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STATE BAR ADMISSION CASES BY INDIVIDUAL STATE

By Evan Gutman CPA, JD (2002)

ALABAMA

379 So. 2d 564 (1980)

IT'S NOT WHAT YOU DO, BUT WHO YOU KNOW, THAT ULTIMATELY DETERMINES WHETHER YOU HAVE GOOD MORAL CHARACTER. ARRESTS ARE NO PROBLEM AS LONG AS YOU KNOW JUDGES.

The Committee refused to certify the Applicant as a law student on character grounds. The State Supreme Court reversed. The Applicant disclosed on his application a number of relatively minor offenses, but failed to disclose others. When confronted by the Committee with information pertaining to other offenses, he admitted them and subsequently disclosed even further additional offenses. He filed his application in 1976. The Supreme Court decided in his favor four years later. The offenses with their applicable dates and disposition were as follows :

A.	1965	Arrested as a "runaway." It appears he was a minor at the time. Held for one night and sent back to Alabama.
B.	1967	Arrested for hopping a freight train. No charges filed.
C.	1967	Arrested on suspicion of burglary and contributing to the delinquency of a minor. No charges filed.
D.	1967	Arrested for hitchhiking in Arizona. Fined $ 24.00. Police records indicated he was jailed for fourteen days. The Applicant testified the police records were in error and he was jailed for only four days.
E.	1967	Arrested for possession of marijuana. Charges dismissed.
F.	1973	Arrested for DWI. Disposition not clear from Court's opinion.
G.	1973	Arrested in Tennessee for possessing an open can of beer in a moving vehicle and fined $ 25.00.
H.	1974	Arrested for disorderly conduct, pled guilty and was fined $ 55.00.
I.	1974	Arrested on suspicion of narcotics possession. No charges filed.

J. 1975 Arrested in Florida for driving down the wrong side of the road. Entered a plea of nolo contendere and paid a fine of $ 24.00.

K. 1977 Arrested for disturbing the peace. Dismissed.

L. 1978 Arrested for driving with a broken headlight. Dismissed.

In sum, the Applicant had been arrested approximately 12 times beginning in 1965 when he was a minor, until 1978. Six of the twelve arrests resulted in no charges being filed, or dismissal. Equity and logic would therefore mandate they be discounted. The remaining six arrests that resulted in either guilty pleas or fines, were for hitchhiking, possessing an open container of beer, DWI, disorderly conduct and driving down the wrong side of the road. With the exception of the DWI, the offenses are of a minor nature, notwithstanding the fact they are admittedly somewhat cumbersome in number.

The most serious of the offenses (the DWI) was the one the Applicant fully disclosed right from the start on his initial application. It was the minor matters that came to light subsequently. Most of the arrests occurred while the Applicant was just entering his adult years. The Committee's decision to deny certification was based in large part on the Applicant's failure to disclose the arrests resulting in no charges or dismissed charges. They asserted this demonstrated a lack of candor on his part. The actual question on the Bar application was as follows:

> "Have you ever been **charged** with violating any State or Federal law or City Ordinance? If so, state fully on separate sheet, giving dates, places and outcome? **Note: Minor traffic violations need not be shown."** [194]

Applying the precise language of the question, some of the incidents could be construed as "minor traffic violations," not requiring disclosure. Further, items C, E, I, K and L resulted in either dismissal or no charges. While the arrest record is admittedly long, his degree of non-compliance with the inquiry is not particularly egregious. Rather instead, it is the question which focuses on "charges" rather than "convictions" which is faulty. On the positive side, the Applicant submitted recommendations from 28 judges and what is characterized in the opinion as "other outstanding members of the Bar." The State Supreme Court cites *Konigsberg I* for the premise that the notion of moral character and fitness is vague in nature, stating:

> "The term "good moral character has long been used as a qualification for membership in the Bar . . . However, the term, by itself, is **unusually ambiguous**. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the **attitudes**, experiences and **prejudices** of the definer. 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."

The State Supreme Court reverses the Committee, on the ground that the letters of recommendation from judges and lawyers satisfied the burden of proof for demonstrating good character. Therein, is the key of the case. Whether an objective reader agrees that this Applicant should be admitted based on the fact that his nondisclosures were minor, one point is irrefutable. The ultimate ruling in his favor was not predicated on assessing the seriousness of his nondisclosure, but instead on the letters of recommendation. Essentially, the conclusion one inescapably reaches is that whether an Applicant possesses good moral character is not based on their acts, but instead on "who

they know and who they are friends with." It is a disappointing case. I agree with the Court's decision to reverse the Bar Committee, but believe they did so for the wrong reason. In my view, it is the "acts" one commits or doesn't commit that should ultimately determine whether they possess good moral character, not how powerful their friends are.

The State Supreme Court in this case admirably asserts the wonderful premises of *Konigsberg I*, declares that the ability to practice law is a "Right" and a "valuable property right," but then predicates its' reversal on letters of recommendation from powerful and influential individuals in the State. Take away this Applicant's judicial friends and attorneys and he is going to be denied admission.

519 So.2d 920 (1988)

YOU MUST BE OPEN AND CANDID DURING THE APPLICATION PROCESS, BUT WE AT THE BAR LIKE TO HIDE THINGS UNTIL THE MOST STRATEGICALLY OPPORTUNE MOMENT.

FOR YOU THE APPLICANT TO WIN AGAINST US, IT'S NOT ENOUGH TO SHOW WE WERE WRONG. YOU HAVE TO SHOW WE WERE REALLY, REALLY, REALLY, WRONG, BY A WHOLE LOT. THE COURT SPOTS US A FEW POINTS IN THE GAME.

The Applicant, a female executed a sworn application for registration as a law student in 1982 and submitted her application for admission in 1985. The Committee advised her that a Hearing would be held in February, 1986 and gave her a letter written by an attorney to the Committee containing unfavorable information about her. The Court's opinion states as follows:

> "Enclosed in the letter to <Applicant> was a copy of letter written by an attorney containing information unfavorable to <Applicant> regarding her past employment and **personal life**."

A major issue became the procedural manner in which the Committee handled the proceedings and the standard of review to be applied by the Court. Essentially the question is, should the Court review the matter anew based on all the facts (a de novo review) without adopting a presumption in favor of the Committee's findings, or should it adopt a presumption in favor of the Committee, and reverse only if their decision is unsupported by clear and convincing evidence. The distinction is important.

Essentially, if the Court adopts a presumption in favor of the Committee, they can affirm its' decision even though they think it may be wrong. Obviously, it would seem adopting such a presumption diminishes reliability of the review process. The Applicant asserted a "de novo" review was proper. In the last case, 379 So. 2d 564 (1980) where the Applicant had favorable letters of recommendation from Judges, the Court adopted such a standard stating:

> "Consequently, we do not indulge in any presumption in favor of the findings by the Committee on Character and Fitness."

Now however, the Court refuses to do so. Instead, they change the playing field in a post hoc manner asserting that the review standard pertaining to disciplinary enforcement should apply. This is notwithstanding that the Applicant is not even a member of the Bar. The Court cites 381 So.2d 52, 54 (Ala. 1980) for the premise:

> "the Supreme Court, on review, will presume that the Board's decision on the facts is correct: and the disciplinary order will be affirmed unless the decision on the facts is unsupported by clear and convincing evidence, or the order misapplies the law to the facts."

The Court then states:

> "This standard is appropriate, given the posture of the case before us . . ."

The Applicant makes a beautiful argument that the failure of the Committee to include Findings of Fact renders the reviewing court unable to ascertain whether the Committee's decision is supported by the facts. Essentially, the Applicant is saying:

> "how can you determine if the decision on the facts is supported, when the Committee failed to state the facts it relies on."

The argument is inescapably sound. The Court departs from logic however stating:

> "Although the inclusion of findings of fact in the order is encouraged, it is not a requirement"

That is quite simply put, judicial logic at its worst. The final argument posed by the Applicant was that she was prejudiced in defending against the charges related to her character because the Bar delayed disclosing that they had received derogatory information. The derogatory letter from the attorney was received by the Bar prior to submission of her application, but the Bar didn't inform her of its' existence until approximately 20 months later. The Bar was baiting her. Their concept was:

> "Don't tell her about the derogatory information received even though she registered as a law student. Let's wait, until she actually applies to the Bar, then we'll nail her."

The Court bails out and holds that the admission rules contain no requirement that the Bar inform a law student of information that might reflect unfavorably on the student's prospective application for admission. This allows the Bar to "mislead" the registered law student into believing their is no character issue pending. A concurring opinion recognizes the blatant unfairness stating:

> "The lack of such a rule, however, does not validate the admission procedure nor does it exonerate the Bar of its responsibility to promulgate and recommend for adoption a procedure through which it will be possible to resolve such situations in a more equitable manner." [195]

The interesting aspects of this case are twofold. First, the Court changed the standard of review post-hoc for the specific purpose of altering the playing field against the Applicant. They relied on a standard applicable to disciplinary proceedings even though in the prior admissions case they held the standard should not contain a presumption in favor of the Committee. Secondly, the Bar baited the Applicant by failing to disclose unfavorable information obtained during the law student years even though she had registered as a law student. To this extent, the Bar violated its own standard of moral character. It was not entirely candid, open or truthful and this could impact on the ability of the Committee members to practice law. Perhaps the public needs to be protected from Bar Examiners. The Court recognized that the Bar's belated disclosure of the derogatory letter impacted unfairly on the Applicant. It nevertheless allowed the Bar to benefit from its' unethical conduct for the purpose of penalizing the Applicant. This was accomplished through a manipulative use of the rules of construction used to interpret Bar rules. Such manipulation assures that the rules always function to the benefit of the Bar, and to the detriment of the Applicant.

Versuslaw 1999.AL.0042917 Case No. 1980749 (December 30, 1999)

THE STATE BAR POCKET VETO

The facts in this case are absolutely incredible. The Alabama Bar refused to render a decision of any nature for the specific purpose of depriving the Applicant of his right to appeal. The Applicant applied to the Alabama Bar in 1994. He was previously a member of the Georgia Bar, but was voluntarily disbarred in 1985 after a felony shoplifting conviction. On his application to the Alabama Bar, he fully disclosed the shoplifting conviction, prior membership in the Georgia Bar, and the fact that he was disbarred in Georgia. The Alabama Bar sent him a form noting that his application for admission was deficient because he did not include a certificate of good standing from the Georgia State Bar. He then wrote the following letter to the Georgia State Bar:

> "I am applying to take the Alabama Bar. In making application I need a letter from the Georgia Bar to the Alabama Bar as to why I was disbarred. In the application they requested a letter of good standing from the previous bar. I stated I was disbarred for felony shoplifting . . . and therefore was not in good standing. As I can understand their request they now want a letter from the Georgia Bar confirming that fact."

The Alabama Character Committee then requested his appearance at a January, 1995 meeting. During that meeting, he again informed the Committee that he had been disbarred in Georgia. The chairman of the Committee stated as follows to him:

> "You have to have a certificate of good standing from any bars of which you've ever been a member or which you are a member. And to get the certificate of good standing, I would think you'd have to go in and be reinstated."

Essentially, the Alabama Bar was taking the position that before he could apply for admission to the Alabama Bar, he had to be reinstated by the Georgia Bar. The Committee Chairman then stated:

> ". . . the panel has decided that we can't approve your application at this time. . . . We could let you withdraw your application at this time and . . . you could make some closer inquiries into the reinstatement in the State of Georgia. . . .
> **. . .**
> . . . And it breaks my heart to be sitting here telling you this, but I think at this point you can either withdraw it or we will disapprove your application, whichever you think."

The State of Georgia had previously **unconditionally pardoned** the Applicant for the shoplifting offense. The Applicant sent a copy of the pardon to the Alabama Bar. He then sent a letter to them explaining that the **Georgia State Bar would not issue him a "certificate of good standing" unless he was readmitted which would require retaking the Georgia bar exam, paying a $ 3,000.00 filing fee, submitting 100 letters of recommendation from members of the Georgia State Bar, and submitting to several levels of review before even being allowed to retake the Georgia bar exam.** The executive director of the Alabama State Bar replied in a letter dated November 13, 1996 as follows:

> "When you appeared before the Character and Fitness Committee of the Alabama State Bar on January 11, 1995, the committee made it plain that in order for them to act upon your application to sit for the Alabama bar exam, it was necessary for you to re-establish your membership in good standing with the Georgia Bar . . . . I also point out to you that obtaining a certificate of good standing from the Georgia Bar will not automatically clear you to sit for the Alabama bar

> exam. Your application will still have to be reviewed and considered by the character and fitness committee . . . . Unfortunately, unless you are reinstated by the Georgia Bar, thereby obtaining a certificate of good standing, **we cannot process your application**. . . ."

On December 4, 1996, the executive director then sent the Applicant a letter that stated in part:

> "**There is no appeal** from the requirement that you be reinstated as a member in good standing with the Georgia State Bar. . . ."

The Applicant then filed a Petition for a Writ of Mandamus with the Alabama Supreme Court to compel the Alabama Bar to make a decision on his application. It is important to note that he was not seeking actual admission by instituting such a legal proceeding. Rather instead, he was just seeking to force the Bar to render some type of decision on his application. This would then procedurally allow him to appeal the decision. The State Supreme Court rules in his favor stating:

> "The issue, says <Applicant>, is whether the ASB, through its Committee on Character and Fitness can refuse to act on an application for admission to the State Bar. We agree with <Applicant> that it cannot.
> . . .
> Thus, when <Applicant> supplied ASB with documentation of his full pardon and the restoration of his civil rights, he had complied with ASB's requirement for a completed application and he was entitled to have a ruling on it.
>
> We cannot and will not direct the Committee as to how it should rule. . . . We simply require the Committee to rule on an application. . . ."

