> PRACTICAL OPERATION OF THE PENNSYLVANIA PLAN IN PHILADELPHIA COUNTY, Bar Examiner, March 1939 (Pages 38-44)

"We must not forget that in many parts of the country there still prevails the fallacious and discredited idea that everyone in democratic America has a right to become a lawyer. . . ." [156]

> THE BAR ASSOCIATION STANDARDS and PART-TIME LEGAL EDUCATION, By Charles E. Dunbar, Chairman of the ABA Section of Legal Education, Bar Examiner Magazine, January 1940 (Pages 3-13)

"the proponents of the standards were referred to, in informal conversation among the opposition, as "The Snobs." The opponents, who were impressed with the fact that Abraham Lincoln never went to either law school or college, were classified as "The Coon-Skin Cap Boys." [157]

> MAINTAINING PROGRESS ON THE LEGAL EDUCATION FRONT, By George Morris, Former President ABA, Bar Examiner, October 1944 (Page 49)

"But there is another way in which the bar can more adequately protect itself. . . . by asking the National Conference of Bar Examiners to make an investigation of the student not only at his school but at his home. . . ." [158]

TRADE BARRIERS TO BAR ADMISSIONS, Bar Examiner, January 1945 (Page 10-16)

"Our European brothers went further. Der Feuhrer, in 1935, issued a decree that, for a period of years, no more lawyers should be admitted to practice." [159]

ADDRESS BY THE CHAIRMAN, John Kirkland Clark, Chairman National Conference of Bar Examiners, Bar Examiner Magazine, October 1943 (Page 61-63)

From a perspective of morality, the necessity of lawyers being able to zealously pursue their client's interests, rather than compromising their integrity by supporting the self-serving interests of the State Bars mandates that Strict Scrutiny be applied to Bar admission standards. The legal ground for establishing Strict Scrutiny as the proper standard for review is that the ability for a qualified individual to engage in the practice of law has been held by the U.S. Supreme Court to be a Fundamental Constitutional Right. It is difficult to conceive how any litigant and most particularly criminal defendants could secure their constitutional rights unless competent, brave and zealous individuals are allowed to become their attorneys. The danger of imposing irrational self-serving State Bar attitudes and beliefs upon Bar Applicants as a requirement for admission to practice law is exemplified by the following statements of various Justices on the U.S. Supreme Court.

"In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber. . . . The Star Chamber not merely allowed, but required, defendants to have counsel. The defendant's answer to an indictment was not accepted unless it was signed by counsel. When counsel refused to sign the answer, for whatever reason, the defendant was considered to have confessed." [160]

Faretta v California, 422 U.S. 806 (1975):

". . . A bar composed of lawyers of good character is a worthy, objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal." [161]

> Konigsberg v State Bar of California, 353 U.S. 252 (1957); Justice Black - Lead Opinion

". . . Indeed, if the State's only real interest was, as the majority maintains, in having good men for its Bar, how could it have rejected Konigsberg, who, undeniably and as this Court has already held, has provided overwhelming evidence of his good character? . . .
. . .
The interest in free association at stake here is not merely the personal interest of petitioner in being free from burdens that may be imposed upon him for his past beliefs and associations. It is the interest of all the people in having a society in which no one is intimidated with respect to his beliefs or associations. . . . If every person who wants to be a lawyer is to be required to account for his associations as a prerequisite to admission into the practice of law, the only safe course for those desiring admission would seem to be scrupulously to avoid association with any organization that advocates anything at all somebody might possibly be against, including groups whose activities are constitutionally protected under even the most restricted notion of the First Amendment." [162]

> Konigsberg v State Bar of California, 366 U.S. 36 (1961);
> Justice Black - Dissenting

"I speak of a need to remind the bar of its traditions and to keep alive the spirit of dignified but determined advocacy and opposition. This is not only for the good of the bar, of course, but also because of what the bar means to American republican government. The bar, when it exercises self-control, is in a peculiar position to mediate between popular passions and informed and principled men, thereby upholding republican government. Unless there is this mediation, intelligent and responsible government is unlikely. The bar, furthermore, is in a peculiar position to apply to our daily lives the constitutional principles which nourish for this country its inner life. Unless there is this nourishment, a just and humane people is impossible. The bar is, in short, in a position to train and lead by precept and example the American people." [163]

> Statement of George Anastaplo, As Quoted in In re Anastaplo, 366 U.S. 82 (1961); Justices Black, Warren, Douglas, Brennan - Dissenting

". . . I would think that the important role that lawyers are called upon to play in our society would make it all the more imperative that they not be discriminated against with regard to the basic freedoms that are designed to protect the individual against tyrannical exertion of governmental power. For, in my judgment, one of the great purposes underlying the grant of those freedoms was to give independence to those who must discharge important public responsibilities. The legal profession, with responsibilities as great as those placed upon any group in our society, must have that independence. If it is denied them, they are likely to become nothing more than parrots of the views of whatever group wields govenrmental power at the moment. Wherever that has happened in the world, the lawyer, as properly so called and respected, has ceased to perform the highest duty of his calling and has lost the affection and even the respect of the people." [164]

Cohen v Hurley, 366 U.S. 117 (1961); Justices Black, Warren, and Douglas - Dissenting (Note: Cohen v Hurley was overruled in Spevack v Klein, 385 U.S. 511 (1967) relying on the Cohen Dissent)

". . . I am not at all certain, however, that the legal profession can survive in any form worthy of the respect we want it to have if its internal inter-group conflicts over professional ethics are not rigidly confined by just those "ordinary investigatory and prosecutorial processes" which, though belittled by the majority today, are enshrined in the concepts of equal protection and due process. For if the legal profession can, with the aid of those members of the profession who have become Judges, exclude any member it wishes even though such exclusion could not be accomplished within the limits of the same kind of due process that is accorded to other people, how is any lawyer going to be able to take a position or defend a cause that is likely to incur the displeasure of the Judges or whatever group of his fellow lawyers happens to have authority over him." [165]

Cohen v Hurley, 366 U.S. 117 (1961);
Justices Black, Warren and Douglas - Dissenting

"Once we approve this measure, we sanction a device where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose. . . . we practically give *carte blanche* to any legislature to put at least professional people into goose-stepping brigades. . . . the First Amendment applies strictures designed to keep our society from becoming moulded into patterns of conformity which satisfy the majority." [166]

Lathrop v Donahue, 367 U.S. 820 (1961); Justice Douglas - Dissenting

"As I have pointed out in another case involving requirements for admission to the Bar, society needs men in the legal profession:

> "like Charles Evan Hughes, Sr. later Mr. Chief Justice Hughes, . . . and John W. Davis . . . men like Lord Erskine, James Otis, Clarence Darrow, and the multitude of others who have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it." [167]
>
> Law Students Civil Rights Research Council v Wadmond, 401 U.S. 154 (1971); Justices Black and Douglas - Dissenting

"We think this Court should not accept for itself a doctrine that conviction of contempt per *se* is ground for disbarment. It formerly held, in an opinion by Mr. Chief Justice Marshall that a lawyer should be admitted to this bar even though, for contempt, he had been disbarred by a federal district court action. . . .
. . .
We do not recall any previous instance, . . . where a lawyer has been disbarred by any court of the United States or of a state merely because he had been convicted of a contempt. But we do know of occasions when members of the bar have been guilty of serious contempt without their standing at the bar being brought into question. It will sufficiently illustrate the point to refer to the tactics of counsel for the defense of William M. Tweed. Those eminent lawyers, deliberately and in concert, made an attack upon the qualifications of Presiding Judge Noah Davis, charging him with bias and prejudice. At the end of that trial, after he had pronounced sentence on Tweed, Judge Davis declared several defense counsel guilty of contempt. Not one of these lawyers, apparently, was subjected to disciplinary proceedings in consequence of that judgment. Among them were Elihu Root, later to become one of the most respected of American lawyer-statesmen, and Willard Barlett, destined to become Chief Judge of the New York Court of Appeals. . . . One of the seniors who participated in the contempt, and certainly one of its chief architects, was David Dudley Field. He later was elected president of the American Bar Association." [168]

> In re Disbarment of Isserman, 345 U.S. 286 (1953); Justices Jackson, Black, Frankfurter, and Douglas - Separate Opinion

There is perhaps no better lawyer to consider than the man named Elihu Root. He was convicted of Contempt of Court. [169] Yet, most remarkably, he was the man most responsible for the rise of the ABA's Section on Legal Education and Bar Admissions, along with its' UPL committee. That is most

incredible. Hypocrisy at its zenith. Elihu Root is the specific individual most responsible for establishment of the State Bar's so-called "good moral character" standard, and yet it is highly questionable whether he would have been able to gain admission into a State bar today. Similarly, Justice Stephen Field of the U.S. Supreme Court was disbarred twice, convicted of contempt, and arrested on a charge of conspiracy to commit murder. [170] U.S. Supreme Court Justice Powell was held in contempt. [171] Justice White was accused of fabricating information in the White Report, which was an account of the sinking of PT-109 commanded by John F. Kennedy in World War II. [172] Attempts were made to impeach Justice Douglas. Justice Black was a member of the KKK prior to becoming a Justice. [174] Justice Warren resigned from the ABA on ideological grounds. [175] Justice Harlan, the staunch supporter of State Bar interests, helped throw a piano out of an office window during a law firm holiday party. [175A] Justice Thurgood Marshall drank booze and gambled regularly. [176] Justice Oliver Wendell Holmes was reprimanded by Harvard University for breaking windows. [177]

The practice of law is positively a Fundamental Constitutional Right. The U.S. Supreme Court opinions and basic principles of the U.S. Constitution coupled with the most rudimentary and basic principles of fairness and justice require it to be recognized as such. So, I suggest that it's about time the State Supreme Court Justices of this nation get on board with the program and stop lying by falsely asserting it's a privilege.

After all, the last thing we need on our State Supreme Courts is a bunch of liars.

THE IRRATIONAL INFIRMITY OF EQUAL PROTECTION JURISPRUDENCE - "SIMILAR" DOES NOT MEAN "IDENTICAL"

It takes many years for sound political thought and an understanding of jurisprudence to develop fully within the mind of a person. I have read Judicial opinions on various legal topics for many years, biographies of great Americans, and great works of political philosophy. This has allowed me to narrow down the crux of the cognitive deficiency in Judicial opinions addressing the Equal Protection Clause (hereinafter "EPC") to one single factor. That factor is the inability of the Judiciary to understand that the term "Similar" does not mean "Identical."

In Plyler v Doe, 457 U.S. 202 (1982) the U.S. Supreme Court described the basic test to be applied in determining whether the Equal Protection Clause is violated. It is actually a simple test and stated as follows:

> "The Equal Protection Clause directs that all persons **similarly** situated shall be treated alike." [178]

The operative term, which serves as the fulcrum for the analysis is the word "similarly." If the person asserting a violation of the EPC is not "similarly situated" to the person or group receiving preferential treatment then the EPC is not violated. If they are "similarly situated" then the biggest hurdle of the analysis is satisfied. The word "Similar" is defined in Webster's New Universal Unabridged Dictionary as follows:

> 1. having a likeness or resemblance 2. In Geometry of figures having the same shape 3. In Math, related by means of similarity transformation.
>
> **Synonyms** 1. like, resembling [179]

The word "Similarity" is defined in the same dictionary as follows:

> 1. the state of being similar, likeness, resemblance. 2. an aspect, trait or feature like or resembling another;
>
> **Synonyms** 1. similitude, correspondence, parallelism. See resemblance. [180]

Black's Law Dictionary defines the term "Similar" as follows (emphasis added):

> "Nearly corresponding; resembling in many respects; somewhat like; having a general likeness, **although allowing for some degree of difference**. . . Word "similar" is generally interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, is somewhat like, or has a general likeness to some other thing but is not identical in form and substance, although in some cases "similar" may mean identical or exactly alike. It is a word with different meanings depending on context in which it is used." [181]

It is easy to see from the above that depending on which definition is selected the determination of whether one person is "Similar" to another depends on the proportion of characteristics between them, which are "Identical" to those, which are "Different." The more characteristics two people have in common which are Identical, the higher is the likelihood the two people will be determined to be "Similar." In contrast, the more characteristics two people have which are "Different," the higher is the likelihood the two people will be determined to not be "Similar."

As the importance and number of "Identical" characteristics increases, there is a corresponding reduction in the significance of the "Different" characteristics. However, whatever definition of "Similar" is selected, it is irrefutably established that the term "Similar" accounts for "Differences" and does not presume that the two people or groups being assessed are wholly "Identical." In contrast, to the word "Similar," the term "Identical" is, defined by New Webster's New Universal Unabridged Dictionary as follows (emphasis added):

> 1. similar or alike **in every way**. 2. being the **very same**, selfsame 3. **agreeing exactly** [182]

The best example of the meaning of the term "Identical" is the mathematical concept of "Identity." Most philosophers and mathematicians presents the classic example of "Identity" as being the logical truth that "A" = "A." Stated more simplistically, since 2 + 2 = 4; and since 4 = 4; it can be concluded that 2 + 2 is "Identical" to 4.

The distinction between the meaning of "Similar" and the meaning of "Identical" is the concept of "Difference." Where "Difference" exists, the two

people being assessed are not "Identical." However, they can still be "Similar." It can fairly be stated that there are differences between all people and no two people are exactly the same. Thus, it can be equally concluded with certainty, that no two people are "Identical." For purposes of EPC analysis, the issue is not whether two people are "Identical." EPC analysis focuses on whether two people are "Similar," and that allows for a degree of "Difference."

The concept of "Difference" in EPC analysis is embodied in laws, which focus on "Classifications" of people. The prime example is the fact that before the Civil War black people were "Classified" as slaves, whereas white people were "Classified" as free. Thus, the "Difference" of skin color gave rise to the "Classification" of the individual's status. A "Classification" depending on whether a person is Male or Female is another example.

The EPC does not preclude "Classifications" of people. Instead, what it does, is subject any "Classification" (i.e. the "Difference") to an analysis. The purpose of the analysis is to determine whether the "Difference" (i.e. the "Classification") is justifiable. The manner in which this determination is made is described in greater detail in the Chapter of this Supplement titled "The Irrational Nature of So-Called Rational Basis Scrutiny is Predicated Upon the Judiciary's Fear and Gang Mentality."

The major purpose of this short essay is simply to point out the importance of the incontestable fact that the term "Similar" does in fact account for a degree of "Difference." It does not require "Identity." From a logical perspective, this means that a person is entitled to constitutional protection when a "Classification" is not justifiable, even if they have certain "Differences" from the person who is advantaged by the "Classification." The reason is that the existence of "Differences" does not preclude "Similarity." The very essence of the notion of "Classifications," recognizes that there are "Differences" between two people. The moral principle intended to be furthered by the EPC is to properly determine whether the "Differences" justify the "Classification."

The problem with Judicial interpretation of the EPC is that Judges have used the concept of "Difference" in an irrational manner as a means to justify the total removal of cases from EPC analysis. They do this based upon a conclusion that the existence of "Differences" means the two groups of people are not "Similar." The impact of this is that they have substantively defined the term "Similar" as meaning "Identical," even though such is clearly not the case.

Competent EPC analysis recognizes the fact that "Differences" exist. It further mandates that the "Different" characteristics be compared to the nature and importance of the characteristics of the two groups which are alike (i.e. "Identical"), in order to determine if the two groups are "Similar."

Lastly, it should be noted that in regards to assessing the justification of "Classifications," the U.S. Supreme Court has regressed from its application of basic principles of "Fairness." It has done so at the expense of the general public, for the purpose of insulating and fortifying governmental power. A seminal case exemplifying this relatively recent retrenchment is FCC v Beach Communications, 508 U.S. 307 (1993). Justice Clarence Thomas, writing the Lead Opinion for the Court virtually demolished the EPC stating:

> "In areas of social and economic policy, a statutory classification . . . must be upheld against equal protection challenge if there is **any reasonably conceivable state of facts** that could provide a rational basis for the classification." [183]

Justice Stevens, protested vigorously against Justice Thomas' irrational test in Footnote 3 of his opinion, writing (emphasis added):

> "The court states that a legislative classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification," . . . In my view, this formulation sweeps too broadly, for it is difficult to imagine a legislative classification that could not be supported by a "reasonably conceivable state of facts." **Judicial review under the "conceivable set of facts" test is tantamount to no review at all**.
>
> I continue to believe that, when Congress imposes a burden on one group, but leaves unaffected another that is **similarly, though not identically, situated**, "the **Constitution requires something more than merely a "conceivable**" or "plausible" **explanation for the unequal treatment**." [184]

BALANCING THE "FIT" BETWEEN "MEANS" AND "ENDS" IN EQUAL PROTECTION JURISPRUDENCE

Justice William Rehnquist has never been one of my favorite Judges. Typically, his opinions regarding the equal protection clause seek to trim constitutional protections by interpreting the EPC too narrowly. I have little doubt that given the choice, he would have preferred the equal protection clause was never enacted. Nevertheless, he did write one of the most thoughtful descriptions of Equal Protection Jurisprudence. In Trimble v Gordon, 430 U.S. 762 (1977), he wrote in dissent as follows:

> "Unfortunately, more than a century of decisions under this Clause of the Fourteenth Amendment have produced neither of these results. They have, instead, produced a syndrome wherein this Court seem to regard the Equal Protection Clause as a cat-o'-nine-tails to be kept in the judicial closet as a threat to legislatures which may, in the view of the judiciary, get out of hand and pass "arbitrary," "illogical" or "unreasonable" laws. . . .
>
> . . .
>
> The Equal Protection Clause is itself a classic paradox, and makes sense only in the context of a recently fought Civil War. **It creates a requirement of equal treatment to be applied in the process of legislation - legislation whose very purpose is to draw lines in such a way that different people are treated differently.** The problem presented is one of sorting the legislative distinctions which are acceptable from those which involve invidiously unequal treatment.
>
> . . .
>
> . . . **For equal protection does not mean that all persons must be treated alike. Rather, its general principle is that persons similarly situated should be treated similarly. . . . For the crux of the problem is whether persons are similarly situated for purposes of the state action in issue.** . . .
>
> The **essential problem of the Equal Protection Clause is therefore the one of determining where the courts are to look for guidance in defining "equal,"** as that word is used in the Fourteenth Amendment. . . .
>
> . . .
>
> The appropriate "scrutiny," in the eyes of the Court, appears to involve some analysis of the relation of the "purpose" of the legislature to the "means" by which it chooses to carry out that purpose. . . .
>
> . . .
>
> . . . It should be apparent that litigants who wish to succeed in invalidating a law under the Equal Protection Clause must have a certain schizophrenia if they are to be successful in their advocacy; they must first convince the Court that the legislature had

a particular purpose in mind in enacting the law, and then convince it that the law was not at all suited to the accomplishment of that purpose.

. . . Even assuming that a court has properly accomplished the difficult task of identifying the "purpose" which a statute seeks to serve, it then sits in judgment to consider the so-called "fit" between that "purpose" and the statutory means adopted to achieve it. In most cases, . . . the "fit" will involve a greater or lesser degree of imperfection. Then the Court asks itself: how much "imperfection" between means and ends is permissible? In making this judgment, it must throw into the judicial hopper the whole range of factors which were first thrown into the legislative hopper. What alternatives were reasonably available? What reasons are there for the legislature to accomplish this "purpose" in the way it did? What obstacles stood in the way of other solutions?

• • •

. . . I had thought that cases like McGowan v Maryland . . . (1961) in which the Court, . . . said that "a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it," . . . would have put to rest the expansive notions of judicial review suggested in . . . Royster Guano."

Trimble v Gordon, 430 U.S. 762 (1977); Justice Rehnquist Dissenting

The key phrase regarding the EPC that Rehnquest writes above reads:

> **"**It creates **a requirement of equal treatment** to be applied in the process of legislation - **legislation whose very purpose** is to draw lines in such a way that **different people are treated differently.**"

The foregoing quote is quite remarkable and true. The very purpose of a law is to treat certain people differently. Yet, the requirement of the EPC is that they be treated equally. From a logical perspective, it appears at first glance to be a logical conundrum that could not possibly be accomplished. The question is, "how is possible to treat people differently and equally at the same time?" The manner in which the EPC attempts to accomplish this involves the application of fair classifications. The classification between categories of people or the nature of the right being infringed determines the Scrutiny level. The Scrutiny level determines the manner in which the differential treatment or statutory restriction must be tailored.

The "Fit" between Means and Ends determines the degree to which the Scrutiny level is adequately satisfied. Typically, the "Ends" is regarded as the legislative purpose aimed to, be attained by the law. The classification between two types of people is the Means by which the government objective (the "Ends") is achieved. The tough part of jurisprudence in assessing the legitimacy of a law is to ensure their is a proper "Fit" between the Means and the Ends. In addition, there is the difficulty of determining exactly what constitutes "equal" treatment.

The application of the Scrutiny level involves an analysis of the Purpose of the legislature to the Means by which the Purpose is carried out. According to the seminal case of Royster Guano, the classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. The distinctions between two classes, which gives rise to the differential treatment between the two classes must have some relevance to the Purpose for which the classification is made. The following are some key U.S. Supreme Court holdings and quotes that highlight the difficulty the Court has in applying EPC principles.

> The sovereign may not draw distinctions between individuals based solely on differences that are irrelevant to legitimate government objectives. People may not be subject to "different" treatment when there is no substantial relation between an important state purpose and the different treatment. EPC denies the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of the statute.
>
> Reed v Reed, 404 U.S. 71 (1971)

> "Permissible discriminations between persons must be correlated to their relevant characteristics."
>
> Atty. Genl. New York v Soto-Lopez, 476 U.S. 898 (1986)

> EPC denies the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, **so that all persons similarly circumstanced shall be treated alike**. Johnson v Robison 415 U.S. 361 and Royster Guano.
>
> U.S. Railroad Retirement Board v Fritz (1980)

> When faced with a challenge to a legislative classification, the Court should ask, first, what the purposes of the statute are, and second whether the classification is rationally related to achievement of those purposes.
>
> Western and Southern Life Ins. Co. v Bd. Equalization, 451 U.S. 648 (1981); Majority Opinion.

"The Constitution does not require things which are different, in fact, . . . to be treated in law as though they were the same," Tigner v Texas, 310 U.S. 141, 147. Hence legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the Equal Protection Clause does require that in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made." Baxstrom v Herold, 383 U.S. 107, 111; Carrington v Rash, 380 U.S. 89, 93; Louisville Gas Co. v Coleman, 2777 U.S. 32, 37; Royster Guano Co. v Virginia, 253 U.S. 412, 415."

Estelle v Dorrough, 420 U.S. 534 (1975), Per Curiam Opinion

"The rationality of a statutory classification for equal protection purposes does not depend upon the statistical "fit" between the class and the trait sought to be singled out. It turns on whether there may be a sufficiently higher incidence of the trait within the included class than in the excluded class to justify different treatment."

Craig v Boren, 429 U.S. 190 (1976), Justice Rehnquist Dissenting

"Under EPC, the means chosen by the State must bear a "fair and substantial relation" to the object of the legislation. Reed v Reed, 404 U.S. 71 (1971), quoting Royster Guano."

Zablocki v Redhail, 434 U.S. 374 (1978); Justice Powell Concurring

"Whether analyzed in terms of equal protection or due process the issue . . . requires a careful inquiry into such factors as the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, and the existence of alternative means for effectuating the purpose."

Bearden v Georgia, 461 U.S. 660 (1983); Justice O'Connor Lead Opinion

"The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."

City of Cleburne, Texas v Cleburne Living Center Inc., 473 US. 432 (1985)
Justice White, Lead Opinion

". . . our cases reflect a continuum of judgmental responses to differing classifications which have been explained in opinions by terms ranging from "strict scrutiny" at one extreme to "rational basis" at the other. I have never been persuaded that these so-called "standards" adequately explain the decisional process. . . .

. . .

. . . In my own approach to these cases, I have always asked myself whether I could find a "rational basis" for the classification at issue. **The term "rational" of course, includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class.** Thus, the word "rational" -- for me at least -- includes elements of legitimacy and neutrality that must always characterize the performance of the sovereign's duty to govern impartially.

. . .

In every equal protection case, we have to ask certain basic questions. What class is harmed by the legislation, and has it been subjected to a "tradition of disfavor" by our laws? What is the public purpose that is being served by the law? What is the characteristic of the disadvantaged class that justifies the disparate treatment? In most cases, the answer to these questions will tell us whether the statute has a "rational basis." . . .

City of Cleburne, Texas v Cleburne Living Center Inc., 473 US. 432 (1985)
Justice Stevens and Chief Justice Burger, Concurring

"The rational basis test contains two substantive limitations on legislative choice: legislative enactments must implicate legislative goals, and the means chosen by the legislature must bear a rational relationship to those goals. In an alternative formulation, the Court has explained that these limitations amount to a prescription that "all persons similarly situated should be treated alike." Cleburne v Cleburne Living Center, Inc. 473 U.S. 432, 439 (1985); see Plyler v Doe, 457 U.S. 202, 216 (1982); Reed v Reed, 404 U.S. 71, 76 (1971).

In recent years, the Court has struck down a variety of legislative enactments using the rational basis test. In some cases, the Court found that the legislature's goal was not legitimate . . . . In other cases, the Court found that the classification employed by the legislature did not rationally further legislature's goal. . . . In addition, the Court on occasion has combined these two approaches, in essence concluding that the lack of a rational relationship between the legislative classification and the purported legislative goal suggests that the true goal is illegitimate. See Cleburne v Cleburne Living Center, supra, at 450; Department of Agriculture v Moreno, 413 U.S. 528, 534 (1973)."

Lyng v Intl. Untion, United Automobile, 485 U.S. 360 (1988); Justices Marshall, Brennan and Blackmun Dissenting

"Deference is not abdication. . . . the test of whether a classification is arbitrary is whether the difference in treatment between earlier and later purchasers rationally furthers a legitimate state interest. . . .

A legitimate state interest must encompass the interests of members of the disadvantaged class and the community at large, as well as the direct interests of the members of the favored class. It must have a purpose or goal independent of the direct effect of the legislation, and one "that we may reasonably presume to have motivated an impartial legislature." Cleburne v Cleburne Living Center Inc. . . .

. . .

A classification rationally furthers a state interest when there is some fit between the disparate treatment and the legislative purpose.

. . .

The Court conclusion is unsound not only because of the lack of numerical fit between the posited state interest and Proposition 13's inequities, but also because of the lack of logical fit between ends and means.

Nordlinger v Hahn, 505 U.S. 1 (1992); Justice Stevens Dissenting

"Although we have not always provided precise guidance on how closely the means (the racial classification) must serve the end (the justification or compelling interest), we have always expected that the legislative action would substantially address, if not achieve, the avowed purpose."

Shaw v Hunt, 517 U.S. 899 (1996); Justice Rehnquist Lead Opinion

"Perhaps the clearest statement of this Court's present approach to "rational basis" scrutiny may be found in **Johnson v Robison, 415 U.S. 361 . . . (1974). . . . eight members of this Court agreed that:**

> ". . . although an individual's right to equal protection of the laws does not deny . . . the power to treat different classes of persons in different ways. . . . it denies the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification, "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . . . "
>
> U.S. Railroad Retirement Bd. v Fritz, 449 U.S. 166 (1980
> Justices Brennan and Marshall Dissenting (But Citing Eight Members in Agreement in Johnson v Robison (1974)

Regardless of whether one adopts an expansive interpretation of the EPC like the liberal wing of the Court, or a narrow interpretation like the conservative wing, it is clear that there must be some type of "Fit" between "Means" and "Ends." Stated alternatively, and concededly subject to a bit of semantic dispute between various members of the Court, a law should be adopted to achieve a purpose. The law should be written and tailored in a manner so that it has a fair and substantial relation to achievement of that goal.

Now, let us turn to application of balancing the "Fit" between "Means" and "Ends" to the bar admissions process. State Bar Applicants are required to answer a multitude of inquiries, which licensed attorneys are not required to regularly and periodically disclose. Ostensibly, the State Bar's goal in requiring disclosure of these inquiries by Applicants is to ensure that lawyers have "Good Moral Character." Thus, the "Ends" is lawyers with "Good Moral Character." The "Means" is the requirement of disclosure by Applicants, but not by licensed attorneys. Thus, the "Classification" is one between Bar Applicants and licensed attorneys. The determinative issue is whether there is an adequate "Fit" between the Means and Ends.

The exemption from having licensed attorneys subjected to regular and periodic review renders achievement of the "End" of having attorneys with "Good Moral Character" an impossibility. The reason is as follows. The "End" sought to be achieved is being wholly undermined by the selected "Means." The Means is Underinclusive because licensed attorneys are excluded from any type of regular and periodic meaningful review. The Means is also Overinclusive because Bar Applicants who have never engaged in conduct warranting ethical discipline may be denied admission for wholly lawful conduct, whereas attorneys engaging in the exact same type of conduct are allowed to continue practicing law. Put simply, the "Fit" between "Means" and "Ends" does not have a fair and substantial relation to the object of the classification between licensed attorneys and Bar Applicants.

The current "Fit" between Means and Ends in the State Bar moral character assessment process is atrocious. It is the equivalent of a man who is told to wear a tuxedo to a wedding and shows up wearing a bowtie and nothing else. The bowtie sticks out like the current moral character assessment for Bar Applicants, while the entire remaining portion of the legal profession is left wholly naked. Put simply, it's not just a bad "Fit," but it's no "Fit" whatsoever because the rest of the clothes aren't even being worn.

THE PRIMARY FUNCTION OF THE JUDICIARY IS TO KEEP IGNORANT LEGISLATORS IN CHECK

The most significant judicial opinion ever written was probably Marbury v Madison in 1803 because it established the exclusive power of the Judiciary to interpret the law. However, there is no doubt the circumstances of that case (discussed in detail on pages 235-237 in the first part of this book) raise disturbing issues pertaining to the moral character of Chief Justice John Marshall, who wrote the opinion. Nevertheless, as a matter of practicality the case has sustained challenge for over 200 years, and its legitimacy is established.

Marbury stands primary for the premise that the Judiciary alone has the authority to declare laws unconstitutional or to interpret the meaning of laws. In conjunction is the premise that it is the Judiciary's role to decide individual cases. The Judiciary only has the opportunity to interpret laws by deciding individual cases. If it is not presented with a case, then the Judiciary lacks the power to decide the validity or interpretation of any law. Thus, when a Court is presented with a case it always has at least one function. That function is to decide the issue presented to it. It then, may or may not have a second function of interpreting or determining the validity of a law. This depends upon whether the validity or meaning of a law becomes a point of contention between the parties.

The critical question is when should the Court "interpret" a law versus determining its "validity." An interpretation presupposes the law is valid, but that its meaning is not clear. A determination of the validity of a law requires assessing its legality. Obviously it is a more significant Judicial action to declare a law invalid, then it is to simply interpret the law. A conclusion of invalidity carries an element of personal professional risk for a Judge reaching that conclusion because it negates an action taken by a legislature (whether that legislature be Congress or a State).

Legislators are humans subject to the emotional frailties and egotistical weaknesses, which characterize all governmental officials. As humans, it can fairly be presumed that legislators who voted in favor of a law, which a Judge declares invalid will be personally offended by the judicial ruling. The reason for this is as follows. A Judicial conclusion that a law is invalid inherently carries with it a corollary communicative message that the legislature subjected citizens to an illegal enactment. The conduct of citizens should only be

regulated to the extent the laws accomplishing such are valid. However, the enactment of an invalid law is an attempt by the legislature to illegally regulate conduct of citizens. Consequently, it must be concluded that the enactment of an illegal law by a legislator is an immoral act by the legislature. That is a very serious charge for a Judge to make against legislators.

It is a basic predicate of human nature that when one person makes another person look bad by exposing their immorality, that person naturally has a personal incentive founded upon self-interest to make the accuser look bad. In its basest sense, this is often called retaliation or revenge. Consequently, Judges who declare laws invalid are understandably fearful that the legislators who were proven to be immoral by their enactment of an illegal law, may seek political revenge against the Judge.

In contrast, merely interpreting a law is not nearly as offensive to legislators compared to declaring it invalid. This is because when the Court interprets a law, it is only saying that parts of the law require clarification, not that it was improper for legislators to enact the law. The only issue the Court is then dealing with is what the law really means. Thus, from the perspective of Judges, there is a personal incentive resting upon professional self-interest to decline to declare laws invalid if the law can be saved through the use of interpretation. This regretful state of affairs exists even when the law is clearly illegal.

Quite often, a Court effectively declares a law invalid without expressly stating such through utilization of "creative interpretation" of the law by sophistical manipulation of logic and semantics. On occasion, a Court may cause a law to have the exact opposite meaning as was intended by the legislature through "creative interpretation." When I use the phrase "creative interpretation," I am referring to the Court's primary tools for interpreting laws. Those means consist of defining the words and terms incorporated into a law.

Now, here's the main problem. Legislators come from a wide variety of professional fields and backgrounds. They are typically ignorant of legal issues that are determinative of the validity of a law. There are few legislators who really understand tests of constitutionality. Additionally, the concern of virtually all legislators is simply to keep constituents who support them happy. That's how they get re-elected. Consequently, you have a situation in which legislators have an incentive to enact laws that satisfy voters who elected them, notwithstanding the fact that they lack the knowledge to assess whether such laws are constitutional. It is thus inescapable that a wide variety of unconstitutional laws are regularly enacted. These unconstitutional laws are then enforced against the citizenry until they are presented to a Court for a determination of legality. At that point, the Judge's self-interest in not offending legislators often

takes precedence over his legal duty to fairly determine the law's validity. The Court then uses its escape hatch of applying a contorted interpretation of the law by creatively defining the words and terms in it for the sole purpose of saving an illegal enactment. The result is that unconstitutional laws continue to be regularly imposed unjustly upon the citizenry. It is a product of ignorant legislators adopting ill-conceived laws that are poorly written, which is then combined with the Judiciary's humanistic fear of assessing those laws properly.

The eradication of this problem requires establishment of several principles. Courts need to free themselves from the fear they have of declaring laws unconstitutional, which is traceable to their fear of offending legislators who enacted the laws. There is only one way this can be accomplished. The Courts need to win the support and respect of the general public. Currently, the Courts do not have either the respect or support of the general public because they have not yet earned it. Ultimately, since legislative careers and power rest upon the voting power of the general public, if legislators perceive that the public supports the Courts, they will be more reluctant to engage in retaliatory political action against the Judges who declare laws they enact unconstitutional.

Currently, the only way Judges escape the spirit of revenge that exists amongst legislators is by pacifying them. The Courts pacify legislators by caving into them. They cave into them by adopting strained interpretations of words in a law to save illegal enactments, rather than by proper declarations as to the law's overall validity. While this concededly works rather well from a political perspective for both legislators and Judges, it has a markedly negative impact upon the general public. It effectively causes citizens to lack trust and respect in both legislators and Judges. Stated simply, the public quite correctly perceives that legislators and Judges have teamed up with each other to protect their own respective spheres of influence. And the group they have teamed up against is the general public.

The Judiciary needs to shift its political alliance from legislators to the general public. In order for Judges to develop the requisite courage to properly determine the validity of laws they need to discover how to win the respect and support of the general public. The most significant message Courts can convey to the general public to win support is that Judges will not perform their duties out of self-interest or fear. Rather instead, Judges need to demonstrate they will render rulings and opinions based upon the public's interest. This is not an easy thing to accomplish.

In order for the Judiciary to win public support it needs to prove itself to the public. It needs to demonstrate that Courts will not function out of self-interest or fear. That requires a lot more than transparent, disingenuous public statements by the Judiciary asserting such. It requires Judicial Action proving

such. There is no doubt that disingenuous self-adulating public statements of the Judiciary are incorporated into their rules of conduct. Additionally, judicial opinions give maximum lip-service to the public's interest and falsely assert a lack of self-interest on the part the Judiciary. The problem is that the actions and conduct of the Judiciary do not comport with these messages. And the general public is quite well aware of it. Put simply, the Judiciary is not succeeding in selling anyone with their grandiose "snow job" so to speak.

The best starting point for the Judiciary to develop its moral character in order to win public support would be for it to cease making statements that virtually every member of the general public knows are false. When it makes public statements everyone knows are untrue, the Courts cannot help but be viewed as liars by the citizenry. This immediately precludes any possibility of Courts gaining sufficient public support to obviate the fear Judges have of offending legislators. Two systemic examples are as follows.

State Supreme Court Justices must immediately discontinue rendering statements that are praiseworthy of the legal profession or lawyers as a whole. Simply put, there is probably not a single American who believes those statements. Virtually no one likes or trusts lawyers. Nobody ever has. Taken as a whole, the average citizen, from the person working in the worst paying job to a Wall Street investment banker does not trust lawyers or the legal profession. The prevalence of lawyer jokes demonstrates such.

The degree to which virtually all citizens have detested and lacked trust in lawyers and the legal profession throughout history is pretty much as apparent and unchanging as the existence of the Sun and Moon. The notion that the legal profession is a "time-honored" profession as it is often characterized by Judges, only succeeds in placing it upon a par with the world's oldest profession of prostitution, also recognized as "time-honored." Any Judge who asserts otherwise in light of the overwhelming opinion of the general public, simply can not be expected to receive any support from the public. By doing so, the Judge only succeeds in losing credibility. This then leaves the Judge with no alternative other than to appease the legislators out of fear.

Secondly, Judges need to desist in interpreting laws by defining words in a manner directly opposite from the commonly accepted usage of the term. Legislators need to write understandable laws and it is the job of the Judiciary to insist they begin to do so. If the law is poorly written it should be bounced back to the legislature to rewrite it. Legislative Crap shouldn't be saved by contorted judicial interpretation. If a word in a law requires such a strained interpretation that its meaning drastically differs from the commonly accepted usage of the term by the public, then the Judge needs to have the courage to declare the law invalid. To do otherwise, results in the citizens lacking fair notice of the laws

they are bound by, because the meaning of the words in the law are interpreted irrationally.

This point becomes particularly egregious when the law functions to promote the economic self-interests of lawyers. For instance, the heart and soul of judicial opinions upholding Unauthorized Practice of Law (UPL) prohibitions is the determination that the speaking of words containing truthful legal information constitutes "conduct" and not "speech." Yet, everyone knows that speaking words is speech. You'd have to be a lame Brainiac to assert otherwise. As previously indicated, I fervently believe that if the admissions process to State Bars is fair (which it currently isn't) then reasonable UPL prohibitions will serve an extremely important public interest. The operative term though is "reasonable."

Certainly, I would not envision ever giving my approval to Nonattorneys appearing in Court or signing documents submitted to a Court on behalf of litigants. However, by the same token the notion that having a conversation with someone outside of a courtroom may constitute the Unauthorized Practice of Law on the ground the conversation isn't "speech" is ludicrous. No one can really rationally buy into that concept. If you ask a housekeeper, a guy at a gas station, a check-out person at a supermarket, a drunk sleeping on a park bench, or a Wall Street Investment banker whether one is engaging in "speech" or "conduct" when they talk honestly about legal information, every single one will say its "speech." You don't even need to know about the Constitution or the legal profession to arrive at that conclusion. Speaking is "speech." It's simple as that. Assertions to the contrary simply decrease judicial credibility. This then causes Judges to resort to performing their duties out of fear of legislators instead of bravely determining the validity of laws.

In summary on this issue, most legislators are understandably ignorant regarding the law. It therefore is to be expected that they are enacting an enormous number of unconstitutional laws. The Judiciary needs to start aggressively serving the interests of the general public by properly determining the constitutional validity of laws without hesitation and by using a close, piercing analysis of those laws. Judges can only do this if they have the support of the general public because it can be anticipated they will offend legislators when they take a more aggressive stance in declaring poorly conceived, or poorly written laws unconstitutional. To win the support of the public, Judges need to prove themselves worthy of such support. They can do this by discontinuing the issuance of overtly false statements in their judgments, rulings and opinions. Courts need to desist in saving poorly written laws by interpreting them in an irrational manner, and instead courageously declare those laws unconstitutional. If legislators enact a law using words that can't be understood, then the Courts

need to bounce that freaking dumb-ass law right back to the legislature to try again. And if the legislature does the same thing, you just keep bouncing the law back until they write something that is understandable.

As a general rule, when it comes to Judicial rules of statutory construction of terms and defining words, its a pretty safe bet that if an honest, hard-working Janitor who typically possesses substantially better moral character than the average attorney knows the definition of a word adopted by a Court is stupid and moronic, then it probably is.

I call it the Judicial Janitor Rule of Statutory Interpretation.

PROPOSED STATE BAR EXAMINATION ESSAY QUESTION

In this short section, I propose an essay question for the State Bar Examination, which Applicants to the State Bar are required to pass. I then present a Model Answer to the question. The Model Answer presents what I believe is the most correct and appropriate answer to the question. Consequently, it should result in the exam taker receiving maximum credit for answering the question fully, accurately and correctly. Naturally, the Model Answer includes all citations to pertinent and applicable law.

By the same token, I must admit I present both the proposed essay question and the Model Answer in a spirit of humor. It is quite possible and perhaps even likely that no State Bar will ever include this question on their exam. But, you never know. Perhaps, if the Board of Bar Examiners in a particular State were suddenly overcome by a wave of candor and sincerity, they might.

The essay portion of the State Bar exam for most states is typically based on the applicable State law in which the exam taker sits. This is in contrast to the Multistate portion of the Bar Exam, which is in a multiple choice format and applicable to all States that use it. Thus, to present my proposed State Bar essay examination question properly, I obviously had to choose a specific State. This is because the laws of different States vary in many ways. I have selected the State of Oregon. Although Oregon law is to be applied to the question, in many regards both the spirit and humor intended are equally applicable to probably all States. So here it is.

PROPOSED STATE BAR ESSAY EXAMINATION QUESTION:

FACTS: Bob purchased a car from Drippy Auto Sales on an installment basis. Bob then filed for bankruptcy. He then called the salesman on the phone who he had purchased the car from and told the salesman that he would reaffirm the debt in the bankruptcy so as not to lose the car. The salesman then met with Bob and got him to sign documents. The documents given to Bob by the salesman provided that a different car dealer named Lippy Used Cars would buy the car from Bob, pay off the debt to Drippy Auto Sales and then resell the car to Bob so he'd be able to keep it. However, the price to Bob would be higher than the amount remaining on the installment contract owed to Drippy Auto Sales. Bob signed the documents, and then defaulted on the payments. Lippy Used

Cars then repossessed the vehicle, sold it for less than was due on its contract and then sued Bob in the Marion County Circuit Court of Oregon for the remaining balance due on the contract.

Instructions to Applicant: Who will win this case in Court and why? Write an essay describing how the trial court will decide the case. Your answer should take into account all facts, pertinent Oregon statutes, case law, and local custom that the trial court Judge will take into consideration in rendering his opinion. To receive maximum credit, your answer should be sufficiently comprehensive to address all applicable aspects of the law, State statutes, rules, regulations and judicial opinions that will be applied by the trial court in rendering its decision. However, your answer should also be as brief and concise as possible and not address anything that will not be pertinent to the Judge's decision. Remember, to receive maximum credit you need to explain who will win and why in as brief, but fully comprehensive manner as possible.

MODEL ANSWER:

Whoever the Judge likes more will win.

HOW COULD THE ARIZONA STATE SUPREME COURT ALLOW ITSELF TO LOOK SO STUPID IN THE HAMM AND KING CASES?

It is my position that if you have a criminal conviction for first-degree murder, you should be denied admission to the State Bar. Simple as that. No character hearing, no Bar application required, don't even bother going to law school, because you're not getting in.

Keep in mind the goal of this book is to liberalize the admissions process to the Bar. State Bars are using a lot of nonsensical Bullshit reasons to keep people out of the Bar. Their purpose is to advance the economic interests of attorneys and racist inclinations of the Judiciary. To accomplish this, admission committees concoct wild and irrational reasons to justify admission denials. Their baseless justifications include ridiculous assertions that an Applicant lacks good moral character because they are obnoxious, sarcastic, arrogant, filed for bankruptcy, engaged in civil litigation and abjectly dishonest State Bar assertions that they engaged in nondisclosure or a lack of candor regarding their application. As demonstrated expansively herein, there are many ludicrous reasons used to deny admission. They are then supported by Stupid-Ass State Supreme Court Justices who review the cases.

But, if you are proven, to have committed a serious violent crime and are convicted, I am not nearly so lenient and understanding. While committing a trivial Contempt of Court often exemplifies the finest moral character and an admirable spirit of personality, in stark contrast the commission of a violent physical act against another human is never justifiable. A person who commits such is a piece of trash. With this foundation, I now address how the Arizona State Supreme Court in the Hamm and King bar admission cases portrayed itself to the general public as what is known in technical legal terms as "Moronic Stupid-Asses." Notably, this characterization is appropriate whether one applies strict construction or implied construction to the phrase "Moronic Stupid-Asses."

The one exception on the Arizona State Supreme Court to the foregoing depiction is Justice Andrew D. Hurwitz. Justice Hurwitz wrote an absolutely phenomenal Dissent in the King case, which brilliantly exposed the cognitive deficiency and psychological infirmity of the other Justices. His Dissent falls squarely into the category of a brave Dissenting Justice who deserves the public's support. In the Hamm case, Justice Hurwitz declined to join the

majority opinion, but instead only concurred. In light of his spectacular Dissent in King, I interpret his concurrence in Hamm as only indicating agreement with the Court's ultimate admission decision, rather than its troubled reasoning. To this extent, my own objection to the Hamm opinion is not the ultimate decision, which I agree with, but rather instead the Court's lame and irrational reasoning. The cases are as follows.

THE HAMM CASE - 123 P.3d 652, 211 Ariz. 458 (2005)

James Hamm pled guilty to first-degree murder for killing a man execution style in 1974 by shooting him in the back of the head during the course of a drug deal gone bad. He was sentenced to life in prison with no possibility of parole for 25 years.

The above two sentences decide the entire case for me. Although I'm not a big fan of overly short judicial opinions, the opinion in this case should have been very short. It is undisputed he committed a heinous and violent act, and pled guilty to it. Therefore, he should not have a chance of getting into the State Bar.

But, what the Arizona State Supreme Court does instead is incredible. They don't just deny admission based on the murder conviction as rationality mandates. Instead, they stupidly support denial of admission because in his Petition to the Court, Hamm did not properly cite information from a U.S. Supreme Court opinion. The State Supreme Court lamebrains assert that by citing public domain information without proper attribution, Hamm committed plagiarism. Accordingly, in their view, this warrants denial of admission. The Judicial Nitwits wrote as follows:

> "The introduction to Hamm's petition before this Court begins:
>
> The consequences of this case for Petitioner take it out of the ordinary realm of civil cases. If the Committee's recommendation is followed, it will prevent him from earning a living through practicing law. This deprivation has consequences of the greatest import for Petitioner, who has invested years of study and a great deal of financial resources in preparing to be a lawyer. . . .
>
> This language repeats nearly verbatim the language of the United States Supreme Court in Konigsberg v State Bar, 353 U.S. 252 (1957) . . . .
>
> . . . If an attorney submits work to a court that is not his own, his actions may violate the rules of professional conduct. . . .("Plagiarism constitutes among other things, a

> misrepresentation to the court. An attorney may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.") . . . We are concerned about Hamm's decision to quote from the Supreme Court's opinion without attribution and are equally troubled by his failure to acknowledge his error. When the Committee's response pointed to Hamm's failure to attribute this language to Konigsberg, he avoided the serious questions raised and refused to confront or apologize for his improper actions, asserting instead, "From Petitioner's perspective, any eloquence that might be found in the Petition does not derive from any prior case decided in any jurisdiction, but rather from the gradual development of his own potential through study, reflection, and devotion to the duty created by his commission of murder." Hamm apparently does not regard his actions as improper or simply refuses to take responsibility." [185]

After reviewing the above passage in the Court's opinion my conclusions are as follows. First, Hamm is completely correct that his use of an isolated portion of a PUBLIC DOMAIN U.S. Supreme Court opinion was not in the slightest, even most minute manner improper. Consequently, he had no legal or moral obligation of any nature to assume any responsibility regarding the Court's false immoral allegation that his actions constituted immoral conduct. The bottom line is U.S. Supreme Court opinions belong to the PUBLIC DOMAIN. That means they belong to everyone. They are freely available for use by each and every citizen. No one has a greater right to them than anyone else and as a result the language in those opinions may be freely used by anyone in any manner, without restriction.

Secondly, Hamm did not copy the passage of the U.S. Supreme Court opinion. Instead, he only used a small portion of the ideas expressed by the U.S. Supreme Court in Konigsberg. That is a significant difference. The actual passage in Konigsberg, which he was falsely accused of plagiarizing, read as follows:

> "While this is not a criminal case, its consequences for Konigsberg take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer." [186]

A careful analysis of the above passage, with the opening passage of Hamm's Petition, reveals the following. Hamm's passage as cited by the Arizona Court consists of 62 words. The Konigsberg passage only consists of 59 words. Konigsberg states above:

> "The Committee's action prevents him from earning a living by practicing law." [187]

In stark contrast, Hamm's related passage states (emphasis added):

> "**If** the Committee's recommendation is followed, it will prevent him from earning a living through practicing law." [188]

These are two very different passages. Both regarding the language used and the idea conveyed. The Konigsberg passage does not contain the conditional "IF" proviso included in Hamm's passage. A second example is that the Konigsberg passage states (emphasis added):

> "**While this is not a criminal case**, its consequences for Konigsberg take it out of the ordinary run of civil cases" [189]

In contrast, Hamm's related passage states:

> "The consequences of this case for Petitioner take it out of the ordinary realm of civil cases." [190]

Notably, the Konigsberg passage includes an express identification that it is not a criminal case, whereas Hamm's passage does not. Clearly, the Arizona Court engaged in the precise conduct they falsely accused Hamm of engaging in. They were dishonest, deceitful and misrepresented the moral nature of Hamm's conduct. Regrettably, the Justices failed to "regard their actions as improper or simply refuse to take responsibility."

As stated, I would have denied Hamm admission. But, I would have done so solely and exclusively on the fact that he was convicted of first-degree murder. Not because of disingenuous Total Bullshit Self-Serving Judicial Crap predicated upon a false allegation by the Judiciacy that using small portions of PUBLIC DOMAIN U.S. Supreme Court opinions constitutes plagiarsim.

THE KING CASE - 136 P.3d 878, 212 Ariz. 559 (2006)

Lee King pled guilty to one count of attempted murder. The circumstances are immensely different than the Hamm case. In 1977, King was a certified peace officer. While off-duty and out of uniform at a bar, he got drunk. He argued with two males that he knew were convicted felons. When he left the bar they followed him. Ultimately, he used his service weapon to shoot each of them at close range. Both victims survived. King was sentenced to seven years in prison. In 1985, his conviction was set aside.

After his release from prison, the Texas Board of Law Examiners concluded he possessed good moral character. He was admitted to the Texas Bar in 1994. In 2003, he moved to Arizona to work in his law firm's Phoenix office, and passed the Arizona Bar exam. In 2005, the Arizona State Bar's Character Committee recommended he be admitted to the Bar.

The Arizona State Supreme Court then, on its own motion, considered King's application and denied admission. The Court's opinion embarks upon a seriously flawed inquiry. It determines King did not satisfy the burden of proving he was rehabilitated. It arrives at this conclusion by falsely asserting he did not accept responsibility for his past criminal conduct. Additionally, the Court immorally concludes King did not identify the moral weakness leading to his unlawful conduct. The majority opinion states:

> "Evidence in the record both supports and negates King's contention that he has accepted responsibility for the 1977 shootings. King demonstrated his acceptance by informing Judges, lawyers, law professors, former employers, and a host of friends, acquaintances, and colleagues of his crime over an extended period of time, impressing upon many of them heartfelt feelings of remorse. And in both hearings before the Committee, King admitted shooting the victims and expressed remorse, calling the shootings "a mistake I made that I will carry with me for the rest of my life."
>
> Conversely, in his written application for admission to law school and to the Arizona bar, . . . King minimized his personal responsibility. . . . King described the circumstances of the shooting and explained that in light of these facts . . . his strained emotional state . . . and anti-police sentiment of the day, it was in his best interests to plead guilty to one charge and "throw himself on the mercy of the Court rather than to attempt to clear himself in a jury trial." . . . .
>
> In his application to this court, King provided a shorter account of the shootings, noting his intoxication and fear of the victims, whom he knew to be convicted felons aware of his peace-officer status. . . .
>
> . . .

In light of the above-described evidence, King has failed to make an extraordinary showing that he has accepted responsibility for the shootings. . . .

. . .

In weighing all the factors concerning King's rehabilitation, we conclude that King's demonstration falls short of the "virtually impossible" showing needed . . . .

By our decision today, we do not effectively exclude all applicants guilty of serious past misconduct from practicing law in Arizona, as the dissent suggests. . . . Nor do we lightly view the choice of applicants such as King to live as good citizens after paying for past misdeeds, as the dissent implies. . . ." [191]

Justice Andrew D. Hurwitz, bravely stands alone against his psychologically disturbed and irrational brethren in an exceptionally fine Dissenting opinion that states (emphasis added):

"The State Bar of Arizona has repeatedly urged us to disqualify from the practice of law all applicants with records of serious past misconduct. Such a bright-line rule would hardly be irrational. . . .

. . .

The majority purports again to reject a per se rule today. . . . In practice, however, the Court has adopted the very bright-line rule **it purports** to abjure. If Mr. King has not demonstrated rehabilitation and current good moral character, it is difficult for me to conclude that any applicant previously convicted of a serious felony ever can.

. . .

. . . several unconstested facts not emphasized in the majority opinion deserve particular focus.

Mr. King comes to us with an extraordinary item on his resume -- he is a long-standing member of the Texas Bar. . . . Under Texas law, his admission necessarily involved a finding that he was then of good moral character. . . .

While we are of course not bound by another state's determination that an applicant possesses good moral character, neither should we simply disregard such a finding. More importantly, the years since 1994 strongly bear out the wisdom of Texas's conclusion. . . . He is in good standing with the Texas Bar and has never been in the subject of a disciplinary grievance or sanction. . . .

. . . Indeed, he appears to have been a model citizen in the almost thirty years following his crime. He is a devoted family man, happily married and successfully raising three children. He is active in his children's Boy Scout groups and the Chandler Christian Church, where he is involved with a number of leadership groups and charitable programs. . . .

King's application is supported by some fifty letters of recommendation, each of which praises King's good moral character and good works. These letters come from peers, colleagues, supervisors, friends, clients, professors, clergymen, Judges, and lawyers. . . .

. . .

Perhaps most telling is that, . . . our Committee on Character and Fitness . . . recommended King in April 2005 for admission to the State Bar. . . .

. . .

. . . By making the required showing of rehabilitation "virtually impossible," the majority pre-ordains the result. I do not believe, however, that our rules and case law support the application of the "virtually impossible" standard in this case.

. . .

The "virtually impossible" language appears for the first time in our case law in Hamm. . . .

It is important, however, to note that the applicant in Hamm had been convicted of the most serious crime recognized under Arizona law -- first degree murder. . . .

The majority ignores these substantial distinctions between Mr. Hamm's and Mr. King's past misconduct, simply equating first degree murder with attempted murder. . . I believe . . . the quality of proof of rehabilitation should increase as the seriousness of prior misconduct increases. . . .

. . .

. . . the majority suggests . . . Mr. King somehow attempted to minimize his culpability for the crimes. Read in context, however, the statement in the application was simply a factual explication of the factors that went into a guilty plea -- . . . The application did not call for expressions of remorse, and I would not penalize Mr. King for not gratuitously offering them. . . .

. . .

The Court also concludes that Mr. King has failed to identify the weaknesses thah caused his misconduct or address those weaknessses. Again, I am unable to agree.

Mr. King has consistently recognized that his misconduct was caused by a combination of alcohol abuse and job related stress. The majority acknowledges this, but speculates that there was also a deeper "character flaw that led King to fail to appropriately cope with stress and/or to abuse alcohol" to which King has failed to admit. The majority condemn King for not submitting evidence from a mental health expert diagnosing this supposed character flaw and attesting to King's triumph over it.

. . .

. . . I would accept the Committee's recommendation and admit King to the practice of law." [192]

Thank you Justice Hurwitz for a great opinion. How you can tolerate working with imbecilic buffoons on a daily basis is beyond my comprehension.

THE OHIO SUPREME COURT "HOOKER" PROGRAM FOR PURCHASING JUDICIAL OPINIONS

In the first part of this book published in 2002, I criticized Bar admission opinions of the Ohio Supreme Court quite harshly. The Ohio Justices simply fail to engage their limited cognitive faculties properly. As a result, they are unable to attain a rational conception or understanding of what "Good Moral Character" really is. Instead, Ohio Justices are the epitome of a State Supreme Court, which renders rulings founded upon vicious bias and anger by emotionally troubled Justices. So I thought it might be a wondrously nice idea to take an even-handed look at the moral character of Ohio State Supreme Court Justices, outside of the context of their State Bar admission opinions. They did not fare particularly well.

One thing that is "good" (I'm being sarcastic) about the Justices of the Ohio State Supreme Court is that you really know where you stand with them. If you want them to rule in your favor they've established a solid, historical record that demonstrates exactly what you need to do. It's actually a whole lot easier than worrying about learning statutes, cases and court rules. All you have to do is contribute to their judicial election campaign. Roughly speaking, as will be demonstrated below, it has been statistically proven that a campaign contribution of $1,000 or more favoring reelection of certain Ohio State Supreme Court Justices provides you with about a 70% chance they will rule in your favor. In the case of Justice Terrence O'Donnell you get an even bigger return for your money at about 91%.

I do not believe a Justice should recuse themself from a case simply because a litigant contributes to their election campaign, so long as the amount is moderate. To hold otherwise, would make it too simple for a litigant to secure removal of a Justice who they knew was going to vote against them. All the litigant would have to do is contribute to their campaign. Stated simply, requiring recusal can have precisely the same effect as not requiring recusal.

However, when the contribution amounts are $1,000 or more the picture changes. More importantly, if a disturbing pattern develops over a course of years showing that Judicial opinions are regularly being rendered in favor of campaign contributors that is troublesome. Such a pattern is precisely what the New York Times found regarding the Ohio State Supreme Court. On

September 30, 2006 the Associated Press published an article that read in part as follows (emphasis added):

"**REPORT: OHIO SUPREME COURT often sides with campaign contributors" by Associated Press, Published 9/30/06**

Justices on the Ohio Supreme Court rarely removed themselves from cases involving their campaign contributors and on average decided in their favor 70 percent of the time, according to an examination by The New York Times.

In the 215 cases with the most direct potential conflicts of interest over 12 years, justices took themselves off a case nine times. . . .

The Times said Justice Terrence O'Donnell voted for his contributors 91 percent of the time, the highest rate of any of the justices.

. . .

. . . Few Judges in states that elect the members of their highest court view contributions as a reason for disqualification when those contributors appear before them, the newspaper reported.

"I never felt so much like a **hooker** down by the bus station in any race I've ever been in as I did in a judicial race," said Justice Paul Pfeifer, a Republican member of the Ohio Supreme Court." Everyone interested in contributing has very specific interests."

"They mean to be buying a vote," he added. "Whether they succeed or not," it's hard to say."

. . .

The study looked at contributors who gave $1,000 or more. . . .

O'Donnell, a Republican, won his seat with the help of big contributions from the insurance, finance and medical industries, the newspaper reported. He is running for re-election this year, and his opponent, Judge William O'Neill, is making contributions an issue.

"We have to stop selling seats on the Ohio Supreme Court like we sell seats on the New York Stock Exchange," said O'Neill, a Democrat. . . . He says he will not accept contributions.

O'Donnell, who has raised more than $3 million since 2000, has helped consolidate the court's transformation from one that routinely ruled against corporations and insurance companies to one quite friendly to business interests, The Times reported.

Several justices told The Times they found Ohio's money-fueled judicial elections distasteful and troubling. . . .

. . .

Duane Adams, who had sued Daimler Chrysler, charging that his car was defective, said he became angry when he learned that the company's political action committee had given money to justices in the majority.

"At the very least, it's a conflict of interest," Adams said. "These gentlemen, they should be prosecuted for what I consider is taking a bribe." . . . ." [193]

Man, I would love to be on a Committee assessing the Moral Character of Ohio State Supreme Court Justices. On the other hand, I guess I am. It's my own one-man Committee, of which I'm the only member. And I've determined that numerous Justices on the Ohio State Supreme Court lack the requisite good moral character to possess a law license. Upon a showing of proper remorse and rehabilitation, and after a lapse of five years from the date of this essay, the Justices of the Ohio Supreme Court may request reconsideration of this opinion.

IN DEFENSE OF THE CONDUCT OF NEW JERSEY SUPREME COURT JUSTICE ROBERTO RIVERA-SOTO

New Jersey State Supreme Court Justice Rivera-Soto was wrongfully disciplined. His case demonstrates how the disciplinary system for members of the legal profession has deteriorated to such an extent that injustice is cast upon some of the highest ranking members of the judiciary. On May 11, 2007 the Newark Star-Ledger reported that the New Jersey State Advisory Committee on Judicial Conduct filed a complaint against Justice Rivera-Soto. He became New Jersey's first Hispanic Supreme Court Justice in 2004. The Committee's complaint charged that he "used or allowed the power and prestige of his office . . . to influence or advance the private interests of his family and son." His attorney quite properly responded that:

> "He thinks he behaved as any father would under the circumstances and believes he did nothing wrong." [194]

Here's what happened. According to the Star-Ledger article, Justice Rivera-Soto's son was being harassed in high school by a football teammate. On September 28, 2006, the two kids butted heads causing an injury to Justice Rivera-Soto's son. Justice Rivera-Soto called the police and signed a criminal complaint against the kid who injured his son. A New York Times article published July 21, 2007 stated as follows (emphasis added):

> "After a couple of incidents in which Mr. Rivera-Soto's son claimed he had been hit by the captain, the justice filed a juvenile delinquency complaint for assault against the teammate. . . ." [195]

On September 29, 2006 Justice Rivera-Soto called the superintendent of schools to discuss the incident. Apparently, at some point during this conversation he made reference to his judicial position. He then called the Camden County assignment Judge and the Camden County prosecutor and requested, "the matter be treated no differently than any other matter." He also asked the prosecutor to "make sure that his complaint received attention." This is a statement that any citizen might make if concerned about their child. Two

months later, a court hearing on the matter was postponed. Justice Rivera-Soto questioned a court clerk about the delay. He then asked the clerk, "if she knew who he was and handed her his business card." He also wrote a letter to the presiding Judge to complain about the postponement of the hearing. Ultimately, the two families involved reached an agreement to settle the matter in December, 2006.

Admittedly, some of the facts stated above arguably reflect adversely upon Justice Rivera-Soto. But, let's face it. What was he supposed to do? His kid is being physically harmed at school. He files a complaint about it. When any parent files any type of complaint to protect their child from being harmed at school, it is likely that the type of work the parent does will come up. If he had been a doctor, accountant, engineer or held any other type of position that wouldn't have been a problem. He also had a right as a parent to call the superintendent.

Similarly, like all citizens he had a right to call the trial Judge and prosecutor on the phone. Whether a Judge or prosecutor decides to talk to the citizen is their decision to make. But, citizens have a right to make phone calls to Judges and prosecutors. It's simple as that. You don't lose that right simply by "lowering" your societal status to the position of being a State Supreme Court Justice. This is particularly the case when the physical welfare of a family member is involved.

So all you're really left with is that when he questioned the court clerk, he asked if she knew who he was and then gave her a business card. He shouldn't have done that. But, considering the circumstances it wasn't a sufficiently egregious act to stain his professional career and impose judicial discipline. This is particularly the case considering that all he was doing was trying to protect his child. He didn't compromise the impartiality of his position for financial gain. In fact, the newspaper article indicates he expressly asked the prosecutor to treat the matter "no differently than any other matter."

It is my position that any parent (including the other Justices of the State Supreme Court) would have handled the matter precisely as he did. The bottom line is he was trying to protect his kid as a good father. He should be commended for that. To the extent handing out his business card or indicating he was a Supreme Court Justice may have technically violated rules, the circumstances indicate a proper exercise of discretion was to decline imposition of discipline. As indicated in the first part of this book, the New Jersey State Supreme Court bar in its Bar admission cases, grants wide discretion and forgiveness to rules violations committed by the Board of Bar Examiners. It was thus immoral for the Court to impose an unforgiving standard upon Justice Rivera-Soto for his minor infraction, caused by him trying to protect his son.

I will also tell you this. I've worked in New Jersey performing litigation support and business valuation services primarily in the matrimonial context as a CPA for many years. I know more New Jersey attorneys than in any other State, and while some are exceptionally competent, I'm not particularly impressed with most of them. There's a lot of Crap going on in New Jersey Courts that's a helluva lot worse than a Justice truthfully stating the nature of his professional position to physically protect his son.

Interestingly, the discipline of Justice Rivera-Soto occurred approximately six months after he "rocked the boat" so to speak in an Opinion he wrote, imposing judicial discipline upon New Jersey Superior Court Judge Wilbur H. Mathesius. The case is In the Matter of Wilbur H. Mathesius, 910 A.2d 594, 188 N.J. 496 (2006). Justice Rivera-Soto's opinion was an extraordinarily courageous opinion with one exception. The discipline of Mathesius, warrants mention herein due to its close proximity in time to the imposition of discipline upon Justice Rivera-Soto.

Based on my reading of Justice Rivera-Soto's opinion, Judge Mathesius is the type of Judge who might often be referred to admirably by people as a "No Nonsense Judge." My opinion of these so-called "No Nonsense" Judges is not quite so admirable. The facts of the opinion indicate as follows. In the criminal case of State v McDaniels, Judge Mathesius believed the criminal defendant was guilty, notwithstanding his acquittal. After the jury verdict, Mathesius ordered the defendant to stand and then stated to him as follows:

> ". . . The evidence was very strong that you were guilty of this offense. I don't know what they [jurors] were thinking, but they're thinking other than what I was thinking. You have a number of convictions and I'll tell you this: If you find yourself in trouble again, the resolution of the case [will be] other than the windfall you received today. . . Do you understand that?" [196]

Mathesius' threat that if the defendant finds himself in trouble again, the resolution will be different is so egregious that it may not even be within the scope of judicial immunity. As I understand the statement, he's basically saying that if the defendant comes before him again, he's going to rig the case to insure a conviction instead of rendering a fair and impartial trial. I believe that is a fair and reasonable interpretation of the word he used in his immoral statement. Mathesius then stated:

> "Now I want you to look and thank God, get on your hands and knees tonight and thank God that this jury didn't see the forest for the trees." [197]

Mathesius then excused the jurors, but ordered them to remain in the jury room. He then entered the jury room and expressed his frustration to the jurors about the Not Guilty verdict. He asked them what the "Hell" they were thinking about. One juror explained she "did not expect to be spoken to in the manner in which she was spoken of." [198]

In a different case State v Byrd, Mathesius entered the jury room off the record, while the jurors were deliberating. He was unaccompanied by any counsel or any court reporter, and he then discharged the jury for the day. When Mathesius returned to the courtroom the following exchange took place between him and Defense Counsel:

COUNSEL: . . . I was told you were going upstairs to inquire of the jurors whether they wished to stay or go home. And this was done by you off the record, and you came out and told me that they want to go home. I object to that. . . .

THE COURT: All right. You object to that.

COUNSEL: I also think the jurors should be brought out and dismissed in the presence of the Court and on the record, and in front of the defendants.

THE COURT: Thank you. You can do that when you're a Judge. I'll do it the way I do it when I'm a Judge. [199]

The next day, Mathesius gave a lengthy explanation on the record of his reasons for excusing the jury. When he concluded, defense counsel requested leave to respond. Mathesius responded as follows:

> "No, I don't care to hear your response. Respond on the appeal if it's necessary." [200]

Based on these and other matters, Justice Rivera-Soto wrote an opinion imposing judicial discipline upon Judge Mathesius. Clearly, Mathesius at a minimum needed an appropriate "attitude adjustment" for trouncing the constitutional rights of helpless defendants. Stated simply, he preyed upon those who were less powerful than he was and that is inexcusable.