The most interesting part of the case is in a concurring opinion by one Justice that states:

> > "I concur in the result because **I cannot find in the Rules Governing Admission . . . anything providing that membership in good standing in the bar of another state is a . . . prerequisite** for a determination by the Character and Fitness Committee. . . ." [196]

This case can be summarized as follows. The Alabama Character Committee attempted to "evade" rendering a decision for the purpose of frustrating the Applicant's right of appeal. It "falsely represented" that a certificate of good standing was required for them to render a decision, when in fact the rules contained no such requirement and the Court ultimately held the opposite to be true. The Bar "misled" the Applicant during the initial Character meeting when it falsely indicated that "it breaks my heart," because in fact at the time, they were achieving the precise result they wanted, notwithstanding the illegality of their position. The Alabama Bar was doing everything it possibly could throughout the case to immorally, unethically and unconstitutionally bust this guy's chops. To accomplish such, they were "misleading," "evasive," and engaged in "false disclosure." When it came right down to it, as the concurring opinion notes, the Alabama Bar didn't even have an enacted Rule in place pertaining to the key issue of the case. They just took it upon themselves to apply arbitrary rules informally enacted on the spot, to fit their immediate anticompetitive interests.

It is my determination that the Character Committee members should have been suspended from the practice of law for a period of two years. After two years they should be allowed to reapply and would be readmitted only upon participating in a formal character interview, and upon showing sufficient remorse and rehabilitation for their immoral, unethical and deceptive conduct which obviously reflects adversely upon their ability to engage in the practice of law.

ALASKA

620 P.2d 640 (1980)

IT AIN'T NO PRIVILEGE, BABY.

Is the ability to practice law a Right, or alternatively a Privilege to be granted only upon the grace and favor of the State? The U.S. Supreme Court held unequivocally in *Ex Parte Garland* that it was a Right. *Garland* has never been overturned and therefore should be considered binding law. Quite simply put, whether a particular State irrationally believes the ability to practice of law is a Privilege, they should refrain from deciding a question already decided by the U.S. Supreme Court. Nevertheless, they persist in addressing it and are about evenly split on the issue.

In this case, the Alaska Supreme Court holds that the ability to practice law is a fundamental right. A nonresident of Alaska who was a member of the Texas and Washington Bars appealed denial of her application. She was denied admission on the ground that she did not meet the 30 day residency requirement of Alaska. The residency issue became a hot item of Bar admission litigation in the 1980s. The purpose of presenting this case is for its' discussion of Right versus Privilege. The Court states in its' opinion deciding in her favor:

> "We agree with the New York Court of Appeals, and the commentators, that the **practice of law by qualified persons is a "fundamental right"** triggering scrutiny under the privileges and immunities clause. The United States Supreme Court has recognized the fundamental right to engage in "common callings" and to pursue "ordinary livelihoods." The Court has protected, under the privileges and immunities clause, the right to fish, to market goods, and to be employed in jobs arising from state oil and gas leases. Assuming that there was once a status distinction between engaging in common occupations and in professional pursuits, it is not of constitutional significance. **The practice of law is like any other species of trade or commerce.** In Corfield v. Coryell, 6 Fed. Case No. 3,230 p. 546 (C.C.E.D. Pa. 1823), the first major case concerning the clause, Justice Washington's list of fundamental rights, quoted by the Court in Baldwin v. Montana Fish & Game Commission, 436 U.S. 371, 384 (1978) includes professional pursuits.
>
> . . .
>
> **The right to practice law is a "fundamental right"** calling for scrutiny under the privileges and immunities clause." [197]

The Court analyzes whether the Bar's residency rule can withstand analysis under the privileges and immunities clause. It adopts the test delineated in *Hicklin v. Orbeck*, 437 U.S. 518, 524-526 (1978). In that case, the U.S. Supreme Court held that a state statute that discriminated against nonresidents in favor of residents was unconstitutional, even though the professed state interest in reducing unemployment was legitimate. Two reasons were given:

1. There was no substantial reason for discriminating between residents and nonresidents.
2. There was no substantial relationship between the means chosen by the state and the end to be achieved, i.e. the reduction of unemployment in Alaska.

Stated simply, the discrimination against nonresidents, did not bear a substantial relationship to the professed evil of high unemployment. The Alaska Court applies the ***Hicklin*** rule. It determines there must be a "substantial relationship" between the means chosen by the Bar (the residency requirement), and the legitimate objectives to be achieved. If the ***Hicklin*** rule is applied to assessment of an Applicant's moral character, the relevant issues could be presented in a variety of ways. Here are just five examples:

1. Does requiring a Bar Applicant to disclose virtually every single facet of their business and personal life, bear a substantial relationship to accomplishing the legitimate state objective that attorneys possess good moral character?

2. Does inquiry of a Bar Applicant's past, in a vague and ambiguous manner, bear a substantial relationship to accomplishing the legitimate state objective that attorneys possess good moral character, even though it results in the Bar not being subject to the same standards as other professions and businesses?

3. Does providing the State Bar Admissions Committee with virtually unchecked power to punish Applicants for their attitudes and beliefs about the Judiciary, bear a substantial relationship to accomplishing the legitimate state objective that attorneys possess good moral character and fitness?

4. Does formulating an admissions application that is so cumbersome, making it virtually impossible to answer every single question without making errors, mistakes, or omissions, bear a substantial relationship to accomplishing the legitimate state objective that attorneys possess good moral character?

5. **Does requiring a Bar Applicant to answer questions that are never again asked of licensed attorneys and Judges once admitted bear a substantial relationship to accomplishing the legitimate state objective that attorneys possess good moral character**?

I now provide the answers to the foregoing questions. No, No, No, No, and "Don't Be Ridiculous."

ARIZONA

539 P.2d 891 (1975)

OUR QUESTIONS ARE NOT VAGUE AND AMBIGUOUS. JUST DISCLOSE "ANY INCIDENT" BEARING ON YOUR CHARACTER AND FITNESS.

The Applicant did not register for the draft in 1964 when he turned 18. He did register in 1972 at age 26. He had three traffic citations, one for failing to have a front license plate, and two for running a red light. He was never convicted of any crime. In 1973 he filed his application. He was denied admission due to his delinquency in registering for the draft. The State Supreme Court affirmed.

This case depicts the application process at its' worst. Here you have a guy who corrects his primary deficiency prior to applying, has never been convicted of a crime and is still denied admission on character grounds. The Court bases its' decision not on his initial failure to register, but rather on the length of delay. The Court expressly indicates that not being convicted of a crime does not indicate one passes muster. It states:

> "Even an acquittal in a criminal action has been held not to be res judicata upon an inquiry to determine an applicant's character and fitness to become a member of the bar."

The Applicant testified at the Character Committee Hearing that when he first became of age he didn't realize he had a duty to register. He admitted that by age 19 he knew of the duty. He attributed his failure to the fact he was getting poor grades at Arizona State University, his father was strict, his dorm rent hadn't been paid and he was having personal problems. Stated simply, he was a kid having difficulty dealing with living on his own at college. It happens to many and is understandable. His father discovered that he was getting bad grades, and he left Arizona State to live at home, taking classes at Northern Arizona University. His grades improved immensely and he made the dean's list every semester. The Committee asked why he then didn't register. He responded as follows:

> "I'm not sure actually why I didn't, . . . I kept telling myself that I was going to do something about it, that I just wanted to get myself settled, that I just wanted to get some good grades here and to start doing things right. And then that I would do something about it . . . . I guess I emotionally wasn't quite ready to do anything about it yet. That's as good an answer as I can give."

I must now detract from discussion of this case. As I am writing this, I just remembered that I haven't had my car inspected yet. It's about six months overdue. I have a 1996 Honda Accord and I can't seem to find the time to get down to the inspection station. On the other hand, I'm already in the Bar, so it's not all that big of a concern. There's no pertinent question on the attorney license renewal forms I receive each year. Now back to the case (Then I have to get my car inspected).

After graduating, the Applicant attended graduate school at the University of Southern California. He then enrolled at the University of Arizona law school. During his second year of law school he spoke to the Dean about his draft registration problem. He testified that he was afraid if he registered at that time, he might be prosecuted. The Dean referred him to a lawyer in Tucson who did draft counseling (Not a particularly big business these days.) The lawyer asked if he was willing to

offer himself for induction in the army. The Applicant said he was reluctant, but would do so if it would avoid prosecution. Ultimately, he simply registered for the Draft and was never arrested or prosecuted. He then filed his Bar application.

The Court first focuses on his initial failure to disclose the draft registration issue. **The nondisclosure issue is particularly weak in this case, because no question on the application even made inquiry pertinent to registering for the draft**. Essentially, the Court was saying he should have volunteered information about an incident for which specific inquiry was never even made. Now here's where it gets great. Question 23 of the application read as follows:

> "Is there any other incident **in your career**, not hereinbefore referred to, having a bearing upon your character or fitness for admission to the bar?"

That is the question where the Committee irrationally asserted the draft issue should have been disclosed. The question's inherent vagueness, ambiguity, and overbreadth could not possibly be more apparent. What is the meaning of the phrase, "any other incident?" What determines if it bears upon your character? I submit that if the foregoing question is valid, then any individual who has ever been admitted to the Arizona Bar and left this question blank, has lied on their application. Here would be my own personal hypothetical answer to the question, which I present for purposes of demonstrating its' ridiculous nature.

> "Yes, there are other incidents not yet mentioned having a bearing upon my character and fitness.
>
> They are as follows:
>
> 1. When I was 18, I had sex with a girl I just met in a bar because we were both drunk and horny.
>
> 2. At a family holiday dinner when I was 19, I agreed to not eat any dessert until we finished the dinner. I then surreptitiously stole one cookie from my parent's refrigerator while no one was watching. No charges were ever filed.
>
> 3. When I was 30, I told a co-worker they looked fine, after being asked, although the co-worker looked terrible. I did this because I felt a person shouldn't be judged by their physical appearance. I didn't want to hurt the co-worker's feelings. Naturally, I realize my kindness may reflect negatively on a Bar application as being indicative of a lack of truthfulness.

Stated quite simply, Question 23 is nothing short of garbage. If allowed to withstand constitutional scrutiny, the Bar has an absolute blank check to conclude that any Applicant has lied. Every single person would have to file an answer at least 5000 pages in length to respond truthfully. The question's mere existence demonstrates the Bar's lack of candor. It is noteworthy that if Bar admission committee members left the question blank when they filed their own application, then applying their own standards, they lack the requisite candor to be a member of the Bar.

The Applicant brilliantly responded to the assertion that he should have disclosed the draft registration issue in an answer to Question 23 by asserting four points:

1. His attorney advised him that he could properly answer the question, "No."
2. At the time of making his application he had fulfilled his legal responsibilities.
3. His Selective Service Number had been disclosed elsewhere in the application and question 23 only requested information about items not "hereinbefore referred to."
4. The term "career" in the question applies to a profession, and he didn't actually have a profession at the time of filing the application.

I agree with the Applicant on all four points. The Committee and Court irrationally disagreed on all points. They were wrong. I am right. The Court's opinion closes by addressing the traffic citations. The Applicant had responded "No" to question 17(b) that read:

> "Have you ever been charged with, arrested, or questioned regarding violation of any law?"

The Applicant testified regarding his negative answer to question 17(b) as follows:

> "It was not anything that, that was important that I thought had any bearing whatsoever."
> . . .
> "I didn't think that the incident had a bearing on my character or fitness for admission to the bar." [198]

For those readers who believe the Applicant should be penalized for not disclosing three puny traffic citations that are considered "infractions," and are not legally "crimes," I pose the following question.

> Can you even remember every single traffic or parking ticket you have received in your life? If not, watch out for the Bar application that asks these questions. Your failure to list such traffic tickets may indicate you lack the requisite character and fitness to be an attorney. Concededly, lacking the requisite character to be an attorney may be the clearest proof in existence of good moral character.

614 P.2d 832 (1980)

CONDUCT YOU ENGAGED IN WHILE ONLY THREE WEEKS OLD AS A BABY, MAY REFLECT UPON YOUR CURRENT CHARACTER. WE NOW WANT TO KNOW ABOUT ANY INCIDENT IN YOUR LIFE, RATHER THAN JUST YOUR CAREER.

The Applicant sold marijuana, but stopped dealing because he felt it was inconsistent with his desire to become a lawyer. He considered marijuana illegal, but not immoral. In law school, he was chairman of the Appellate Advocacy Board and received an award for outstanding contribution to the law school. He filed his application in 1975 and was asked to meet with the Committee to discuss his involvement in selling marijuana. At the meeting, he denied the allegations. After being threatened with federal indictment, he withdrew his application. It appears he was never arrested or convicted of any crime. The Bar put the "squeeze" on him to encourage withdrawal of the application.

He also had not filed a federal income tax return under the mistaken belief that illegal profits from selling marijuana were not taxable. In 1979, he reapplied for admission. Several character witnesses testified on his behalf including Arizona attorneys and a Superior Court Judge. The State Supreme Court denied admission. It relied on the GAQ (Garbage Admission Question) discussed in the prior case which inquired:

> "Is there any other incident or occurrence **in your life**, which is not otherwise referred to in this application, which has a bearing, either directly or indirectly, upon your character or fitness for admission to the bar?"

The interesting aspect of this case is the revised nature of the GAQ (Garbage Admission Question). In 539 P.2d 891 (1975), the question had stated:

> "Is there any other incident **in your career**, not hereinbefore referred to, having a bearing upon your character or fitness for admission to the bar?"

The phrase "in your career" which that Applicant contested, had now been changed to "in your life." [199] Remember, the Court in the prior case rejected the Applicant's defense that he had no duty to disclose the draft registration issue because he was not yet in a "career." It is amusingly ironic and hypocritical that the Court after rejecting his argument, felt there was enough of a problem with the question to change its' scope from "career" to "life." Kind of a tacit confession on their part. It would appear that when the Court rejected his argument, they were not being entirely "candid," "open" and "truthful" regarding the question's validity. Perhaps this reflects on their moral character and ability to practice law. What makes matters worse is that the GAQ was now more ambiguous and vague. It now encompassed a person's whole life. It now imposed a duty to disclose details pertaining to all those things an Applicant did in grammar school, Kindergarten and while in nursery school.

See, you never should have caused a disturbance in that restaurant when you were three weeks old! Or taken a dump in your pants when you were eight months old. It could be determined to reflect negatively on your character and fitness to be an attorney. Truly and irrefutably, a GAQ (GARBAGE ADMISSION QUESTION).

618 P.2d 232 (1980)

FAILURE TO DISCLOSE THAT YOU HAVE BEEN THE SUBJECT OF A FAILED INVESTIGATION REFLECTS NEGATIVELY ON CHARACTER ?

The Applicant was admitted to the Illinois Bar in 1969 and practiced criminal defense law. On May 9, 1978 he applied to the Arizona Bar. He answered, "no" to the following question:

> "Have you ever either as a juvenile or adult been served with a criminal summons, questioned, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or convicted of, or **ever been the subject of an investigation** concerning the violation of any felony or misdemeanor"?

In February, 1979 he executed a Statement of Material Changes in Application which stated as follows:

> "I, the undersigned, hereby certify to the Committee on Character and Fitness that as of the date of the beginning of the examination for admission, . . . there have been no material changes in or additions to the facts as shown by my answers to the Application for Admission which have occurred between the date of my filing the Application and the date of the examination . . ."

Several months earlier, the IRS had commenced an investigation of organized gambling in Arizona. A Special IRS Agent was assigned to engage in the practice of placing bets with a bookmaker. The Agent received a phone call from the person he understood was the bookmaker. He was told a person would approach him at a card game to collect on a bet. On May 9, 1978 (the exact date of the Bar application), the Agent was approached by the Applicant at the card game and gave him $ 550. A few months later, the IRS caused a search warrant to be issued of a sporting goods store in Phoenix. During the search, the Applicant arrived. He was informed that he was the subject of an investigation and read his Miranda rights. He was asked if he was admitted to practice law and he responded that although admitted in Illinois, he was not admitted in Arizona. He was neither arrested, nor detained. Two months later, a subpoena was issued to compel his appearance before a Grand Jury, but it was never served on him. After learning of its' existence, the Applicant telephoned the U.S. Attorney and informed him that if required to appear, he would assert his Fifth Amendment right against self-incrimination. The U.S. attorney responded that he need not appear. No indictments were issued and the Applicant heard nothing further from either the IRS or U.S. Attorney's office. He was never arrested, charged, indicted, or convicted of any crime.

Let's now recap where we are. The application question made inquiries that included whether the Applicant had ever been the "subject of an investigation." The Applicant answered "No" in May, 1978 which was a truthful statement. Between May, 1978 and February, 1979 he was informed that he had become the "subject of an investigation." He was however never arrested, charged, indicted or convicted of any crime. In February, 1979 after the Grand Jury failed to return any indictments, the Applicant executed a Statement of Material Changes in Application and indicated there were "None." The Bar asserted that in doing so he had lied during the application process. The issues raised are as follows:

1. Is an inquiry about whether an Applicant is a "subject of an investigation," a constitutionally valid Bar application question?

2. Have their been material changes in an application when after its' filing, an Applicant becomes the subject of an investigation which results in no charges, arrests, or indictments?

3. Assuming the inquiry into whether one has ever been the "subject of an investigation" is valid, and that commencement of such an investigation after the filing of a Bar application is material, is the failure to inform the Bar of such, grounds for denying admission?

A negative answer to any of the foregoing questions would mandate admission. The Court does not address any of the issues and simply denies admission. I will be a bit more diligent than the Arizona Supreme Court. I address the issues as follows:

1.) Inquiring into whether an Applicant has been the "subject of an investigation" is unconstitutionally vague and ambiguous for several reasons. First, it does not limit inquiry to investigations by law enforcement agencies. Rather instead it states:

> "ever been the subject of an investigation concerning the violation of any felony or misdemeanor"

Conceivably, the question imposes a duty to disclose facts pertaining to investigations by anyone, even casually. Informal casual inquiries by friends, co-workers and families would be included. Who has not been asked by friends or co-workers, "have you ever been convicted of a crime?" Does such casual inquiry constitute an investigation? What if they follow the question up with inquiries, such as "have you ever gotten really drunk?" Are they investigating into whether you've committed the crime of DWI? To have any possibility of surviving constitutional scrutiny, the question must be limited to investigations by law enforcement agencies.

2.) Assuming the question is constitutionally valid (which it is not), if the Applicant becomes the "subject of an investigation" after filing his application, the investigation would not constitute a "material" change unless it results in an arrest, charge, or conviction. Rationality mandates that materiality be gauged in the context of whether the specific facts could affect the ultimate decision on the application. It is difficult to perceive how the Bar justifies materiality regarding an investigation that results in no arrest, conviction, or charge. Stated simply, such an investigation reflects worse on the investigating agency than the person investigated. To accept the Bar's notion would mean that an individual who has done nothing wrong can be denied admission simply because some law enforcement agency thinks there is a possibility the person may have violated the law. The initiation of what ultimately proves to be a "failed investigation," is irrefutably not material.

3.) Assuming the inquiry into whether one has ever been the "subject of an investigation" is constitutionally valid (which it's not), and that disclosing the existence of a "failed investigation," initiated after filing the application is material (which it's not), nondisclosure is still not grounds for denying admission. It is admittedly unnecessary to explain a conclusion based on two clearly flawed assumptions, but the logic is simple. Nondisclosure of a material matter that does not result in an arrest, conviction, indictment or charge is not sufficient grounds to deny admission <u>if the nondisclosure is made without an "intent to deceive."</u> Even if the

nondisclosure is "material," then for the nondisclosure to reflect negatively on the Applicant's moral character it must have been done with an intent to deceive. If the Applicant demonstrates a good faith misunderstanding of a highly ambiguous and vague question, he should not be penalized.

The Arizona Supreme Court did not address the important legal issues. Instead, they were satisfied to adopt a logically flawed and irrational stance. The Applicant testified during the Bar hearings he would have asserted the Fifth Amendment privilege against self-incrimination, because he believed it was inappropriate to assert an Attorney-Client privilege due to the fact he was not a licensed Arizona attorney. He was irrefutably correct on this issue as a matter of law. The Court however, irrationally suggests, he should have asserted the attorney-client privilege even though he was not an Arizona attorney. They state:

> "It is apparent that rather than test the asserted attorney-client relationship before the Grand Jury, applicant preferred to deceive the United States District Attorney, thereby impeding the investigation into the asserted criminal activities of his two friends." [200]

The phrase "investigation into the asserted criminal activities of his two friends" is noteworthy. The Court is tacitly conceding that the Applicant was not even the "subject of the investigation." Such being the case, the Applicant irrefutably had no duty of disclosure.

555 P.2d 315 (1976)
680 P.2d 107 (1983)
686 F.2d 692 (1982)
466 U.S. 558 (1984)

BAR FIGHT OF THE CENTURY - A CASE THAT SMELLS BAD

The Ronwin Case

This case, or series of cases I should say, is classic. It depicts nothing short of the complete degeneration of the Bar admissions process. Undoubtedly, the Arizona Bar will never forget this Applicant. It is also a very sad case. The guy did make it to the U.S. Supreme Court though, where he lost in a narrow 4-3 decision with two justices not participating.

He was admitted to the Iowa Bar in 1974. He also took the Arizona Bar exam in January, 1974, but failed. He petitioned the Arizona Committee for re-grading of the exam and his request was denied. He then filed a petition with the Arizona Supreme Court that was denied and a Petition for Certiorari with the U.S. Supreme Court that was denied. At this point, he was irrefutably conducting himself appropriately. He was going right up the ladder with his grievance in the proper legal fashion. After losing at all levels, he requested to retake the exam in July, 1974. The trouble then escalates.

The Bar denies permission to sit for the July exam on character grounds. That smells bad. Here you have an Applicant who exercised his due process rights for review, and after losing simply wants to sit for the exam again. His character was not called into question when he sat for the January exam. Why all of the sudden deny character certification after he has petitioned for review? It gives the appearance that the Bar is trying to get even with a person who took them to Court. A so-called "mental fitness" hearing is held and the Committee concludes:

> "the applicant suffers from a "personality disorder" which . . . :
>
> (a) Causes him to be unreasonably suspicions that bad motives and intentions activate persons with whom he comes into contact and to unreasonably imagine that he is the object of unfair persecution by such persons and to act upon such imagined wrongs as if in fact sustained by known facts;
>
> (b) Causes him to make irresponsible and highly derogatory untrue public accusations and charges against persons in responsible positions which he knows or reasonably should know are without any factual basis or support;
>
> (c) Causes him to bring and pursue with great persistence groundless claims in court proceedings and otherwise even though he knows or should reasonably know such claims to be groundless, and that thereby others will be subjected to needless expense and concerns."

If certification of his character had been denied for the January, 1974 exam, I would be less inclined to demean the Committee's reckless and vindictive conclusions. Why was his character not an impediment to the January, 1974 exam, but became an impediment after he instituted appropriate legal action? The fact that he was during this same time admitted to the Iowa Bar which certified his character further weakens the Arizona Bar's position. The Applicant's suspicions far from being unreasonable, appear to have been very reasonable, rational and well-supported by the evidence. The Bar has motive to cause him trouble. He took them to Court. The Bar has opportunity. The character

review. The Applicant petitions the Arizona Supreme Court for review of the Committee's decision and then petitions the U.S. Supreme Court again which denies certiorari.

The origins of this case actually stem back further than 1974. While attending law school at Arizona State University he was harassed. Graffiti and ethnic slurs about him being Jewish were written on the bathroom stall and walls of the law school. In today's world, swift action would undoubtedly be taken. Such was not the case however in 1974. Ironically, the Court's opinion isn't even clear as to whether the Applicant was Jewish. The Applicant wrote a letter to the President of the University accusing the law school dean of expressing an "attitude of malice" toward him by failing to stop the graffiti. The letter stated:

> "the activities of the Dean *** sum to an astonishing and deliberate nonfeasance and malfeasance and were directly responsible for both my troubles at the school, which continued virtually unabated during my entire association, and for much of my current problems with the Bar"

Other comments in the letter were critical about a resident professor, two visiting professors and an acting dean of the law school. The acting dean was accused of deliberately soliciting memoranda containing derogatory comments about the Applicant and of bringing the memoranda to the Bar Committee's attention with the object of destroying his chances to be admitted to the Bar. The Arizona Supreme Court issued its' opinion in 1976. It irrationally denied admission on the purported ground that the Applicant was mentally unfit. The opinion first remarkably states that the practice of law is a Right and not a Privilege. This is remarkable because such a holding is directly adverse to the Court's ultimate conclusion. The Court states:

> **"The practice of law is not a privilege but a right,** conditioned solely upon the requirement that a person have the necessary mental, physical and moral qualifications. . . . This right is "**neither greater nor less than the right to engage in other occupations, business or trades**, for the right to seek and retain employment is shared by all equally and to be equal must be upon the same conditions."

In denigrating the Applicant's mental fitness, the Court declines to state specific facts or reasons, but instead relies on mere unsupported conclusions stating:

> "To survey in this opinion the allegations or criticisms made by various witnesses or the psychiatric and psychological testimony would unnecessarily inject comment on the character or reputation of persons other than the individual who is the focus of this case and would serve to heighten the extreme emotion with which the applicant and others view several of the incidents which were highlighted at the committee hearings. It would also discourage in the future the sort of candid and personal testimony which many people are naturally reluctant to give but which is necessary in order to make a competent evaluation of the applicant's qualifications."

Essentially, the Court's position is that to foster "candid" testimony, the content of such testimony must be kept secret. The most interesting aspect of the opinion concerns the Committee's finding (c) which stated in reference to the Applicant:

> "(c) Causes him to bring and pursue with great persistence groundless claims in court proceedings . . . even though he knows or should reasonably know such claims to be groundless, and that thereby others will be subjected to needless expense and concerns."

The foregoing was obviously adopted in response to his challenging the grading process through appropriate legal means. The Bar was trying to adopt an irrational standard that instituting a legal proceeding against the Bar constituted mental unfitness by an Applicant. The State Supreme Court properly recognized the danger of the Bar's position and at least facially rejected it, although in substance it clearly played a role in their decision. The Court states:

> "We do not agree with ground "(c)" of the Committee's Findings, that <Applicant> has in the past brought "with great persistence groundless claims in court proceedings and otherwise." We hesitate to fault the applicant for resorting to the legal system to express his grievances where, as in this case, there is credible evidence that the actions were brought with a good faith belief in their merit."

The Applicant then institutes suit in Federal Court. He alleges the Bar violated antitrust laws when grading the January, 1974 examination that he failed. Remember, there was no issue pertaining to his character when he took that exam. The character issues only came into play with the July exam. The crux of his argument is that if the January exam was graded in violation of federal law and he would have passed, then he would have been admitted. His attack on the grading procedure is predicated on the allegation that the Bar grades exams to admit a predetermined number of persons, without reference to achievement of a pre-set standard of competence, and for the purpose of restricting competition among attorneys. He is essentially asserting the existence of a quota system designed to keep the number of attorneys in a State at a low number.