However, Justice Rivera-Soto's opinion also imposed discipline upon Mathesius for a reason I believe to be totally unwarranted. Specifically, Mathesius' outspoken nature extended to criticism of New Jersey Court of Appeals Justices when they Reversed him in a case. There's nothing wrong

with that. In fact on this limited issue, I admire Mathesius, notwithstanding my assessment of his contemptuousness nature toward helpless defendants.
A Judge does not check his First Amendment rights at the bench when he becomes a Judge. He has the right to criticize opinions of other Judges in concluded cases just like anybody else. Additionally, Court of Appeal Justices have more, not less power than him. From a moral perspective, it is as equally admirable for Mathesius to have stated his truthful opinion regarding the Court of Appeals, as it was contemptuous for him to chastise those weaker than him.

The facts surrounding his criticism of the Court of Appeal Justices are as follows. In State v Fletcher, 380 N.J. Super. 80 (App. Div. 2005) the Court of Appeals reversed him. Following the reversal, on September 14, 2005, while attending a dinner held by the Mercer County Bar Association, Mathesius, approached a law clerk of the Appellate Division Justice who wrote the opinion reversing him. He told the law clerk to deliver a message to her Judge that the Judge was "inexperienced and not competent." I actually kind of like that. On September 26, 2005 he then wrote the Appellate Division Judge asserting that the Judge was "uninformed and impractical." Nothing wrong with that either. He then accused the Appellate Division Judge of engaging in a "folly" that:

> "breeds a sense of Dickensian disrespect of the law not only to its practitioners, but to the general public at large, and concluded that the Appellate Division opinion in Fletcher "indulged in fictive and romantic imagination." [201]

Nothing wrong with that either. I do not see the slightest reason to impose discipline upon Mathesius for appropriately criticizing Appellate Justices. He has a right to state his opinion regarding their opinions just like any other citizen does. Other interesting aspects of Justice Rivera-Soto's opinion about Mathesius indicate that he believes strongly in GOD, detests guns, and has no tolerance for violence. Frankly speaking, I'm on board with all three of these beliefs, along with supporting his constitutional right to sharply criticize Appellate Justices.

But, Mathesius did not have either the legal or moral right while performing his duties on the bench to engage in nasty, unconstitutional conduct when dealing with helpless Defendants in his courtroom. I use the term "helpless" to the extent that, while they may or may not have committed a violent act, they were "helpless" in his courtroom to ensure protection of their legal rights. That was the job of Mathesius. He abrogated that legal duty. The imposition of discipline upon Mathesius was correct, except to the extent it was based on his criticism of the Appellate Division. On that issue, he was totally

innocent. In fact, it's a very positive situation when there 's some healthy intellectual and passionate friction between Judges and Justices. This friction contributes to enhancement of the truth-finding process.

Whether Justice Rivera-Soto paid a high price himself for writing the decision imposing discipline on Judge Mathesius is unknown. I certainly fall short of asserting there was a direct connection between the two cases, notwithstanding their close time proximity with each other. In any event, the imposition of professional discipline imposed on Justice Rivera-Soto for fulfilling his moral duty as a father to protect his son was positively unjust.

THE ILLINOIS SUPREME COURT GUIDE TO CONVERTING YOUR JUDICIAL OFFICE INTO A "GET RICH QUICK" SCHEME

Okay, so you want to make a lot of money. Here's what you do. It's simple. You get yourself elected to be a Justice on the Illinois Supreme Court. Then when someone criticizes you, institute a lawsuit against them for defamation. But, after you win the lawsuit, make sure you reaffirm your commitment to the First Amendment.

Illinois State Supreme Court Justice Robert Thomas, with the assistance of other Justices on the Illinois State Supreme Court who testified on his behalf, succeeded in implementing this ingenious "insider" investment plan to the tune of a cool $3 million. Alright, concededly no one in the general public or media will probably ever really trust Justice Thomas again and he ruined his judicial career by compromising his commitment to the general public for a few bucks. But, the bottom line is that he got $3 million for it. And based on my research, he did it legally. The man should have been a Wall Street tycoon. Here's what happened.

In 2003, Bill Page a columnist for the Kane County Chronicle wrote three articles extremely critical of Justice Thomas. According to a New York Times article written by Adam Liptak and published on June 25, 2007, the columns ran beneath the word OPINION, which was in BOLD 60 Point Type. In the columns Page alleged that Thomas had traded his vote in an attorney disciplinary case pending before the Court for a political favor. Thomas instituted suit against Page and the Chronicle for defamation.

The case was tried before Cook County Judge Donald O'Brien. Justice Thomas obtained a jury verdict in his favor for $7 million. This was subsequently reduced by the trial court Judge to $4 million. According to the New York Times article, Judge O'Brien refused to allow the jury to see that the columns ran beneath the word "OPINION" in bold 60-point type. Instead, he preferred to conceal this critically important fact from them.

Page and the Chronicle then instituted suit in the Federal District Court of Illinois against Justice Thomas, along with 10 other Judges in the Illinois State system. They included the trial court Judge and other Justices of the State Supreme Court. According to the Sun-Times it was their position they couldn't fight the trial court verdict because Justice Thomas headed the entire State court system, which would hear any appeal.

An article in Chicago Magazine written by David Murray, stated as follows (emphasis added):

> "Although the Chronicle is published in Thomas's Second Judicial District, the column did not set off many ripples. And why would it? After all, the paper claims a circulation of less than 15,000. . . .
> . . .
> Perhaps the biggest question concerns Justice Thomas's motives for going to court. . . .
> . . .
> Is there any precedent for a state supreme court justice suing a newspaper for libel? Chicago [Magazine] could unearth only one, and that case was in Pennsylvania. Although 21 years old, it has yet to be resolved despite the fact that the justice, James T. McDermott died 12 years ago. . . .
>
> **. . . In filing the suit, Thomas has probably ensured that the charges in the small newspaper's columns get vastly bigger and longer play than the columns ever did."** [202]

One of the most interesting aspects of the case was that other Justices of the Illinois State Supreme Court appeared as witnesses on behalf of Justice Thomas. This is quite remarkable considering that prior to the trial on February 10, 2006, the following was published by author Michael Miner according to the Chicago Reader story archive (emphasis added):

> ". . . The defense [Chronicle and Bill Page] also asked the trial Judge to dismiss the suit entirely.
>
> "A ludicrous proposition," declared Cook County Judge Donald O'Brien last week as he denied the motion to dismiss. Perhaps it was. But so is the position Page's lawyers find themselves in. The witnesses they want answers from are Thomas's fellow supreme court justices, who will probably cooperate as soon as hell freezes.
> . . .
> The suit says Page falsely portrayed Thomas as a "vindictive, petty and biased human being."
>
> The problems this case has stirred up were there from the beginning. No Kane County Judge would touch it, so it was shifted to Cook County and wound up with O'Brien. Seeking documents and depositions, Page's lawyers subpoenaed the other supreme court justices. OK by us, says Power: "If the appellate court allowed it we'd have another six good witnesses." But it wasn't OK with these "non-party justices," who moved to quash the subpoenas. O'Brien granted their motion, Page appealed and the appellate court gave the justices all the protection they could dream of." [203]

Ultimately, the parties settled for $3 million according to an article published by the Chicago Tribune on October 12, 2007. As part of the settlement, the Chronicle and Justice Thomas issued a joint public statement. The statement indicated that the newspaper regretted publishing statements about Thomas that a jury found to be false. The Chronicle apologized to Justice Thomas. For his part, Justice Thomas affirmed his support for the role of a free press in informing the public about all branches of government, including the Judiciary.

I actually love that. It's just too perfect. The Judge institutes suit against the newspaper for making statements about him and then reaffirms his support for a free press. According to a Suntimes article written by Dan Rozek and Eric Herman on October 12, 2007, the settlement did not sway columnist Bill Page from his original stance. Page stated, "I don't apologize. I stand by what I wrote. . . ." [204] Page called the settlement a money decision. The Chicago Tribune quoted Page on October 12, 2007 as indicating in a phone interview that he would not have agreed to a settlement and stands by his work. Page said, "I will never back down from what I wrote. . . . It was based on what I had from confidential sources." [205]

In an article published June 25, 2007 by Adam Liptak of the New York Times, Justice Thomas' attorney Joseph A. Power Jr. compared the Federal lawsuit that was filed by the Chronicle against the eleven Illinois Judges as being the sort of filing that arrives at the court written in pencil by people representing themselves, badly. Specifically, Power stated (emphasis added):

> "This is the type of case that a **mentally challenged** pro se plaintiff would file." [206]

Power's selection of the phrase "mentally challenged" is totally correct, but he applied the phrase to the wrong category of litigants. The phrase should more appropriately be applied to a State Supreme Court Justice who would institute a defamation suit against people for criticizing him. Nevertheless, I must concede my review of applicable case law indicates Supreme Court Justices are not necessarily precluded from doing so. It's just a stupid thing to do.

The problem is that when a Justice sues those who criticize him, they engage in conduct that will be perceived by a large percentage of the general public as inimical to the spirit of the First Amendment. When high-ranking judicial officials sue people who criticize them for the purpose of obtaining monetary judgments (whether such criticism is based upon truthful fact or false

allegations), they appear to the public as compromising their commitment to judicial office for personal profit.

However, I also concede that notwithstanding the inevitable negative public perception, the U.S. Supreme Court may have "arguably" held such lawsuits are not prohibited. As discussed below, it's a difficult call. If such lawsuits are not prohibited, then it means people who disseminate negative opinions about Supreme Court Justices based on false allegations, may not be protected from liability by the First Amendment. This would be the case even if their statements are couched in terms of opinion. Notably, the same premise would apply to criticism of the President of the United States, U.S. Senators or any other politician.

As I read existing U.S. Supreme Court case law, it "arguably" appears to suggest President George Bush or Bill Clinton, using Justice Robert Thomas" theory, could institute defamation lawsuits against all of the newspaper reporters or private citizens who express negative opinions about them. That would be about 20 million lawsuits right off the bat, give or take several million either way. But the bottom line is that whether you like or dislike Bush or Clinton, or any other President, none of them have been stupid enough to institute such lawsuits. It's just a dumb thing to do. A "mentally challenged" thing to do, so to speak. Presumably, if a State Supreme Court Justice possessed the understanding of legal matters, characteristic of competent Pro Se litigants those "mentally challenged" Supreme Court Justices wouldn't institute such lawsuits.

The seminal U.S. Supreme Court case addressing the issue is Milkovich v Lorain Journal Co., 497 U.S. 1 (1990). The express holding of Milkovich is that the First Amendment does not require a separate "opinion" privilege limiting application of State defamation laws. However, in the opinion the Court also indicates that under Greenbelt Cooperative Publishing Assn, Inc. v Bresler, 398 U.S. 6 (1970) statements that cannot reasonably be interpreted as stating actual facts about an individual are protected. The example the Court gives in Milkovich is that to state "In my opinion the Mayor is a liar" is an unprotected statement because it implies knowledge of facts leading to the conclusion that the Mayor told a lie. In contrast, to make the statement, "In my opinion Mayor Jones shows his abysmal ignorance by accepting the teachings of Marx and Lenin," would not be actionable. Distinguishing the line between what is actionable and what is not actionable is quite difficult.

The foregoing examples given by the Court in Milkovich intended for clarification, actually make the opinion pretty confusing. I personally have a difficult time differentiating between the real essence of the two above examples presented. One statement is presented by the Court as actionable, and one as not. Yet, the statements aren't really all that different. It does appear though

that the mere assertion a statement is nothing more than an "opinion" does not protect a citizen from a defamation lawsuit. This seems to be the case even regarding lawsuits filed for financial gain by powerful public officials, including the President of the United States or a State Supreme Court Justice like Robert Thomas. That is quite a problem. At a minimum, the Milkovich opinion positively needs to be modified or overruled to the extent it provides protection from legitimate criticism to high-ranking public officials.

After the jury verdict in favor of Justice Thomas' apparently legal, albeit politically ill-advised lawsuit, and before the parties settled for $3 million, the Illinois State Legislature in August, 2007 passed Public Act 095-0506. It states as follows (emphasis added):

> "Section 5. Public policy. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement. . . .
>
> Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPS" as they are popularly called.
>
> The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. **This abuse of judicial process can and has been used as a means of intimidiating, harassing, or punishing citizens**. . . ." [207]

The highlighted passage above is quite important. The Illinois law indicates that if an Illinois State Supreme Court Justice were to currently institute a suit like Thomas did, they would be engaging in an "abuse of judicial process." That's quite a strong and totally correct charge. The question however, in the Thomas case became whether the statute applied to his lawsuit because the jury verdict was rendered prior to enactment of the statute. This became a serious point of contention between the parties because of additional language in the statute, which provided as follows:

> "Section 15. Applicability. This Act **applies to any motion to dispose of a claim** in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." [208]

Presumably, in reliance on the phrase "applies to any motion," the Chronicle filed a motion to have the trial court judgment overturned. The Chicago Tribune reported on September 27, 2007 that the Chronicle's attorney Bruce Sanford stated in reliance on the statute as support for the motion:

> "The anti-SLAPP law "obviously applies to pending litigation and future litigation,"" [209]

However, according to the Chicago Tribune, Justice Thomas' attorney, Joseph Power then said:

> "It's a complete and utterly frivolous motion," . . . It's shameful the things these lawyers are doing." [210]

Shortly thereafter, the Chicago Sun-Times reported on October 12, 2007 that the case settled for $3 million. Whether the SLAPP law would have applied to a motion filed after its enactment, which attacked the legitimacy of a jury verdict rendered prior to its enactment, I really don't know the answer to. There is definitely a strong presumption against ex-post facto laws, so my inclination is the statute probably could not have been applied to a motion addressing the jury verdict. By the same token, Power's overreaching statement that "It's a complete and utterly frivolous motion" is incorrect, in light of the express language of the statute indicating otherwise. The settlement of the case for less than the trial court award shortly subsequent to the filing of the motion seems to confirm such.

As for Justice Robert Thomas, he's really not "mentally challenged." He's just Plain Ol' Stupid. He gave up an immense degree of public respect, thereby jeopardizing his entire judicial career for a paltry $3 million.

Enjoy your retirement money Bob. You paid a high price for it.

A TRUE AMERICAN HERO - FEDERAL DISTRICT COURT JUDGE ANNA DIGGS TAYLOR

"The President of the United States, a creature of the same Constitution which gave us these Amendments, has undisputably violated the Fourth in failing to procure judicial orders as required by FISA, and accordingly has violated the First Amendment Rights of these Plaintiffs as well." [211]

> ACLU v National Security Agency, **Opinion of U.S. District Court Judge Anna Diggs Taylor**, Case No. 06-CV-10204 (August 17, 2006)

"The district court - asserting a heretofore unprecedented, absolute rule that the Fourth Amendment "requires prior warrants for any reasonable search," . . . agreed and granted the plaintiffs' motion . . . on this theory. . . .

However, the Supreme Court has made clear that Fourth Amendment rights are "personal rights" which, unlike First Amendment rights, may not be asserted vicariously. . . .
. . .
. . . As acknowledged by plaintiff's counsel at oral argument, it would be unprecedented for this court to find standing for plaintiffs to litigate a Fourth Amendment cause of action without any evidence that the plaintiffs themselves have been subjected to an illegal search or seizure." [212]

> ACLU v National Security Agency, U.S. Court of Appeals Majority Opinion, Reversing District Court Judge Anna Diggs Taylor (July 6, 2007)
> Case #06-2095

"**Without expressing an opinion concerning the analysis of the district court**, I would affirm its judgment. . . ." [213]

> ACLU v National Security Agency, U.S. Court of Appeals Dissenting Opinion, Case #06-2095

"no law is of any value unless it is followed." [214]

> U.S. Supreme Court Justice Samual A. Alito Jr. - Keynote speech to graduating class of Essex County College Police Academy as published by Associated Press, 8/16/06

Federal District Court Judge Anna Diggs Taylor. This is one great woman. Okay, so pretty much the entire Judiciary branch of government bailed out on her. Even the Dissenting opinion at the Court of Appeals, which reversed her didn't support her spectacular Opinion at all. Okay, so the woman took an incredibly brave stand against the President of the United States, who positively was violating the Fourth Amendment, as well as FISA, and in the end nobody really went to bat for her. She exemplifies how it is much tougher to be a brave and courageous Judge, than it is to be one of those wimpy Star Chamber magistrates characteristic of our Judiciary. But, there are still some very good, upstanding Judges. And Judge Taylor ranks amongst the best. These are the people who are willing to stand alone to do what is right, instead of caving in to political pressure.

Here are the facts of the case. After the tragedy of 9/11/01, President Bush authorized the National Security Agency (NSA) to begin a counter-terrorism operation known as the Terrorist Surveillance Program (TSP). Pursuant to the program, the NSA intercepted **without warrants** telephone and e-mail communications where one party is outside the U.S. and the NSA has a reasonable basis to conclude one party is affiliated with Al Qaeda. The Plaintiffs in this case were journalists and lawyers who regularly communicated with individuals located overseas who they believe the NSA suspects of being terrorists.

Before continuing, it is important to note that it is my position the NSA should positively be wiretapping these individuals. No rational person can contest that. BUT, the NSA positively should not be wiretapping them without a warrant. Because that's the law. The issue in this case isn't the legal legitimacy of wiretapping these people. They positively should be wiretapped both as a matter of law and morality. The issue is whether the wiretapping should be accomplished without a judicial warrant and whether the President violated a Congressional statute (FISA), as well as the Fourth Amendment by allowing for wiretapping without a warrant. He positively did. That is the crux of Judge Taylor's opinion.

Judge Taylor in her opinion issued an Injunction against warrantless wiretaps of telephone and internet communications in contravention of the Foreign Intelligence Surveillance Act (FISA). She also held the TSP violates the Separation of Powers doctrine and the First and Fourth Amendments to the Constitution.

The Sixth Circuit Court of Appeals reversed her decision. They did so on the ostensible ground that the Plaintiffs lacked Standing. Whereas, Judge Taylor's opinion is well-written and easily understandable, the Sixth Circuit's opinion is a convoluted and confusing mess of indiscernible illiteracy and

semantic manipulation. The appellate court knew the result they wanted to attain. They just had to figure out a way to get there, no matter how little sense it made. Thus, rather than upholding the law, they relied on contorted logic to justify their disrespect for the rule of law. They gave an immense degree of judicial support to the premise that a person can successfully violate the law, if they've got a Judge willing to write an irrational opinion interpreting it to mean something other than it is.

Setting aside most of the sophistical arguments concocted by the appellate opinion (which regrettably I did waste time reading) on issues of Standing, Redressability, Causation, Injury in Fact, Separation of Powers, Inherent Powers, and all the other legal bullshit, the bottom line is that the President of the United States broke the law and got away with it. He got away with it because Sixth Circuit Justices wanted him to. They used the Standing issue to bail out from doing their job. It's simple as that. Judge Taylor was completely and totally correct on the critical issue.

The Sixth Circuit's conclusion that the plaintiffs in this case lacked Standing is the equivalent of a Jew in Nazi Germany going to Court to contest the legitimacy of Hitler's Enabling Act and being told that since he only has an "unsupported belief" Hitler is going to persecute him, he lacks Standing.

Notably, the NSA's arguments stressing National Defense, Inherent Powers and Emergency Powers to support President Bush's alleged authority to wiretap without warrants are scarily reminiscent of Hitler's "Defense of the State," and "Emergency Powers" arguments. They were used by Hitler to nullify rights that had been included in the German Constitution prior to Hitler's assumption of power. These arguments used by the NSA were the same theoretical legal linchpins Hitler used. They are also the same arguments President's Bush's lawyers presented to the Court. That is a fact.

Judge Taylor wrote in her incredibly brave and courageous opinion, which I quote at length, as follows (emphasis added):

> "Since the Court's decision of Katz v U.S. 389 U.S. 347 (1967), it has been understood that the search and seizure of private telephone conversations without physical trespass required prior judicial sanction, pursuant to the Fourth Amendment. Justice Stewart there wrote for the Court that searches conducted without prior approval by a Judge or magistrate were per se unreasonable, under the Fourth Amendment. . . .
>
> . . .
>
> In 1976 the Congressional "Church Committee" disclosed that every President since 1946 had engaged in warrantless wiretaps in the name of national security, and that there had been numerous political abuses, and in 1978 Congress enacted the FISA.

> Title III . . . was later amended to state that "**the FISA of 1978 shall be the exclusive means by which electronic surveillance of foreign intelligence communications may be conducted.**
> . . .
>
> The FISA defines a "United States person" to include each of Plaintiffs herein and **requires a prior warrant for any domestic international interception of their communications.** For various exigencies, exceptions are made. . . .
> . . .
>
> A FISA judicial warrant, moreover, requires a finding of probable cause. . . .
>
> The FISA was essentially enacted to create a secure framework by which the Executive branch may conduct legitimate electronic surveillance for foreign intelligence while meeting our national commitment to the Fourth Amendment. . . ." [215]

Judge Taylor then notes the historical danger, which has accompanied Presidential attempts to exempt the Executive Branch of government from the law, writing as follows:

> "The Constitution . . . provides that "the executive Power shall be vested in a President . . . And that " . . . he shall take care that the laws be faithfully executed. . . ."
>
> Our constitution was drafted by founders and ratified by a people who still held a vivid memory of the image of King George III and his General Warrants. . . .
> . . .
> The seminal American case in this area . . . is that of Youngstown Sheet & Tube v Sawyer, 343 U.S. 579 (1952). . . .
> . . .
> Justice Jackson's concurring opinion in that case has become historic. He wrote that . . . "when the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for he can rely only upon his own Constitutional powers minus any Constitutional powers of Congress over the matter. . . .
> . . .
> After analyzing the more recent experiences of Weimar, Germany, the French Republic and Great Britain, he wrote that:
>
> . . . emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. . . .
> . . .

> In this case, the President has acted, undisputably, as FISA forbids. FISA is the expressed statutory policy of our Congress. The presidential power, therefore, was exercised at its lowest ebb and cannot be sustained." [216]

The Sixth Circuit in reversing Judge Taylor placed emphasis on one phrase in her opinion, where she stated that the Fourth Amendment:

> "requires prior warrants for any reasonable search," [217]

The appellate Court apparently had two objections to the foregoing statement. The first was that it asserted Judge Taylor was incorrectly asserting the existence of an absolute rule regarding the Fourth Amendment's warrant requirement. That however, is a misleading statement by the appellate Justices. The reason is that the appellate Court conveniently failed to disclose in its opinion when making the assertion that Judge Taylor's use of the foregoing phrase was preceded by her citation to the case of U.S. v Karo, 468 U.S. 705 (1984). Her opinion noted that in Karo, Justice White wrote for the U.S. Supreme Court that warrantless searches of a private residence are presumptively unreasonable, absent exigencies. Judge Taylor specifically included the phrase "absent exigencies" when citing the Karo passage. Thus, it is clear she properly recognized that exceptions existed to the warrant requirement of the Fourth Amendment in "exigent" situations.

Similarly, Judge Taylor also noted in her opinion that Karo was consistent with Katz v U.S., 389 U.S. 347 (1967) where Justice Stewart wrote for the Court that searches conducted without prior approval by a Judge or magistrate were per se unreasonable "subject only to a few specifically established and well-delineated exceptions." Once again, she specifically noted there were exceptions to the general rule. Accordingly, the appellate court's assertion that she was incorrectly asserting the existence of an absolute rule was false.

It seems apparent that the Sixth Circuit Court of Appeals intentionally misconstrued Judge Taylor's phrase "requires prior warrants for any reasonable search," by failing to disclose that she noted in prior passages there were exceptions to the rule and certain exigencies. Rather than openly and honestly assessing Judge Taylor's opinion, the appellate Court preferred to place an undue irrational emphasis upon one phrase in Judge Taylor's opinion. They did this to justify their own glossing over the irrefutable fact that the President was

violating the law on a systemic basis. What the appellate Court did was to isolate one passage of Judge Taylor's opinion, in order to create a misleading impression of her opinion. Even the most rudimentary opinions on statutory construction uniformly adopt the principle that words should not be taken out of context, but instead should be interpreted in light of other passages concurrently written to ascertain the proper meaning. This basic premise of law was ignored by the Sixth Circuit Court of Appeals.

In regards to the Standing issue both Judge Taylor and the Dissenting opinion of Justice Ronald Lee Gilman of the Sixth Circuit determined that the Plaintiffs had Standing. Substantively, that makes the vote 2 - 2 on the Standing issue because there were only three Justices on the appellate panel. One wrote the Court's opinion, a second Justice concurred, and the third Justice dissented. It seems to me if the Standing issue is that close, and the case involves the President violating a Congressional statute on a wide-scale basis, the Court should at least have the courage to decide the key legal issue. Instead, it used the issue of Standing as an escape hatch to avoid a real decision on the merits. It did so by relying on a convoluted, incomprehensible analysis of Standing.

Lastly, I note that the Sixth Circuit's opinion also held the Plaintiffs did not assert a viable FISA cause of action. Their justification of this conclusion defies belief. They rejected Plaintiffs' contention that the NSA was even engaging in "electronic surveillance." This was notwithstanding the fact that the government admitted it intercepts telephone and e-mail communications. The Court adopted the ridiculous position that the interception of telephone and e-mail communications using electronic media does not necessarily constitute "electronic surveillance." The Court predicated this irrationality based on the complex nature of definitions set forth in FISA, which it construed as rendering possible the interception of telephone and e-mail communications involving electronic media, without such constituting "electronic surveillance." That's nuts. Such a contention ranks right up there with Bill Clinton's assertion that getting a Blowjob wasn't Sex. And as I recall, Clinton relied on a definition of "Sex" formally adopted by a Federal Judge.

Judges can only do so much with wordplay, semantic games, definitions, sophistry and manipulative logic. FISA says what it says. The President violated the law. It's simple as that. If you want citizens to comply with the law, then the President and Judges should do the same. Like U.S. Supreme Court Justice Samuel Alito said, "no law is of any value unless it is followed." Judge Anna Diggs Taylor knew that. She did her job. And she will forever be recognized as a True American Hero for doing so. Which is a lot more than can be said for the Sixth Circuit Court of Appeals Chickenshit approach.

FISA - A CONGRESSIONAL ENACTMENT TO SUPPLEMENT PRESIDENTIAL POWER

Life and government are characterized by an irony that is often comical, which is as follows. The effect of conduct anyone engages in is often precisely Opposite to the effect intended. As indicated in the previous Chapter, FISA is the Foreign Intelligence Surveillance Act. Enacted for the purpose of limiting Executive power, under President George Bush it had the effect of increasing Executive power. All it took was two simple requisites. First, the President had to violate the law, and then he had to be the beneficiary of the Judiciary's failure to uphold the law.

The matter was first decided quite correctly and bravely by Federal District Court Judge Anna Diggs Taylor. She squarely held President Bush violated the law. The government appealed to the Sixth Circuit Court of Appeals. The Justices cowered out of even deciding the key issue by manipulatively interpreting the doctrine of Standing. As indicated in the previous Chapter, they did so in an indecipherable opinion figuring that nobody would really be able to fully understand what they wrote anyway. On that point, the Sixth Circuit was quite correct.

The matter was then addressed by the Federal Ninth Circuit Court of Appeals, in an opinion published November 16, 2007. The facts of the Ninth Circuit's opinion are quite interesting, and its logic amusing, if not pitiful. In general, the Court presents the matter as follows. Following the terrorist attacks of 9/11/01, President Bush authorized the National Security Agency (NSA) to conduct a warrantless communications surveillance program known as TSP (Terrorist Surveillance Program). After the New York Times revealed the program in 2005, government officials doled out disclosures about the program. One day later President Bush informed the country in a radio address he had authorized the program.

A domestic organization called the Al-Haramain Islamic Foundation instituted suit after the President's uncoerced confession. They claimed they had been subject to warrantless electronic surveillance in 2004 in violation of FISA. However, unlike the case presented to the Sixth Circuit, Al-Haramain was in possession of a "Top Secret" document proving they had been the subject of warrantless surveillance. Thus, Al-Haramain had irrefutably cleared the "Standing" hurdle that was the impediment in the Sixth Circuit case.

Now, a reasonable person would probably ask, "How did the organization obtain possession of such a Top Secret document?" The answer is both easy and

pathetic. They got the "Top Secret" document because the United States government just gave it to them in error in 2004 during the course of proceedings to freeze the organization's assets. Even though the government voluntarily gave the organization the document, it contends in the FISA litigation, that the Court should not consider the document because it is still "Top Secret" and thus covered by the state secrets privilege.

Now, am I missing something here? How can you possibly tell somebody a secret and then contend they don't have a right to know it? It's like going up to your wife and saying, "Honey, I've been screwing around with your best friend, but you can't divorce me for that, because I made a mistake telling you when I was drunk and you're not supposed to know." In a pathetically lame manner, the Ninth Circuit does indeed contrive a contorted, albeit mentally impaired, irrational way to justify the foregoing premise. What the Court does is as follows.

The Court first notes the state secrets privilege is "not to be lightly invoked." It then proceeds to "lightly invoke" the privilege in a manner more lightly than has ever occurred in American history. It agrees with the District Court that the subject of the TSP program is not protected by the state secrets privilege because President Bush publicly acknowledged he authorized the program. The Court further notes that subsequent to Bush's disclosure, government officials made one voluntary disclosure after another about the TSP. So it concludes the TSP program itself is not subject to the state secrets privilege.

That however, does not resolve the question as to whether the so-called "Top Secret" document the organization was given by the government is covered by the state secrets privilege. The Ninth Circuit opinion states:

> "This case presents a most unusual posture because Al-Haramain has seen the Sealed Document. . . . The district court held, however, that "**because the government has not officially confirmed or denied whether plaintiffs were subject to surveillance, even if plaintiffs knew they were, this information remains secret**. . . . The district court also concluded that **the government did not waive its privilege by inadvertent disclosure of the Sealed Document**." [218]

The Court then states:

> ". . . Al-Haramain is privy to knowledge that the government fully intended to maintain as a national security secret. . . . We reviewed the Sealed Document . . . . Having reviewed it in camera, we conclude that the Sealed Document is protected by the state secrets privilege." [219]

The essence of the Court's opinion is that the "Top Secret" document obtained by Al-Haramain, which proves they were subjected to warrantless surveillance can not be used by the organization, because the governmental disclosure was made by mistake. Stated simply, the Court concludes that since the government intended to keep the document secret, even though it revealed the secret in error, the state secrets privilege still applies. The result is that Al-Haramain cannot use the document they were given to prove they have Standing, and as a result they lack Standing.

The Court's opinion is stupidity at its "best" ("worst"). Two facts are irrefutable upon rational consideration of the cognitively deficient logic used in the opinions of the Sixth and Ninth Circuits, compared to the logically sound opinion of Federal Judge Anna Diggs Taylor. First, President Bush positively violated FISA. Second, neither the Sixth or Ninth Circuit had the courage to directly decide the issue. Instead, they both relied on ridiculously contrived reasoning pertaining to the issue of Standing. The reason they lacked the courage to decide the main issue is they knew if they did, they would have to rule that the President violated the law. Federal District Court Judge Taylor was willing to uphold the law. In contrast, the Appellate Justices of the Sixth and Ninth Circuits were too handicapped by their own personal fears to fulfill their judicial duties.

Lastly, I note the following. The issue of terrorism is undoubtedly one of serious national concern. The exigency of an emergency situation that could impact upon the entire nation may in fact justify warrantless surveillance in isolated instances. If so, what should have occurred is as follows. Bush should have gone to Congress asking for repeal or amendment of FISA to the extent necessary for fulfilling the nation's defense needs. He should have done this before violating the law, not after. Alternatively, the government could have challenged the constitutionality of FISA on the ground it infringed upon rightful Presidential power.

But, for Bush to simply say, "to hell with FISA, I'm doing what I want" and then blatantly violate the statute was commission of an Illegal act by the President. The failure of the Sixth and Ninth Circuit Court of Appeals Justices to fulfill their sworn duty to uphold the law, by evading the rendering of a decision on the key issue was an act of Contempt for the law on their part. That sends a disturbing message to the public. If the President can violate the law, and if Appellate Justices are contemptuous towards congressionally enacted statutes, the general public can reasonably be expected to have a diminished degree of respect for the written law.

As the saying goes, if you want a secret kept, then keep it. The notion of "I didn't really mean to tell you my secret, so it should still be treated as a secret" is a buffoonish mockery of reason.

Perhaps FISA really stands for "Federal Insulation from Statutes for the Administration."

A COMPARATIVE ANALYSIS OF JUDICIAL INTERPRETATION OF THE PHRASES "ELECTRONIC SURVEILLANCE" AND "GOOD MORAL CHARACTER"

The issue I examine in this chapter is whether the average citizen and the Judiciary can define the phrase "Good Moral Character" or "Electronic Surveillance." The conclusion I reach is that to the average citizen the phrase "Good Moral Character" is impossible to define, but the phrase "Electronic Surveillance" is easy to define. In contrast, to the Judiciary, the exact opposite is true. To the Judiciary, the phrase "Good Moral Character" is easy to define and the phrase "Electronic Surveillance" is almost impossible to define.

The result of this disparity between the Judicial ability to interpret words and the citizens ability to interpret words is a mandated conclusion that the Judiciary is not functioning in a cognitively rational manner properly aligned with the general public's interest. Instead, the Judiciary is functioning to further the interests of the government and itself at the expense of the general public.

I compare in this essay two important cases decided by the Sixth Circuit Federal Court of Appeals within 14 months of each other. The two cases considered conjunctively exemplify a selective application of logical principles that can only be construed as being in furtherance of judicial self-interest.