Throughout his case in Federal Court there was apparently some friction between the Applicant and the Federal District Judge. He ultimately instituted suit against the Federal Judge. While his suit against the Bar was pending, he filed a Motion to Disqualify the Federal Judge on grounds including, but not limited to the following:

1. The Federal Judge was prejudiced against him because the judge was a defendant in an action brought by him.

2. The Federal Judge allegedly engaged in ex parte communications with defense counsel.

His Motion to Disqualify was denied and the Bar's Motion to Dismiss granted. Dismissal was predicated on the ground that the Bar's grading procedures were immune from federal antitrust laws due to state action exemption. The Bar argued that even assuming, arguendo, that the grading formula was anticompetitive, the Committee's status as a state agent renders its actions absolutely immune from antitrust liability.

The Applicant then appeals. And he wins!! The Federal Court of Appeals rules in his favor disagreeing with the Federal District Court Judge and the State Bar's position on the antitrust issue. The Federal Court of Appeals reasons that since there is no statute or Supreme Court rule requiring the challenged grading procedure, it is not covered by state action exemption. The District Court had also based its' dismissal on the Bar's assertion that the Applicant lacked Standing to sue the Bar. The Bar's position was that even if they committed an antitrust violation, it did not result in denial of admission because he was subsequently found mentally unfit. The Court of Appeals once again disagrees. It correctly reasons that since the Arizona Supreme Court didn't decide until later that the Applicant was mentally unfit; if he had passed the January, 1974 exam, conceivably he would have been admitted. Remember, his mental fitness became an issue in relation to the July exam, not the January exam. The Applicant comes out the big winner at the Court of Appeals, beating the Arizona Bar and State Supreme Court.

The case then goes to the U.S. Supreme Court which grants certiorari to review the Court of Appeals decision on the antitrust issue. It rules in favor of the Bar and against the Applicant in a narrow 4-3 decision with Justices O'Connor and Rehnquist not participating. Stevens, White and Blackmun join in a compelling dissent, while Powell, Burger, Marshall and Brennan issue a well-written majority opinion. The antitrust issue is admittedly difficult. The crux of the case at the U.S. Supreme Court is whether the Bar can claim immunity under the state action exemption from the Sherman Antitrust Act. The Supreme Court holds that the Bar is entitled to immunity and Ronwin's win at the Court of Appeals is nullified.

While the federal case was moving its way up from the District Court to the Court of Appeals, from 1977 - 1980, Ronwin applied for permission to take the Arizona exam numerous times and each application was denied. Arizona clearly did not want him admitted and would go to all irrational lengths to keep him out. What was previously characterized as his unreasonable suspicions were quite to the contrary, obviously very well-founded. He also continued petitioning the State Supreme Court for permission to take the exam. The Court finally ordered that he be permitted to take the 1982 exam, but reserved the issue of his character. He passed the July, 1982 exam. The Arizona Supreme Court then took the extraordinary step of considering the Applicant's character directly, rather than leaving it to the Bar Committee.

This is a very important fact. I believe it must be construed to mean that the State Supreme Court felt at least some of the Applicant's concerns about the Bar Committee were well-founded, and additionally they were afraid about the federal case headed for the U.S. Supreme Court. Certainly, the State Supreme Court was concerned about the fact that they lost in the Federal Court of Appeals. In any event, their extraordinary move displayed a marked lack of confidence in their own Bar Committee.

The Arizona Supreme Court first reaffirms that the practice of law is a Right, and not a Privilege. This continues to boggle me because while they continually concede it's a Right, they persist in treating it as a Privilege. Their inconsistency is evident in their statement that:

> "Each case must be judged on its own merits "and an ad hoc determination in each instance must be made by the court."

The Court focuses on numerous additional suits the Applicant instituted against the Bar, several judges and the Committee members, as well as numerous letters he wrote. It ultimately denies admission on character grounds. In reading the opinions involving this Applicant, the conclusion to be reached is quite clear. He was a man who was the subject of harassment during his law school years. In response, he attempted to remedy the injuries through appropriate legal means. The law school Dean turned a blind eye to the harassment and a good case could be made for the assertion that his Bar application was indeed sabotaged on character grounds by the Bar's elite.

Nevertheless, from 1974 until 1976 he seems to have maintained faith in the legal system, and went right up the ladder in proper professional and spirited fashion. This man I think truly believed at least initially and for some period of time thereafter, that the Arizona Supreme Court would ultimately do the right thing and where all others had failed, they would be fair and impartial. I think he believed they would realize he was a man seeking to right a terrible wrong. In his mind, he probably had faith the Arizona Supreme Court's decision on his initial application would wholly vindicate his position.

Once the Arizona Supreme Court denied that initial application, in a short, poorly written opinion that irrationally denigrated him with the groundless assertion that he was mentally unfit, they became the final link in what very well may have been a conspiracy to keep him out of the Bar. Upon realizing the Arizona Supreme Court would not have the courage to hold itself above the others, he then lost complete faith in the legal system. The sequence of events suggests his position had great merit. He went from faith tempered with reason and passion, to anger. He started suing everybody. This in no way suggests that his anger was not justified, because it appears that it probably was. Even

notwithstanding his justified anger, the Applicant persisted in utilizing proper legal recourse, albeit more than the Bar liked. The Bar on the other hand relied on deception, ex parte communications, covert conduct and the strength of their political position. The ultimate conclusion I reach is that the primary fault in this case lies with the Arizona Supreme Court, rather than the Bar Committee members. The State Supreme Court was supposed to hold itself above it all. Instead, they rendered an opinion based on what seemed at the time to be politically expedient.

The crux of this case lies in the one key fact asserted at the beginning. His character was not an issue when he took the January, 1974 exam. It only became an issue after he petitioned for re-grading and then petitioned the U.S. Supreme Court for certiorari. That smells bad. But it's certain the Arizona Bar will never forget this applicant. Particularly, since the case is still making them look bad 25 years later. [201]

ARKANSAS

839 S.W.2d 1 (1992)

THE ABILITY TO PRACTICE LAW IS A RIGHT, NOT A PRIVILEGE, BUT IT SHOULD BE TREATED LIKE A PRIVILEGE AND NOT A RIGHT?

The Applicant was denied admission based on two relapses to use of illegal drugs. Based on facts set forth in the opinion, he does not appear to have ever been convicted of any crime. He voluntarily entered into a drug treatment program prior to submitting his Bar application, and also entered Alcoholics Anonymous. There is no indication that he lied on his Bar application and he was totally free from drug use for more than two years, at the time the State Supreme Court wrote its opinion. The relapses apparently occurred prior to this two-year period. The Court recognizes the vagueness of moral character standards in its opinion stating:

> "Unfortunately for those who would like a black-letter rule, the concept of "good moral character" **escapes definition** in the abstract. Instead, a particular case must be judged on its own merits, and an **ad hoc** determination must be made by the court . . . . In the same vein, Supreme Court Justice Felix Frankfurter once remarked on the "**shadowy** rather than precise bounds" of the concept of "moral character."

The court also cites with approval *Konigsberg I*, and recognizes the danger of judging moral character utilizing vague standards. It also recognizes the ability to practice law is a Right, rather than a Privilege stating:

> "However, the Court declared, "the term, by itself, is **unusually ambiguous.** It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the **attitude,** experiences, and **prejudices** of the definer. 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."

After submission of appeal and oral argument, the Applicant filed a motion requesting that his medical records be sealed and that his identity in the case be anonymous. The Court denies the request stating:

> "Again, the issues in this case involve the protection of the public interest as well as *** fitness to practice law. We see nothing to be gained by shrouding his efforts to attain a law license in secrecy" [202]

In my view, since the Court denied admission, there was no reason to deny the request for anonymity. It furthered no public interest. Based on matters set forth in the opinion, I would admit this individual since he has no criminal convictions. Furthermore, even if he had one drug conviction (which does not appear to be the case), he was voluntarily participating in a treatment program and was drug free for more than two years. The Court recognizes the problem associated with judging moral character using vague standards. It recognizes that the ability to practice law is a Right, rather than a Privilege, but then substantively treats it like a Privilege to be denied using an irrational, arbitrary analysis.

894 S.W.2d 906 (1995)

> *RULE ARE RULES. UNLESS OF COURSE THEY DON'T WORK IN FAVOR OF THE BAR, THEN THEY'RE REALLY NOT RULES.*
>
> *THE ABILITY TO PRACTICE LAW ISN'T REALLY A RIGHT. IT'S JUST A CLAIM OF ENTITLEMENT. WE DIDN'T MEAN WHAT WE SAID IN 839 S.W. 2d. 1 (1992).*
>
> *SINCE WE'VE BEEN TREATING THE ABILITY TO PRACTICE LAW LIKE A PRIVILEGE ALL ALONG, WE'LL CALL IT A PRIVILEGE FROM NOW ON.*

The Applicant is denied admission. In 1973, at age 18 he pled guilty to possession of an illegal drug and was placed on 18 months probation. After 7 months, apparently based on a plea bargain, the charge was dismissed. In 1984, at age 29 he pled guilty to possession of marijuana with intent to deliver (he was growing marijuana plants) and was sentenced to 4 years in prison. The sentence was suspended and he was placed on probation. At age 31, he was charged with felony manufacture of a controlled substance. He was found guilty of the lesser offense of possession, a misdemeanor and sentenced to one year in prison. The conviction was expunged in 1991.

The Bar Board determined that by continuing to profess his innocence, the Applicant was not being truthful. On the Bar application, he disclosed the convictions. The 1986 misdemeanor conviction had been expunged, and eleven years had lapsed since his last un-expunged conviction. After his release from prison he completed his bachelor's degree with high honors in two years and nine months. He submitted to the Bar numerous letters of recommendations from friends, teachers and relatives attesting to his honesty and trustworthiness.

The Applicant raised numerous legal challenges to the admissions process. **He asserted that the Board violated his right to equal protection by impermissibly classifying him apart from other applicants with criminal records who have been admitted.** The Arkansas Supreme Court evaded ruling on this issue on the procedural ground that it was presented in his Reply Brief rather than his Opening Brief. He also asserted that the Board restricted his access to a hearing and caused undue delay in the disposition of his case by declining to further process his application until he posted a bond. The Court rejected this argument on the ground that since the ability to practice law is not a fundamental right, U.S. Supreme Court opinions that prohibit restricting access to courts for indigents by imposing a fee do not apply. He also asserted that the Board did not afford him procedural due process because it applied a Bar rule to his initial application that was intended for reinstatement cases. The Court rejects this argument on the ground he was not prejudiced by such.

Although the Court rejected his procedural due process argument that the Bar incorrectly applied a Rule intended for reinstatement cases to an initial admissions case, the opinion notes that the Rule in question had since been amended to include initial applications. This irrefutably confirms in my mind that the Rule should not have been applied to the Applicant. It is disturbing that the Court failed to consider his Equal Protection Clause challenge on the ground that he did not strictly follow procedure, yet allowed the Bar's interpretation of a procedurally defective rule to pass muster. The Bar was less prejudiced by his Equal Protection challenge being presented in a Reply Brief, than he was by the Bar's improper application of a Rule which was not intended for initial applications. Essentially the Court's opinion stands for the premise that the rules of procedure will be applied strictly to the Applicant, and leniently to the Bar. That is a logically defective double standard. In reference to the ability to practice law being a Right, the Court states as follows:

> "An applicant who satisfies the statutory prerequisites for admission to the bar has a **"legitimate claim of entitlement"** to practice his profession. . . . In its decisions concerning the constitutionality of filing fees, the Supreme Court has held that when a fundamental right is involved, a fee cannot restrict an indigent person's access to the courts. *Boddie v. Connecticut*, 401 U.S. 371 (1971). However, where a fundamental right is not involved, such fees do not violate due process, especially if alternatives are available for the vindication of the indigent's rights. *United States v. Kras*, 409 U.S. 437, (1973). . . . We have been cited to no authority for the proposition that one may have a **"fundamental right**" to practice law. [203]

I would admit this Applicant. The convictions do not reflect on his honesty or trustworthiness. The 1986 misdemeanor conviction should not even be considered since it was expunged. Over 11 years had lapsed since the 1984 conviction. To the extent the Bar adopted the irrational stance that his continued assertions of innocence reflect upon his truthfulness, they are on extraordinarily weak ground. It is a clear example of the "pot calling the kettle black." The greater concern is whether the Bar was candid and truthful throughout consideration of his application. They improperly applied a procedurally defective rule designed for reinstatement proceedings to an initial application. They essentially adopted a stance of "we didn't really mean what we expressly said." This reflects adversely on the candor of the Admissions Committee and may indicate they lack the requisite moral character to practice law. There is little doubt in my mind that if this Applicant had not challenged the Bar's procedures during the application process, he probably would have been admitted. The Bar appears to have been getting back him for making them look stupid. The revised Rule adopted by the Supreme Court of Arkansas included the following statement:

"The practice of law is a privilege."

In *839 S.W. 2d 1*(1992), the Arkansas Supreme Court had quoted *Konigsberg I*, for the premise that the ability to practice law was a "Right." In this case, they retreated from that determination and falsely labeled it a "legitimate claim of entitlement," rather than a "fundamental right." The new rule expressly classified it as a Privilege. That's how they were treating it all along anyway. Apparently, once the Applicant made the Arkansas Bar look stupid, the Arkansas Supreme Court no longer felt they should abide by the premises of *Konigsberg I* delineated by the U.S. Supreme Court.

No. 98-369, ; 1998 AR. 42039 (VERUSLAW)

IF YOU SAY YOU'RE INNOCENT, IT'S WORSE THAN BEING GUILTY.

The Applicant had never been convicted of any crime. He is denied admission based on facts surrounding suspension of his dental license, his explanation of such at the Bar hearing and alleged fiscal irresponsibility. He allegedly billed an insurance company for dental services not rendered and accepted a 120-day license suspension. He then allegedly practiced dentistry while his license was suspended. He answered "No" to a Bar application question inquiring if he had ever been accused of fraud. In responding to an inquiry whether he had ever applied for a license (other than to become an attorney), that required good moral character or examination, he did not disclose that he had applied for a Series 7, Securities license. In the Series 7, Securities License application, he responded "No" to a question inquiring if he ever made a "false statement or omission or been dishonest, unfair or unethical."

He had relied on advice and counsel of Arkansas attorneys representing him with respect to the services he rendered that were alleged to constitute the unlawful practice of dentistry. Such Counsel had approved his plans for operating another dentist's office during the suspension period. He continued to claim he was innocent of unlawfully practicing dentistry, but could not contest the allegations because he lacked the finances to defend himself. Substantially all facts pertaining to denial of his admission relate to his allegedly billing an insurance company for services that were not rendered in 1988 and 1989. That was nine years prior to the Court's decision on his admission. During the Bar Hearings, he apparently retracted his prior admission of guilt before the Dental Board. His assertion of innocence was held against him by the Court which cites a Florida case for the following premise:

> "An applicant's "continued denial" of an act for which he or she has been found guilty or sanctioned "does not serve the applicant well" in bar-admission proceedings and is, in fact, "unacceptable." *709 So.2d at 1381.*

My conclusions are as follows. If he truly perpetuated a fraud upon the insurance company by billing for services not rendered, then he should have been prosecuted. In the absence of prosecution and a conviction, it is inequitable to deprive him of a law license. The fact that he admitted to the Dental Board that he billed the insurance company improperly, admittedly causes some concern. There are however many possible reasons, which would not constitute criminal conduct. The improper billing may have been attributable to a series of errors. The opinion does not state that he admitted billing the insurance company "fraudulently," but rather instead "for services not rendered." It is possible he was only admitting to billing errors, rather than fraud.

He may have merely used incorrect medical billing codes, resulting in billing for services not rendered, and not billing for services actually rendered. There are too many unknowns to treat this as a crime. The fact that he was never prosecuted is the main point in his favor and greatly bolsters the likelihood that the faulty billing was not criminal in nature. Regarding his purported nondisclosures, they should be deemed immaterial since even if he had provided the information, constitutional principles mandate that he be admitted to the Bar. This is because in the absence of making similar inquiries regularly and periodically of all members of the Bar, they are constitutionally infirm questions. They treat Nonattorney Applicants in a manner dissimilar from licensed attorneys. It is irrelevant whether one has ever been "accused of fraud." It is prosecutions, convictions or acquittals that from a legal perspective are determinative of whether one committed acts they are accused of.

While I do have some concern pertaining to his confession to the Dental Board, I have greater concern with the fact that the Court and Bar are amenable to treating his assertions of innocence as evidence corroborating an allegation of untruthfulness. The day when one is considered to be essentially committing perjury by claiming they are innocent, is the day the Courts rule by force and coercion, rather than the rule of law. [204]

CALIFORNIA

496 P.2d 1264 (1972)

WE ADMIT WE'VE BEEN SCREWING UP FOR A LOT OF YEARS. SO LET'S JUST MAKE IT RIGHT NOW.

This case did not deal directly with the issue of an Applicant's character, but does contain related information. The Applicant was denied admission on the sole ground he was not a U.S. citizen. Ruling in his favor, the California Supreme Court states:

"The question for decision, accordingly, is whether the statutory exclusion of aliens from the practice of law in this state . . . constitutes a denial of equal protection of the law. . . . It is the **lingering vestige of a xenophobic attitude which, as we shall see, also once restricted membership in our bar to persons who were both "male" and "white."** It should now be allowed to join those anachronistic classifications among the crumbled pedestals of history.

. . .

And in Konigsberg the court reiterated . . . that "We recognize the importance of leaving States free to select their own bars, but **it is equally important that the State not exercise this power in an arbitrary or discriminatory manner** . . . . 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."

. . .

The first statute regulating the practice of law in California limited membership in the bar to those who were (1) white, (2) male, and (3) citizens. (Stats. 1851, ch. 4, p. 48) The first two qualifications remained the law of this state for a quarter of a century: several times reaffirmed by the Legislature . . . . It was not until 1877 that the total exclusion of nonwhites and women was abandoned. . . .

Beginning in 1861, by contrast, an applicant for admission to the bar was not required to be a citizen: an alien was also eligible . . . .

. . . This situation prevailed in California until 1931, when the State Bar Act was amended to restrict membership, as in the early years of our statehood, to United States citizens."

. . .

Second, the theory that the practice of law is a privilege and not a right--which has been invoked in the past to justify various legislative regulations of the profession . . . was seriously questioned by the Supreme Court in Schware v. Board of Bar Examiners (1957) . . . . "Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. **Certainly the practice of law is not a matter of the State's grace. Ex Parte Garland,** 4 Wall. 333, 379." Respondent seeks to minimize the effect of this language by asserting that it had "no apparent significance" in Schware and was there relegated to a footnote. But in Hallinan v. Committee of Bar Examiners . . . this court relied on prior opinions which "characterize a claim for admission to the bar as a claim of right entitled to the protections of procedural due process," and concluded it was "impossible for us to regard admission to the profession as a mere privilege." **And the Schware footnote was squarely elevated to a textual holding in Baird v. State Bar of Arizona, 401 U.S. 1 (1971) . . . when the Supreme Court said, citing Schware and Garland :**

"The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." . . . Manifestly we cannot undertake to exhume legal theories so freshly and firmly buried."

Footnote 2 of the opinion states:

> "At the national level, alien attorneys were significant figures on the legal scene throughout at least the first half of our history: as the United States Supreme Court observed in Bradwell v. The State (1872) . . . "Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." [205]

The Court's opinion specified three critical points:

1. Aliens were prohibited from becoming attorneys in California from 1851-1861. They were permitted to be attorneys apparently from 1861-1931. They were then prohibited again from 1931-1972, the date of this opinion. As explained earlier in this book, 1931 was the year the NCBE began taking control of the admissions process. Their purpose was to exclude those considered by the Bar to not be "worthy." Specifically, they meant to exclude immigrants.

2. The U.S. Supreme Court in 1957 and 1971 reaffirmed its position that the ability for a qualified individual to practice law was a "Right" and not a "Privilege." Notwithstanding, there were numerous state court opinions incorrectly asserting it was a "Privilege." In doing so, it is irrefutable that the state courts were usurping the power and authority of the United States Supreme Court, in the face of *Schware* and *Baird*.

3. The *Schware* footnote indicating that the ability to engage in the practice of law was a "Right," which was predicated on the U.S. Supreme Court's holding in *Ex Parte Garland* was squarely elevated to a textual holding in *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971).

YOU MISUNDERSTOOD ME. WHEN I SAID "WE HAVE TO BE A LOT HEAVIER ABOUT THE KIND OF VIOLENCE THAT WE'RE GOING TO PERPETRATE" I WAS TRYING TO IMPRESS UPON THE CROWD THE NEED FOR APPROPRIATE LEGAL ACTION.

The Applicant was a student civil rights leader during the late 1960s and participated in numerous protests where he gave what were at a minimum "passionate" speeches. A bit of background on his early years is relevant. Prior to high school, he was active in the Boy Scouts and attained the rank of Life Scout. He graduated second in his high school class in New York, was elected to the National Honor Society and received several scholarships. While in college he worked as a volunteer at a YWCA sponsored project in North Carolina involved in voter registration and surveying social needs of the black community. He also worked as a counselor in a home for delinquent teenagers sponsored by the Lutheran Church. He graduated magna cum laude from college and was awarded department honors from the religion department. He entered a competition sponsored by the Wall Street Journal and was one of 50 persons selected in the nation to win a fellowship. He was offered law scholarships from several schools and chose the University of California. Following graduation he was awarded a Reginald Heber Smith Community Law Fellowship for work with the Legal Aid Society of Alameda County. While in law school, he became active in the Boalt Hall Community Assistance Program and was head of the Boalt Hall chapter of the Law Students Civil Rights Research Council. He was elected to the position of Student Advocate of the Associated Students and awarded a fellowship by the Law Students Civil Rights Research Council. In the spring of 1969 he was elected to the Presidency of the Associated Students of the University of California.

The California Bar Committee concluded he lacked the requisite moral character on the ground that he lied during the admissions process. The manner in which they asserted he lied was attributable to how he explained the meaning of statements he made in three speeches delivered in 1969 and 1970. The Committee concluded as follows:

> "Applicant intentionally lied to the Subcommittee and to the Committee by testifying under oath that he had never advocated violence or violent conduct."

The issue of dispute was the meaning of the words he spoke. This case demonstrates how the skillful "parsing" of words can be effectively utilized by either side. The Applicant admitted saying certain things, but it was his position that the Committee was misinterpreting them. Here are examples of two of his speeches and his explanations.

CONTENT OF APPLICANT'S PUBLIC SPEECH May 15, 1969:

> "Now, we have not yet decided exactly what we are going to do. But there are some plans, I have a suggestion, let's go down to the People's Park, because we are the people. . . . If we are to win this thing, it is because we are making it more costly for the University to put up its fence, than it is for them to take down their fence. What we have to do then, is maximize the cost to them, minimize the cost to us. So what that means, is people be careful. Don't let those pigs beat the (****) out of you, don't let yourself get arrested on felonies, go down there and take the park."

APPLICANT'S EXPLANATION OF May 15, 1969 Speech at Bar Hearing:

> The Applicant testified at the Bar Hearing that the language in the above speech was not a call to any particular action except as it urged the crowd to move to the location of the park and peacefully demonstrate its opposition to the action taken by the university. He asserted the phrase "go down there and take the park" was not a call to violence, but a call to undertake the first phase of an ongoing demonstration of public disapproval.

CONTENT OF APPLICANT'S PUBLIC SPEECH March 6, 1970:

> "I like to call this stage, give them a little (****) for the (****) they are giving us. That's what's been going on. That's what started in Berkley when we had our first insurrection in the summer of 1968. That's what happened down in Santa Barbara in the last couple of weeks. It's called the, give them a little (****) for the (****) they give us. And, brothers and sisters, I am not going to get up here and tell you that in this society nonviolence is the way, because that's (****), we know that. But just at the same time I am not going to tell you that nonviolence is the way and we should avoid violence because it is bad or something like that, I am going to tell you this, that we have to be, as time goes on, as the (****) comes down heavier and heavier in Babylon, we have to be a lot heavier about the kind of violence that we're going to perpetrate. We are going to have to talk about violence, if it's violence, the question is not nonviolence vs. violence, the question is when violence, and how violence and what violence, because, that is to say that to some of the people, some people think that any kind of violence is groovy and that goes along with the philosophy, give them (****) for giving us (****), which is the only philosophy we have. But I will say this, that the kind of oppression that is coming down in this country right now, we will have to do a little bit more thinking, a little bit more getting ourselves together. . . ."

APPLICANT'S EXPLANATION OF March 6, 1970 Speech at Bar Hearing:

> The Applicant testified that the thrust and intention of the above speech, viewed as a whole, was to persuade his audience of the inefficiency of random violence as a response to their grievances and urge them to join him in massive political action within the context of the electoral system; that remarks made in the course of the speech indicating that violence was a permissible alternative mode of action were made purely for the purpose of establishing rapport with the audience in order to render them amenable to persuasion; and that the result of the speech was not violence but on the other hand was the type of political action which petitioner advocated.

The Supreme Court of California rules in his favor and orders that he be certified for admission. In order to address the Character Committee's assertion that he lied, the Court has to determine what constitutes a "lie." The conclusion reached by the Court is as follows:

> "To lie is "to make an untrue statement with intent to deceive." . . . Thus, the determination of whether a lie has been told comprehends an analysis having two aspects; (1) an objective aspect, which is concerned with whether an "untrue statement" has been made, and (2) a subjective aspect, which is concerned with the intent or state of mind of the person who utters such a statement."

The Court notes that the Committee did not find that the Applicant lacked good moral character because he advocated violence, but instead because he lied by testifying that he had never advocated violence. The Court then details how it will proceed. In order to rule in his favor, the Court must reach one of the following two conclusions:

1. There exists a reasonable basis for determining the speeches did not advocate violence
2. Even if there is no such reasonable basis, the Applicant lacked any intent to deceive when he testified that the speeches did not advocate violence.

The Court never fully addresses the second issue, because it rules in his favor on the first. The Court incredibly determines that there is a reasonable basis for concluding the speeches did not advocate violence. The Court supports its determination by relying on the following two points:

1. Criminal proceedings initiated against the Applicant as a result of the speeches were concluded in his favor.
2. The Applicant's testimony before the Committee that the speeches did not advocate violence is not wholly lacking in rational integrity. [206]

The Applicant wins and his admission to the Bar is certified. The conclusion I reach in this case is straightforward. If you have significant public and political support, you are exempt from the Bar admission character analysis. The fact that this Applicant was never convicted of a crime would alone incline me to grant admission. Nevertheless, if the State Supreme Court is not going to adopt such a bright line rule for everyone, this case demonstrates a blatant inconsistency in the review process. Here you have a man, who I believe was irrefutably advocating the use of violence in his speeches. He is admitted, while other Applicants are denied admission for unpaid credit card debts, undisclosed parking tickets, a "cavalier" attitude, or institution of civil suits.

As stated above, I would admit the Applicant. But I would admit him because he has never been convicted of a crime. Not through utilization of a warped twisting of logic and manipulative parsing of words that results an absurd interpretation of words spoken. The Court's analysis of what constitutes a "lie" is sound. The Court's application of the elements is unsound. More importantly, there is no consistency in application of the rule for other Applicants. Instead with most Applicants, a "lie" is deemed to exist not only based on innocent misstatements of fact, but even nondisclosures. Rather instead, the proper requisite elements of materiality and intent to deceive must be uniformly applied. Lack of uniformity breeds favoritism and inappropriate deference to privilege.