In ACLU v National Security Agency, Case #06-2095 (2007) the Sixth Circuit addressed the interception of telephone and e-mail communications without any judicial warrant by the National Security Agency (NSA). One aspect of the Court's opinion addressed a critical provision of the Foreign Intelligence Surveillance Act (FISA), which requires judicial warrants for governmental interception of communications occurring by means of "Electronic Surveillance." The Sixth Circuit's opinion, ruling against the ACLU and in favor of the government's interception without a judicial warrant states (emphasis added):

> "Next, the interception must occur by "electronic surveillance." **According to the plaintiffs, the government's admission that it intercepts telephone and email communications - which involve electronic media** and are generally considered, in common parlance, forms of electronic communications - **is tantamount to admitting that the NSA engaged in "electronic surveillance"** for purposes of FISA. **This argument fails upon recognition that "electronic surveillance" has a very**

> **particular, detailed meaning** under FISA - a legal definition that requires careful consideration of numerous factors. . . **The plaintiffs have not shown**, and cannot show, that the **NSA's surveillance activities include** the sort of conduct that would satisfy FISA's definition of **"electronic surveillance".** . . ." [220]

The above passage asserts that the government admitted it intercepts telephone and e-mail communications involving "electronic media." This is because it is irrefutable telephone and e-mail communications involve electronic media. Notwithstanding, the Court holds this type of interception is not necessarily "electronic surveillance." The problem is that if the question were presented to all of roughly 250 million adult Americans, virtually every single one would conclude that if you intercept a telephone call or an e-mail communication it constitutes "electronic surveillance.

However, the Sixth Circuit seeking in desperation to find some way to justify the government's position, adopts an exceptionally constricted view towards interpretation of the phrase "electronic surveillance." It does this even though by doing so, its interpretation does not conform to society's commonly understood perception of the meaning of words. This results in the Court essentially isolating itself from accepted moral norms of society. Alternatively stated, the Court is in its "own world" so to speak.

In contrast to the sophistical reasoning used to escape the commonly understood meaning of the phrase "electronic surveillance," the Sixth Circuit adopted an entirely different approach when interpreting the phrase "Good Moral Character" in the case of Frank Lawrence v Michigan Board of Law Examiners, Case No. 05-1082 (2006). The Lawrence case was decided a mere 14 months prior to the NSA decision, but the method used to define words was precisely opposite to that used in the NSA decision. In the Lawrence case, the Bar Applicant launched a facial challenge to Michigan State Bar admission rules. This included an allegation that the "Good Moral Character" standard gave unbridled discretion to State Bar decision-makers. The Sixth Circuit indicated that under Michigan law the phrase "Good Moral Character" was defined as follows (emphasis added):

> ". . . the propensity on the part of the person to serve the public in the licensed area in a **fair, honest, and open** manner." [221]

The Court then held as follows (emphasis added):

> "The defendants also do not have "unbridled discretion" in deciding whether to admit or to reject bar applicants because **the Michigan statute provides sufficient guidance** to determine which applicants have "good moral character." [222]

Once again, I turn the matter over to roughly 250 million American citizens. In contrast to the NSA case, where the overwhelming majority of Americans would conclude without hesitation that the interception of telephone and e-mail communications involving "electronic media" constitutes "electronic surveillance," you would indisputably get a wide array of opinions from the general public as to what constitutes "fair." Everyone has a different opinion as to what is "fair." Similarly, you would get vastly different opinions as to what constitutes being "honest" or "open." For centuries, great philosophers have wrestled interminably trying to define these terms. Yet, all of the sudden when it comes to the State Bar, the same Sixth Circuit that couldn't figure out the meaning of the phrase "electronic surveillance," concludes without hesitation that the terms "fair, honest, and open" are definitively clear.

In the Lawrence case, the Sixth Circuit isolated itself from well-accepted moral norms of society, just like it did in the NSA case. Those well-accepted moral norms recognize that determining what is honest, fair and open is an exceptionally difficult thing to do. Interestingly, since the crux of the NSA case was that the government was "surreptitiously" eavesdropping "without judicial warrants," it would be fair to conclude they did so "unfairly," "dishonestly," and not "openly."

Thus, if we apply the methodology used by the Court in Lawrence to the NSA case, the only rational conclusion that can be reached is that the government lacked "Good Moral Character" by surreptitiously eavesdropping without warrants. Alternatively, the rule to be gleaned from the conjunction of these two cases in the Sixth Circuit's view is that to be "fair" means to engage in noncompliance with properly enacted Congressional law (FISA). In turn, to be "honest and open" means the government's failure to comply with Congressionally enacted law must be accomplished "surreptitiously and secretly."

It's like BizarroWorld.

In Re Gatti, 330 Or. 517 (2000) and 18 U.S.C. 1001

"Although the text of 1001, read literally, makes it a crime for an undercover narcotics agent to make a false statement to a drug peddler, I am confident that Congress did not intend any such result." [223]

Brogan v United States, 522 U.S. 398 (1998); Dissenting Opinion of Justice Stevens

"By its terms, 18 U.S.C. 1001 covers "any" false statement - that is, a false statement "of whatever kind," . . .

. . .

Petitioner asks us, however, to depart from the literal text that Congress has enacted and to approve the doctrine adopted by many Circuits which excludes from the scope of 1001 the "exculpatory no." . . .

. . .

In any event, we find no basis for the major premise that only those falsehoods that pervert governmental functions are covered by 1001. . . .

. . .

. . . it is not, and cannot be, our practice to restrict the unqualified language of a statute to the particular evil that Congress was trying to remedy. . . .

. . .

A brief word in response to the dissent's assertion that the Court may interpret a criminal statute more narrowly than it is written: some of the cases it cites for that proposition represent instances in which the Court did purport to be departing from a reasonable reading of the text. . . . **Also into this last category falls the dissent's correct assertion that the present statute does not "make it a crime for an undercover narcotics agent to make a false statement to a drug peddler." . . . . Criminal prohibitions do not generally apply to reasonable enforcement actions by officers of the law."** [224]

Brogan v United States, 522 U.S. 398 (1998); Majority Opinion

On August 17, 2000, the Oregon Supreme Court issued an opinion throwing all undercover law enforcement operations by Federal and State agencies in Oregon into complete and total chaos. This state of affairs existed for approximately 18 months, finally ending in early 2002. The Court's opinion

in In Re Gatti, held that a lawyer who misrepresented his identity during the course of investigative activities was guilty of unethical conduct. The Court declined to distinguish between a lawyer engaging in such conduct within the scope of private practice and those who do so in the course of law enforcement.

The opinion gave rise to a total media frenzy and was extensively debated in the U.S. Congress, which tried to figure out how to handle the situation. The result of the opinion was that the U.S. Justice Department filed a Federal lawsuit against the Oregon State Bar challenging its code of ethical conduct. The reason was simple. The Court's opinion resulted in every single FBI undercover operation in Oregon being brought to a standstill. The Washington Post in an article by Jeff Adler published in 2001, described the situation as follows:

> "A controversial ruling by the Oregon Supreme Court has prompted federal prosecutors there to suspend all major federal undercover investigations for the past year, halting everything from street-level drug stings to probes into organized crime and child pornography.
>
> In a strict reading of the state bar's ethics code, the state Supreme Court last year prohibited lawyers from engaging in any form of deceit or encouraging others to lie. Because of the decision, federal and state prosecutors fear that they could face discipline for advising undercover investigators, who must misrepresent themselves as part of their work.
>
> Rather than risk sanction, federal prosecutors stopped signing off on covert operations by the FBI, the Drug Enforcement Administration and other federal agencies in Oregon a year ago. . . .
>
> Phil Donegan, the FBI special agent in Portland, said the court's decision has hampered hundreds of federal criminal investigations, from white collar fraud to organized crime. The bureau also halted an operation that targeted child pornography on the Internet.
>
> "It has handcuffed federal law enforcement in the state," Donegan said. "If we're gong to buy drugs, we have to walk up to the dealer and say, "We're the FBI, and we'd like to buy drugs from you."
>
> . . .
>
> The Justice Department has filed suit against the Oregon State Bar, challenging the ethics code. . . .
>
> . . .
>
> The ruling's ripple effect has been far-reaching. In the past, prosecutors under Oregon Attorney General Hardy Myers coordinated closely with investigators on both civil and criminal fraud cases to ensure that evidence was collected legally. But those conversations have ended.

. . .

In January, the Oregon State Bar asked the state Supreme Court to approve an amendment to the bar's ethics rules that would have allowed lawyers to advise or supervise certain clandestine operations. But the high court rejected that amendment in April, calling it too broad. . . ." [225]

The chaotic state of affairs was resolved on January 29, 2002 when the Oregon Supreme Court adopted an amendment to the disciplinary rule at issue. The amendment provided that government lawyers could supervise, but not participate, in undercover investigations that would force them to lie.

During the 18 months of chaos, the direct effect of the Gatti opinion was limited to Oregon. Virtually no attention was given by the media to the irrefutable fact that the exact, same precise conduct the Oregon Supreme Court prohibited in the Gatti opinion, is expressly stated in 18 U.S.C. 1001 to be illegal throughout the entire nation. However, notwithstanding the express statutory language of 18 USC. 1001, manipulative "judicial interpretation" has excluded law enforcement activities from its purview. But, the bottom line is that the language of the statute prohibits the same conduct Gatti prohibited. And that statute still exists today.

In the first part of this book, on pages 640 - 643, I addressed the "judicial function exception" and 18 USC 1001. A brief review is warranted. In 1995 the U.S. Supreme Court held in Hubbard v United States, 514 U.S. 695 (1995) that the judicial function exception was not needed because 18 USC 1001 did not apply to the Judiciary branch of government at all. The practical effect of this ruling was to vastly expand the scope of the judicial function exception by virtue of its own elimination. Stated simply, there is no need for the Judiciary to have an "exception" to a law, if the law in total is deemed to be inapplicable to the Judiciary. That of course, is the so-called "beauty" of judicial interpretation. It demonstrates the power associated with the ability to interpret words as one pleases. It also exemplifies how the power to interpret words is an immensely greater power than the power to write words. It then follows that the power to interpret law possessed by the Judiciary, is greater than the power to enact law possessed by Congress.

In 1996, in response to the Hubbard ruling 18 USC 1001 was amended by Congress pursuant to the False Statements Accountability Act of 1996 to read as follows in part (emphasis added):

"a. Except as otherwise provided in this section, **whoever, in any matter within the jurisdiction of the executive,** legislative, **or judicial branch** of the Government of the United States, knowingly and willfully -

1. falsifies, conceals, or covers up any trick, scheme, or device a material fact;
2. makes any materially false, fictitious or fraudulent statement, or representation; or
3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

b. **Subsection (a) does not apply to a party to a judicial proceeding, or that party's Counsel,** for statements, representations, writings or documents submitted by such party or counsel to a Judge or magistrate in that proceeding." [226]

The amendment had two effects. First, it had the impact of overruling the U.S. Supreme Court's earlier controversial determination that the Judiciary was entirely excluded from the scope of 18 USC 1001. However, it also codified the judicial function exception by excluding deceptive conduct of attorneys in Courts of law from the purview of 18 USC 1001. It did not however, contain any expressly stated exception from its coverage for activities performed by undercover law enforcement officials.

To the contrary, the express language of 18 USC 1001 irrefutably prohibits deceptive conduct by Federal law enforcement officials. This is because all of their activities are matters within the "jurisdiction of the executive" branch of government. Interestingly, 18 USC 1001 has been amended many times over the decades. Yet, none of the amendments have included an exception for law enforcement activities. I'm really not sure why that it is because I do believe such an exception is warranted. However, until an exception for law enforcement activities is expressly stated in 18 USC 1001, it is irrefutable the statutory language indicates FBI agents or Justice Department officials engaged in undercover activities involving deception should be fined, imprisoned or both. But, as we know, Congressionally enacted laws are often of lesser force, or even negligible force compared to Judicially enacted law. Judicially enacted law is often a much greater power, even though the Judiciary is not supposed to enact laws at all.

In Brogan v United States, 522 U.S. 398 (1998), the Court addressed the question as to whether there was an "exculpatory no" exception to 18 USC 1001.

An "exculpatory no" consists of a person simply saying "No," in response to an inquiry by a law enforcement official as to whether the person committed a crime. The issue before the Court in Brogan was whether simply saying "No," could constitute a false statement that violated 18 USC 1001. The Court held there was not an "exculpatory no" exception to the statute. It reached this conclusion by purporting to rely on the "literal" language of 18 USC 1001.

The problem is as follows. While the majority in Brogan on one hand emphasizes the "literal" language of the statute for purposes of imposing criminal liability on citizens, it simultaneously rejects the "literal" language approach to applying 18 USC 1001 to activities of law enforcement officials. Thus, what you are left with is a self-contradicting rule of statutory construction that functions as follows. The "literal" language of a statute takes precedence over everything else when it functions to the government's benefit. In contrast, the "literal" language is ignored and implied construction of terms coupled with legislative intent takes precedence when that works to the benefit of the government. These premises are demonstrated by the quotes from the majority in the Brogan opinion heading up this chapter.

Both the majority and the dissent in Brogan agree that the express language of 18 USC 1001 prohibits false statements by law enforcement officials engaged in undercover operations. Yet, both the majority and the dissent also agree 18 USC 1001 does not apply to law enforcement officials. The reason they give is that since they are law enforcement officials, they are allowed to violate the law within the scope of their official duties.

In the historically insightful book, Hitler's Justice - The Courts of the Third Reich, author Ingo Muller writes as follows regarding this style of legal reasoning (emphasis added):

> "Alert legal experts recognized at the time just how far the Supreme Court had gone in perverting justice with its fatal message that the (presumed) interest of the state stood above the law. By implication, **even the most heinous acts were not punishable if they were committed in the interest of the state,** while legal actions were punishable if they ran counter to it." [227]

It is also worthy of note that according to the express language of 18 USC 1001, each time a Federal appellate Judge or even a U.S. Supreme Court Justice asserts that the opinion of another Justice on the same Court conceals a material fact, or case, or misrepresents a Court's holding on a particular issue, as a matter of substance they are accusing that Justice of violating the express terms of 18 USC 1001. This fact applies both to Justices in the majority who criticize

dissenting Justices, or dissenting Justices who criticize the majority. And that happens all the time. That being said, I think it's a fair bet judicial interpretation of 18 USC 1001 would preclude its application to judicial opinion writing if the matter were raised in a case. Call it a hunch. But, the express language of the statute certainly indicates it applies.

The bottom line is that 18 USC 1001 remains a very poorly written statute. Undercover activities of law enforcement agencies if they are to be permitted need to be addressed by the express statutory language. Otherwise, the Judiciary is not simply interpreting 1001, but enacting its own version of the statute. Judicial cases addressing 18 USC 1001 have basically constituted a re-writing of the statute to fit the Judiciary's subjective interests.

As I have emphasized consistently herein, the Judiciary needs to adopt a more aggressive and courageous role by declaring poorly written statutes unconstitutional. But it also needs to back off from re-writing statutes through manipulative use of judicial interpretation. The written law either passes muster or it doesn't. That is the primary and critical function of judicial decision-making. The writing of the laws should be left to the legislature. And the written law should just keep getting kicked back down to ignorant legislators until they learn how to write laws properly.

The Oregon Supreme Court's Gatti opinion caused chaos for law enforcement activities in one State for 18 months. The reason it did so was because Oregon lawyers were worried about losing their law license and therefore complied with the Court's opinion.

But, 18 USC 1001 has expressly prohibited the exact same conduct condemned in the Gatti opinion, in every single State of the nation for decades. Yet, nobody has given two craps about the express language and literal meaning of this validly enacted congressional statute for the same period of time. Such immoral conduct inevitably results in diminished public respect for the sacred rule of law.

HUMPTY-DUMPTY'S
TYRANNY OF WORDS REVISITED

In the first part of this book published in 2002, in the chapter titled "Humpty-Dumpty and the Semantic Scalpel" I examined utilization of the devious Judicial tool called a "semantic scalpel." Judges being possessed by an arrogant nature transcending that of other people tend to gain personal satisfaction by engaging in retaliatory conduct against people who disagree with them. This is not limited to situations where litigants disagree, but applies equally when other Judges reject their misguided beliefs. One technique used by Judges to retaliate against each other consists of exposing Judicial deception. The concept is basically, "since you are refusing to adopt my opinion, I'm going to expose how we do things deceptively." Their perspective is that if other Judges will agree with them, they will allow continuation of deceptive Judicial conduct. However, if other judges won't agree, they will resort to honesty as a last resort tool of retaliation and expose the invidious nature of Judicial opinion writing.

In State ex rel Frohnmayer v Oregon State Bar, 307 Or. 304 (1989) former Oregon Chief Justice Wallace Carson, a pervasive practitioner of the semantic scalpel throughout his tainted judicial career, found himself in the rare position of being in the Dissent. He thus utilizes truthfulness as a last resort and exposes the devious nature of Judicial opinion writing. Justice Carson states in Footnote 2 of his Dissent:

> "When I use a word, "Humpty Dumpty said in rather a scornful time, "it means just what I choose it to mean -- neither more nor less."
>
> "The question is," said Alice, "whether you can make words means so many different things."
>
> "The question is, "said Humpty-Dumpty, "which is to be master -- that's all." [228]

The foregoing is Judicial decision-making in a nutshell. Justice Oliver Wendell Holmes summed up the theory in his historic and often cited passage in Towne v Eisner, 245 U.S. 425 (1918) writing:

> "A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in color and content according to the circumstances and time in which it is used." [229]

Similarly, U.S. Supreme Court Justice Harlan wrote in Cole v Richardson, 397 U.S. 238, 240 (1970):

> "Almost any word or phrase may be rendered vague and ambiguous by dissection with a semantic scalpel . . . <But, such an approach> amounts to little more than verbal calisthenics." [230]

When I first quoted Chief Justice Humpty-Dumpty's passage in the first part of this book, I had not yet read Stuart's Chase's book "The Tyranny of Words" published in 1938. It addresses the manner in which people, including Judges particularly, use word definitions to mislead others. One of the most interesting facets of his often-cited work is the fact that Mr. Chase was an Accountant, not a lawyer. This fact supports the commonly accepted belief that Accountants possess superior intelligence compared to the inferior mental faculties of lawyers. On page 167, of his book, Mr. Chase presents basic rules for interpreting words. Some of these rules are as follows:

1. Words are not things. Identification of words with things, however, is widespread, and leads to untold misunderstanding.

2. Words mean nothing in themselves, they are as much symbols as x or y.

3. Meaning in words arises from the context of the situation in which they are used.

4. No two situations or events are exactly similar.

5. Abstract words are especially liable to spurious identification. The higher the abstraction, the greater the danger.

6. To improve communication new words are not needed, but a better use of the words we have. [231]

The point is that Judicial opinions purport to rely on logic and rationality to arrive at conclusions. However, a careful reading of many Judicial opinions reveals nothing more than manipulative, dishonest logic by Judges. This gives rise quite often to absurd consequences. Mr. Chase points out in "Tyranny of Words" that "logic" is the manipulation of words and can be used to

intentionally distort understanding. He presents the following example on page 227 of his book:

1. **No cat** has eight tails.

2. Every cat has one more tail than **no cat**.

3. Therefore, every cat has nine tails. [232]

On its face, the foregoing example applies principles of logic. But, everybody knows the conclusion reached is totally untrue. This is notwithstanding that (3) above, seems to flow logically from (1) and (2). The distortion of rationality occurs because of the phrase "No cat." It is easy to see from this simple example, arrogant Judicial contentions of logic and rationality can give rise to false premises, false principles and deviant conclusions of law.

When Judges reach absurd conclusions by manipulating word meanings they are doing nothing more than subjecting the public to the adverse results of a devious Judicial sham. When this occurs, they function as Judicial scam artists. They're running a "Semantic Shell Game" and the general public is the "Pigeon." Words must be subjected to reasonable interpretation as accepted by the general public. Mr. Chase states on page 231 of his book:

> "When a physicist says that an atom is "free," he does not mean in this context that Atom, is a rugged individualist with a mind of his own prepared to tolerate no nonsense from an interfering government. He means that the motions of atoms are subject to chance." [233]

> On page 233, Mr. Chase writes:
>
> "How much misery has flowed from holding a person strictly accountable for what he said, rather than for what he meant?" [234]

It is irrefutable that numerous U.S. Supreme Court opinions, which once purported to constitute "rational law," have since been overruled and the principles they stood for determined to be despicable. Obvious examples are the Dred Scott decision and Plessy v Ferguson. This gives rise to the equally incontestable premise that any opinion of the U.S. Supreme Court on any issue may change in the future. Thus, we always need to remember to take Judicial

opinions with "a grain of salt" so to speak. We need to realize the Court may be wrong or it may be right.

The mere fact that the U.S. Supreme Court decides an issue does not necessarily mean its decision should be supported. Instead, irrational U.S. Supreme Court opinions should always be peacefully and rationally opposed for the purpose of finding and promoting the greater truth. The truth is not necessarily embodied in opinions of individual Justices, who may have arrived at a mentally impaired conclusion. If it is not, their opinions should be opposed. Notably, the concept of declining to "support" a U.S. Supreme Court opinion does not necessarily entail violating it. There are many ways to oppose Judicial rulings and violation is just one.

Certainly, if this premise applies to U.S. Supreme Court opinions, it is even more applicable to Court Orders emanating from lower Courts. Any given Court Order or Judgment may ultimately be found to embody nothing more than misguided belief at best, and criminal Judicial corruption at worst. There have been too many reversals of trial court judgments, criminal convictions of innocent people, or reversals of long-standing and widely accepted irrational Judicial beliefs to justify blind support of Judicial decisions from any Court. It has been repeatedly shown that dishonest Judges exist. There is no evidence demonstrating Judges possess better moral character than the average citizen. As such, the misguided judicial opinions, irrational beliefs, and unconstitutional illegal Court Orders of dishonest Judges should be vigorously and aggressively opposed on a regular and persistent basis. This ultimately will give rise to attainment of a higher moral purpose and character for society as a whole. As the Great Justice William O. Douglas stated quite properly and correctly, albeit in Dissent, with the support of Justices Warren, Brennan and Fortas in Walker v City of Birmingham, 388 U.S. 307 (1967):

> "The right to defy an unconstitutional statute is basic. . . .
>
> . . .
>
> A court does not have jurisdiction to do what a city or other agency of a State lacks jurisdiction to do. . . . An ordinance -- unconstitutional on its face . . . is not made sacred by an unconstitutional injunction that enforces it. It can and should be flouted in the manner of the ordinance itself. Courts as well as citizens are not free "to ignore all the procedures of the law," . . . . The "constitutional freedom" of which the Court speaks can be won only if judges honor the Constitution." [235]

A lamentable failure on the part of citizens and attorneys to respectfully oppose the unlawful acts of Courts and Judges would leave all blacks in this country as slaves today, according to the Dred Scott decision. We must always remember the U.S. Supreme Court has been proven wrong on countless occasions. In certain instances it has damaged our nation more than any other branch of government. The continuous flux of ever changing ideas and attitudes in society is embraced with virtual poetic beauty by the following passage of Mr. Chase on pages 240-241 in "Tyranny of Words" (emphasis added):

> "Plato condemned the logic of the Sophists as a sham. Aristotle convinced the Dialectic of Plato of formal inability to yield a demonstration. Bacon denounced the sterility of Aristotle's formal demonstration. Mill deplored the inadequacy of the Baconian induction method. The critics of Mill showed that his induction technique was as formal and as futile as anything hitherto attempted. Locked demolished Edward Herbert. Hume demolished Locke. Morris Cohen demolishes Hume, J.E. Boodin demolishes Descartes. Modern philosophers wipe their boots on Kant and Herbert Spencer. John Dewey makes mincemeat of his forerunners. Bright postgraduates in Columbia, Harvard and Chicago are now busily engaged in dismembering Dewey. . . . **In brief, the boys do not seem to be making much progress."** [236]

Mr. Chase properly recognizes how difficult it is to be a good Judge, along with the correlative premise that since Judges are nothing more than humans, it is inescapable they will make wrong decisions. Sometimes their erroneous decisions will be a product of innocent, incorrect understanding. But, sometimes their irrational decisions are a product of an intentionally invidious judicial nature. Chase writes as follow on page 319:

> "Civilized living is impossible without machinery to settle disputes. If we accept this, and also accept the statement that legal decisions are always made by human beings, we can admire those who assume the difficult task of finding the facts and rendering decisions, and be grateful to them. But when we begin to think of them as priests, speaking not out of their own experience but sounding boards for a Law which is beyond human frailty, then this necessary machinery is converted into a branch of demonology. It is as though an umpire in a baseball game were regarded not as a fellow citizen doing the best he could, but as an automaton receiving a signal from on high before he cried "Ball!" or "Strike!" The irritated fan in the bleachers sometimes does not hesitate to throw a pop bottle at an umpire whose decisions appear to be biased or consistently out of line with the facts. I do not recommend throwing pop bottles at judges, but there is a lot in the pop-bottle point of view. A Supreme Court judge is just as human as a baseball umpire.

> Early in its history, legal machinery became entangled with the ghosts of divine sanction, and judges in their robes walked as solemnly as priests of the church in theirs. . . .
>
> . . . The early modes of trial - the ordeal, the judicial duel, the oath, . . . were considered to be uncontaminated by human elements. The judgment was the judgment of the super-natural. . . .
>
> . . . The more we try to conceal the fact that judges are swayed by prejudices, passions, and weaknesses, the more likely we are to augment the fact. . . . These beliefs enhance the bad effects of the judges' prejudices, passions, and weaknesses, for they tend to block self-examination by judges of their own mental processes. . . .
>
> Many factors affect judicial decisions, of which the rules of law constitute but one." [237]

Mr. Chase further writes on page 323 as follows:

> "But the violation of some laws is a normal part of the behavior of every citizen. During the unhappy period of alcoholic Prohibition, most of us were "lawless elements." [238]

For those who take offense or vigorously dispute the foregoing statement, I will place the matter in modern context. Who does not periodically exceed the speed limit on any given road by 5 miles per hour without giving the matter a second thought as to morality? It's my guess one would be hard-pressed to find any State Supreme Court Justice who hasn't occasionally exceeded the speed limit. How many people had even just one alcoholic beverage before reaching age 21? I'm not talking about teenage alcoholics. I'm talking about a college student who has one beer, or a kid who has a glass of wine during a family holiday. How many cigarette smokers have taken a puff in an area where smoking is prohibited? It is apodictic that lawbreaking is an accepted fact of society to the extent the violation is not "serious." The term "serious" is interpreted subjectively. Mr. Chase describes lawbreaking as, "the relativity of the term" to the purported evil intended to be abrogated by the enactment of any law. [239]

The importance of recognizing the danger in giving blind approval or support to the interpretations of words rendered by another, including Judges

particularly, is demonstrated in a closing passage of Mr. Chase's book. On page 360 of "Tyranny of Words," Mr. Chase writes:

> "Dictators can force a kind of duress agreement on the formula of "Agree with me or be shot."[240]

The above quote captures the ultimate drastic result of failing to oppose irrational Judicial decision, rulings, interpretations and absurd constructions of terms contained within the written law. We need to always be extremely cognizant of the human frailties, cognitive deficiencies, irrationalities and mental aberrations of our decision-makers and government officials. This principle applies equally to Judges and Legislators alike.

Legislators adopt words to be included in a law and Judges then interpret the law. The process of interpreting a law entails defining the individual words stated in the law. It is not an easy task to accomplish successfully. Thomas Hobbes, in his historic work Leviathan writes (emphasis added):

> "All Laws, written and unwritten, have need of Interpretation. . . . The written Laws, if they be short, are easily mis-interpreted, from the diverse significations of a word, or two. If long, they be more obscure by the diverse significations of many words. . . .
> . . .
> . . . **For all words, are subject to ambiguity; and therefore multiplication of words in the body of the Law, is multiplication of ambiguity**." [241]

Under Hobbes' theory, legislators are kind of damned if they do and damned if they don't. Short laws place too much emphasis on one individual ambiguous word. Attempts to clarify short laws by adding provisions, explanations, limitations and exceptions, necessarily use more words. Those additional words are then subject to further ambiguity. This concept is demonstrated by the U.S. Supreme Court's statement in Lamar v United States, 240 U.S. 60 (1916) where Justice Holmes wrote:

> "The same words may have different meanings in different parts of the same act, and, of course, words may be used in a statute in a different sense from that in which they are used in the Constitution." [242]

Fairly recently, on February 21, 2007 the so-called "liberal wing" of the U.S. Supreme Court in a 5-4 opinion adopted an absurd and ludicrous construction of the meaning of the term "Absolute" in Marrama v Citizen Bank

of Massachusetts, 127 S.Ct. 1105 (2007). It was not a particularly high profile case. However, the Majority's logic was so egregiously flawed that the case is quite important. The Majority's opinion stands for the ridiculous premise that the term "Absolute" means "Conditional." It's an absurd conclusion.

The facts of Marrama are briefly as follows. A debtor sought to convert a Chapter 7 bankruptcy to a Chapter 13 pursuant to Section 706 of the Bankruptcy Code. The applicable language of Section 706 states:

> "(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time. . . . Any waiver of the right to convert a case under this subsection is unenforceable." [243]

Both the Majority and the Dissent noted that the Senate Report pertaining to the statute stated (emphasis added):

> "Subsection (a) of this section gives the debtor the one-time **absolute** right of conversion."[244]

Some additional facts of the case are as follows. The debtor, in his bankruptcy petition made statements determined to be misleading and inaccurate. As a result, the lower Court determined he acted in "bad faith" and as a result denied him the "Absolute Right" to convert. The issue to be decided by the U.S. Supreme Court was whether there was a "bad faith exception" to the "Absolute Right." The Majority in a 5-4 opinion held that it was within the inherent power of the lower court to take appropriate action in response to fraudulent conduct. Thus, the Majority held the debtor could be denied his "Absolute" right.

From a cursory consideration of morality, the Majority opinion seems to make sense. After all, "Why should someone who has engaged in dishonest conduct be allowed to take advantage of an "Absolute Right?" Basic morality seemingly suggests people who engage in dishonest conduct should not be able to profit from their dishonesty.

But, there is a major problem with the foregoing perspective. It results in the Judiciary not doing what the Senate Report expressly states they should do. Instead, the Majority rewrote the Senate Report by redefining the meaning of the phrase "Absolute Right." They interpreted "Absolute Right" as being a right conditioned upon good faith. Thus, the term "Absolute" came to mean "Conditional." It was totally absurd.

For those who support the Majority's decision in this case on the purported ground it is rooted in sound morality, the question I pose is as follows. Then, why bother with a written bankruptcy statute or Senate Reports at all? If it is going to be left to the Courts to decide what is "fair" and what type of relief a debtor is entitled to based upon Judicial assessment of their morality, why not just have a really short, simplistic bankruptcy statute containing one provision. It would read as follows:

> "The Court shall provide relief from debts for any honest debtor to the extent the Court deems fair."

That's it. Solves everything. Certainly, it would seem to conform with well-accepted notions of morality. Of course, it does raise the issue of determining what is "fair" and what constitutes "relief." But, the bottom line is, according to the Majority, the determination of what is fair and equitable, is ultimately going to be left to the Judiciary anyway. The Majority asserts that even if Congress says a debtor's right is "Absolute," Judges don't have to recognize it as Absolute.

Wait, I've got another solution! Maybe, this will satisfy everyone. It's a way for Congress to enact numerous particularized provisions regarding what constitutes relief for a debtor. This suggestion will also allow Congress to determine what is fair. Additionally, this suggestion would allow the U.S. Supreme Court to interpret the provisions in a manner consistent with good morality. This suggestion will require only one minor change to our legal system, which is as follows. Nobody should regard congressional enactments as "Laws," required to be complied with. Instead, congressional enactments will be regarded as "Suggestions" that Courts should give serious consideration to. Then, the bankruptcy "statute," with all of its particularized provisions could remain as it is, but simply be prefaced as follows:

> "The following bankruptcy statute contains all provisions of relief for an honest debtor, which the Court should give serious consideration to as **our suggestions**, when rendering its determination as to what constitutes the law on a case by case basis."

The bottom line is that the Majority opinion in Marrama, results in the Court treating the written Law as nothing more than a "suggestion." Substantively, the Majority ignored the enacted written law and rewrote the statute and Senate Report to meet its immediate goal by "creative" interpretation of the term "Absolute." The Dissenting opinion in Marrama written by Justice

Sam Alito and joined by Justices Scalia, Roberts and Thomas states (emphasis added):

> "Under the clear terms of the Bankruptcy Code, a debtor who initially files a petition under Chapter 7 has the right to convert the case to another chapter. . . . The Court, however, holds that a debtor's conversion right is conditioned upon a bankruptcy judge's finding of "good faith." Because the imposition of this condition is inconsistent with the Bankrtuptcy Code, I respectfully dissent.
>
> The Bankruptcy Code unambiguously provides that a debtor . . . has a broad right to convert the case. . . .
> . . .
> **Nothing in 706(a) or any other provision of the Code suggests that a bankruptcy judge has the discretion to override a debtor's exercise of the 706(a) conversion right on a ground not set out in the Code**. . . .
> . . .
> . . . the Court points to 11 USC 105(a), which governs a bankruptcy court's general powers. Second, the Court suggests that even without a textual basis, a bankruptcy court's inherent power may empower it to deny a 706(a) conversion request for bad faith. Obviously, however, neither of these sources of authority authorizes a bankruptcy court to contravene the Code. On the contrary, a bankruptcy court's general and equitable powers "must and can only be exercised within the confines of the Bankruptcy Code." [245]

The process of interpreting law is not easy. Regrettably, it often portends to the supplementation of governmental power at the expense of justice for the citizenry. Sir Algernon Sidney in the 17th century wrote in his historically acclaimed work "Court Maxims" in the Ninth Dialogue as follows:

> "Court Maxim: The corruption of lawyers is useful to the king.
> . . .
> . . . They have found a way, by dexterously proposing business to the Parliament under several pretences, through the power and subtlety of their creatures in Parliament, to obtain a multitude of statutes by which the whole body of the law is brought into such a confusion that no man fully understands it. . . All questions in law are subject to a variety of interpretations, and the number of suits is infinitely multiplied. . . . The whole nation is hereby brought into such a dependence upon the lawyers . . . Thus the treasure of the nation with a full stream flows into their bosoms. . . They know the king is the author and preserver of their felicity, and must therefore as lawyers endeavour to maintain the government that upholds their profession. . . .
>
> . . . Whatsoever the king now desires to do is found to be legal. . . . Everyone sees there is no safety but in the king's favour. . . .

. . .
. . . The justice therefore of all laws does necessarily and essentially depend on the plainness and clearness of them, that every man may understand them if he will. . . .

. . . The utmost deviation that can be from this rule in making laws is when through the multiplicity and intricacy of them they are rendered unintelligible. . . .
. . .
. . . That which lies in most direct opposition to this is when . . . a law which consists of various and heterogeneous parts, as statutes, customs, and precedents, or judged cases, comprehends an infinite number of particular laws, many of them thwarting one another, and not a few contrary to the letter and intent of the . . . constitutions. . . . The law itself is made a snare, and we, who should be protected, are destroyed by it. . . .
. . .
. . . The . . . law is so entangled with statutes and cases often unjustly judged, that no man can be said to understand it. . . . The intricacies are so various that those who are cunning in it make it speak what they please. They never fail to find something in their books to put a fair colour upon the most wicked and unjust acts that can be committed or imagined for their own gain. . . .These faults in the law introduce all manners of corruption into the administration of it. . . . By this means bar and bench are filled with a corrupt crew of mercenary persons. They who regarded their fees more than truth, when they were pleaders, will value bribes more than justice when they come to be judges. . . .
. . .
. . . by variations, explications, and additions they have so turned the point of the law that what was intended for the public good was brought to aim chiefly at their private good.
. . .
Whatsoever I say against our lawyers, I no ways blame the . . . study of law. I know the administration of justice to be one of the noblest works that can be done by man, and it is to be performed by those only who do study the law." [246]

WE ARE ALL JEFFERSONIANS - STRICT CONSTRUCTION vs. IMPLIED CONSTRUCTION

This essay provides a basic lesson in constitutional law for the multitude of Judges lacking knowledge in the law, who obtained their positions by generating substantial legal fees for law firms they worked for. The fees they generated allowed them to establish the necessary friendships for obtaining a Judicial position. However, regrettably these friendships did nothing to assist them in developing legal knowledge. Thus, on a quantified basis, this essay is directed to about 60% of the nation's Judges.

Strict Construction of legislative enactments generally means that the law will be applied by a rigid adherence to definitions of words contained in the law. It relies on the premise that the law should not be expanded by implication of the words expressly stated. In contrast, Implied Construction generally means laws are interpreted in a manner that not only takes into account the expressly stated words in the law, but also considers legislative intent and purpose. Thus, Implied Construction provides more flexibility to interpret the written law because Judges can go beyond the stated words in the law.

Since this nation's inception, officials of all three branches of government have argued about whether laws should be interpreted Strictly or by Implication. I conclude that the position adopted by any Judge depends upon the exigency of the moment. Put simply, Judges use Strict Construction when it supports the conclusion they want and they use Implied Construction when that supports the conclusion they want. Thus, all Judges are ultimately Jeffersonians (don't worry trial court Judges, I'll explain to you what that means shortly).

The Strict versus Implied Construction debate began shortly after the U.S. Constitution was adopted. The issue was whether the U.S. Constitution granted the Federal government power to form a Bank. Alexander Hamilton was the Secretary of the Treasury. He was the major proponent for forming a Federal Bank, but he had a problem. His problem was that the express words of the Constitution did not provide power for the Federal government to form a Bank. Thus, he needed to get over the nuisance of the definitions of the express words in the Constitution. He did so by arguing in favor of the existence of Federal power by Implication of the express words stated in the Constitution.

Hamilton's opponent on the bank issue was Thomas Jefferson. Jefferson opposed the Bank on the ground that the Constitution only granted the Federal government "Particular Powers" and that those powers could not be expanded by

Implication of the expressly stated words. Jefferson at this time was a staunch Strict Constructionist. According to him, the Constitution meant precisely what it said and nothing more. The crux of Jefferson's strategy was to demonstrate that Hamilton was seeking to expand Federal powers by going beyond the powers expressly granted in the Constitution. Hamilton in contrast adopted the position that the words meant more than they stated. This dispute all occurred in the early 1790s. Now, here's the catch.

In 1800, Jefferson was elected President. Three years later in 1803, Napoleon of France offers to sell the entire French Louisiana Territory to the United States for a paltry $15 million. The region to be sold was so large that it encompassed numerous present day U.S. States. Jefferson now has a problem. If he wants to effectuate the purchase, he has to grab the deal quickly or Napoleon may withdraw the offer. However, in order to grab the deal quickly, Jefferson has to accept it before Congress even has time to agree to it. That creates a major dilemma for Jefferson because he knows that according to the U.S. Constitution he lacks authority to approve the deal without congressional approval. But, the deal is just too good to pass up.

So Jefferson takes a gamble. He accepts the proposed deal knowing full well that he lacks the legal power to do so. Subsequently, Congress ratifies the deal and the U.S. gets the entire territory. But, Jefferson is politically attacked for his abject hypocrisy. He was the one who argued for Strict Construction of the Constitution against Hamilton. Yet, when he was the one faced with a decision, he opted for Implied Construction to suit the exigency of the moment. With that decision, Strict Construction of laws in general, and the Constitution in particular, as a matter of practicality ended. This occurred because the most fervent supporter of Strict Construction, chose Implied Construction when it suited him.

Since Jefferson's decision, there have been numerous U.S. Supreme Court Justices and Appellate Justices who purport to be Strict Constructionists. But, the bottom line is that there really hasn't been one. They all interpret laws based upon what suits their immediate need. There is enough case precedent material sitting out there to support any decision a Judge makes. So, they emphasize the expressly stated words in a law when that fits the decision they want. And they emphasize legislative purpose, intent or development of the law when that suits their immediate need.

Realistically, there is a minimal distinction, if even that between Strict Constructionists and Implied Constructionists in today's judicial world. Instead, it can be fairly stated that all Judges are Jeffersonians. They are Strict or Implied Constructionists depending upon which approach is needed to arrive at the conclusion they seek.

This concept was summed up in the historic work "The Tyranny of Words" written by Stuart Chase, published in 1938. Chase write as follows (emphasis added):

> "Chancellor Kent of New York State, a great legal authority, in a charming burst of frankness once wrote: "I saw where justice lay, and the moral issue decided the court half the time. I then sat down to search the authorities. . . . I might once in a while be embarrassed by a technical rule, but I almost always found principles suited to my view of the case." **The learned judge used his his best judgment, came to a decision, and then ransacked the fat books for authority to support him. . . . The decision constitutes the reality of legal machinery; the citations contribute to the magic."** [247]

The foregoing is for the most part, judicial decision-making in a nutshell no matter who the Judge is. Whether so-called, conservative or liberal, Strict or Implied Constructionist, they decide what they want to do and then find legal authority to support their decision. Some Judges don't even bother with the final step. They just totally ignore the matter of finding legal authority and just do what they want to anyway.

Throughout our nation's history, depending on the Judge, the time period and issue presented, Implied Construction has been used to both enlarge Rights of the citizenry and to diminish such Rights. Similarly, Strict Construction has been used alternatively to do the same. Sometimes it is used to supplement citizen rights and other times, diminishes such in favor of governmental power.

I believe words should at least mean something. Concededly, this is a bit of a far-fetched premise for the Judiciary to accept. To allow unbridled Implied Construction of words in laws, effectively negates the entire concept of law itself. By the same token, I am sensitive to the fact that most legislators are morons. As a result, a totally rigid adherence to Strict Construction would result in the invalidation of so many laws it is unimaginable. Nevertheless, when Courts define words to save statutes in a manner resulting in the word meaning the precise opposite of its commonly accepted definition, Implied Construction has gone to far. There is no doubt that the doctrine of Implied Construction was the specific approach used by the German Judiciary to apply the laws of Nazi Germany.

Regrettably, many of our Courts have embarked on the same misadventure as the German Judiciary in the 1930s. When "Absolute" comes to mean "Conditional," [248] when "Third Conviction" means "Fourth

Conviction," [249] when "Child" means "Adult" and "Adult" means "Child," [250] and "Punishment" means virtually nothing, [251] something is drastically wrong. Words come to mean nothing because they mean what any particular Judge says they mean at the given moment. If that's the case, then you might just as well skip having a legislative branch of government entirely.

Legislators should be held accountable for the meaning of their words. If the express words they write in a statute do not comport with Constitutional Rights of the citizenry, you bounce that freaking piece of Crap Statute right back to the legislative morons who wrote it. To do otherwise, makes the Judiciary an accomplice to legislative incompetence and dishonesty. It is not the Judiciary's job to save poorly written statutes. It is their job to closely scrutinize statutes.

But, before the Judiciary can justifiably assume its intended function of closely scrutinizing legislative enactments, it needs to scrutinize itself more closely. **Judges should lean strongly towards Strict Construction of legislative enactments, but also recognize the U.S. Constitution is subject to Implied Construction. Essentially, an emphasis on Strict Construction with a Warren Court spin so to speak.** The reason for this is that the U.S. Constitution announces general principles to be followed in Spirit. In contrast, the intent of legislative enactments is to regulate conduct with precision. By leaning strongly toward strict construction of legislative enactments, but allowing for implied construction of constitutional principles, the proper balance of judicial interpretation is achieved.

The achievement is attained using the concepts delineated herein, which makes it more simplistic than the Hegelian Dialectic. (Look that one up yourself trial court Judges. Pro Se 's can't do everything for you.).

THE GREATEST AND LONELIEST AMERICAN EVER - U.S. SENATOR CHARLES SUMNER

Substantially all Historical Facts in this Essay and their Presentation are Based on DAVID HERBERT DONALD'S BOOKS - CHARLES SUMNER - DA CAPO PRESS, NEW YORK, 1996 - "Charles Sumner and the Coming of the Civil War," 1960 - "Charles Sumner and the Rights of Man," 1970. Use of Quotation Marks is Minimized to Improve Readability and Pursuant to Fair Use Doctrine.

On May 22, 1856 the U.S. Senate adjourned at 12:45 p.m.. Senator Charles Sumner of Massachusetts remained at his desk signing copies of his historic speech titled the "Crime Against Kansas." In the speech, he had insulted Senator Butler of South Carolina and the entire State for its proslavery views. Congressman Preston Brooks was Senator Butler's cousin.

While Senator Sumner was sitting at his desk, Brooks approached him and said his speech was a libel to South Carolina. As Sumner began to rise Butler hit him with a heavy cane with a gold head. Sumner was stunned. He threw out his arms to protect his head. Brooks struck him harder and harder with the cane. Dazed by the first blow, Sumner could not remember that to rise from his desk, which was bolted to the floor he had to push back his chair. About a dozen blows fell on his head and shoulders while he was still pinioned. Blood began to flow and Congressman Brooks continued to strike him. Sumner staggered forward, providing an even better target. When he finally broke free he staggered with his hands uplifted. He was reeling around against the seats backwards and forwards and lost consciousness as blood streamed from his head. He lay helpless as a corpse for several minutes with a bleeding head.

Brooks was arrested and freed on $500 bail. He became the hero of the Proslavery Congress. Southerners said if Congress dared discuss Brook's actions, it would ring with revolvers. The Senate determined that since Brooks was not a Senator, but a member of the House, he could only be punished by, the House. On July 14, 1856 the House passed a motion to expel Brooks, but since a 2/3 majority was lacking, he was not expelled. Sumner would not regularly resume his Senate duties for three years. His vacant chair became his perpetual speech against slavery.

The foregoing is one of the most incredible events to transpire in the U.S. Congress. A Congressman beating a Senator right in the Senate. Kind of puts a damper on the whole "rule of law" thing.

Senator Charles Sumner is one of the most amazing, greatest, passionate, loneliest and pitiful characters in American history. His life is a testament to the premise that leaders pay a high price in terms of happiness to achieve what we call "Greatness." He was probably more responsible for freeing the slaves and attempting to achieve equality than anyone other than Thaddeus Stevens. Certainly, his dedication to the principle of equality easily surpassed Lincoln's attitude and belated resolutions. For almost his entire career, Sumner stood alone against everyone fighting on behalf of equality. He was an advocate of international peace, a leader of educational and prison reform movements, organizer of the antislavery Whigs who became the FreeSoilers, a founder of the Republican Party and the principal antislavery spokesman in the Senate.

He was born in 1811. He had a twin sister who died at 21. He attended Harvard University and later in life remarked, "I am not aware that any one single thing is well taught to the Undergraduates of Harvard. . . . Certainly I left it without knowing anything." His father was a Master Mason who ultimately entered the Anti-Mason movement. After graduating from Harvard, he enrolled in Harvard Law School despite reservations about the legal profession. He once asserted, "a mere lawyer must be one of the veriest wretches. . . ."

In 1837, he traveled to Europe and concluded that French tolerance for blacks was superior to American slavery. After studying the French legal system he concluded that a French Court was a laughable place where the judge, lawyers and parties were merely players in a theatre. Upon visiting England, he concluded the U.S. lacked the culture of England. The contacts he made in Europe helped him become a bridge between American and European society.

By 1843, Sumner began to suffer from paranoia. He was convinced he had enemies in Boston society. This was due partially to the fact that he was becoming a political reformer. He believed the role of a political reformer was a dedication to the good and happiness of society. This required the reformer to dedicate his efforts to principles, rather than individuals.

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The first major turning point in his career occurred on July 4, 1845 when he was invited to give a speech in Boston. His speech was titled, "The Grandeur of Nations." In it, he criticized the "invidious plan" to annex Texas to create slave States. He also criticized wars in general. Many people were shocked by the speech, but antislavery crusaders applauded it.

Throughout his life, Sumner's modus operandi was as follows. He would appear in public, make unpopular inflammatory statements, and be attacked for them. The more he was criticized the more inflexible he became. He carried principles to extremes and alienated moderate opinion of his time. By doing so, he essentially placed himself outside of society.

The prevailing political parties throughout the 1830s were the Jacksonian Democrats and the Whigs. The Mexican -American War, instigated by the U.S. resulted in the acquisition of an enormous amount of territory. The issue then became whether the territory would be slave or non-slave States. This caused the Whig Party, which had included both northerners and southerners to split. It split into Conscience Whigs who condemned U.S. instigation of the Mexican War as a ploy to obtain slave territory; and Cotton Whigs who supported slavery. Thus, it can fairly be stated that the greedy acquisition of Mexican territory by the U.S. gave rise to our own Civil War. What goes around, comes around.

By the late 1840s, both political parties were splintered over the slavery issue. Instead of just having Democrats and Whigs as in the 1830s, the parties by 1848 included Conscience Whigs, Cotton Whigs, Barnburners, Free Soilers (formerly Conscience Whigs mostly), and Democrats.

Sumner began appearing at Free Soil conventions around 1850. Free Soilers believed the Compromise of 1850 granted unnecessary concessions to the slave States. Sumner called for the abolition of fugitive slave laws, the end of slavery in the District of Columbia, the exclusion of slavery in all national territories, and a general overthrow of the slave power in politics. He was considered to be extremely radical for these viewpoints.

Now, here's how he got to be a U.S. Senator. It was by a corrupt bargain. Sumner was a Free Soiler. The only real principle of the Free Soil Party was to abolish slavery. The Whigs were stronger than either the Democrats or the Free Soilers. But, they weren't more powerful than the Democrats and Free Soilers combined. So that is what the two smaller parties did. They combined for the purpose of beating the Whigs even though they didn't have a single principle in

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common. When the arrangement became public, Massachusetts denounced the coalition of two political parties that didn't have a single principle in common. As part of the deal, the Free Soilers would get a U.S. Senate seat, which went to Sumner. He became one of only three Free Soil Senators in the U.S. Senate.

On June 27, 1852, Sumner moved for repeal of the Fugitive Slave Law of 1850. On August 26, 1852, he presented his "Freedom National" speech. In it, he contested the assertion that slaveholder rights had been settled by numerous laws by stating, "Nothing can be settled which is not right." He responded to the difficulties of emancipation by contending that antislavery was right, and the right is always practicable. He contended the Founding Fathers who had adopted the Northwest Ordinance carefully excluded slavery from western territories, which attested to their devotion to liberty. He then asserted that from this point of virtue at the nation's inception there had been a decline in the nation's character as evidenced by compromises in favor of slavery. His Freedom National speech lasted for four hours and was presented by memory.

In January, 1854, Senator Stephen Douglass was a leader of the proslavery Democrats. He introduced a measure to adopt the doctrine of Popular Sovereignty in organizing a government for the Nebraska Territory. The doctrine stood for the premise that the issue of slavery should be left to the inhabitants of the Nebraska Territory rather than the Federal government. Previously, pursuant to the Missouri Compromise of 1820 slavery had been excluded in Nebraska. Douglass was thus trying to circumvent the Missouri Compromise. He did this by arguing that all prohibitions against slavery contained in the Missouri Compromise had been superceded by the Compromise of 1850. However, the 1850 Compromise contained no such express statement.

On February 21, 1854 Sumner gave his speech titled "The Landmark of Freedom." In it, he opposed the Popular Sovereignty measure. He argued that it was the South, which had profited from the Missouri Compromise because it allowed for a greater degree of slavery in certain areas. He further argued that now that the South had the consideration of the Missouri Compromise in its pocket, it was repudiating the bargain it made.

Douglas won and Sumner lost. On March 4, 1854 the Senate passed the Kansas-Nebraska bill, which adopted the principle of Popular Sovereignty. Sumner asserted this delivered the North hand and foot bound to the South. He also asserted it was the worst measure ever passed by Congress, that it annulled

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all past Compromises and effectively made any future compromises regarding slavery impossible. The bill set up a North/South confrontation because it put Freedom and Slavery face to face against each other.

Sumner's antislavery speeches began to cause threats to be made against him. When he protested President Pierce's utilization of force to return a slave to a slaveowner pursuant to the Fugitive Slave Act, the Washington Star published a warning directed at Sumner, which stated:

> "If Southern gentlemen are threatened . . . while legally seeking to obtain possession of property for the use of which they have a solemn constitutional guaranty . . . certain Northern men now in our midst will have to evince a little more circumspection in their walk, talk and acts." [268]

Sumner paid little attention to the threats until 1856. Pursuant to the Kansas-Nebraska Act, the South was instituting a reign of terror in Kansas intent on making it a slave State. When confronted with the violence occurring in Kansas, Douglas contended it was attributable to an abolitionist conspiracy started by antislavery men against peaceful southerners. Thus, it is easy to see one's version of any governmental event depends on which side you are on.

On May 19, 1856 and May 20, 1856, Sumner gave his "Crime Against Kansas" speech that resulted in the violent physical attack upon him by Congressman Preston Brooks. After the attack, Sumner was a Hero in the North and branded a Dog in the South. Brooks was branded a Dog in the North and a Hero in the South. Once again, it is easy to see everything in life is a matter of perspective and depends upon which side you are on.

By 1856, the Republican Party was formed by a coalition of antislavery Parties. Republicans made "Bleeding Sumner" a principal issue of the 1856 political campaign. Democrats contended Sumner was shamming his injuries.

The Southern version of the attack went as follows. Sumner had engaged in a foul-mouthed denunciation of South Carolina and expressed unprovoked vicious insults upon Senators Butler and Douglas. Brooks' weapon was a common walking stick that gentleman frequently use and he had not violated any privileges of the Senate. Southern politicians further contended that Sumner

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fell to the floor in cowardice, even though he only had minor flesh wounds. Once again, everything in life is a matter of perspective.

Sumner traveled to Europe after the attack. In December, 1859 upon his return, Mississippi Senator Albert Gallatin Brown boldly and despicably stated:

> "slavery is a great moral, social, and political blessing - a blessing to the slave, and a blessing to the master." [269]

Senator Mason of Virginia agreed and asserted that the condition of African bondage elevates both races. Sumner re-entered the fracas on June 4, 1860 by giving his four-hour oration titled "The Barbarism of Slavery. He asserted slavery was barbaric and once again singled out South Carolina for scorn.

After Lincoln was elected in 1860 the secession crisis began as Southern States seceded from the Union. Sumner opposed any compromise to avert Civil War. He felt the Missouri Compromise, 1850 Compromise and Kansas-Nebraska Act had all been abdications of principles of decency in favor of the South. But, many Republicans wanted to avert war. Senators Douglas and Crittenden proposed a compromise that would guarantee slavery in all U.S. Territory below a certain, latitude. It was called the Crittenden proposal.

Sumner opposed the Crittenden proposal and it was defeated on Lincoln's inauguration day. It's defeat made war a certainty. The South attacked Fort Sumter in South Carolina on April 11, 1861. Southerners blamed Sumner in large part, for the War. He helped ruin the National Whig Party, which once joined Northern and Southern politicians, by becoming a Conscience Whig. As a Free Soil Senator, he seized every opportunity to attack the South. As a martyr after the Brooks' attack, he helped keep Republicans committed to an antislavery course.

With the South out of the Union, Republicans were now in total control of Congress. Sumner who had helped form the Republican Party, and who had been one of only three Free Soil Senators in a Democrat controlled Congress, was now a Senate leader. He was selected to be Chairman of the Committee on Foreign Relations. One of his first acts was to banish from the committee room the free liquor available to members (one of his worst decisions in my opinion).

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As Chairman of the Foreign Relations Committee, Sumner contended his power was inferior only to President Lincoln and nobody else. This created friction between him and William Seward, who was Secretary of State. Lincoln was not well versed in foreign policy when he took office and became disenchanted with Seward early on. This caused him to give Sumner a virtual veto power over foreign policy. Lincoln authorized Sumner to go through all foreign correspondence and allowed Sumner to effectively set up his own State Department. Visiting foreign representatives sought out Sumner, not Seward.

Sumner tried to convince Lincoln to issue an emancipation proclamation freeing the slaves when the war began. But, Lincoln was not receptive initially. As the war progressed, the relationship between Lincoln and Sumner had its ups and downs vacillating between friction and support for each other. Sumner felt that Lincoln was not sufficiently dedicated to antislavery or equality for blacks. At one point in 1862, Sumner arrived at the White House and asked Lincoln:

> "Do you know who at this moment is the largest slave-holder in this country? It is Abraham Lincoln for he holds all the 3,000 slaves of the District, which is more than any other person in the country holds." [270]

Sumner blamed the Union's failure to gain victory over the South upon Lincoln's refusal to proclaim emancipation. By the middle of 1862, Sumner tried to have the U.S. Congress emancipate the slaves with or without Lincoln. Sumner declared full control of war powers rested with Congress alone. This made him quite unpopular, until Lincoln came to his rescue by issuing the Emancipation Proclamation on September 22, 1862. Sumner's opposition collapsed when it became clear he was now on common ground with Lincoln.

Lincoln's First Emancipation Proclamation was just a propaganda vehicle. He wanted to steal the thunder of emancipation from Congress. He also wanted to use it to coerce Confederates back into the Union. He attempted to accomplish this by delaying the effective date of the Proclamation until January 1, 1863, 100 days after its issuance. Many believed if the South reentered the Union before the effective date, Lincoln would rescind the Proclamation.

Furthermore, the so-called Emancipation Proclamation did not require slaves to be freed who were owned by slave-owners in States that had not seceded. Thus, as a practical matter, it did not free one single slave since it

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applied only to slaves in the seceded States. Those States could not yet be controlled and thus the Proclamation was unenforceable.

Sumner knew as long as blacks had no land, no jobs, no education, and no legal rights, emancipation was just a mockery. He asserted that the Courts could have ended slavery long ago, but just became barracoons" and the U.S. Supreme Court was the "greatest barracoon" of all. This was Sumner's repetitive course in life. He would be the one most responsible for arousing public concern over emancipation and equality. But, his insistence on equality was not viewed as realistic by other members of Congress. They considered his conception of true equality to be so preposterous that many did not even believe he was serious. Although the North was antislavery, it was not in favor of equality. To the contrary, it was widely accepted that the only way to preserve white civilization was by strict rules precluding the mingling of the two races.

As the war drew to a close, the issue of Reconstruction took front stage. Sumner introduced many equal rights bills. Typically, his proposals called for greater rights and enforcement mechanisms than Congress was willing to provide. As a result, in debates he found himself opposing provisions Congress would adopt, but in a voting showdown he voted in favor of them.

On October 12, 1864, Chief Justice Taney who issued the Dred Scott decision, which held slaves were property, died. Sumner wrote to Lincoln expressing his joy upon hearing of Taney's death as a "victory for Liberty"

The major Reconstruction issue was whether the southern States were in or out of the Union during the war. Lincoln consistently asserted southern States never left the Union and had never seceded. He did this because he did not want to recognize the right of a State to secede. From his perspective, there was no war. Instead, he asserted the entire "Union" was putting down a large civil insurrection in the South led by treasonous individuals. Lincoln's concept created a dilemma regarding reconstruction. Drastic conditions could only be imposed upon southern States, if they had in fact seceded. The reason is that if they were never out of the Union it would be unfair to impose drastic reconstruction conditions upon them. Thus, Congress was faced with a logical conundrum.

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Sumner did not handle this conundrum well. He forcefully stated, "No act of secession can take a State out of this Union." But, when it was asserted that meant Louisiana had all rights guaranteed by the Constitution, he replied:

> "It is in the Union and it is not. The territory is in, but as yet there is no State government that is in." [271]

After Lincoln's assassination, Andrew Johnson took office. Johnson met with Sumner and expressed general agreement with Sumner's ideas of equality. Sumner told his friends, "In the question of colored suffrage the President is with us." But, Sumner quickly learned he was mistaken. In 1865, Johnson appointed William Holden as provisional governor of North Carolina and called for an election by only loyal white voters. Sumner thought he was hearing the facts incorrectly. It was too inconsistent with what Johnson told him. But as one Presidential proclamation followed another reorganizing southern States based on white supremacy, Sumner realized Johnson had sold him out. Black Codes were passed in one State after another. They did not secure even minimal rights for blacks. Johnson argued that certain "Rights" were "Privileges." Specifically, he contended the voting "Right" was a "Privilege."

The main issue pertaining to suffrage dealt with proportional representation. Before the war, to determine the number of Representatives a State was entitled to, 3/5 of the slaves were counted. However, after emancipation all blacks would be counted. This would have the ironic effect of increasing southern representation in Congress as a result of the Civil War the South had started. To neutralize this effect, Sumner proposed that representation be based on the number of voters, rather than a State's total population. This would encourage the South to grant blacks the right to vote.

The proposed Fourteenth Amendment declared that if a State denied the right to vote on the basis of race, all such persons would be excluded from the basis of representation. Sumner successfully defeated this proposal due to its emphasis on race. The final version of the Fourteenth took out the reference to "race" or "color" and simply indicated that if a State denied the vote to anyone, those people would be excluded from the basis of representation. The effect was

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that if Southern States denied the vote to blacks, they would pay the price in the form of reduced representation.

At age 55, having never been married, Sumner tied the knot with 25 year old, Alice Hooper. She was the widowed daughter-in-law of a Congressman and had a seven year old daughter. Her first husband died in the war. She was three decades younger than Sumner and considered a "prize catch" in social circles. She was wealthy and beautiful.

Apparently though, unbeknownst to Sumner, Alice was also quite the Bitch. She treated him like dirt, which is rather incredible considering this was a time in our history when women were expected to be quite subservient to men. Alice definitely didn't fit that mold. They would attend parties and when he wanted to leave, she told him to basically get lost and indicated that she was staying. She ridiculed him, laughed at him, insulted at him, and definitely didn't take any crap from him. It's quite amazing. In the Senate he was a man in charge. But, in his marriage his wife walked all over him. He could dominate the Senate, but never played the role of a domineering husband. Instead, he just put up with her antics.

Within a short time, Alice had an affair with a young man from Berlin named Baron Friedrich von Holstein. She and Sumner separated. A few years later, shortly before he died, Sumner quietly got a divorce from her asserting the ground of desertion. In his eyes she was a wicked woman. He never spoke to her again and refused to even utter her name, referring to her only as "that woman." Alice moved to Europe where she became friends with Henry James who adored her "great beauty." She died in 1913.

Republican Congressman were horrified when Sumner proposed that black suffrage be required in northern States as well as the south. Friction between Johnson and Sumner grew. At Johnson's impeachment trial in 1868, Sumner wanted to dispense with limitations on Congress' power to conduct the proceedings. He stated:

> "Give me a lawyer to betray a great cause. He can always find an excuse. Technicality and quibble cannot fail." [272]

Georgia was readmitted to the Union in 1868. As soon as it was readmitted, it purged all 28 black members from its legislature and instituted a reign of anarchy, cruelty and terror against blacks. Sumner correctly predicted

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that the 14th Amendment would not effectively secure the right to vote for blacks. Congress had required new constitutions be enacted in southern States granting blacks the right to vote before their readmission. But, southern States effectively nullified these provisions by intimidating blacks, largely through the Ku Klux Klan (KKK). The KKK systematically intimidated freedmen, and flogged or murdered black leaders. Congress soon began considering the proposed 15th Amendment, which would guarantee the right to vote for blacks.

Sumner took center stage. By 1869, he could argue more effectively for equality because he had all along insisted the reconstruction measures adopted by Congress were too lenient. He forthrightly asserted it was not enough to abolish slavery or give blacks the right to vote. He asserted that so long as segregation existed, blacks would be regarded as an inferior caste. He drew upon the theological argument that GOD rejoices in Unity. He also argued that the Declaration of Independence gave Congress a greater grant of power than the Constitution. He wanted the Declaration to stand side by side with the Constitution. Under this theory, no legal technicality could defend segregation and Congress would possess sufficient power to control reconstruction. He argued that before Virginia could be readmitted it had to ratify the 15th Amendment granting blacks the right to vote. Congress followed his leadership and by 1870 the same provisions were imposed on Mississippi. Mississippi then chose a black as one of its U.S. Senators. Hiram R. Revels of Mississippi became the first black U.S. Senator.

In January, 1870 President Grant showed up at Sumner's home. Grant wanted to annex the Dominican Republic and was seeking Sumner's support. The details of the conversation would become an issue of dispute. Grant contended Sumner pledged his support and didn't fulfill his promise. Sumner disagreed. Whatever transpired, several points are clear. Grant wanted to annex the Dominican Republic to send U.S. blacks there. Sumner successfully assisted with defeating Grant's proposal. But, his opposition angered Grant. Grant got even with Sumner by having him removed as Chairman of the Foreign Relations Committee, which he had commanded for so long.

Secretary of State Hamilton Fish at the time was one of Sumner's friends, but would later betray him. In March 1870, Fish visited Sumner at his house. Sumner was brooding over his loneliness, physical exhaustion, and lack of

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following in the Senate. He told Fish that he was all alone in the world and at night he would wake to realize his solitary, unhappy state. When Fish offered him sympathy, Sumner said, "You can't understand my situation. Your family relations are all pleasant. Why, many and many a night when I go to bed, I almost wish that I may never awake."

Several months later, relations between Fish and Sumner soured when Grant used Fish to secure Sumner's removal as Chairman of the Foreign Relations Committee. Near the end of 1870, Grant plotted against Sumner because of his success in defeating the Dominican annexation proposal. Sumner watched his enemies combine. By January, 1871 he was visibly affected by the mental excitement and fearful of physical assault from Grant or one of his aides. On February 15, 1871 he suffered acute pain in his chest and on March 9, 1871 he was removed as Chairman of the Foreign Relations Committee.

Interestingly, after his removal as Chairman, he remained totally silent. Throughout his life, he gave elaborate, inflammatory speeches on many issues. Yet, on this one subject, his own removal from the Chairmanship that he had held for so many years, he was silent. He was still a Senator, but Grant had neutralized his power. Sumner was a complete outsider during the final stage of his political career. No one wanted to oppose Grant at this time. He was too popular. The scandals and corruption that would later plague his presidency had not yet occurred. Most significantly, Sumner lacked the physical stamina to defend himself.

In January, 1872 Sumner gave a speech to arouse support for a sweeping civil rights proposal. He argued that the doctrine of "segregated but equal" was unacceptable because "the substitute is invariably an inferior article." He was clearly envisioning the case of Brown v Board of Education, to be decided 80 years later. He also reasserted that the Declaration of Independence gave Congress a power superior to the Constitution because it was earlier in time.

The animosity between Grant and Sumner was so great that Sumner could not support him in the 1872 election, even though Grant was a Republican. The Democrats nominated Horace Greeley, a lifelong abolitionist. But, many abolitionists considered Greeley to be untrustworthy and felt he would betray blacks. When Sumner supported Greeley, instead of his own Party's candidate, Republicans were sharply critical of him. His friends told him he was insane to believe Democratic promises. Thus, he was ostracized by the Republicans and

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it was said that if the Democrats won they would step on him like a beetle. He was said to be a man on a bridge, upon which he has set fire to both ends.

As the end of his life approached, he was genuinely alone with no political following and very ill. He was overwrought mentally, nervously and plagued with angina. In August, 1872 when he went to London those he knew were struck by the fact that he was a very sick man. They said he spoke with a loudness of tone and vehemence of manner that indicated an "alienation of mind." John Bigelow an American in London said of him, "He is more than ever the center of the system in which he lives. He did not ask a question that indicated the least interest of any mortal but himself."

Sumner returned to New York in November, 1872, but was still very ill. He learned the Massachusetts legislature had censured him for a congressional resolution he presented. In February, 1873 he quietly began proceedings to divorce Alice on grounds of desertion. They had not been together for years by this time and she was in Europe. As the end approached, he renewed ties he had earlier in his life with the Transcendentalists.

His final months were occupied trying to finish his book. He also spoke with Susan B. Anthony who was leading the movement for women's suffrage. He gave her copies of his speeches on reconstruction. He told her to put the term "sex" where he used the term "race" or "color" and she would have the strongest arguments for granting women the right to vote.