The rule left by this case is as follows. Lies are not lies to the State Supreme Courts, when told by those with massive public support, those who have Judges as friends, or when spoken by State Bars to further the economic self-interests of the legal profession. Statements that cannot reasonably be construed as "lies" however are quickly classified as such, when innocence, mistake, inadvertence or omission is professed by those who are weak or stand alone. That is why you need a clear bright line rule to determine who meets the moral character qualifications. A rule applied equally to Nonattorney Bar Applicants and licensed attorneys. A rule applied equally and periodically to both. A rule that does not require a Nonattorney Bar Applicant to disclose information that is not regularly and periodically required to be disclosed by licensed attorneys.

602 P.2d 768 (1979)

IF YOU DON'T LIKE THE RECORD, JUST SAY IT MEANS SOMETHING ELSE.

The Applicant in this case is ordered to be certified for admission by the State Supreme Court after the Bar rules against him. The Bar denied admission on the ground that he failed to demonstrate adequate "remorse" for conduct in managing an employment agency between 1972-1974. He had been disciplined by the State Bureau of Employment Agencies for engaging in unethical fee collection practices. Specifically, the Applicant made numerous phone calls to debtors and urged their employers to pressure them or discharge them for failing to pay their debts. Also, the Bureau alleged that he improperly solicited a fee from a client for obtaining a job that his agency did not even have a job order for. In addition, the Bureau alleged that he failed to disburse a refund to a client who had left a job for just cause, as required by California law.

The Applicant was never convicted of a crime or arrested based on the Court's opinion. He had a distinguished Air Force record, including award of the Air Medal with five oak leaf clusters for participation in 35 World War II combat missions. He was honorably discharged. He was a good husband and father of 5 children. He was 59 years old. Two character witnesses including an officer of a San Diego bank and private investigator testified that he was hardworking, industrious, straightforward, honest and sticks up for what he believes. During the Bar proceedings, he refused to retract his claims of innocence. That was determined to be a negative factor by the Bar's Character Committee, but a positive factor by the State Supreme Court.

The Court rules in his favor. It determines there is support for his claim that the Employment Bureau's proceedings were tainted by the bias of its investigator. The Court further determines that the misconduct described by the Bureau was less serious than ethical breaches which have confronted the Court, in cases involving other Applicants refused certification. The Court states as follows in reference to **514 P.2d 967** discussed previously:

> "Most recently, we rejected the Committee's finding that an applicant "lied" to it by giving "evasive answers" and "incredible and unbelievable explanations" regarding his statements in political speeches. . . . The Committee, we held, may conclude that an applicant lied in testifying to the meaning of his previous utterances only where the Committee finds "beyond any reasonable doubt" that the applicant's version is both objectively false and advanced with an intent to deceive the Committee."

Regarding his persistence in continuing to profess innocence, rather than expressing remorse, the Court states:

> ". . . refusal to retract his claims of innocence and make a showing of repentance appears to reinforce rather than undercut his showing of good character.
> . . .
> **An individual's courageous adherence to his beliefs, in the face of a judicial or quasi-judicial decision attacking their soundness, may prove his fitness to practice law rather than the contrary**."

Footnote 2 of the opinion states:

> "The subcommittee findings adopted by the Committee referred to several matters which we do not discuss in the text because we find them relatively insignificant: (1) . . . has been a party to five lawsuits, and would not admit wrongdoing as to those lawsuits . . . (2) . . . testimony

> concerning his dismissal from his job as a flight engineer with United Airlines as indicating his belief "that apparently a conspiracy existed against him with a fellow flight employee lying against him." . . . Neither the portions of the record cited by the Committee in support of that finding nor the record as a whole reveal the use of such language . . .; his application states that a flight manager who incorrectly advised him regarding a licensing procedure later denied giving such advice . . . ."

Footnote 19 quotes the Applicant's testimony before the Committee as follows:

> "Why should I have remorse when I didn't do those things I was accused of. That sounds like the person who was framed and railroaded to prison for several years, (then denied) parole . . . because he no remorse."

I believe the Court did an exceptionally good job in this case. The Bar Committee had egg on its' face as evidenced by the Court's statement that:

> "Neither the portions of the record cited by the Committee in support of that finding nor the record as a whole reveal the use of such language . . ." [207]

Why did the Committee mischaracterize the Applicant's statements? Why weren't they candid and truthful? Applying their own standards in the manner they do, it would appear to indicate they lacked candor during the admissions process. Such demonstrates that they lack the requisite moral character to engage in the practice of law.

666 P.2d 10 (1983)

WE RULE IN FAVOR OF THE APPLICANT, BUT WE'LL LET THE COMMITTEE DO WHATEVER IT WANTS ANYWAY.

DON'T ASK US TO TELL YOU WHY THE APPLICANT IS DENIED CERTIFICATION. HE JUST IS BECAUSE WE SAY SO.

The Committee denied certification on the general ground that the Applicant lacked good moral character. It did not however, make any specific findings or provide support for its conclusion. The issues focused around the fact that he had represented himself to be an attorney before a trial judge during the course of a pro se litigation. The Judge asked for his Bar card and he then admitted that he wasn't licensed. He was sentenced to four days in jail for contempt. In 1976, he signed the name of one of his law professors to legal documents falsely claiming he had the law professor's permission. The law professor testified that he did not consent to the use of his name. In 1977, he filed an answer in a litigation listing another attorney as attorney of record, and signed her name to the answer without consent.

During the admission proceedings, he admitted he made serious mistakes in judgment, and that it was wrong for him to have held himself out as a lawyer. Subsequent to the above incidents he had not engaged in any activity constituting the unauthorized practice of law. The Court rules in his favor on the basis he admitted wrongdoing, had not engaged in further wrongdoing since the above incidents and expressed remorse.

The Court's opinion is defective in two ways. First, although the Court rules in his favor, it gives the Committee two options. The Committee is given the option to either hold further hearings or admit the Applicant. Since the Court ruled in his favor, they should have Ordered certification. Instead, they gave the Bar an option of certifying or holding further hearings. The Applicant was right back where he started, even though he won. Once he goes through the lengthy and costly process of an appeal, fairness mandates that the Court render a conclusive decision. This Applicant is again at the mercy of his future competitors. It is a situation custom built for the Committee that rejected him, to now squeeze him. Essentially, "be nice to us, and we'll certify, but otherwise we'll hold more hearings." That's garbage.

Secondly, the Court should have slammed the Committee hard, for not adopting specific findings of fact. The Committee concluded he lacked good moral character, but did not say why. That is absolutely unacceptable.

I would admit the Applicant, but do so with some hesitation. The fact that he engaged in what is called the "unauthorized practice of law" does not concern me particularly because most UPL prohibitions are anticompetitive, vague, and suffer from overbreadth. The fact however, that he signed the names of other attorneys is wholly inexcusable and I believe possibly criminal in nature. Nevertheless, since he was not prosecuted, I am reluctant to hold it against him. Frankly speaking, if he did commit the act, then he should have been prosecuted. But in the absence of prosecution and conviction, I am unwilling to conclude it justifies denial of admission. The facts surrounding representing himself to a Judge as an attorney and being held in contempt are not of serious concern to me. It was wrong, but he paid the price by spending four days in jail. Also, the fact that he did it in the course of representing himself, rather than representing someone else, moderately reduces the seriousness. It was wrong no doubt, but not sufficiently serious to warrant denial of admission. My biggest concern in the case is with the Bar's failure to adopt specific Findings. The necessity of supporting denial of character certification with Findings is fundamental to procedural due process. I would be tempted to admit virtually any Applicant if specific Findings are not adopted by the Bar. Stated quite simply, in the absence of Findings, the denial should be deemed ineffective. The Bar

should not be allowed to circumvent basic and fundamental constitutional requirements in such an egregious manner. [208]

158 Cal. App. 3d 497 (1984)

IT'S ALRIGHT FOR US AT THE BAR TO ENGAGE IN DECEPTION

The Applicant instituted suit against members of the Bar's character committee. He passed the February, 1982 Bar exam, but was notified certification would be delayed pending a moral character investigation. A Hearing was set for January, 1983. He learned that an individual he was suing in an unrelated case, was communicating with a Bar admissions official in charge of the character investigation. The Applicant served that individual with a notice of deposition for the January hearing. The Bar wanting to protect its' informant from giving a deposition, and "evaded" the process by canceling the January hearing.

In May, 1983 the Applicant discovered frequent contacts were being maintained between the informant and the Bar admissions official. The Applicant asserted that the Bar was conspiring with the individual to deny his certification in retaliation for the unrelated lawsuit. He further alleged that such conduct violated the Civil Rights Act and deprived him of rights guaranteed by the Constitution. The trial court dismissed his case and the appellate court affirmed dismissal on the ground that the acts of Bar committee members, were entitled to absolute quasi-judicial immunity. Essentially, the Court was saying that even if the Bar Committee did what the Applicant says they did, they were immune from liability under the Civil Rights Act.

I introduce this case not for the purpose of analyzing the validity or invalidity of judicial immunity which is beyond the scope of this book, but solely for the purpose of commenting on the Bar's cancellation of the January character Hearing. It demonstrates how the admissions process is used by parties in litigation for purposes of leverage. That is wrong. All one needs to do when litigating against an individual who is in the process of applying to the Bar is submit a character complaint and no matter how groundless it may be, admission is delayed indefinitely. It is particularly saddening that the Bar intentionally frustrated this Applicant's legitimate right to obtain a deposition by canceling the Hearing. It is also sad that the Bar was not candid with the Applicant regarding the communications it had been receiving. Applying their own standards, this reflects poorly on their character. [209]

741 P.2d 1138 (1987)

WE JUST CAN'T SEEM TO GET THIS FINDINGS OF FACT ISSUE RIGHT

The Applicant practiced as a licensed private investigator for 10 years in California without a single charge of misconduct. He was never charged with or convicted of any crime. Letters of recommendation were submitted on his behalf by five judges, fourteen attorneys and one medical doctor. The Bar denied admission for the following reasons.

In 1974, he counseled a murder witness on how to avoid a subpoena. From 1969-1977, as a California Highway Patrol officer and later as a private investigator he allegedly engaged in inaccurate record-keeping, improper collection and storage of evidence and suspect loan practices.

In 1984, he was hired by an attorney to assist in a child custody dispute. The mother had illegally removed the child, in violation of a valid Canadian Court Order. The Applicant assisted the father with a legal retaking of the child by force. He also did not inform one of his character witnesses that supported his admission to the Bar of the facts and circumstances surrounding an earlier denial of admission to the Bar.

The State Supreme Court rules in his favor, noting that most of the alleged misconduct was at least 10 years old. It concludes that its value in determining present moral character is diminished significantly by its age. The Bar argued that the child custody matter in 1984 demonstrated a lack of rehabilitation. The Applicant countered that the incident facilitated reunification of a father and his child pursuant to a valid court order. The Court notes that prior to the incident, the father's attorney contacted the Sacramento County District Attorney's office to confirm the legality of the proposed taking. Although the attorney ultimately received an angry letter from the mother's attorney, with a copy sent to the State Bar, the Bar initiated no disciplinary proceedings against the attorney who developed the child recovery plan. The Court does not condone what the Applicant did, but emphasized it was accomplished pursuant to a valid Court order.

The most interesting aspect of the opinion addresses an impropriety committed by the Bar. The Applicant had been denied admission to the California Bar in 1982. In 1984 he reapplied, which became the subject of the case at hand. When notifying the Applicant of the character Hearing the Committee's notice identified the subject of inquiry as follows:

> "The purpose of the hearing is to allow you to present evidence of your rehabilitation **since the denial of certification in July 1982**, to examine your conduct **since that date**, and to inquire into any litigation in which you have been involved, including family law matters such as dissolution and child support."

Prior to the Hearing, the Committee's principal referee confirmed that:

> **"Direct evidence will not be taken from second parties as to matters found by the Committee of Bar Examiners in their July 12, 1982 decision**, **unless** in examination of applicant, the State Bar Examiner **specifically** opens up questions in addition to whether applicant is now telling the truth"

Essentially, the gist appeared to be that only conduct from 1982 - 1985 would be the subject of the Hearing. At least that's what the Notice indicated. But the Committee wasn't candid and truthful. What happened is as follows. The Hearing Panel issued its Findings from the 1985 Hearing in January, 1986. The panel noted that it had considered the 1982 findings, <u>but did not elaborate</u> and instead focused on the post 1982 conduct. In June, 1986 the Committee then provided the Applicant with another Hearing. The Court summarizes what happened next beautifully as follows:

> "Despite the Committee's professed concern in 1985 with . . . post-1982 conduct, the Committee's 1986 findings and conclusion painted a much different, and far more damning picture than did the findings of the hearing panel. Eleven of the Committee's thirteen findings of fact were restatements of the 1982 findings.
> . . .
> In fact, nowhere in the Committee's findings and conclusion is the date of any alleged misconduct mentioned. . . . The balance of the hearing was comprised of a question and answer session pertaining to . . . misconduct prior to 1977. . . . we are troubled by three considerations.
>
> **First, it is clear from the hearing transcript that both <Applicant> . . . and his attorney were caught woefully off-guard by the Committee's questioning. . . . The hearing panel's notice of hearing, the hearing itself, and the panel's findings consistently emphasized that the critical issue to be considered was . . . post-1982 conduct. . . .**
>
> Second, by questioning <Applicant> . . . on the facts underlying the 1982 findings, the Committee was, in essence, going behind its own findings. By so doing, the Committee placed <Applicant>. . . in an unfair dilemma. If, on the one hand, <Applicant> . . . challenged the 1982 findings, he left himself open to lack of candor charges, ... On the other hand, if <Applicant> . . . accepted the 1982 findings, he left himself open to charges that he had lacked candor in 1982 by refusal at that time to acknowledge culpability. . . .
> **. . .**
> . . . counsel aptly stated in his closing argument to the Committee, lack of candor is "a valid standard . . . but that's something different than saying that because there is a dispute as to testimony, that therefore is lying."
> . . .
> **The foregoing matters raise significant doubts about the fairness of the Committee's proceedings.** Certainly, the Committee appears to have allowed itself to be carried away by the distant tide of . . . . earlier misconduct."