He died on March 11, 1874. Sumner stood alone most of his life. He was politically alone as one of the earliest opponents of slavery. When the war began he pressed Lincoln for the Emancipation Proclamation. He pissed off pretty much everybody and few people liked him. The one significant relation he had with a woman was a disaster. At certain times he was in total control, but most of the time he was trying to gain control. He was a passionate, visionary who quite correctly predicted the future many times. He did more to help blacks in this country than anyone, with the possible exception of Thaddeus Stevens. In today's world it doesn't take all that much courage to argue in favor of equality. But, in Sumner's day, it was an unheard of thing to do.

Arguing in favor of equality in his time was viewed as an irrational, cognitively impaired perspective. Yet today, we know that it is really those so-called leaders who argued against equality who were really the irrational individuals.

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This of course leads to the simple premise that the term "Irrational" simply means anyone who doesn't agree with the prevailing view of the time. It is a term, which for the most part can only be defined subjectively. The impact of such is that when Courts today use the term "Irrational," that which they apply the term to, may be precisely "Rational." Similarly, that which State Supreme Court Judges today call "Rational" may in the future be classified as the "Insane" viewpoint of mentally disabled State Supreme Court Justices.

As for Charles Sumner, he accomplished a lot. He proved a lot in his life. He proved that the ideas he held, which were condemned by others, were the proper values and virtues of decency that should be held by a nation. But, he sure didn't get much happiness or satisfaction out of being right. He was a great man. He was also a lonely and unhappy man.

Sumner was the living embodiment of the premise that a mere intellectual devotion to an issue is insufficient to effectuate change. One needs to accompany such devotion with action, or no progress for society is made. That is the reason why we have so many brilliant law school professors writing all these interesting articles on legal issues, but who don't do crap to have their ideas actually adopted. They're too afraid to instigate lawsuits to test their ideas or to subject themselves to the associated risks.

Sumner took the requisite action needed to accomplish change in addition to expressing his views. But, it certainly didn't bring him happiness. So, maybe the law school professors are right. Maybe, it's best to just submit your written opinions to a well-accepted law review where no one will read them.

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THE PROBLEMS ASSOCIATED WITH KNOWING GOD's EXISTENCE WITH CONCLUSIVE CERTAINTY

It has been my personal experience that the primary dilemma associated with possessing certain knowledge of GOD's existence consists of a substitution of fears. Prior to attainment of certain knowledge that GOD exists, we may have a temperate belief in HIS (HER) existence, but for the most part our daily fears are limited to those of the secular world. We fear our government as prudence dictates, fellow citizens as prudence may similarly dictate, losing our money, getting injured in an accident, losing our job, or any of the other multitude of fears that typify the average person's existence.

However, once you become fully convinced with conclusive certainty that GOD really exists, you tend to lose pretty much all of the everyday fears the average person has. This occurs whether the manner in which you gained your knowledge of HIS (HER) existence was through a process of study, belief or empirical proofs. However, once attained, the knowledge causes all of your fears of the secular world to be replaced with one substantially greater fear. That one fear is to not Piss off GOD. This overriding fear causes you to change the manner in which you approach everything in life. You do your best to direct each of your efforts to pleasing GOD and pray that HE (SHE) will forgive you for your multiple of shortcomings, errors, flaws and infirmities.

But, I am also fairly convinced that GOD does not desire us to just be Kiss-Ass wimps either. Life is intended to be a learning experience. That requires us to be willing to assume risks on occasion in order to progress. It can be fairly stated that once we believe in GOD with conclusive certainty, each time we elect to engage in conduct involving an element of risk, we fear whether GOD will approve or disapprove of the selected action. In the long run, although not necessarily the short run, GOD's overall approval or disapproval of the risks we choose to take is probably somewhat determinative of our future, both in the secular and nonsecular world.

So the good part is that once you are certain GOD exists, you don't have to fear anyone on Earth. You lose your fear of lawyers, criminals, Judges, prosecutors, defense attorneys, police officers and everyone else. Cause you know the bottom line, is that there is absolutely nothing they can do to harm you without GOD's consent.

But, fear of GOD is more substantial than fear of anything else. For instance, in one chapter of this Supplement I wrote about the diminishing

leverage of government upon the elderly. The concept was that as a person gets older, government has less of an ability to control that individual's compliance with positive law. This is simply because an older person has fewer years left in their life for the government can ruin. However, that infirmity of governmental power is markedly absent in regards to GOD's authority. HE (SHE) can punish you for an unlimited amount of time.

I will be the first to admit that while I have a tendency to rather enjoy making arrogant, sanctimonious Judges look stupid to the general public, I try my absolute best to demonstrate to GOD that I want to please HIM (HER) in all regards without exception. Similarly, whereas I fervently assert the best form of government in the secular world is a Democratic Republic, when it comes to the spiritual world, I am fully onboard with the Monarchy form. GOD is definitely my KING and it's as simple as that.

Coupled with the substitution of fear principle, possessing knowledge of GOD's existence with conclusive certainty creates another dilemma. Since the overwhelming majority of people in the secular world have at most a temperate belief in GOD, if you become one of the minority possessing certain knowledge of HIS (HER) existence, it becomes increasingly intolerable for you to deal with the majority on a daily basis. There is also a tendency to focus your daily actions upon maximizing the probability of a happy afterlife. Additionally, you can't help but feel an associated degree of frustration due to your inability to know precisely how to accomplish that.

I am also quite convinced that possessing certain knowledge of GOD's existence carries with it a degree of responsibility that other members of the secular world are not burdened with. Being a rational GOD, it can be fairly assumed that HE (SHE) would be more likely to grant forgiveness to those who engage in immoral acts, if they lack knowledge of GOD's existence. In contrast, if you possess certain knowledge of GOD's existence, but still choose to engage in immoral acts, your probability of being granted forgiveness is probably diminished, although not eliminated.

The reason for this is that people who lack full and complete knowledge of the consequences of their actions in the secular world, basically "don't know what their doing" so to speak. Thus, they should be more easily forgiven. In contrast, one who possesses certain knowledge of GOD's existence is probably held to a higher standard of conduct as a result of possessing such knowledge. When they engage in immoral acts, they do so fully cognizant of the potential ramifications of such.

In certain respects, it's kind of like how a Judge in the secular world is expected to conduct themselves. The general public believes Judges should have a higher standard of morality than the average citizen. Whereas, no one

objects to a construction worker getting rip-roaring drunk after work, it's fair to say that if a U.S. Supreme Court Justice did the same thing, the newspapers would be talking of impeachment the next day. Nevertheless, as indicated in this book there are numerous instances in which Judges enjoy the ability to engage in a lower standard of moral conduct than the average citizen. The obvious example, which is applicable to the subject of this book, is the ability of a Judge to evade disclosure of matters pertaining to their moral character in comparison to a Bar Applicant.

As also stressed herein, a determination of that which truly constitutes immorality extends beyond the personal activities and conduct of a Judge. For instance, the trial court Judge who does not drink, swear, gamble, or engage in any social vices, may in fact be substantially more immoral than the Judge who does. Certainly, morality is not wholly dependent on one's engagement in harmless social vices. Put simply, most litigants in any case are going to be better off if their Judge is a Drunk, rather than a Prick. Regrettably, it seems the latter is becoming more common than the former.

The critical point is that those who possess certain knowledge of GOD's existence have a greater responsibility and obligation to the world than those who lack such knowledge. Such individuals enjoy the blessing of an absence of fear from most things in the secular world. But, they do have a constant, overriding fear that they may not be pleasing GOD in all regards at all times. By the same token, certain knowledge GOD's existence is accompanied by the blessing of knowing GOD's moral character traits of forgiveness, understanding, and love. And most importantly, HE (SHE) truly has an absolutely terrific sense of humor amongst a wide host of other positive character traits.

So you work from the premise that as long as you don't screw up too bad, you'll probably be okay. You lose a degree of freedom in certain areas, but gain a larger degree of freedom in other ways.

Overall, it's a pretty decent deal.

THE #1 DUMB-ASS U.S. SUPREME COURT OPINION OF THE LAST 40 YEARS - Bell v Wolfish, 441 U.S. 520 (1979)

And the Winner is. . . .

It is undeniable that since the inception of this nation the U.S. Supreme Court has occasionally issued some really Dumb-Ass Judicial opinions. They've also written some good ones. For the most part, overall, I'd say they've done a relatively decent job. Concededly, the fact that they started the Civil War with the Dred Scott decision, which was the most bloody and vicious conflict this nation has ever been engaged in, arguably militates against that conclusion, but nevertheless such is my opinion.

The focus of this essay is limited to the U.S. Supreme Court for the last forty years. During that timeframe it is my opinion that the stupidest, most irrational, most illogical and baseless opinion the Court has written was Bell v Wolfish, 441 U.S. 520 (1979). It is still considered as "good" law today, with the term "good" subject to such liberal construction that it actually means "Crap."

The case stands for the legal premise that the infliction of vicious, cruel and unusual prison conditions of virtually any nature, imposed upon a pretrial detainee do not constitute prohibited "Punishment," so long as the prison employees decline to express an "intent to punish." The impact of the opinion has been to substantively repeal the Eighth Amendment without permission of Congress or the States. While the Eighth Amendment continues to exist as a matter of form, for the most part it was substantively repealed by the five Justices who signed the Majority opinion. The facts of the case are as follows.

Several individuals (hereinafter "Respondents") who were charged with crimes, but not yet tried or found guilty, were incarcerated. They challenged the prison conditions of their pretrial incarceration. The reason for their incarceration pending trial was to ensure their presence at trial (i.e. to make sure they wouldn't flee before trial). That was not a disputed issue. Both the government and the Respondents agreed that persons may be incarcerated prior to being found guilty. The issue before the Court was the scope of their constitutional rights during pretrial confinement.

The Respondents alleged that during their pretrial confinement they were deprived of their constitutional rights because of overcrowded conditions, undue length of confinement, improper "searches" (including those of the anal cavity and genitals), insufficient staff and a wide host of other points. The Federal

District Court ruled in favor of the Respondents regarding some of the allegations. The Federal Court of Appeals Affirmed most of the District Court's rulings, but the U.S. Supreme Court, Reversed.

Both the Court of Appeals and District Court relied on the "presumption of innocence" as the source of a pretrial detainee's right to be free from conditions of confinement that are not justified by a "compelling necessity of jail administration." However, the Majority opinion of the U.S. Supreme Court rejects that analysis. Instead, it determines that the proper analysis is whether the prison conditions amounted to "Punishment" of the detainee. The definition of "Punishment" adopted by the Majority is what is known in technical legal terms as a "Dumb-Ass" definition.

The Majority defines "Punishment" by a manipulative process of exclusion. It concludes Punishment does not include every condition imposed upon a pretrial detainee. It points out that the fact a detention interferes with the detainee's desire to live as comfortably as possible and with as little restraint as possible, does not convert the condition into Punishment.

Now, here's where the Majority really drops the ball. The crux of the opinion, which essentially demolished the Eighth Amendment is the following statement (emphasis added):

> "Thus, if a particular condition or restriction of pretrial detention is **reasonably related** to a **legitimate** governmental objective, it **does not**, without more, **amount to** "**punishment**." [274]

The foregoing sentence effectively removes a wide realm of cruel and unusual prison conditions from Eighth Amendment analysis. The manner in which it accomplishes such is as follows. It removes most prison conditions from any inquiry into whether they are prohibited as cruel and unusual punishment. This is because as expressly stated above, the conditions are no longer classified as "Punishment" at all. As the sentence indicates, once the government shows that a particular condition is reasonably related to a legitimate government objective, that condition no longer constitutes Punishment. The impact is that the condition is no longer subject to Eighth Amendment scrutiny against "cruel and unusual punishment."

Under the theory of the Majority, cruel and unusual prison conditions are not necessarily included within the definition of the term "Punishment." It is absolutely diabolically brilliant logic, notwithstanding the fact that it also falls squarely into the realm of "Dumb-Ass" logic. The Majority removed a wide realm of cruel and unusual "conditions" from Eighth Amendment protection, on

the ground that those conditions are not Punishment and the Eighth only covers Punishment.

The Dumb-Ass, diabolically brilliant logic of the Majority is exemplified by the Dissenting opinions of Justices Marshall, Steven and Brennan. Justice Marshall writes as follows, quoted at length (emphasis added):

> "The Court holds that **the Government may burden pretrial detainees with almost any restriction provided detention officials do not proclaim a punitive intent** or impose conditions that are "arbitrary or purposeless." **As if this standard were not sufficiently ineffectual, the Court dilutes it further by affording virtually unlimited deference to detention officials' justifications for particular impositions. Conspicuously lacking from this analysis is any meaningful consideration of the most relevant factor, the impact that restrictions may have on inmates**. Such an approach is unsupportable, given that all of these detainees are presumptively innocent and many are confined solely because they cannot afford bail.
>
> In my view, the Court's holding departs from the precedent it purports to follow and precludes effective judicial review of the conditions of pretrial confinement. More fundamentally, **I believe the proper inquiry in this context is not whether a particular restraint can be labeled "punishment." Rather**, as with other due process challenges, **the inquiry should be whether the governmental interests served by any given restriction outweigh the individual deprivations suffered.**
>
> The premise of the Court's analysis is that detainees, unlike prisoners, may not be "punished." To determine when a particular disability imposed during pretrial detention is punishment, the Court invokes the factors enunciated in Kennedy v Mendoza-Martinez, 372 U.S. 144, 168-169 (1963). . . . :
>
> > "Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only a finding of scienter, whether its operation will promote the traditional aims of punishment -- retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purposes assigned are all relevant to the inquiry, and may often point in differing directions."
>
> A number of factors enunciated above focus on the nature and severity of the impositions at issue. Thus, if weight were given to all its elements, I believe the Mendoza-Martinez inquiry could be responsive to the impact of the deprivations imposed on detainees. However, within a few lines of quoting Mendoza-Martinez, the Court restates the standard as to whether there is an express punitive intent on the part of detention officials, and if not, whether the restriction is rationally related to some nonpunitive purpose or appears excessive in relation to that purpose. . . Absent from the reformulation is any appraisal of whether the sanction constitutes an

affirmative disability or restraint or whether it has historically been regarded as punishment. Moreover, when the Court applies this standard, it loses interest in the inquiry concerning excessiveness, and indeed, eschews consideration of less restrictive alternatives, practices in other detention facilities, and the recommendations of the Justice Department and professional organizations. . . By this process of elimination, the Court contracts a broad standard, sensitive to the deprivations imposed on detainees, into one that seeks merely to sanitize official motives and prohibit irrational behavior. As thus reformulated the test lacks any real content.

To make detention officials' intent the critical factor in assessing the constitutionality of impositions on detainees is unrealistic in the extreme. . . .

. . . As the District Court noted, "zeal for security is among the most common varieties of official excess. . . . Indeed, the Court does not even attempt to "detail the precise extent of the legitimate governmental interests that may justify conditions. . . . Rather, it is content merely to recognize that "the effective management of the detention facility . . . is a valid objective that may . . . dispel any inference that such restrictions are intended as punishment." [275]

Justice Marshall continues as follows:

"Although the Court professes to go beyond the direct inquiry regarding intent and to determine whether a particular imposition is rationally related to a nonpunitive purpose, this exercise is, at best, a formality. **Almost any restriction on detainees, including, as the Court concedes, chains and shackles can be found to have some rational relation to institutional security, or more broadly to "the effective management of the detention facility." . . . Yet this toothless standard applies irrespective of the excessiveness of the restraint or the nature of the rights infringed.**

Moreover, the Court has not, in fact, reviewed the rationality of detention officials' decision, as Mendoza-Martinez requires. Instead, the majority affords "wide-ranging" deference to those officials "in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline."

. . .

A test that balances the deprivations involved against the state interests assertedly served would be more consistent with the import of the Due Process Clause. . . .

. . .

In my view, the body cavity searches of MCC inmates represent one of the most grievous offenses against personal dignity and common decency. After every contact visit with someone from outside the facility, including defense attorneys, an inmate must remove all of his or her clothing, bend over, spread the buttocks, and display the anal cavity for inspection by a correctional officer. Women inmates must assume a suitable posture for vaginal inspection, while men must

raise their genitals. And as the Court neglects to note, because of time pressures, this humiliating spectacle is frequently conducted in the presence of other inmates.

. . . There was evidence, moreover, that these searches, engendered among detainees fears of sexual assault, were the occasion for actual threats of physical abuse by guards, and caused some inmates to forgo personal visits." [276]

Justices Stevens and Brennan wrote as follows in their Dissent:

"It is not always easy to determine whether a particular restraint serves the legitimate, regulatory goal of ensuring a detainee's presence at trial and his safety and security in the meantime, or the unlawful end of punishment. But the courts have performed that task in the past, and can and should continue to perform it in the future. **Having recognized the constitutional right to be free of punishment, the Court may not point to the difficulty of the task as a justification for confining the scope of the punishment concept so narrowly that it effectively abdicates to correction officials the judicial responsibility to enforce the guarantees of due process.**

. . . **the Court seems to say that, as long as the correction officers are not motivated by "an expressed intent to punish"** their wards and as long as their rules are not "arbitrary or purposeless" **these rules are an acceptable form of regulation**, and not punishment. Lest that test be too exacting, the Court abjectly defers to the prison administrator unless his conclusions are "conclusively shown to be wrong." . . .

Applying this test, **the Court concludes that enforcement of the challenged restrictions does not constitute punishment, because there is no showing of a subjective intent to punish** and there is a rational basis for each of the challenged rules. In my view, the Court has reached an untenable conclusion because its test for punishment is unduly permissive.

The requirement that restraints have a rational basis provides an individual with virtually no protection against punishment. Any restriction that may reduce the cost of the facility's warehousing function could not be characterized as "arbitrary and purposeless" . . . . This is true even of a restraint so severe that it might be cruel and unusual.

Nor does the Court's intent test ensure the individual the protection that the Constitution guarantees. **For the Court seems to use the term "intent" to mean the subjective intent of the jail administrator. This emphasis can only "encourage hypocrisy and unconscious self-deception**. . . ." [277]

I do not see the need to render commentary beyond that presented by Justices Marshall, Stevens and Brennan. They state quite adeptly in detail the reasons why the Majority opinion in this case meets the simplistic and quite correct characterization of the U.S. Supreme Court's Majority opinion as falling squarely into the category of "DUMB-ASS." The Number One Dumb-Ass opinion in fact.

Being #1, perhaps they'll try harder.

WHY AREN'T PETITIONS FOR CERTIORARI TO THE U.S. SUPREME COURT ON PACER and the IMMORAL INCIVILITY OF RULE 33

It's my guess this essay won't be received particularly favorably by the U.S. Supreme Court. Oh, well. If such is the case, then both my goal and the purpose of the First Amendment have been achieved. The bottom line is that it is my responsibility to tell it like it is regarding all issues. That includes constructive negative criticism (with a bit of friendly, invective vituperation) regarding how the U.S. Supreme Court conducts its affairs.

As previously demonstrated herein, it is of significant public concern that State Supreme Court Justices, often do not more than give lip service to U.S. Supreme Court opinions. Certainly, they don't seem to feel particularly obligated to follow the "Spirit" of U.S. Supreme Court opinions. However, they do tend to at least give a degree of facial cognizance to the express language of the opinions. At the same time they appear to reserve the right to negate holdings of the higher Court by use of their own manipulative illogical means.

Regrettably, even to the extent State Supreme Court Justices give consideration to U.S. Supreme Court opinions, they receive a most disturbing message from that Court. The message conveyed by the U.S. Supreme Court to lower courts is that the Judiciary should strive to conduct its affairs in a secretive manner. In addition, it has also been sending a strong message to lower Courts that they should frustrate the ability of litigants to gain meaningful access to the legal system by adopting unnecessarily burdensome procedural rules.

The manner in which the U.S. Supreme Court conveys these messages is threefold. First, it has conveyed this message by its reprehensible failure to make Petitions for Certiorari available on PACER. Second, the message has been conveyed by its elimination in October, 2007 of direct public access to U.S. Supreme Court Briefs on the Merits from the Court. Third, the message has been conveyed by the irrational, ludicrous nature of Rule 33 pertaining to document preparation. I address each cognitively deficient policy in turn.

FIRST, the PACER issue. PACER stands for Public Access to Court Electronic Records. PACER makes available by internet almost all information and legal filings for cases in all Federal District Courts and Courts of Appeals. Any member of the public can set up an account. You can then search litigations by party name, and view and print the legal documents. This includes

Complaints, Answers, Motions, Court Orders, Judgments and Briefs. You can obtain almost any legal document for virtually any litigation that is in process.

But, you know what? You can't get the freaking information for Petitions for Certiorari filed with the U.S. Supreme Court from PACER. These are the cases that present the most significant issues facing the entire freaking nation, and the U.S. Supreme Court Justices won't put them on PACER. In technical legal terms that is what's known as a "Crock of Shit."

The nation and media have a right to know facts supporting issues presented to the Justices of the U.S. Supreme Court in cases the Court declines to grant review. That is the only way as the sovereign, we can properly and fairly assess the performance of the Justices who work for us. We need to know what constitutional issues they determine to be unworthy of review and the facts about the case. This is the only way we can assess whether the Justices correctly declined to review the matter, or whether instead they declined review because of some fear they have of the issue or the people involved.

Based on the fact that there are substantially more cases in District Courts and Courts of Appeal, with virtually all related legal documents pertaining to such being made public, it is not believable that the reason for Petitions for Certiorari not being available on PACER is related to the burden of doing so. Roughly speaking, I understand there about 9,500 Petitions for Certiorari filed each year. The U.S. Supreme Court needs to start making them available on PACER.

SECOND, is the matter of the dramatic step backward the U.S. Supreme Court took in October, 2007. On its website accessed in June, 2008 I reviewed and assessed its public posting titled "WHERE TO FIND BRIEFS OF THE SUPREME COURT OF THE U.S." The posting indicates Briefs on the Merits can be obtained from a number of internet and pay sources. However, it also states regarding "Self-service at the Supreme Court" that "This service is no longer available."

U.S. Supreme Court cases are not particularly low profile cases. We are not talking here about cases where parties might assert a privacy issue or other justification for sealing court documents. These are cases addressing the most important legal issues of national concern at the highest Court in the nation. Yet, these Banana-Brains (sorry U.S. Supreme Court Justices, but you know I'm right!) have discontinued making the Briefs on the Merits available directly from their Court. Unacceptable. Needs to change immediately.

THIRDLY, is the issue of U.S. Supreme Court Rule 33. This Rule applies to document preparation including Petitions for Certiorari. Its provisions are irrational and overly burdensome. Stated simply, the Rule is nothing short of a total pain in the ass. As I see it (and I'm always right) the Rule is designed

to provide the Justices with the personal satisfaction of knowing they were able to bust the chops of litigants and to increase legal fees in order to further no rational purpose of any nature. The rule states in part as follows:

> "(a) . . . every document filed with the Court shall be prepared in a 6 1/8" by 9 1/4' inch booklet format. . . .
> . . .
> (c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight. . . ." [278]

I truly would like to know which lame Brainiac at the U.S. Supreme Court came up with the measurement of 6 1/8" by 9 1/4" and the requirement that such be on card stock. Virtually, every other single freaking Court in this nation accepts regular good ol' 8 1/2" by 11" inch paper. However, the U.S. Supreme Court, which is supposed to be the Court that decides issues pertaining to meaningful access to the Courts comes up with this absolutely ludicrous measurement. To the best of my knowledge, the only way you can even get paper to be this size is to have it cut specially, or perhaps there is a specialized national outlet where it can be purchased at an inordinately high price.

There is no justifiable reason for the Court to make it so difficult for litigants to file a Petition for Certiorari. There is no valid justification for the requirement that all of the pages be on card stock. A litigant should be able to easily purchase the paper needed for preparation of U.S. Supreme Court legal documents. They shouldn't have to get paper specially cut. To require otherwise, results in the Justices sending a very strong message to all lower Courts that is essentially as follows, "We want you all to be ballbusters, just like we are at the U.S. Supreme Court."

Accordingly, I hereby conclude as follows. The U.S. Supreme Court has a moral responsibility to the general public of this nation to make Petitions for Certiorari easily available on PACER. In the current legal environment where Courts and Judges are increasingly insisting on so-called "Civility" by attorneys even when such jeopardizes the legal rights and legal representation provided to the litigants; Rule 33 functions in an Immoral and Uncivil manner.

THE U.S. SUPREME COURT IS HEREBY FORMALLY REQUESTED TO ADOPT THE REQUISITE CHANGES NEEDED CONSISTENT WITH THIS OPINION.

IT IS LOGISTICALLY IMPOSSIBLE FOR U.S. SUPREME COURT JUSTICES TO PERFORM THEIR JOB COMPETENTLY

This short essay is designed to present one point. The point is that it is logistically impossible for U.S. Supreme Court Justices to perform their job competently. The reason is simple. The caseload is too big and the point I am making is easy to prove.

In 2007, according to Table A-1 containing U.S. Supreme Court statistical data obtained from the Federal Courts website, a total of 9,602 cases were on the docket of the U.S. Supreme Court. The overwhelming majority of these cases are denied review by the Court. However, in order to determine whether review should be granted, it would be seem to be a fair assumption that a Justice would have to actually read the Petitions being filed. The bottom line is that it is logistically impossible for each Justice to read 9,602 Petitions. There's simply not enough work hours in the year.

U.S. Supreme Court Rule 33(g) lists page limits for Petitions for a Writ of Certiorari and indicates the maximum number of pages is 30. Although I have not been able to find statistical data indicating the average number of pages for Petitions filed, I think 25 is probably a fair estimate. Concededly, I don't have empirical data to back that number up. Maybe, the actual average is 21, 24, 27 or 28. But, I do think that 25 is a rough fair estimate.

Additionally, I am assuming as a very rough estimate that the average U.S. Supreme Court Justice can read, synthesize and consider 60 pages of written legal material per hour. Using these rough estimates, it would take each U.S. Supreme Court Justice 4,000 hours per year (9,602 times 25 = 240,050 pages; then divided by 60 pages per hour equals 4,000), just to read the Petitions. It simply can't be done. Even if you were to assume that the average Petition had only 21 pages, and that the average Justice could read, synthesize and consider 90 pages of written legal material per hour, it would still take 2,240 hours per year (9,602 times 21 divided by 60 = 2,240) just to read the Petitions.

I don't know exactly how many hours per year the Justices work. I do know that typically the average person has 1,920 work hours per year (52 weeks minus two weeks vacation minus holidays and sick days times 8 hours per day = 1,920). There is clearly a gap in available hours for the Justices, and that is before giving any type of consideration to cases that they actually adjudicate, which I understand takes up the majority of their time. Under the reasonable

scenarios presented above, if the Justices were to actually read all the Petitions themselves, they would have absolutely no time to write any opinions, no time for any oral arguments, no time for case conferences or any other duties.

The bottom line is that the only way the Justices can lay claim to properly performing their duties, is if they are actually reading the Petitions. The Petitions are the means that determine, which cases are adjudicated by the Court. And it's simply a logistical impossibility for the Justices to read them all. That means the determination of which cases are heard by the Court, is largely being made in one of two ways. Either the law clerks, many of whom have virtually no legal experience, are reading the Petitions and then deciding which Petitions should be presented to the Justices; or alternatively, many Petitions are simply not being carefully read or considered by anyone. Neither prospect is particularly appealing.

When FDR presented his Court packing plan in the 1930s, the Justices scoffed at his assertion that they were overworked, as the justification for more seats on the U.S. Supreme Court. Since then, the number of Petitions filed has skyrocketed. But, Court packing will not resolve the problem, and would probably exacerbate it for the following reason.

If additional Justices were added to the Court, you would simply have more Justices, with each possessing an individual duty to read all of the 9,602 Petitions filed. It is simply not acceptable to divide the filed Petitions between the Justices to determine which cases warrant review. To the contrary, in order for the job to be performed properly, every single Justice who has a vote on whether to grant or deny review should be reading every single Petition. But, it's not logistically possible.

Indigent prisoners are generally the ones who file the Petitions, which are in all likelihood treated like trash by the Court. Yet, they have a greater interest at stake than virtually any other litigant before the Court. They have their freedom at stake.

In short, and in conclusion on this issue, I really don't have a suggestion as to how to solve the problem. But, it is a problem. The Petitions are not being properly reviewed, if for no other reason than it is logistically impossible to properly review them due to the time constraints and caseload. That means the Justices cannot genuinely lay claim to doing their job properly, although I do concede it is through no fault of their own on this isolated issue. By the same token, the Justices of the U.S. Supreme Court cannot expect help on the issue, until they acknowledge the problem.

As the old saying goes, no one can help you, until you admit you have a problem. The doctrine of judicial immunity provides no exemption for U.S. Supreme Court Justices on this issue.

THE "REAL ESSENCE" OF ALL GOVERNMENTS IS ON THE TWENTY DOLLAR BILL

The "Nominal" Essence of any thing, object or person is what it "purports" to be. The "Real" Essence is what it truly is. As an example, consider the trial court Judge who presents himself as an honest person who bravely upholds the law and renders fair judicial decisions. Then let us presume as typically occurs, this Judge in actuality subverts the written law by utilizing any one of the numerous available Judicial techniques of manipulation and deception delineated herein. Under this scenario, the Judge's Nominal Essence is that of a moral, upstanding Judicial official. However, his Real Essence is that of a deceptive, tricky, conniver. Thus, the Real Essence of any thing, object or person may be precisely opposite to its Nominal Essence. It also may be the same or only slightly different from its Nominal Essence.

With these principles in mind, I now turn to the Real Essence of all governments, since history began thousands of years ago. It is my proposition that the Real Essence of governments may be found on the U.S. Twenty Dollar Bill (hereinafter, the "Bill"). The Bill portrays the picture of former U.S. President Andrew Jackson. He served two full terms as President winning the 1828 and 1832 elections.

The Nominal Essence of a President who has their picture on currency is perceived by the average citizen to be for the purpose of honoring their Presidency. The average citizen is given the impression that the former President faithfully served his country, promoted the principles and values of his country, and was a devoted servant of his nation. However, notably the U.S. Bureau of Engraving and Printing as described on the website www.moneyfactory.gov neither confirms nor denies this common perception. Instead, it simply states in reference to people who have their picture on currency as follows (emphasis added):

> "Treasury Department records do not reveal the reason that portraits of these particular statesman were chosen in preference to those of other persons of equal **importance and prominence**." [279]

Jackson was undoubtedly "important" and "prominent." However, Importance and Prominence are not necessarily terms of positive moral character connotation. A classic example is Adolf Hitler. He was definitely

"important" and "prominent", but one would be hard-pressed to find a rational person who would consider him in a positive light. Quite to the contrary, he exemplified the most negative moral character traits imaginable.

Thus, all we can conclude from the statement regarding Treasury Department records is that a former President whose portrait is on currency is that they were Important and Prominent. The question of the positive or negative nature of their moral character traits is left wholly open.

In my view, the most authoritative biography about Andrew Jackson was written by Robert Remini. [280] Remini portrays both the positive and negative moral character aspects of Jackson's life, career and presidency. On the positive side, Jackson did bring government to the public, removed a great deal of its elitism, and played a major role in transforming a "Republic" into a "Democratic Republic." However, on the negative side, he was cruel, vain, ruthless and lacked respect for the authority of the other two branches of government. He was largely responsible for the vicious treatment of Indians and what came to be known as the "Trail of Tears." He ignored opinions of the U.S. Supreme Court. He took it upon himself to interpret, as well as administer the law. He was probably as close to a Dictator as we've ever had in this nation, although many contend Franklin Delano Roosevelt was also a Dictator. Jackson regularly conducted himself as above the law.

Both before and after becoming President, Jackson hated the U.S. Bank. As President, one of his primary goals was to destroy it and he succeeded in doing so. He drew his power from the public and viewed the Bank as the instrument through which elitists were exploiting the general public. The Bank had a controversial past since its inception. The legal legitimacy of its predecessor institution was debated ferociously between Alexander Hamilton and Thomas Jefferson. As a result of the ongoing conflict about the legal legitimacy of a national Bank, it had gone in and out of existence a number of times during the first 60 years of our history. When Jackson became President, the Bank was back in existence.

A large part of the disputes regarding the U.S. Bank focused on the use of "hard money" versus "soft money." Hard money was known as "Specie." It consisted of gold or silver. Thus, using hard money meant that if you wanted to buy a product you would actually hand over gold or silver. In contrast, soft money allowed for the use of paper money or promissory notes, as we commonly use today.

Jackson was a staunch "hard money" man. It was his belief that the Bank's main tool for exploiting the working class was its use of soft money. Thus, the "Real Essence" of Jackson was to eliminate soft money and have trade

effectuated primarily by Specie (i.e. hard money). That was the crux of his economic policy.

After a controversial Presidency and life, Jackson died on June 8, 1845. In 1928, the Federal Reserve, which was essentially the new U.S. Bank, put his portrait on the twenty-dollar bill. And that is what the "Real Essence" of government is all about.

Jackson's portrait isn't on the Bill as an honor. It's on the Bill for the purpose of disgracing everything he believed in. I am the first to wholeheartedly agree he was an absolute vicious tyrant. This is particularly the case as regards the cruel treatment the American Indians endured. But, the bottom line is that Jackson is not on the Bill for the purpose of honoring him. He's on the Bill because the new version of the old U.S. Bank which he had destroyed, wanted to give him what's known as a "zinger" so to speak.

They put him on the Bill because they knew there is absolutely nothing he would detest more. Jackson himself would positively be the first one to passionately object to putting his portrait on the Bill (i.e. soft money). This is because he didn't want paper money to even exist for the most part. He strongly believed in the use of Specie (hard money gold or silver). He was against the Bank and against soft money (paper money).

Every now and then on the internet I come across a website that points out quite correctly, how ruthless Jackson was. Such websites then point out that since he was so ruthless and cruel, he shouldn't be honored by having his portrait on the Bill. But, these websites are interpreting it all incorrectly. The U.S. government didn't put Jackson's portrait on the Bill to honor him. They did it to disgrace everything he believed in.

Now, here's the major problem with the U.S. government's theory. The average citizen is unaware of the "Real Essence" related to Jackson's portrait being on the Bill. They don't know it was for the purpose of disgracing everything he believed in. Instead, the average citizen knows only the "Nominal Essence." They only know that the portrait of a former President on currency conveys a recognition of importance and prominence. As indicated previously, prominence and importance are not necessarily connotations of positive moral character. They can be indications of negative moral character traits as well. Nevertheless, there is a tendency for people to view importance and prominence in a positive light, since that is the most common usage of the terms.

Most citizens are not well-versed in American history. At best, the average citizen only knows that Jackson was a former President at some point in time during the 19th century. Many citizens don't know even that much. They haven't read Robert Remini's biographies of him. They probably have never heard of the "Trail of Tears," although they may remember that at some point in

grammar school, they heard something about Indians not being treated fairly.

The impact of this disparity is that the average citizen pulls out the Bill to pay for a product, sees Jackson's picture on it, and instinctively assumes he must have been an all around good guy. At the next level, you have people who are aware of the negative aspects regarding Jackson's moral character, and they are outraged by the fact that he is "honored" with his portrait on the Bill.

But, the "Real Essence" is that the government put Jackson's picture on the twenty dollar Bill for the purpose of disgracing his beliefs, even though it was concurrently aware most people would consider only the Nominal Essence that such is generally an honor. This gives rise to the following conclusion. The government advanced its own agenda of disgracing the beliefs of a person it disagreed with (i.e. Jackson) even though the government was fully aware that by doing so it would have to intentionally trick the general public into a false set of beliefs. Thus, the government's duty to be truthful to its own citizens took a backseat to the government's own political agenda.

And that is the "Real Essence" of all governments since time began.

THE ART OF LEVERAGING THE JUDICIARY BRANCH OF GOVERNMENT

The brave, noble art of leveraging the Judiciary branch of government for the public good requires recognition of three basic principles by any moral person embarking on such a quest, which are as follows.

1. While many Judges are honest, brave and highly ethical decision-makers, a large proportion of Judges are nothing more than Cowards.

2. Due to (1) above, any person who rationally challenges irrational, cognitively deficient Judicial decision-making tacitly accepts the prospect of being unfairly punished by immoral Judges whose cowardliness gives rise to a retaliatory nature within their persona, which is manifested by their commission of illegal, irrational acts under the guise of law.

3. In light of (1) and (2) above, successful achievement of leveraging the Judiciary requires extensive preparation both intellectually and regarding personal lifestyle, along with extensive contemplation of potential irrational and illegal acts that may be committed by certain Judges for the sole purpose of protecting their political position and furthering their own self-interest.

Leveraging the Judiciary branch of government requires placing it in a no-win position. It needs to be maneuvered into a conditional state, whereby, whatever move it makes of any nature, it comes up the loser. That is basically what Judges do regularly to litigants.

A prime example is the Judiciary's handling of civil litigation. What often occurs is as follows. The Judge falsely purports to be a fair decision maker. However, in truth the Judge's only goal is to avoid making a decision by getting the parties to settle. Employed as decision-makers, the act of deciding the presented issue is precisely what the Judge seeks to avoid. To accomplish this, the Judge will utilize tools of manipulation and leverage. Often the Judge's main modus operandi consists simply of delaying proceedings for the purpose of wearing down and weakening the litigants financially and emotionally. As legal fees mount, settlement positions of both litigants tend to relax.

Another immoral tactic used quite often by Judges consists of informally indicating how they would rule, if they were to rule. The concept here is to basically "decide without deciding." The Judge's informal message to counsel is

then communicated by them to the clients. This places at least one litigant in the position of knowing they will lose, if they don't settle. The effect of this invidious Judicial tactic is to render a ruling as a matter of substance, but to evade both the responsibility and ramifications of issuing a formal decision.

The Judiciary's main objective is to "look good" and "look fair," while concurrently maintaining its ability to "act bad" and "act unfair." Judges seek to portray themselves as "moral," while maintaining their ability to conduct themselves "immorally." When they accomplish these goals, the litigant is effectively positioned, so that no matter what move they make, they lose. If the litigant continues the litigation, legal fees mount and they will lose anyway. Thus, the litigant is faced with the only logical decision being to accept losses already incurred and settle the case. The incurred losses generally consist of legal fees paid and the emotional stress experienced due to the litigation. When the case is over, the litigant inwardly realizes they were effectively leveraged by the Judiciary. They also gain an understanding of basic principles of Risk/Reward and Cost/Benefit analysis. Often the litigant will properly characterize this in-depth understanding of how the Judiciary works in a simplistic and correct manner using the phrase, "The whole thing was such a Crock of Shit."

To leverage the Judiciary, the reformer must use tactics that encourage the Judiciary to rule fairly. Implementation of such is quite complex. You have to place the Judiciary in a position whereby furtherance of its own self-interest mandates conceding to rational reform. Above all, the reformer must concentrate efforts on making the Judiciary "look bad," if it does not decide the pending issue in the public's favor. Because above all else, the Judiciary can not afford to "look bad." It can afford to "act bad" and often seeks to do so. But, it can't afford to "look bad." If it "looks bad" that jeopardizes its ability to "act bad" in the future.

Since a high proportion of Judges perform their duties using manipulative techniques exemplifying a cowardly nature, they suffer from the infirmities of that trait. The reformer can use these infirmities to advantage the interests of the general public, whom he seeks to assist. Cowards only conduct themselves tyrannically when dealing with those who are weaker. That is the very nature of being a coward.

An example is that most of the so-called "No Nonsense" Judges we often hear about, are only of that nature when dealing with litigants who can not defend themselves. They generally will not conduct themselves in the abrasive manner characteristic of the "No Nonsense" persona when addressing Justices on higher courts or Legislators. Quite to the contrary, on such occasions these tyrants become individuals of extreme deference and respect to powerful

superiors. After all, their superiors are the ones who provide them with the ability to play the role of Cowardly Tyrant to litigants. The key in leveraging the Judiciary is to capitalize on its cowardly and irrational nature.

The best example of effectively leveraging the Judiciary was FDR's Court Packing Plan. The U.S. Supreme Court had been regularly striking down his proposed legislation. So, FDR had Congress propose expanding the number of Justices on the Court. That would dilute the power of individual Justices significantly. The result was that when the Justices were faced with the prospect of having their own personal power diminished, coupled with the public's overall perception of the Court being at risk, they totally caved in to FDR. By placing Judicial self-interest at risk, FDR got U.S. Supreme Court Justices to lose more than just a bit of their arrogant attitude.

Applying principles of Risk/Reward analysis, the Reward aspect of successfully leveraging the Judiciary is as follows. It consists of convincing the Judiciary on a given issue to render its decision in the public's favor and according to the law.

The Risk aspect is equally simplistic. It consists of accepting the fact that the cowardly nature of many Judges gives rise to a retaliatory nature within their persona. This then leads to the prospect that if you fail in your attempt to leverage the Judiciary, immoral Judges may unfairly punish you. Most Judges are no different than most humans. Being subject to basic principles of human nature, they will tend to repel a failed intellectual legal attack with vengeance. Armed with their contempt power, political support of prosecutors and attorneys, and an arsenal of conflicting statutes (which the Court may construe in any manner it pleases), it is not particularly difficult for Judges to gratify their interest in vengeance against any honest, ethical, citizen.

Upon becoming educated to the manner in which many (but, not all) Judges function, the reformer who is willing to accept the Risk of being unfairly punished by immoral, unethical Judges in the hope of effectuating positive reform on behalf of the public interest should do the following. Preparation consists of both intellectual education and personal lifestyle adaptability. Intellectually, you must be well-versed in law, history and philosophy. This is because they are all intertwined. This preparation not only provides you with knowledge, but of greater importance it enhances your own moral perspective. Additionally, it teaches you why and how the opposition functions from an immoral perspective.

In regards to personal lifestyle, there are only a few basic rules. First and foremost, you shouldn't be romantically involved with anyone. That's concededly a pretty tough one. As guys, we want to get our rocks off and I understand women have a similar desire. But, the bottom line is that whether

you're a male or female, anyone you are romantically involved with wants to know what you think. That's a real problem.

Romantic companions want to know your opinions and worse yet, they want to give you their opinions. A good marriage is undoubtedly the greatest blessing in life. Regrettably, it is totally incompatible with effectuating positive government reform. A good marriage is a partnership. To pursue political ideals effectively, you can't be bogged down by the opinionated input of a partner. Similarly, you can't be in a position where you have to constantly be answering all of their stupid-ass questions.

Okay, so the first basic rule in regards to lifestyle eliminates just about everybody. The second rule is that you need to do your best to develop your own moral perspective in a positive manner. This does not mean that your morals must conform to what society commonly accepts as good morals. However, it does mean that you must have a genuine belief that you are in the "Right" and that the moral principle you are seeking to achieve is important. It also means that since your primary focus must be on the moral principle you seek to achieve, for the most part you should not focus at all on specific individuals who wronged you in the past. As stated elsewhere, John Locke wrote in his Second Treatise of Government:

> "And he that appeals to Heaven, must be sure that he has Right on his side; and a Right too that is worth the Trouble and Cost of the Appeal, as he will answer at a Tribunal, that cannot be deceived, and will be sure to retribute to every one according to the Mischiefs he hath created to his Fellow-Subjects; that is any part of Mankind." [281]

The foregoing is an extremely important point. At some point in life, reformers like all other people, tend to turn to Prayer. The facts and circumstances will all be different, but the Prayer is generally the same. In one form or another it goes, "Please fix this thing GOD" or "Please help me GOD." That's a pretty common Prayer. When you say it, you want to be in a position of genuinely believing you are entitled to help, or at least willing to admit your own errors and change your ways if help is given.

In a nutshell, that is the way you leverage the Judiciary branch of government. You recognize that a lot of Judges (though not all) are cowards. You capitalize on the infirmities of that character trait. You accept the fact they may seek vengeance against you for exposing their irrationalities and cognitive deficiencies. You conduct yourself bravely. You conduct yourself to the best of your ability in conformity with what you genuinely believe constitutes good moral character, while recognizing that no one is perfect. You perform a

Risk/Reward analysis, and accept the prospect that immoral, unethical Judges may unfairly punish you if you lose. You prepare intellectually. Then, you attempt to place the Judiciary in a position whereby it either rules in your favor (i.e. the public wins) or alternatively it rules against you, which causes the Judiciary to look like total Crap to the public (i.e. the Judiciary loses).

A good hypothetical example in regards to the foregoing would be a person who attempts to reform the State Bar admissions process using the following legal theory. Either the State Bars open their doors to minorities, or alternatively they will lose Unauthorized Practice of Law prohibitions. If the reformer can make good on this concept, it functions as extremely good leverage. Essentially, the concept is that lawyers will lose the legal monopoly (i.e. UPL prohibitions), if they do not begin conducting the licensing process in a fair manner (i.e. reforming application of the so-called "Good Moral Character" standard for State Bar admissions).

Under this hypothetical, the Judiciary looks good to the general public if the admissions process is reformed, and it is in a position whereby it will lose immensely if it is not reformed. Of course, the latter potential outcome is predicated upon the reformer being able to make good on the assertion that UPL prohibitions can be broken and that is by no means a certainty.

It is obviously difficult, if not impossible to ascertain or predict how the above hypothetical might turn out. It is fair to say that given the uncertainty and unpredictability of all events in life and the Universe; Risk/Reward analysis is far from a precise science. Nevertheless, like all other aspects of life, you do your best to perform the task. And if an Appeal to Heaven becomes necessary by either Party, you want to do your best to be in the position of the "Right."

Like Bill Murray said in the movie, Groundhog Day:

"You make choices and you live with them."

UNWRITTEN RULES OF COURTESY, CIVILITY, AND LOCAL CUSTOM INDICATE A JUDICIAL PROPENSITY TOWARDS IMMORALITY

It is commonly misunderstood by Judges and State Bars that a lawyer's first duty is to the Court. It is thought to encompass a duty of candor to the Court, civility in courtroom manner, respect, not being disruptive, preserving the dignity of the Court and a wide host of other aspects of so-called "professionalism." These duties are imposed in written rules of professional conduct, judicial opinions and also unwritten rules of general understanding amongst local lawyers in a State.

Perhaps greatly to the dismay of State Bars, local lawyers in a State and Judges, they must become acclimated and relegated to their proper station in the world. As a preliminary matter, the duty owed by a lawyer to the Court is subservient to his duty to GOD. However, there is no need to dwell on that point. The reason is, that I am sufficiently satisfied any lawyer or Judge (including the U.S. Supreme Court) disputing this premise will ultimately be provided by the Almighty with the necessary encouragement to change their viewpoint.

Okay, so now the lawyer's duty to the Court is bumped down to second at best. The next issue is determining where the lawyer's duty to his client is in comparison with any duty to the Court. The Judiciary contends that the duty to the Court is higher than the duty to the client. I'd say the two are about evenly tied. In either instance, particular circumstances of a case may place the duty to a client above the duty to the Court, or vice versa. To a large extent it depends on the client, the nature of the case, and whether the Judge deciding the case performs his duties morally, immorally, legally, or illegally.

Of course, a corrupt judge is owed no duty of any nature. Similarly, a corrupt judge supported by a cabal of appellate Justices who ignore concrete proof of corruption, eviscerates any alleged duty to the Judge or the appellate Court. By the same token, a lawyer who alleges such better be certain about the legitimacy of the accusation.

There are also times when the lawyer's duty to his client is terminated. Just as the lawyer has no duty to a corrupt judge, there is no duty to present false evidence on behalf of a dishonest client. A lawyer, who knowingly does so, is just as morally reprehensible as a corrupt Judge or even a State Bar.

The lawyer's duty to the Court broken down to its widest categorical divisions consists of written and unwritten rules. Judges mistakenly conclude that lawyers are immoral if they do not comply with "unwritten rules of understanding" or "local custom of attorneys." In truth, the reverse is true. The mere existence of unwritten rules constitutes an indicia of judicial propensity towards immorality.

The nature of unwritten rules is to promote the efforts of lawyers to "get along" with each other. They are thus subversive to the adversarial system of justice, which is predicated upon lawyers opposing each other to further the interests of their client. The inimical theory of Judges behind unwritten rules is that to reach resolutions in pending cases, local lawyers should willingly do the following. They should agree to extensions of time for filings by other attorneys; take into account personal plans of other lawyers when scheduling hearings, depositions and meetings; and waive objections to procedural defects in pleadings of other lawyers. Often the impact of these "understandings" is to compromise legitimate interests of the litigants. The essence of the unwritten rules is to encourage lawyers to be "cooperative" with each other. Unwritten rules are more poignantly and correctly understood by litigants to confirm the existence of what is known as a "Good Ol' Boy Network." Thus, the litigants quite properly perceive unwritten rules as the Judiciary's way of undermining justice and basic notions of fairness.

The same lawyer who unhesitatingly grants an extension to another lawyer who practices in the same geographic area, will promptly deny the same type of request if made by a pro se litigant. Therein, illustrates the main problem. The unwritten rules create an un-level playing field. They suffer from the infirmity of immorality because they allow lawyers to carve out for themselves benefits and privileges in litigation extending beyond the written law. In addition, the only lawyers who gain the benefits of these privileges are those willing to grant a quid pro quo to other local lawyers. If an attorney declines to cheerfully participate in and support the unwritten rules of professional conduct, they are branded as an outcast by their peers. This creates an increased probability for the imposition of professional discipline. In addition, Judges are typically governed by an unwritten local rule requiring them to ensure that lawyers who do not support interests of other lawyers have a decreased probability of winning cases. Practically speaking, the effect of all this is that lawyers and Judges have a choice. They can either provide unwavering support for the interests of other lawyers or suffer the consequences.

The ultimate victim of a lawyer who refuses to participate in promoting the unity and cohesiveness of the nefarious good ol' boy network is the lawyer's client. Clients suffer when lawyers are falsely labeled by peers and Judges as

renegades. In truth though, lawyers who give no heed to unwritten rules are engaging in noble moral conduct Thus, the unwritten rules of general understanding function to turn morality on its head. It is of course a quite despicable result, with the primary perpetrators of immorality being the Judges who compromise ethical principles by lending their power and strength to the good ol' boy network. Better they should help the litigants and public.

The remedy to this problem is to recognize that the Court is subservient and inferior in importance to the general public. This concept is not amorphous, but has been established as the bedrock foundation for our Constitution. It begins straightforwardly by stating who is in charge. The Constitution does this by use of the phrase "We, the People." The phrase "the People" delineates the vesting of sovereignty. The sovereign in any nation is the one in whom the supreme human power is vested. In a monarchy for instance, it would be the king. In an aristocracy, it would be the wealthy privileged elite.

However, the fact that in the U.S. the "People" are sovereign as a group, does not mean each citizen is individually a sovereign. Clearly, one person may not claim individual sovereignty and start ordering Judges what to do. That would make each person a king. Assuming without deciding that the Judiciary is willing to comply with the U.S. Constitution (which admittedly may be a faulty assumption) then it must be accepted that the Judiciary accepts the fact that the "People" as a group are sovereign. And if so, while each individual may not act as a sovereign or even on behalf of the sovereign, they are entitled to some appropriate recognition and treatment as a "component" of the sovereign.

I am concededly unable to fully determine with precision what the phrase "appropriate recognition and treatment" encompasses. However, it certainly does not mean each component of the sovereign (i.e. each person) is wholly subservient to a privileged class of lawyers. And that is what the unwritten rules of local custom and understanding effectuate. To allow continuance of such a regrettable state of affairs, effectively converts the U.S. Constitution into a document establishing an Aristocracy.

As stated, each component member of the sovereign (i.e. each citizen) cannot claim to be a king. However, it is equally apparent that Judges lack the constitutional power to establish an Aristocracy by granting benefits and privileges through use of unwritten rules and local custom to lawyers.

Thus, we now must totally chuck out all those unwritten rules of understanding and "wink of the eye" local custom that the lawyers have so gleefully been enjoying before the Courts at the expense of the litigants. This entails educating Judges as to their proper role of subservience to the sovereign "People." It also requires Judges to become acclimated regarding the proper

reasonable extent of their inferior power compared to the sovereign. When Judges attempt to increase their sphere of power beyond its limited role through use of unwritten rules, it is merely a transparent exemplification of their propensity towards immorality. This of course, raises the issue whether they possess the requisite good moral character to possess a law license.

The failure of the judiciary to publish its unwritten rules of understanding renders such rules offensive to morality. It results in litigants becoming victims of unwritten laws and rules, which they are not even privy to the existence of. These unwritten rules of the "good ol' boy network" are no less offensive than the concept of a State Supreme Court refusing to publish a dissenting opinion of a State Supreme Court Justice. But of course, that could never happen.

No State Supreme Court would ever refuse to publish a dissenting opinion of a validly elected or appointed judicial peer. Guess again. That was precisely the case in Guardianship of Danny Keffeler, Washington State Supreme Court Case No. 67680-1. In his dissenting opinion (which he had to publish on his own website due to the Court's refusal), Justice Richard B. Sanders wrote as follows:

> "I have requested the majority to publish its order and this dissenting opinion. However, the invitation was summarily declined.
>
> I find this action particularly troubling in its own right.
>
> . . .
>
> The published judicial opinion is the "heart of the common law system." . . . . Courts ensure the legitimacy of their decisions by preparing and publishing opinions that explain and justify their reasoning.
>
> . . .
>
> The core reasons for publication are judicial accountability and uniformity in the impartial meting out of justice. But the majority in this proceeding has defenestrated these two values.
>
> The common law maxim, "Cessante ratione legis cessat ipsa lex" - "When the reason for the law ceases, the law itself ceases" is a propos. . . . **The rule of law is too important to be so lightly sacrificed in the shadows of an unpublished opinion."** [282]

Similarly, the rule of law is too important to be covertly and secretly evaded at the expense of litigants through the use of unwritten rules of understanding, and "local custom" by attorneys in a State Bar. That which the public knows to be called the "Good Ol' Boy Network" does in fact exist. Denials of its existence by State Bars and Judges are no longer to any avail. The

Judicial conspiracies, which litigants or lawyers often allege to exist in various cases and which are discounted by State Bar officials and Courts as irrational allegations are in fact quite rational, truthful and correct. They exist. Unwritten immoral rules of local custom and reprehensible unwritten understandings between attorneys and Judges are indicative of widely accepted system-wide conspiracies to subvert the interests of litigants. They are immoral. They are wrong. They are unethical. And any State Bar or State Supreme Court Justice that supports the existence of unwritten rules lacks good moral character. Period. That is an absolute, irrefutable positive, truthful fact.

As stated in the Celine Dion song, "That's The Way It Is."

MALES AND FEMALES ARE INTELLECTUAL EQUALS AS LAWYERS AND JUDGES - WHICH DOESN'T SAY TOO MUCH FOR EITHER

There is no doubt that anyone who believes males are better Judges or lawyers than females, or vice versa, are wholly incorrect. For the most part, the majority of both are pretty much Crap. There are some exceptions. You really can't even differentiate between the two sexes as attorneys for the following reasons. Both sexes play the same manipulative games of deception whether as Judges or lawyers. They've both basically subjugated their sexuality and any semblance of individualism to the economic interests of the legal profession. As for the games of deception they both play, it's really just like a card trick. Once you learn how the trick is played, either a male or female can perform it equally well. The motivations involved in playing the trick are about the same.

One interesting aspect involving the approach to litigation concerns the emotions of the individuals involved. It has been my experience that both male and female attorneys generally do not allow emotions between themselves to interfere with conduct of a case. Both tend to view litigation the same. The goal is to milk the litigants for their money and once the money's gone, get the case settled. It's certainly not a conflict between plaintiff's attorney and defendant's attorney. Rather, the conflict centers upon both attorneys teaming up against both litigants. The Judge is generally on the side of the attorneys and against the litigants. Consequently, it's not too difficult to see that ultimately the attorneys will prevail over the litigants.

Both male and female attorneys I have been exposed to know the law equally well. That means most males and females do not know or understand law at any level below its surface. It is rare when I have come across a lawyer with any in-depth knowledge of American history, western philosophy or the true driving forces of Judicial decision-making. At best, they have a moderate working knowledge of rules of procedure and perhaps a bit of substantive case law in the particular area they're working. Many, don't even have that. Pretty much all of them place their overwhelming reliance on the fact that the Judge will overlook their legal errors and intellectual shortcomings, so as long as they are supportive of the Judiciary and legal profession. Most of them are.

For two reasons, I cannot fault lawyers entirely for their lack of legal knowledge or absence of legal expertise. First, they are only doing what they've been brainwashed to do by the Judiciary and State Bars. In this regard, they are concededly victims as much as perpetrators.

The second reason probably functions even more as a valid defense on their behalf. It is that the laws of this nation both Federal and State have become so cumbersome, so complex, and subject to so many contradicting interpretations, that it is logistically impossible for any person to have a coherent understanding of all aspects of the law. At best, if a lawyer specializes in a narrow field of law, they can probably know it fairly well.

However, your average general practice lawyer works in a wide multitude of areas. They normally work on personal injury suits, divorces, estates, wills, trusts, criminal defense, medical malpractice, contracts, consumer protection, torts and countless other subject matters. It's nothing short of a total pathetic joke. There's simply no way any person can be well versed in all of these areas. As the old saying goes, "a man who knows a little about everything, knows virtually nothing about anything."

The one thing that all of the lawyers know extremely well is that if they've been around long enough they can freely say anything nasty or mean about the litigants in their pleadings. However, under no circumstances are they supposed to say anything nasty about the Judge, no matter how corrupt he or she is. Similarly, it is an exceptional circumstance when a lawyer will say anything derogatory about another lawyer in a pleading. The definition of the term "exceptional" in the prior sentence is generally as follows. An "exceptional" circumstance exists if the case involves a sufficient amount of money in legal fees.

Thus, I conclude that male and female attorneys generally possess the same degree of legal skill and expertise (i.e. minimal). Additionally, both are able within the context of litigation to sufficiently control their emotions in order to achieve what they both perceive to be justice (i.e. legal fees).

One of the most pervasive areas of the law demonstrating the above proposition is divorces. During the last decade, my career has focused primarily on performing business valuation and litigation support services in matrimonial cases. Thus, I have worked with many matrimonial attorneys, both male and female. Subject to a few exceptions, they both tend to view the husband and wife as irrational.

There's really not much of a tendency for female attorneys to view husbands as any more irrational than wives, as one might think. Nor does there seem to be a tendency for male attorneys to view wives as more irrational than husbands. At least so far as my exposure has been, both male and female attorneys tend to view both husbands and wives as irrational. This is because such a perspective works to the mutual advantage of both attorneys. The couple going through the divorce is typically viewed as a joint entity by the attorneys,

notwithstanding the divorce. It's really both attorneys against both litigants, not plaintiff's attorney against defendant's attorney.

The unity of the legal profession is quite pervasive and immoral. The mutual goal of both male and female attorneys, to maximize transference of wealth from litigants to themselves has effectively overcome the battle of the sexes. It's actually quite remarkable. Outside of the legal profession, friction between males and females remains noticeably existent. Without delving too much into the nature of male/female relationships, I think it's fair to say you often hear many men saying, "my wife is nuts" or many women saying "my husband is nuts." The same often applies to relationships in the dating stage. However, that aspect is noticeably diminished in the legal profession.

Both male and female lawyers and Judges control their emotions adequately. Neither are particularly well-versed in legal matters. But, they have to a large degree, overcome the friction between the sexes existing in so many other areas of life.

The factor that accomplished this was the immoral character trait of "Greed" coupled with the mutual understanding between lawyers of both sexes that neither one them really knows what they're doing.

IDIOCRACY, PHILOSOPHY AND THE "DUMBING DOWN" OF STATE BARS

"Most science fiction predicted a future that was more civilized and more intelligent. But, as time went on things seemed to be heading in the opposite direction. **A Dumbing Down**. . . . The years passed. And mankind became Stupider at a frightening rate."

From the Comedy Movie "IDIOCRACY"

The movie IDIOCRACY is one of my favorites. The plot consists of an average man named Joe, who is placed in suspended animation and wakes up in the year 2505. Although he was only of average intelligence in today's world, he finds out that he is the smartest man on Earth in the 2505. The reason is that everyone else in the world has become dumber.

In one scene of the movie he is placed on trial for stealing and is represented by a lawyer who graduated from COSTCO law school. When Joe tells his attorney that he's innocent, the lawyer responds "Well, that's not what the other lawyer says." Ultimately, the prosecution asserts that Joe is guilty relying on the premise, "well, just look at him." The trial is a comical farce. The Judge is a buffoon who thinks both lawyers are doing a good job, even though they are both evidently morons. When Joe tries to logically and rationally state his case, everyone in the courtroom just laughs at him. Ultimately, Joe is convicted and sent to prison. While being admitted to prison, the narrator of the movie states that Joe used his "superior intelligence" to devise the best escape plan he could think of. The escape plan simply consists of Joe going up to the prison guard and saying that he's supposed to be getting out of prison today. The guard then calls him a moron and tells him that he's in the wrong line. With that, Joe gets out of prison.

In all fairness, I would have to concede that neither State Bars, nor the Judiciary has quite yet degenerated to the level of stupidity shown in the movie IDIOCRACY. But, they are headed in that direction and definitely in the midst of a "Dumbing Down." This is evidenced by the multitude of cases where litigants acting Pro Se present logical legal arguments in conformity with well-accepted legal premises, only to have attorneys and State Supreme Court Justices unfairly chastise their mental abilities. Once the Judiciary targets a Bar Applicant or a litigant in any type of case by labeling them as a "troublemaker," the law pretty much loses its applicability to that individual. The statutes and

court rules become meaningless. Cases quite often degenerate into mere legal lynchings of rational litigants by cognitively deficient lawyers and irrational Judges who function essentially as nothing more than a gang without regard for the written law.

My research of the bar admissions process has revealed that one of the primary tactics to neutralize Applicants who oppose State Bars is to challenge their mental competency. The case law is replete with admission committees ordering psychological examinations of Bar Applicants for no valid reason. The State Bar's basic theory is that if an Applicant challenges their decisions or processes, then the Applicant is presumptively suffering from mental illness. This theory applies no matter how correct the Applicant may be as a matter of law, and no matter how irrational the State Bar committee members conduct themselves. Thus, "mental illness" has become a fundamental strategic instrument to foster the maintenance of arbitrary State Bar power. Similar to how everyone in the courtroom in IDIOCRACY laughed at Joe who was the only rational man in the courtroom, State Bars and State Supreme Courts often denigrate the mental competency of litigants whose intelligence and knowledge of the law surpasses their own. It's basically a defensive mechanism used by the Judiciary to cover up there own mental infirmities. Put simply, it effectively conceals the "Dumbing Down" of the Judiciary.

Loose and unsupported allegations of mental illness by the Judiciary are quite problematic. For purposes of examination herein, I wholly exclude anyone who has committed any act of violence. The reason for this exclusion is that the commission of such an act lends substantial credence to the assertion that they are genuinely mentally ill. Rather, my focus is on those individuals who are labeled as mentally ill by the Judiciary even though they have not caused any type of harm to anyone.

The basic problem with asserting that someone is mentally ill is that it presupposes the accuser possesses empirical knowledge of what constitutes Reality. This is because mental illness in its most general sense is an inability to rationally deal with or recognize, that which constitutes Reality. But, if the true nature of Reality is unknown by any human being, then it is almost impossible to justify a finding of mental illness with respect to anyone who has not committed harm to someone else. And the true nature of Reality is positively unknown to all human beings. This is evidenced by the conflicting views of Reality provided by the greatest philosophical and religious minds in history. It is also quite easy to demonstrate.

Before addressing the conflicting views of Reality provided by philosophers throughout history, an easy example warrants some consideration. Let us assume the average person believes in GOD. Let us further assume that

the average person believes GOD is all Perfect, all Powerful, and can do absolutely anything without exception. Now, let us assume that a man is walking down the street with tin foil on his head. He is stopped by a police officer and tells the officer that he is wearing the tin foil, because it allows him to speak with aliens. Most people would assert the man is mentally ill and possibly he is. But, the operative term is "possibly." The bottom line is that if you believe in GOD and that GOD can do anything, it is not an absolute impossibility that the man wearing the tin foil on his head really is speaking with aliens. Any absolute, conclusive determination that the man is mentally ill, flies directly in the face of a steadfast belief that GOD can do anything. Thus, to a certain extent, it can be concluded that belief in GOD is incongruent with belief in the existence of mental illness.

It may very well be that all these people who the Judiciary asserts are mentally ill, have genuinely achieved some type of higher level of Understanding about the Universe. They just may not know exactly how to deal with it. As for the people hearing voices, they may be real. If one believes in the Afterlife and that the Soul is Eternal, it is not entirely inconceivable that other Souls could communicate with us through our minds. If the Soul and Spirit can leave the body when it dies, then there would seem to be no reason to conclude Souls and Spirits can not enter the body when it is alive. It is also not entirely inconceivable that since each of our Souls has not yet risen to the Afterlife, that each of our Souls are not entirely capable of fully controlling the Body while alive. Perhaps, our Soul comprises somewhere between 40% - 60% of the decision-making authority of our Body, with other Souls constantly flying into us and trying to influence each and every decision we make every single day. Under this theory, we would each possess the ultimate decision-making authority for the most part and thus be responsible for our actions. However, that decision-making authority would be influenced by other Souls in the Universe. I do not conclude that the foregoing is positively the case. But, it is a very real possibility.

The difficulty in ascertaining what constitutes Reality, upon which accusations of mental illness must inescapably rest upon, requires an inquiry into how the human mind functions.