Footnote 8 of the opinion states:

> "In its brief to the court, the State Bar repeatedly refers to <Applicant's>. . . involvement in the child custody incident as an "assault," although the Committee made no such finding, and no charges of assault were ever filed. . . ." [210]

The State Supreme Court did an exceptionally good job in this case.

782 P.2d 602 (1989)

WHEN LUCK RUNS OUT

The Applicant in this case had the following record:

A. Arrested in 1975 for possession of marijuana. Charges dismissed.
B. Arrested in 1978 with a suitcase containing cocaine. Charges dismissed.
C. Arrested in 1979 when he picked up a package containing marijuana. No charges filed.
D. Police found cocaine in Applicant's car in 1982 following a traffic stop. No charges filed.
E. Arrested in 1982, charged with knowingly and intentionally distributing cocaine. Applicant pled guilty and received a three year suspended sentence, with a six-month actual sentence and five years' probation. Applicant served 147 days at a federal work camp and probation terminated in 1988.
F. All but the first arrest occurred after the Applicant entered law school.
G. Applicant's most extensive drug dealing took place while he studied for the bar exam.
H. Before any of the arrests Applicant was a deputy sheriff and gave more than 80 drug information lectures to school children, warning them of the use of illegal drugs. [211]

He submitted to the Bar Committee 33 letters of recommendation including 6 from members of the California Bar that stated he had an excellent reputation for honesty. He also demonstrated some community involvement since his release from prison. The State Supreme Court rules in favor of the Bar, denies admission and allows the Applicant to reapply in two years. I agree with their opinion.

I also would not admit the Applicant, but would allow him to reapply, at which time I would focus on rehabilitation. He was convicted of a serious crime and that reflects adversely upon consideration of his application. An insufficient period of time has lapsed between conviction of the crime and the application. My determination is predicated on the fact that he was convicted, the short length of time lapsed since the conviction and minimal evidence of rehabilitation. I give little weight to the arrests that resulted in dismissals or no filed charges. Similarly, I give little weight to the letters of recommendation since they only indicate he has friends. The focus is on the conviction and the nature of the crime. It is the standard by which our society assesses a person's character.

791 P.2d 319 (1990)

BANKRUPTCY DISCHARGE AGAINST THE APPLICANT

The Applicant was never convicted of a crime. He was a member in good standing of the New York Bar and had never been the subject of a disciplinary proceeding. He performed work for the New York Legal Aid Society. He submitted letters of recommendation from seven judges, seven attorneys and a pastor. The Bar Committee denied certification for the following reasons. In 1980, he filed for bankruptcy to avoid paying a judgment related to a 1970 fatal car accident in which he was involved, and that money judgment was discharged in the bankruptcy. In 1980, he was also denied admission to the Florida Bar on character grounds. The Florida Bar determined the following instances of wrongful conduct that the Applicant did not dispute:

1. He testified falsely in a deposition during the wrongful death suit that he had no joint interest in any checking account, when in fact he had a joint account with his wife.
2. In his Florida Bar application, he misrepresented the amounts paid by him towards the judgment in the wrongful death suit
3. He refused to make further payments on the judgment
4. He reapplied to the Florida Bar in 1983 and 1987 and was denied admission on character grounds. (Ultimately, he was admitted to the Florida Bar in 1998)
5. He took no steps to fulfill his moral obligation regarding the wrongful death judgment

The California State Supreme Court rules in his favor. The opinion is predicated on the fact that the State Bar violates the Bankruptcy Act by denying certification on the ground that a person has a moral obligation to pay a money judgment. The Court notes that the government is prohibited under statutory law from denying a license to a person solely because he has not paid a debt discharged in Bankruptcy. The Court further notes that the significance of the Applicant's conduct was diminished by the passage of time. The automobile accident occurred twenty years before. The most interesting aspect of the opinion is the Dissent, which I do not agree with. The Dissent contests the Court's holding that federal law prohibits consideration of the bankruptcy. The Dissent irrationally states:

> "As the majority notes**, a governmental unit may not deny a license to a person "solely because" he "has not paid a debt** . . . was discharged under the Bankruptcy Act." (11 U.S.C. Par. 525(a)) . . . I disagree with the majority's conclusion that refusing to certify petitioner on the evidence presented would violate this principle . . .
> **. . .**
> . . . our decisions make clear that section 525(a) **does not foreclose consideration of the continuing indebtedness** as an indicator of lack of rehabilitation from prior defects in moral judgment."

Essentially, the Dissent's position is that although you can't deny a law license because an individual discharged a debt in bankruptcy, you can consider the failure to pay the debt. The position is predicated on an illogical parsing of words to render an absurd and irrational conclusion. Through manipulative use of logic, the Dissent seeks to "evade" the mandate of the Bankruptcy Act for the purpose of enhancing State Bar power. The Dissent's irrational opinion closes as follows:

> "Moreover, the majority's assumption that petitioner's misconduct is in fact not "related to the practice of law" is far from warranted. **It is undeniably true that drunk driving, or filing for discharge of a debt, is not necessarily related to the practice of law**. Petitioner's drunk driving and ensuing bankruptcy, however are not the misconduct alleged in this case. Rather, the true issue is petitioner's dishonesty and disrespect for the legal process." [212]

The Dissent's irrational opinion is important because its' "magical" use of logic ultimately became the warped reasoning adopted by many other states on this issue. As such, it has resulted in State Bars denying admission to many Applicants who declare bankruptcy. The State Bars do so in violation of federal authority. Their irrational notion suggesting that although you can't deny admission based on discharge of a debt in bankruptcy, but can deny admission based on failure to pay the debt, is blatantly ridiculous. To accept such a position requires a warped interpretation of the express language in the statute, that does not comport with its obvious intent. It demonstrates how the manipulative use of statutory construction by State Bars and Courts vacillates wildly from implied construction to strict construction, in order to serve their immediate self-interest. No uniformity or consistency.

Most importantly, the construction suggested by the Dissent lacks logical sense. If you deny admission based on failure to pay discharged debts, then you are substantively adopting a principle that Applicants will be penalized for declaring bankruptcy. **Of greater importance is the fact that the ethical rules of conduct for licensed attorney members of the Bar, contain no requirement that attorneys pay their debts.** How can the Courts then rationally deny admission to an Applicant based on failure to pay debts? The answer is that they can not do so rationally, but can only do it irrationally. My concern is that the Bar's asserted position which substantively "evades" Federal law by the use of manipulative logic makes them appear very deceptive and misleading. Not entirely candid, but instead trying to sneak their position through, even though the rule of law mandates otherwise. The assertion of such a logically flawed position by the Bar impacts on whether the Committee members possess the requisite moral character to practice law.

I would admit the Applicant without a doubt. The majority's opinion is for the most part correct and the Dissent is out in the woods with respect to its' ridiculous misconstruction of the impact of Section 525(a) and the Bankruptcy Act. Similarly, the Dissent's statement that "It is undeniably true that drunk driving . . . is not necessarily related to the practice of law" is incorrect. Drunk driving is a lot worse than not being able to pay your debts. The determinant factor is whether the Applicant was ever convicted of a serious crime, which would include a DWI. That is how we are supposed to determine guilt or innocence with respect to an alleged act. A conviction for any serious crime, including a DWI, is related to the practice of law. To the extent that a DWI does not necessarily impact on an individual's trustworthiness, such is only a mitigating factor.

815 P.2d 341 (1991)

The Applicant appears to have never been convicted of a crime based on facts sets forth in the court's opinion. Between 1980 and 1987 he took the bar exam 13 times before finally passing in 1987, which a Footnote in the opinion points out, "may be a record, but of course it is not fatal or even relevant to the decision."

He graduated cum laude from college and while an undergraduate was active in consumer affairs, and served as the first director of the university's Consumer Protection Project. He also co-authored a consumer rights handbook. He received several awards and citations for his work. He graduated from law school in 1980 and in 1985 joined a Southern California based consumer group known as CALJUSTICE, an organization seeking reform of the attorney disciplinary process, including its removal from the hands of the State Bar. The admission committee must have just loved that. He was a visible advocate for change in the attorney disciplinary system, appearing before several state legislative committees, the State Bar Board of Governors and other forums. He did this on an uncompensated, volunteer basis. Stated succinctly, the State Bar had motive to cause this Applicant trouble. He was seeking through appropriate legal means to weaken their organization. The State Bar also had the opportunity. The admissions process. The Bar focused on some of his personal litigation. It then denied admission on character grounds for the following purported reasons:

1. Litigation commenced by the Applicant demonstrating a pattern of harassment
2. Omitted from his bar application litigation in which he had participated
3. Showed a lack of respect for the law
4. Engaging in un-consented tape recording of telephone conversations

The primary focus of the Bar's inquiry was on incidents that occurred between the Applicant and his former classmates. He wasn't getting along with some former law school classmates and ultimately it impacted upon his application. The facts in the opinion do not clearly indicate who was at fault. Essentially, what you had were four students who at one time were friends and subsequently the friendships ended. Ultimately, there were mutual allegations of harassive telephone calls, the anonymous mailing of sexually explicit postcards and fragments of newspaper clippings. It is not clear whether the Applicant was the responsible party or whether he was the victim, as he asserted. Little evidence corroborated that he was the responsible party, other than allegations from ex-friends. He similarly alleged they were responsible. Mutual self-serving accusatory allegations that appear for the most part to balance each other out. Ultimately, he instituted suit against some of his ex-friends. He was represented by an attorney in all of the proceedings with the exception of one small claims matter. The opinion contains a somewhat amusing Footnote (8) with respect to the litigation engaged in by the Applicant that states:

> **"The hearing panel's conclusion that petitioner used the courts for "personal reasons" is also puzzling. The bulk of civil proceedings brought by individuals would qualify for reprimand under this rubric."**

The Bar alleged that in his application, the Applicant omitted several of the lawsuits, until the omissions were brought to his attention. His stance was that the omissions were inadvertent. The Bar countered that his explanation was unconvincing because he appeared to be otherwise meticulous with details. The Court decides squarely in his favor stating:

"We are not informed by its decision, however, what the panel made of these omissions--it made no finding that they constituted acts of moral turpitude. Presumably the panel inferred that petitioner's failure to disclose the lawsuits until asked by the State Bar to submit an updated long-form application was accompanied by an intention to conceal the fact of the litigation from the State Bar.

The evidence, however, undermines such an inference. It discloses correspondence in 1986 between petitioner, the State Bar, . . . in which petitioner noted the restraining order he had obtained against . . . and his subsequent defamation action . . . . The record includes a reply from the State Bar's executive director inviting petitioner to provide any additional information . . . Thus, in 1986 petitioner certainly knew that the State Bar was aware of the . . . litigation. . . . He would thus have had no discernible reason to fail to disclose the litigation in his application in the hope of concealing it from the State Bar.

We have distinguished between affirmative misstatements intended to place an applicant at an advantage and the unintentional nondisclosure of information which, under the circumstances, is not morally significant. . . . Given the circumstances of record, notably the absence of any apparent motive on the part of petitioner to lie about the matter, the failure to include the litigation appears to us to qualify as the sort of "unintentional nondisclosure of a relatively unimportant matter" which does not justify exclusion from the bar."

In reference to the Bar's allegation of un-consented tape recording of phone calls, the Court notes it was not necessarily unlawful. The Court criticizes the Bar instead for placing an unwarranted value on the fact the recording was made without consent, and ignoring the substantive evidential value of the cassette's contents. The Court states:

"Rather than assess the substantive evidential value of the content of the cassette recordings in assisting it in resolving the pivotal issue in the case, the hearing panel instead seized on the fact that the tape recordings were made without . . . knowledge as an additional basis on which to fault petitioner's character. It ruled that the making of the cassette revealed another character defect--a "lack of respect for the law"--and furnished an additional ground on which to deny petitioner admission.

Of all the evidentiary uses to which the tape recordings and their contents might have been put, the hearing panel's seems the most dubious. . . ."

The Court orders that he be certified for admission. It is an excellent opinion. The fact set suggests the Bar was acting out of vindictiveness. This guy was challenging their disciplinary process, had never been convicted of a crime, and the most the Bar could come up with to use against him was some minor litigation he was involved in. The manner in which the Court addressed the litigation issue is excellent and deserves repeating because it is equally applicable to issues other than litigation:

" He would thus have had no discernible reason to fail to disclose the litigation in his application in the hope of concealing it from the State Bar.

We have distinguished between affirmative misstatements intended to place an applicant at an advantage and the unintentional nondisclosure of information which, under the circumstances, is not morally significant. . . . notably the absence of any apparent motive on the part of petitioner to lie about the matter, the failure to include the litigation appears to us to qualify as the sort of "unintentional nondisclosure of a relatively unimportant matter" which does not justify exclusion from the bar." [213]

The Court is hitting on the key elements of what constitutes a lack of candor. Those elements are as follows:

a. An affirmative misstatement, rather than simply a nondisclosure
b. Material in nature
c. Made with intent to deceive

Simply failing to disclose immaterial matters is not "lying." But what determines whether something is "material" or "immaterial?" The Court states it perfectly above:

"***notably the absence of any apparent motive on the part of petitioner to lie about the matter"***

What determines whether "motive" exists? Obviously, whether affirmative disclosure would have a negative impact on the ultimate decision. The resulting simple rule for assessing truthfulness should be as follows:

A nondisclosure of information is immaterial for purposes of assessing the Bar applicant's truthfulness and candor, if affirmative disclosure of such information would not result in denial of admission to the Bar.