John Locke in his "Essay Concerning Human Understanding," asserts that we are restricted to looking at the "outside" of things. We view and perceive things as appearances, but that may not necessarily be how they really are. Locke asserts that we cannot form ideas, which will allow us to understand the "real essence" of things. Additionally, there are things that GOD has not given us to know at all. [283]

David Hume in his "Treatise of Human Nature" addresses theories quite similar to Locke. Hume asserts that perceptions of the mind consist of Impressions and Ideas. Impressions strike upon our Senses. From the Impression, the mind then takes a Copy. The Copy remains after the Impression and the Copy is called an Idea. But, Copies contain imperfections and thus do not necessarily accurately represent in full that which we call Reality. [284]

Rene Descartes presents his Cartesian system, where man is represented as consisting of two substances. They are the Mind and the Body. Descartes was known as a Dualist because he believed in both a Material (Body) man and a Spiritual (Mind) man. The relation of Mind (Soul) and Body is analagous to that of the pilot in the ship. The Soul is influenced by the Body and the Body by the Soul, so that in some respects they are separate, but they also constitute a Unity. According to Descartes, the apprehension by the Senses of Things is obscure and confused. Thus, Things may not be precisely what they seem to be. What is perceived is in the Mind, but it represents what is outside the Mind. [285]

Baruch Spinoza asserts that GOD is Infinite and thus must possess Infinite Attributes. It is his position that Infinite Divine Substance is indivisible and thus must include that which is Finite, including man. Thus, to Spinoza, GOD is everything. This would include both man and nature, since GOD is Infinite. He asserts that GOD and Nature are synonymous terms, since GOD is Infinity. For this reason, Spinoza was attacked by many as being an Atheist, because his notion of GOD was not in conformity with the Theistic notion of a GOD being someone above both man and nature. Rather, to him, GOD was Infinity and thus encompassed everything including man and nature. [286]

Gottfried Leibniz asserted the Universe was a harmonious system comprised of Monads. The Monads are each individual and unique and could be analogized with the Soul. Each Monad is a world in itself and changes in harmonious correspondence with the changes in all other Monads. Each Monad reflects in itself the whole Universe from its own Finite point of view. Thus, to Leibniz, to a certain extent, as Monads, each of our Souls creates its own form of Reality. [287]

Immanuel Kant in his "Dreams of a Ghost-Seer" presents a world of Spirits in which the Spirits influence men's souls. According to Kant, man belongs to the Sensible Order (the world as perceived by the Senses), and also the Noumenal Order (things beyond our Senses and Experience). Kant

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ultimately arrives at a bifurcated view of Reality. It consists of the Phenomenal World (the world as we Experience it) and the SuperSensible or Noumenal World of Spirits and GOD. [288]

Johann Fichte asserts that the Ego (Self) posits the Non-Ego (the rest of the World) in order to discover its own self-consciousness. Thus, it is the Ego that gives rise to the Sensible World (the World according to our Senses). Self-consciousness is not possible for the Ego without a Non-Ego from upon which it can recoil onto itself. Put simply, he is asserting that we each create a World extrinsic to ourselves, because without such a World, we would not know that we existed. This is because if we assert that Things exist independently of the Mind, we necessarily set ourselves above those Things. [289]

Friedrich Schelling expands somewhat upon Fichte's theories. Schelling's position is that self-consciousness is the Ego (Self). The Ego exists through knowing itself. But, to become its own Object, the Ego has no choice but to set something over against itself, which is namely, the Non-Ego (the rest of the World). Thus, the existence of the Non-Ego (the World) is a pre-condition of self-consciousness. Essentially, the Ego is creating a Universe for itself. Some people often say, "the world is what you make it." To Schelling and Fichte, this is a quite literal description. Schelling also asserts that the Sensible World (the World according to our Senses) is an indefinite succession of shadows, images, and images of images. [290]

George Hegel grapples with the problem of overcoming the antithesis between the Finite (Man) and the Infinite (GOD). The question to him is whether the Finite and the Infinite can be unified in a manner that does not result in either term being dissolved into the other. Stated alternatively, is it possible to achieve a unification of the Many into the One. Hegel argues that if the Finite and the Infinite are set against each other as opposed concepts, then there can be no passage from one to the other. Many people work from the perspective that the concepts of the Finite and the Infinite are irrevocably opposed. If Finite, then not Infinite. Hegel seeks to discover a Synthesis between the two, which Unites them, but without annulling their difference. He calls this Identity-In-Difference. A pre-condition of Self-Consciousness for the Self is the existence of another Self. One Self seeks to triumphantly asserts its Selfhood above the other Self. But a literal destruction of the other Self would defeat the purpose. For consciousness of one's own Selfhood demands as a condition, the existence

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of another Selfhood. Hegel asserts that the human mind does not create "Things," but it does determine the character of those Things (the Phenomenal World). Thus, to Hegel, we do not create Reality, but we do determine its characteristics. [291]

As the foregoing demonstrates, the greatest minds in the history of the world cannot agree upon what constitutes Reality. Nobody really knows with certainty what Reality is. Thus, it is irrational to accept the preposterous notion that unintelligent State Bar lawyers most of whom have no knowledge of philosophy or experience in psychology or psychiatry can ascertain what constitutes Reality, which is a necessary prerequisite to a finding of mental illness. Yet, State Bar admission committees regularly utilize unsupportable and quite vindictive assertions that Bar Applicants suffer from some type of mental infirmity to justify denial of admission. State Supreme Court Justices regularly give their rubber stamp of approval to these findings.

They do so as a defense mechanism to cover up the tragic "Dumbing Down" of State Bars and the Judiciary. Unfortunately, State Supreme Court Justices are not quite as funny as the movie IDIOCRACY. Nor concededly, are they currently quite as Dumb as the characters in the comedy movie. But, they're getting there. In the movie IDIOCRACY it took several hundred years before the "Dumbing Down" was complete. However, State Supreme Court Justices often take pride for being on the fast track.

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THE IMMORALITY OF NEW JERSEY SUPREME COURT JUSTICES EVIDENCED BY CREWS V CREWS, 751 A.2d 524 (2000)

On May 31, 2000, the New Jersey Supreme Court issued its opinion in Crews v Crews, 751 A.2d 524 (2000). Ostensibly, the opinion manifests a blatant and flagrant judicial bias in favor of the non-earning spouse in a divorce, who is typically, although not always a woman. However, as a matter of practicality, the opinion has not functioned to the benefit of either the husband or wife in a divorce. Rather, the impact of the opinion has resulted in nothing more than a massive transfer of marital assets to lawyers and accountants. The Court's main holding is summed up in the following passages (emphasis added):

> ". . . we reaffirm the . . . principle that the goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage. The importance of establishing the standard of living experienced during the marriage cannot be overstated. . . .
>
> This case illustrates the pitfalls associated with the failure to establish the marital standard of living. . . . That standard is: whether the supported spouse can maintain a lifestyle that is reasonably comparable to the standard of living enjoyed during the marriage. . . .
>
> . . .
>
> The factors that should be considered . . . during the initial analysis of an alimony award: the dependent spouse's needs, that spouse's ability to contribute to the fulfillment of those needs, and the supporting spouse's ability to maintain the dependent spouse at the former standard."

The Court's opinion gave rise to a new industry in New Jersey. That industry was the preparation of so-called lifestyle reports and I have personally prepared many of them. The cost imposed upon the parties, both husband and wife, is nothing short of astronomical because the time and complexity involved in preparing these reports is immense. Generally, obtaining the data needed to prepare the reports requires a great deal of work on the part of attorneys who make and oppose various discovery requests related to such. The issue of

determining exactly what the marital lifestyle was, is then litigated by the attorneys, after the accountants prepare the reports. If wife engages an accountant to prepare her version of the marital lifestyle, then husband typically also is compelled to engage an accountant. Thus, it is quite typical for there to be two accounting experts preparing the same type of report, and two opposing lawyers litigating the matters delineated in those reports. The marital assets are then divested to the extent of the time spent by four professionals in dealing with these so-called "lifestyle reports." And the bottom line is that the only reason this is occurring is because of the New Jersey Supreme Court's opinion in Crews v Crews, which unduly emphasized the need to establish the marital lifestyle.

Notably, absent from the Court's opinion in establishing the alimony award is sufficient concern or consideration for the ability of the earning spouse to maintain the lifestyle they enjoyed during the marriage. Rather, the primary focus of the opinion is upon the ability of the dependent spouse to maintain the marital lifestyle, subject to the earning spouse's ability to pay. Thus, the Court placed on the record as a matter of law an atrocious and immoral Judicial Bias in favor of the dependent spouse. This expressly stated Judicial Bias is in direct contravention to the alimony factors set forth in statutory law established by the New Jersey legislature. The applicable statute section violated by the Court in Crews is NJSA 2A:34-23(b)(4). It states as follows regarding factors to be considered in setting the alimony award (emphasis added):

> "The standard of living established in the marriage or civil union and the likelihood that **each party** can maintain a reasonably comparable standard of living."

Whereas the statute expressly mandates consideration of the ability for each party to maintain the marital standard of living, the Court's opinion only stresses the consideration to be given to the dependent spouse's ability. That is totally unfair. It is a matter of practical reality that when two households need to be supported rather than one, divorce typically renders it impossible for both parties to enjoy the marital lifestyle.

Since issuance of the wholly biased Crews opinion, there has been a tendency among New Jersey Judges to include within the definition of the phrase "marital lifestyle" a "Savings" component. The concept is that if the earning spouse was not only making enough money to pay for a certain lifestyle of the couple, but also an excess amount that was put into savings or investments of the parties, then the dependent spouse is entitled to a fair share of such an additional amount after the divorce. This concept effectively negates the utilization of establishing the marital lifestyle for the following reason.

If the earning spouse is making more than the marital lifestyle requires, then the dependent spouse is being awarded alimony based on actual earnings, which includes the savings component. In contrast, if the earning spouse is making less than what is necessary to maintain the marital lifestyle, then even under Crews in the absence of having other assets, they are not required, nor would it be possible, for them to pay more than their earnings allow. Such being the case, it is easy to see that in either event it is the actual earnings of the supporting spouse that drives the determination of the alimony award. Thus, there is no reason for the Court to require the husband and wife to spend the enormous and excessive fees that both lawyers and accountants are charging to determine the marital lifestyle. Just base the alimony on the supporting spouse's earnings, whether they are higher or lower than the marital lifestyle. Effectively, that is what's occurring anyway.

The only critical distinction is that Crews has created a massive divestiture of the marital assets to the benefit of lawyers and accountants in the form of professional fees. These excessive professional fees have been substantively awarded on a "gratis" basis, to the detriment of both husband and wife, thanks to the immorality of the State Supreme Court's biased Crews opinion.

The Crews opinion is an abortion of morality, law, logic and equality. The Court expressly fails to adequately give equal weight to the statutory requirement of considering the ability of the supporting spouse to maintain a comparable lifestyle and is only interested in the dependent spouse. By so doing, they engaged in legislating from the bench. Additionally, the opinion does not even work to the advantage of the dependent spouse as it was intended to do, because ultimately the massive professional fees required to prepare useless lifestyle reports divests the marital assets to the detriment of both the husband and wife.

Lastly, I note the following. Divorce is one of the most traumatic emotional events that people can go through. It is inexcusable for the New Jersey Supreme Court to create a situation where both parties suffer, solely in order to ensure that lawyers and accountants make more money. By doing so, the Court has increased the height to which the emotional tensions can rise. Accordingly, the New Jersey Supreme Court must bear a certain degree of culpability for becoming the proximate causation in many instances for acts committed by either husband or wife that are not within the confines of the law, and which are caused by the heightened emotional state the Court created.

THE IMMORALITY OF NEW JERSEY LEGISLATORS EVIDENCED BY KNOWN, FALSE ASSUMPTIONS BUILT INTO CHILD SUPPORT TABLES

As discussed in the preceding section the New Jersey Supreme Court has become the proximate causation for creating a legal environment conducive to heightening the emotional tensions between parties going through a divorce with its irrational opinion in Crews v Crews. Similarly, the New Jersey Legislature has engaged in immoral conduct by adopting known, false assumptions in Child Support tables. Specifically, child support awards in New Jersey are based on published guidelines that require set amounts to be paid based on income levels of the supporting spouse. The calculated amounts have been determined using certain assumptions. The primary assumption used as the basis for the calculations is set forth in Paragraph (7) in the Appendix to the Guidelines titled "Assumptions Included in the Child Support Guidelines." It states as follows:

> "Intact Family Spending Patters as the Standard for Support Orders - Support guidelines based on spending patterns of intact families provide an adequate level of support for children. Child-rearing expenditures of single parents provide little guidance for setting adequate child support awards since single-parent households generally have less money to spend compared with intact families."

In the movie, "Back to School," starring Rodney Dangerfield there is a scene where the business school professor fails to recognize the cold realities of the business world in presenting a case study to the class. With a blind eye to cold-hard realities the professor then asks the class where the factory in their model case study should be built. Rodney Dangerfield then shouts out, "How About Fantasyland?"

Fantasyland, is in fact the geographic location that the New Jersey legislature must have had in mind when it adopted the above assumption. The concept of using an "Intact Family" as the basis for establishing child support awards is ludicrous because it doesn't represent the reality of the situation. It is nothing more than a legislative fantasy. The couple is getting a divorce. The family is not intact. Everybody knows it. It is in fact, the one uncontested issue. Both the husband and wife know their family will not be intact and that there

will be two separate households. The attorneys for both sides know it. The Judge knows it. The Appellate Justices know it. And in fact, the legislators know it also.

Yet, notwithstanding that it is irrefutable the legislators knew their assumption was positively false, that is the basis they use to establish child support awards. The reason they adopted the false assumption was to artificially increase the calculated child support amount from what reliance on the truth would have resulted in.

Is a child better off in an intact family? Generally speaking, yes. And people in poverty would be better off if they had more money. And nations would be better off if there were no wars. But, the bottom line is that people are in poverty because they don't have enough food or money. And nations persist in fighting wars with each other. And similarly, children of divorced parents don't live in "intact families." The concept of a branch of government knowingly adopting a false assumption turns morality on its head. It is a known derogation of truth that inevitably sets the government against those who rely upon it to do things fairly. There is simply no way that one can contend a government acts fairly when it adopts a wide, sytemic policy that relies solely upon a known, false assumption.

By the adoption of a known, false and critical assumption, New Jersey legislators have created an environment conducive to increasing emotional tensions between parties and their children in a divorce. Accordingly, the New Jersey Legislature must bear a certain degree of culpability for becoming the proximate causation in many instances for acts committed by either the husband or wife that are not within the confines of the law, and which are caused by the heightened emotional state the legislature created with its known false assumption.

CLINICAL TREATMENT
FOR THE BRAIN DISEASE "OLCD"
(Oregon Legislative Cognitive Deficiency)
- Oregon Revised Statute 107.169(3)

There is no doubt that mental illness can be a debilitating disease affecting one's judgment and ability to function rationally in the world. It is important for members of society to have sympathy for those suffering from cognitive disabilities. In most instances, rather than punishing the mentally ill, members of society should assist them with obtaining proper clinical treatment. Unfortunately, on occasion those suffering from the inability to make rational decisions become State legislators. In such instances, the havoc they may wreak upon the citizenry, and more importantly helpless children can be quite substantial. Empirical examples are Oregon Revised Statutes 107.169(3) and 107.169(5), which state as follows regarding child custody disputes between divorcing parents:

> "The **court shall not order joint custody**, unless both parents agree to the terms and conditions of the order." ORS 107.169(3)
>
> ". . . Inability or unwillingness to continue to cooperate shall constitute a change of circumstances sufficient to modify a joint custody order. ORS 107.169(5)

The above statutory provisions are quite unusual. I am unaware of any other State that expressly prohibits a Judge from ordering joint custody to two parents, both of whom equally love and care for the child, but who can't get along with each other. Notably, the preclusion of judicial authority to award joint custody applies not only with respect to initial custody decisions, but also with respect to modifying existing joint custody orders.

Consequently, the following scenario can occur quite regularly in Oregon. Two parents get divorced when the child is a baby. For many years, they both love and care for the child, even though they constantly bicker with each other regarding who gets the child for a particular holiday or weekend. The child lives with Parent #1 five days per week, and is with Parent #2 every weekend. The child loves both parents equally. At some point, as the child gets older, Parent #1 is told about the existence of the above statutory provisions.

Upon becoming aware of the above statutory provisions, Parent #1 recognizes a golden strategic opportunity to cut #2 out of the picture. All #1 has to do is intentionally fail to cooperate with #2. This intentional failure to cooperate by #1 has the effect of virtually ensuring the Court will award sole custody to #1.

The reason is that under 107.169(3) the Court is forced to award sole custody to one of the parents. Although the Court may recognize that both parents love and care for the child, it is inevitable that sole custody will be awarded to #1 because for many years the child has been with #1 all weekdays. That's the majority of the time. Parent #2 has only had the child on weekends. The only way that #2 can be awarded sole custody is if #1 has some type of extremely serious parenting deficiency such as abusing the child, which in the above hypothetical and most cases does not exist.

It's obviously a rather cognitively demented effect the Oregon legislature has given rise to. One parent is given an "Incentive" to not cooperate with the other parent, because by doing so that parent obtains sole custody.

In the mid 1990s, the Oregonian newspaper published an article about the above statutory provisions. Apparently, they were enacted as a result of the efforts of two divorced parents who got along very well with each other. Their perspective was that even though they didn't want to be married to each other, they would cooperate in all regards regarding the child. The theory behind the enacted statute is that only parents who get along with each other should share joint custody. That's wonderful! Commendations to them!! Perhaps, if they were able to get along so well as divorced parents, they should have just stayed married in the first place for the benefit of the child.

As we now exit Oregon's Legislative Fantasyland, the bottom line is that most divorced parents don't get along. Bickering over holidays, weekends and visitation time is the norm. Rationality mandates that you don't use two divorced parents who get along so perfectly as the basis for enacting child custody statutes. Because the reality is that most people who get divorced don't get along with each other. That's the reason for the divorce. It's totally irrational to use a couple who get along perfectly to set the standard for everyone else.

The creation of a statutory "Incentive" for Parent #1 to not cooperate with Parent #2 in order to gain sole custody is nothing short of an immoral legislative atrocity. Even if an Oregon Court were to be honest, it is precluded by statute from rendering a fair and just decision. The Court can't order joint custody even if it wants to. If the parents don't agree to joint custody, the Oregon Court must award sole custody to one parent.

Logic dictates that if sole custody must be awarded, in most cases it's going to the parent who the child has been with for the most time. Yet, it is

irrational to reward #1 with sole custody, if #1 is the cause of the unwillingness to cooperate. In most cases, the Court will not even be able to discern who is responsible for the unwillingness to cooperate. It will simply be the word of #1 against the word of #2. When that occurs, #1 is going to come out the winner, even if the Court recognizes that both parents are good parents.

The foregoing irrationality of statutory law is notably caused by legislators, not Judges. It exemplifies a serious cognitive deficiency on the part of Oregon Legislators. They have irrefutably become the proximate causation for the havoc wreaked upon the lives of children who end up having their relationship with one parent largely cut off or substantially curtailed.

Parent #1 cannot be fully blamed. The reason is that #1 simply functioned in a manner to be expected based on human nature. It is the legislators who created the "Incentive" to be unwilling to cooperate. Parent #1 merely took advantage of that "Incentive." That is basic human nature and can fairly be expected when two divorced people don't get along. The culpable fault rests squarely with Oregon legislators for creating the immoral "Incentive."

Clinical treatment for the mental disability suffered by Oregon legislators is not an easy matter to address. Many mental illnesses and certain brain diseases giving rise to similar cognitive dysfunction can be treated with drugs. While that is a possible solution, I'm not entirely certain that it would be the proper resolution in this situation. I also don't really know whether the medical insurance carried by Oregon legislators would cover the cost of the necessary drugs for over 100 State Senators and State Representatives.

Psychiatric treatment and counseling for Oregon legislators is another option. The goal with respect to such would obviously be to assist them in beginning to function rationally. It might help them recognize their mistakes and accept the proper degree of responsibility for the damage they have caused to families and children. Proper psychiatric counseling might also assist them in dealing with their illness on a daily basis. Certainly, it might encourage them to accept the proper degree of remorse. Presumably, at some point they could begin a program of legislative rehabilitation.

Most importantly, as a society we need to remember that like all people suffering from cognitive disability or mental illness, the goal is to treat Oregon legislators who caused irreparable harm to children and families by these statutory provisions with compassionate understanding. By the same token, Oregon legislators need to understand that no one can help them until they're willing to help themselves.

OLCD is a damaging, tragic and debilitating cognitive disease. Hopefully, it's not contagious.

CONCLUSION -

THE NOBEL PEACE PRIZE, PULITZER PRIZE AND DISBARMENT

Morality, the World and the Universe are replete with startling contradictions. More than once in world history that which was believed to be irrefutably true was ultimately proven to be positively false. As demonstrated herein, the definitions of words are often construed by Courts to mean the precise opposite of the commonly accepted usage of the word. So too, it is with so-called "distinguished recognitions." Valid arguments may be made for the premise that what we tend to recognize as an "Honor" may in truth be a "Disgrace." Similarly, that which is widely considered a "Disgrace" may in fact really be an "Honor."

Consider the Nobel Peace Prize, the Pulitzer Prize, and the Disbarment of an attorney. The first two are widely recognized as honors and the last as a disgrace. In fact though, the exact reverse may be true of all three.

Let's first address the Nobel Peace Prize. Clearly, it must have been named after a great humanitarian. Based on the name of the Prize, one would think the person honored by its title, devoted their entire life to the furtherance of world peace, the elimination of conflict between nations, and the promotion of world tranquility. Well, not exactly. Actually, the guy's most significant accomplishment in life was that he invented Dynamite.

Alfred Nobel, the man who the Nobel Peace Prize is named after was born in 1833. His father worked with early versions of Torpedoes. Around 1860, Alfred began devoting himself to the study of explosives, including particularly the use of nitroglycerine. Ultimately, this led him to the invention of dynamite. He became known worldwide as the "merchant of death." Not exactly, your typical humanitarian. This of course raises significant issue as to whether all recipients of the Nobel Peace Prize have been honored or disgraced.

Turning now to the Pulitzer Prize, this recognition is widely recognized as one of the highest national honors in literature and journalism. Certainly, it must be named after a person who was devoted to conveying messages of profound literary truth with a genuine love of literary works. Well, not quite. The guy it's named after was a notorious yellow journalist in the late 19th

century who utilized the written word in his newspapers to amass a large personal fortune, even if it meant circulating false news to the general public.

Joseph Pulitzer, who the Pulitzer Prize is named after, was born in 1847. Around 1879, he purchased the St. Louis Dispatch and merged it with the St. Louis Post. In the early 1880s, he then purchased the New York World. His chief competition was notorious yellow journalist William Hearst. The coverage of the Spanish-American War in the 1890s, led to a major competition between Hearst's paper and Pulitzer's paper. Ultimately, they were both labeled as yellow journalists. Both amassed huge personal fortunes. Neither one of them was a true proponent of commendable literature. Rather, they both used the written word for the purpose of deceiving the public in order to profit personally. This of course raises significant issue as to whether all recipients of the Pulitzer Price have been honored or disgraced.

And now I turn to the distinguished recognition of Disbarment. It is widely considered to be a disgrace. In fact though, in numerous instances it can fairly be characterized as an honor and resume builder. One would be hard-pressed to find any rational person who today would consider the disbarment of a Jewish attorney in Berlin, Germany in 1935 to be a disgrace. Yet, at that time it was considered by the Germans to be a disgrace.

Similarly, there are numerous situations in the U.S. today where State Supreme Courts and State Bar disciplinary committees pursue an imprudent course, which is not unlike that of the German bars in the 1930s. They do so by disbarring lawyers who possess the courage to challenge illegal and unethical State Bar practices and schemes. They also disbar attorneys who courageously challenge the corruption of dishonest Judges. Their concept is to neutralize the attorney, in order to protect the perpetrators (i.e. State Bars). There are also numerous Judicial opinions dealing with bar admission cases where State Supreme Courts expressly assert the denial of a law license is justified because the Applicant instituted a civil suit alleging illegal conduct by the State Bar.

When disbarment or denial of admission is predicated upon a legal challenge to the licensing agency, the legal profession or the corruption of an individual Judge, the concept of "good moral character" is turned precisely on its head. That which is recognized as good, is really in truth bad, and that which is recognized as bad, is really in truth good.

I do not suggest that all lawyers who have been disbarred have been honored, rather than disgraced. I do genuinely believe most disbarred lawyers have been disgraced, including particularly those who stole client funds or betrayed the interests of their clients. By the same token, the imposition of attorney discipline based on amorphous notions that the lawyer engaged in conduct "prejudicial to the administration of justice" give rise to a fair

conclusion that in certain instances disbarment is an honor, and not a disgrace. In such cases, it reflects the lawyer's willingness to place at risk their own personal self-interest (i.e. lose a law license) in furtherance of the cause of morality, justice and/or the interests of their client.

Whenever I see a Judicial opinion indicating an attorney is being disciplined for engaging in conduct "prejudicial to the administration of justice" the bells and whistles go off. It's a meaningless phrase, because it means whatever the Court wants. Often it indicates the Court doesn't have anything concrete to pin on the attorney. They use the phrase when they have nothing else to work with. It becomes their justification for disciplining a lawyer simply because they don't like the ideas and opinions expressed by the attorney. If they had something more, they'd use it. Anything can be called "prejudicial to the administration of justice." It depends on how you define the term "justice."

In view of the fact that the best philosophical minds in the world have been unable to agree upon a uniform definition of the term "justice" for thousands of years, I think it's fair to say irrational State Supreme Court Justices don't have a chance. That states the matter mildly. The probability of State Bars and State Supreme Courts being able to successfully define the phrase "prejudicial to the administration of justice," is about equivalent to the chance of expecting them to do what's in the best interests of the public, rather than themselves. It's just not going to happen often enough. At most, it occurs on some occasions.

In light of the individuals whom the Nobel Peace Prize and Pulitzer Prize are named after, it is open to debate whether those recognitions are an honor or disgrace. Similarly, in light of the circumstances surrounding certain disbarments it is equally open to debate whether such is an honor or disgrace. It seems to me that if the legal profession seeks even a slight semblance of public respect, State Supreme Courts need to backtrack mighty quickly on their strong inclination to discipline lawyers who challenge the hypocrisy of the legal profession and Judiciary. Otherwise, the disciplinary process is nothing more than a self-serving mechanism to further financial interests of lawyers and political aspirations of the Judiciary. That's not what it's supposed to be. It's supposed to be a process to protect the interests of clients and the general public.

Regrettably, we are approaching a point where the interests of litigants and the general public are almost diametrically adverse to the interests of the legal profession and Judiciary. To the extent lawyers are disciplined for promoting the interests of their clients and the general public, even if it is at the expense of the legal profession or Judiciary, disbarment does in fact become an honor and resume builder. Quite, a high honor, might add.

One thing is certain. Whether you view disbarment as an honor or disgrace, you have to admit former President Bill Clinton proved one thing. "Sometimes" the real fun in life begins after disbarment. The operative term is "sometimes." As, it "usually" is with "everything." The operative term is "usually," which wholly negates the term "everything."

And so it goes on and on and on with word play and semantics.

APPENDIX

A TRIBUTE TO JUSTICE RICHARD B. SANDERS

I tend to like the Underdog in almost any given context. This is probably a product of the fact that within the context of litigation, I have almost always personally been the Underdog myself. And since I know that I have almost always been right, that must mean that the other Underdogs tend to be right. Concededly, that logic suffers from an infirmity or two.

Unlike the preceding sections of this Supplement, which were completed in 2008, I started writing this essay in December, 2010. One of the main premises of this essay, is that every type of economic or political environment has an Underdog. An individual who does not agree with the powers that presently control that particular environment. This concept does not end when a person becomes wealthy or powerful. In fact, it probably exists to a greater degree at the upper echelons of society. Just like a Pro Se litigant is an Underdog when going up against an attorney in Small Claims Court, a Dissenting State Supreme Court Justice is an Underdog, going up against peers who are more powerful, simply due to their sheer numbers.

Justice Richard B. Sanders was a Washington State Supreme Court Justice. I've never met, seen or spoken to him in my entire life. Nevertheless, I did contribute approximately $1,000 to his re-election campaign in 2010. I contributed to his re-election campaign based upon my reading of his Dissenting judicial opinions over the years. He lost his re-election bid due to an act of betrayal, which was without justification, by the Seattle Times newspaper. More specifically, a key player in the newspaper's betrayal of Justice Sanders appears to have been Ryan Blethen, who in 2010 was the Seattle Times editorial page editor.

Justice Sanders' (a Libertarian) judicial opinions adopted a markedly circumspect view towards State Bar disciplinary actions. In addition, his opinions adopted a critical view of prosecutorial conduct with respect to the constitutional rights of criminal defendants. For several years, I knew that this combination placed him in personal political jeopardy with respect to his own judicial career. Put simply, he was a brave and courageous Justice who was willing to put his career on the line and "buck the system." Predictably, as a result, he paid the political price in terms of losing his judicial office.

Ideally, years ago, I had hoped that the chapter of this book titled "CURRENT DISSENTING STATE SUPREME COURT JUSTICES WILL SOON LEAD THE MAJORITY" would ultimately be a commentary upon Justice Sanders' future on the Washington State Supreme Court. However, that does not currently seem to be the case, since he has lost his seat on that Court. Nevertheless, it is concededly not impossible that he will regain it one day.

With the foregoing in mind, here is the story of how Justice Sanders, an admittedly controversial Justice with a rather astounding judicial record of writing opinions against the State Bar, and in favor of protecting the constitutional rights of criminal defendants, lost his seat on the State Supreme Court. This story is important for the following reason. It is a case in point about how the Justices who fight the hardest for the individual constitutional rights of the general public, may ultimately lose their judicial career due to the deception and trickery of their opponents' supporters. When that occurs, the public is left mostly (although not entirely) with Justices who simply write opinions in favor of those in power (namely the State Bars) without sufficient due regard for the law.

On August 4, 2010, approximately three months before the election, the Seattle Times passionately endorsed Justice Sanders in an article that read in part as follows:

"THE TIMES RECOMMENDS RE-ELECTION OF RICHARD SANDERS TO THE STATE SUPREME COURT

> JUSTICE Richard Sanders should be re-elected to the Washington Supreme Court. The court's most fundamental job is to push back against the other two branches of government - the executive and the legislative - when they step on the rights of the people. No member of the court does that more consistently, and with greater gusto, than Sanders.
>
> • • •
>
> We are staying with Sanders because we so often relish his strong and well-reasoned opinions. Begin with open government - the scope of the state's public-disclosure laws. Access to documents for everything is something we in the newspaper business champion. In protecting that right, Sanders is as solid as a mountain - and many of his colleagues are not.
>
> On freedom of the press and of speech, Sanders is equally solid. On religious freedom, the same. On the rights of property owners, the same. Gun rights, the same. The rights of the accused, the same. The people's right of intiative and referendum, the same.
>
> . . . of the nine justices, Sanders is more often the one standing up and yelling "No" at some rotten thing a political agency is doing to someone."

The election was to be held during the first week of November, 2010. It seemed like Justice Sanders would be re-elected, even though the race was a hotly contested one. However, shortly before the election, Justice Sanders made a public statement according to the Seattle Times that was as follows:

> "African Americans are overrepresented in the state prison system because they commit more crimes."

Based on this statement, the Seattle Times pulled their endorsement of Justice Sanders at a critical juncture and in a highly publicized manner. In doing so, they single-handedly crippled his re-election bid, just days before the election. In an article published on October 24, 2010, the Seattle Times wrote, in part, as follows (emphasis added):

"DON'T RE-ELECT JUSTICE RICHARD SANDERS FOR STATE SUPREME COURT

> STATE Supreme Court justices Richard Sanders and James Johnson inflamed racial tensions with their remarks that African Americans are overrepresented in the state prison system because they commit more crimes.
>
> How disappointing these two legal minds were unable to offer more thoughtful, nuanced views about racial disparities in the criminal-justice system.
>
> **. . .**
>
> **This page takes the unusual step of withdrawing its endorsement of Sanders. The Seattle Times now supports lawyer Charlie Wiggins. . . ."**

Justice Sanders stood by his statement, asserting that it was truthful and refused to retract what he said. Subsequently, an additional article dated October 29, 2010 was published by the Seattle Times. It was written by, Ryan Blethen, the editorial page editor for the Seattle Times. Mr. Blethen wrote, in part, as follows (emphasis added):

> "Sanders' ignorance was only reinforced by stubbornly backing his comments, which were made at a meeting about fairness in the courts. Think about that for minute. At a meeting about judicial equality, **two of our state Supreme Court justices claimed that African Americans are overrepresented in prison because of their skin color. That is not just shocking. It is a tragedy** and an example of how far we have yet to travel."

Now, here's the basic problem with the stance adopted by the Seattle Times at the expense of Justice Sanders' judicial career. The problem is that as a point of fact, blacks are overrepresented in prison, precisely because of their skin color. That's exactly what prejudice is. That's the problem.

There are only two logistical possibilities regarding Justice Sanders' assertion that blacks commit more crimes. The first logistical possibility is that what he said constitutes the truth. If so, then he certainly should not have been penalized for making a truthful statement. The second logistical possibility is that what Justice Sanders said, does not constitute the truth. However, if this is the case, then it inescapably means that there are massive numbers of black criminal defendants who are in prison for crimes they did not commit. If massive numbers of blacks are in prison for crimes they did not commit, the Judiciary branch of government taken as a whole, has failed miserably in performing its duties.

Notably, while Mr. Blethen aggressively and unjustifiably challenged Justice Sanders' assertion that more blacks are in prison because they commit more crimes, Mr. Blethen fell quite notably short of vigorously asserting that the failure of the Judiciary to perform its duties caused massive numbers of innocent black people to be sentenced to prison. The reason Mr. Blethen fell short of making such an assertion, was in all likelihood, because he did not believe such to be the case. However, that, in turn, brings the matter right back to the first logistical possibility, which is that Justice Sanders' spoke the truth.

Put simply, Justice Sanders either spoke the truth or he did not. If he spoke the truth, then he should not have been unjustifiably betrayed by the Seattle Times for doing so. The bottom line is, that virtually everyone in power in Washington State, including the Seattle Times and Ryan

Blethen knew for a fact, that Justice Sanders' opinions conclusively demonstrated that he fought harder to protect the constitutional rights of criminal defendants than any other Justice. That alone is strong evidence in favor of concluding that he was actually, the least racist Justice on the Court.

So now we come to the real reason why the Seattle Times withdrew its endorsement of Justice Sanders. By doing so, they eliminated from the Court the most vigorous defender of the constitutional rights of criminal defendants. Put simply, the Seattle Times fostered the unfair treatment of black criminal defendants, by securing the removal of their biggest defender, who was Justice Sanders. The Seattle Times unjustifiably branded as a racist, the one Justice who was the greatest defender of constitutional rights for all criminal defendants including blacks. By doing so, the Seattle Times knowingly and intentionally increased the probability that blacks would be treated unfairly in Washington State Courts.

Decades ago, Elvis Presley sang a hit song titled "In the Ghetto." The song is about how a black baby born in the ghetto turns to crime when he grows up, and as a result, ultimately dies while stealing a car. The basic message conveyed by the song is that by being born in the ghetto, one is virtually destined to a life of crime. No one would ever dare brand the song as racist in nature. It is the exact opposite. The song is an emotional plea and cry to society to help those who are born into ghettos, so they don't turn to crime. Poverty leads to criminal conduct. Due to existing prejudices in society, more blacks are unjustifiably subjected to poverty. As a result of this poverty, born from prejudice, many do turn to crime. It's totally unfair. But, it's a fact.

From a basic perspective of morality, a newspaper shouldn't swing a judicial election, by betraying a Justice for stating the Cold, Hard, Statistical, Truth. Particularly, considering the fact that by doing so, the newspaper actually promotes continuation of the exact type of prejudice that it disingenuously purports to be fighting against.

Justice Sanders was a great, brave Justice. He continuously bucked the system and fought hard on behalf of the Underdog. He knew that by doing so, he was placing his own judicial career at risk. And that's the reason he lost his seat on the bench. Justice Sanders did more to help black criminal defendants in Washington than any other State Supreme Court Justice. That's an absolute Truth that the Seattle Times can not possibly escape. And the Seattle Times editorial board was fully well aware of it. They knew precisely and exactly what they were doing. By withdrawing their support from Justice Sanders and betraying him, the Seattle Times knowingly and intentionally did immense harm to the plight of black criminal defendants in the State of Washington.

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