A related corollary is as follows:

The affirmative misstatement of material information with an intent to deceive is a valid basis for denying a Bar applicant admission on the ground they lack the requisite moral character and fitness.

In conclusion, it is grossly unfair to treat a nondisclosure with the same harshness as an affirmative misstatement. To do so, places the Applicant at the whim and mercy of his future competitors and the Bar, which can arbitrarily and discriminatively determine the degree of disclosure necessary to probe all facets of an individual's past, background and beliefs.

CONNECTICUT

294 A.2d 569 (1972)

WE ARE PLEASED TO INFORM YOU THAT THE LAW SCHOOL YOU GRADUATED FROM WAS ACCREDITED IN 1954. UNFORTUNATELY, SINCE YOU GRADUATED IN 1952, WE NOW DISBAR YOU. WE MADE A MISTAKE ADMITTING YOU.

Connecticut had a system, that appears custom built for conflict. Admission was granted by an individual Superior Court judge, based on the recommendation of local county bar committees. The Applicant was a member of the NewYork bar. He graduated from New York Law School in 1952. In 1969, he applied to the Connecticut Bar Examining Committee for a certificate of educational qualifications that was required for admission to the Connecticut Bar. He then applied to the Superior Court for admission and informed the clerk's office he had applied for the educational certificate, but had not yet received it. The clerk attached a note indicating the certificate was lacking. Notwithstanding the absence of the certificate, the County Standing Committee recommended his admission and the court then admitted him. The County Committee just assumed New York Law School was accredited when he graduated. The County Committee "failed to disclose" to the Court that the educational certificate had not been issued yet.

In 1970, the Bar denied his application for the educational certificate on the ground New York Law School was not accredited when he graduated. The school had however become accredited two years after his graduation in 1954. The County Committee asserted the school should be considered properly accredited with respect to the Applicant. They presented these facts to the judge who had admitted the Applicant and the court held a hearing. At the Hearing, the Committee Chairman disclosed all that had happened and asserted the Committee considered his law school as properly accredited. The judge then correctly endorsed the report. Upon learning of the court's decision, the State Bar Examining Committee brought an action to vacate the Order admitting the Applicant. The Applicant appealed on the ground the court lacked the power to vacate the judgment of admission. He claimed that having admitted him the Court could not remove him. The Connecticut Supreme Court ruled in favor of the State Bar in an irrational opinion that states:

> "Because of the peculiar facts surrounding the granting of the temporary license and the total disclosure of facts by the respondent, it is evident that all parties did not want to cast any implication of disgrace on the respondent. Although the proceedings were not given any label, they were in fact proceedings to disbar. Unfortunately, the word "disbar" connotes misconduct.
> . . .
> **The issue then is whether the Superior Court may remove the respondent from practice after the time for reopening the judgment admitting him has passed.** Practice Book 19 provides the answer : "The Superior Court may, for just cause, suspend or disbar attorneys."
> . . .
> The court is not restricted in this function to removal solely for misconduct. Any unfitness--whether moral, mental, educational or otherwise will constitute just cause for denying one the power to act as an attorney.
>
> While the Superior Court has established disbarment procedures only in the case of misconduct, the court, in the absence of specific provisions, has the power to conduct proceedings as it sees fit. . . .

> . . .Confronted with the fact that the respondent had not satisfied the educational requirements of Practice Book 13, the court had no choice but to remove the respondent from practice as an attorney."

This case can be summarized as follows. The local Standing Committee screwed up by recommending admission without first receiving the educational certificate. It also failed to disclose the absence to the Court. The admitting Superior Court screwed up by not carefully scrutinizing the record to see if the educational certificate was present. The State Bar then "evaded" the rule of procedure placing a time limit on reopening judgments by asserting the Superior Court's Order of admission was not a judgment. Simultaneously, they asserted that New York Law School's accreditation in 1954 was invalid for a 1952 graduate submitting a bar application in 1970.

The end result is that an Applicant who did absolutely nothing wrong is not only denied admission, but worse yet is unjustly branded with the stigma of disbarment which he must report on an application to any other Bar. This all occurs because of the County Standing Committee's screw-ups, the State Bar's intent desire to perpetrate an obvious injustice and the State Supreme Court's irrational willingness to penalize an innocent Applicant for the colossal foul-ups of the Committee and Bar. It is particularly interesting that while the State Supreme Court construed procedural rules in an extraordinarily strict fashion against the Applicant, it simultaneously had the colossal gall to make the statement:

> "While the Superior Court has established disbarment procedures only in the case of misconduct, the court, **in the absence of specific provisions**, has the power to conduct proceedings **as it sees fit**." [214]

392 A.2d 452 (1978)

WE'RE COMMITTEE LAWYERS. WE DIDN'T THINK CONSTITUTIONAL NOTIONS OF FAIR PLAY APPLIED TO US. WE REALLY THOUGHT WE WERE EXEMPT.

In this case, two Applicants both members of the New York Bar were denied admission on the ground they had not satisfied the local standing committee that they would devote a major portion of their working time to practicing law in Connecticut and also on moral character grounds. The Applicants appealed to the Connecticut State Supreme Court. One minor problem though. The Supreme Court had neither a transcript of the proceedings, nor a record sufficient in detail to show the facts developed by the committee with respect to the moral character issue.

There was also nothing to show that the Applicants had been given an opportunity to explain or refute facts adverse to them. Kind of like a little Star Chamber. They reject the Applicant on moral character grounds, but don't give the State Supreme Court the reasons for rejection. They just arbitrarily decide to deny admission. The Connecticut Supreme Court's opinion states:

> **"In lieu of a transcript of the proceedings and what was said by the applicants as to their intention to practice in Connecticut, the court had for consideration only the recollections of the two applicants and the recollections of two members of the committee, supplemented by the personal notes of the chairman. . . .**
>
> The conclusion of the standing committee that the applicants had failed to satisfy the committee that they were of good moral character appears to have been predicated upon information obtained by the committee subsequent to the filing of its first report. . . .
>
> **The circumstances giving rise to this appeal make abundantly clear the reasons why this court spelled out . . . the necessity for a transcript or other adequate record of the proceedings of a standing committee . . .**
>
> **In no way do we impugn the industry and integrity** of the members of the Fairfield County standing committee who, in responding to the call of the court, perform a difficult and time-consuming task of great assistance to both the bench and the bar . . . ." [215]

In no way do we impugn the industry and integrity? Sorry, that's exactly what the Court was doing. And for good cause. No record makes for a smelly case.

601 A.2d 1021 (1992)

EVERYBODY'S GOT SOMETHING TO SAY.

WE'RE WILLING TO CORRECT THE DEPRIVATION OF DUE PROCESS, NOW THAT YOU'VE RAISED THE ISSUE IN COURT. TOO BAD THE CHARACTER WITNESS YOU WANTED TO TESTIFY FOR YOU, ISN'T HERE ANY MORE.

This case illustrates the complex lunacy of the Connecticut system which is custom built for conflict, because too many committees, agencies and courts are involved. Typically in most states, the State Bar assesses character and makes a decision. Adverse decisions are then appealable to the State Supreme Court. Connecticut apparently wants everyone to have their little say, and different standards are applied by each group.

The Applicant was unanimously recommended by the Fairfield County Standing Committee for admission. Thereafter, the State Bar Examining Committee conducted its own investigation and rejected him on character grounds. He sought review in the trial court claiming the State Bar Examining Committee (BEC) acted arbitrarily and in abuse of its discretion. The trial court ruled in his favor. The BEC appealed and the Appellate Court transfers the appeal to the State Supreme Court. Got all that? Substantively, the issues were as follows. The Applicant used marijuana from 1977 - 1985 resulting in three convictions for possession. He revealed them on his application.

After the Fairfield County Standing Committee recommended admission, the BEC notified the Applicant that on February 19, 1988 it would hold a hearing. The BEC Notice advised the Applicant he could bring an attorney, and documents or witnesses relevant to the area of inquiry which was his criminal record. The Notice also indicated however, that general character witnesses would not be permitted. The Applicant appeared without counsel and responded to extensive questioning. The committee denied admission and each member placed the reason for his vote on the record. The reasons delineated by two of the three members were stated in vague, ambiguous and general terms as follows:

1. Applicant's "explanation . . . was not credible."
2. "applicant displayed a lack of candor and did not appreciate the importance of his testimony."

The third member voted to deny based on the three convictions. The trial court nevertheless, ordered admission. The BEC appealed on the ground that the trial court lacked authority to assess moral character. The State Supreme Court is obviously dealing with a power struggle. Who has the final word short of the State Supreme Court on character assessment, the BEC or the trial court ? In the midst of this power struggle, is the helpless Applicant who just wants to be admitted, but has basically become a Pawn in their power game.

The Applicant claims the BEC deprived him of due process rights of notice and an adequate opportunity to rebut adverse evidence. The State Supreme Court rules that the Superior Court may review the BEC's negative recommendation, but such a review is not an independent examination (de novo). Rather, the trial court is limited to determining whether the BEC conducted a fair and impartial investigation. In making this determination one issue that must be decided is whether the BEC must give weight to the Fairfield County Standing Committee's recommendation. It is now obviously a mess. The local committee, the BEC, the trial court and then the State Supreme Court.

The Supreme Court determines that while the trial court may not conduct a de novo hearing, the BEC may do so and does not have to give any consideration to the standing committee's findings. This is obviously ridiculous, since it is clear there is a great deal of friction between the local standing

committee and the BEC. Such friction creates a high probability of creating a situation where receiving the local standing committee's positive recommendation, actually functions as a detriment. The State Supreme Court however, is going BEC right down the line. In reference to the general, conclusory nature of the BEC's purported "Findings" the State Supreme Court cops out and states:

> **"In this case, although the executive committee members did not articulate the precise facts underlying their ultimate conclusions, their failure to do so is not reversible error.** The committee should ordinarily find only the ultimate facts. . . ."

By adopting such a posture, the requirement of having facts and findings is negated. The BEC is essentially given the power in substance, if not form, to deny admission for any ambiguous reason. In reference to the Applicant's assertion that the BEC violated his right to procedural due process by questioning him on February 19, 1988 about matters of which he had no notice, and prohibiting him from presenting general character witnesses, the State Supreme Court cops out again stating:

> "Although not represented by counsel, the petitioner, a law school graduate, did not object to the notice he had been given nor to the fact that he was prohibited from presenting general character witness 10 at the time of the first hearing. Moreover, on November 17, 1989 the BEC conducted a second hearing . . . . At that time, the chairman of the executive committee informed the petitioner's counsel that he was "free to present anything that he considers relevant. . . ."

Footnote 5 of the Court's opinion indicates that the November 17, 1989 hearing was scheduled just prior to the hearing on the petition filed in the Superior Court. The Applicant agreed to postpone the Superior Court hearing pending another BEC hearing. I believe this suggests the BEC convinced the Applicant to postpone the Superior Court hearing for the purpose of curing its' own defects in procedural due process. The concept being:

> "the applicant has us on due process grounds, so let's just have another hearing for the purpose of weakening his case."

Apparently, the BEC was successful because the Supreme Court's opinion states:

> "We are persuaded that the BEC corrected any possible due process violations as to notice and to the prohibition on general character witnesses by giving the petitioner an opportunity to present evidence involving his "criminal record or . . . any other matter . . . ."

A few additional footnotes in the opinion are noteworthy, tending to raise an eyebrow or two. Footnote 3 states in reference to the BEC:

> "Although five members of the executive committee participated in the factfinding hearing, the minutes reflect that only three voted on the petitioner's application at the subsequent executive session."

Footnote 7 states:

> "The constitutionality of denying admission to the bar solely on the basis of any past criminal act was placed into doubt by the United States Supreme Court's opinion in Schware v. Board of Bar Examiners, 353 U.S. 232, 243, 246-47 (1957). In that case, the court stated that the nature of an offense must be taken into account in determining whether the commission of an offense is rationally connected to a person's moral character . . . ."

Footnote 10 explains the entire case, because it demonstrates the politics involved. It states:

> ". . . the BEC apparently had before it letters that had been submitted to the standing committee by a Superior Court judge, **the petitioner's brother, who is an attorney**, and an assistant clerk at the Milford Superior Court, all attesting favorably to the petitioner's character."

The Applicant's brother was an attorney. A critically important fact buried in a footnote. It is my guess there was friction between the brother and the BEC, and the brother was influential with the local standing committee and Superior Court. It all comes down to who you know, or in this case, who it probably wasn't advantageous to know. Lastly, Footnote 12 states as follows:

> **"In this respect, fitness to practice law may be analogized to parental fitness."** [216]

The analogy raises too many disturbing issues associated with governmental paternalism for analysis herein.

Superior Court of Connecticut, No. 032-05-50, Feb. 18, 1994

YOU'RE ADMITTED. NO!! WAIT, YOU'RE NOT ADMITTED.
WELL, ACTUALLY WE MEAN YOU SHOULDN'T HAVE BEEN ADMITTED.
ANYWAY IT WASN'T OUR FAULT. IT'S THIS STUPID SYSTEM WE HAVE.

The Applicant was a member of the Pennsylvania Bar. His application in Connecticut was initially referred to the New Haven County Standing Committee. This however, was apparently a clerical error. As a result, it was referred back to the BEC with a favorable recommendation from the Standing Committee. The BEC then conducted an independent investigation. By letter dated August 12, 1989 the BEC notified the Applicant that it would hold a hearing on September 15, 1989 to consider the following items:

1. failure to respond to inquiries
2. credit questions
3. law school incident
4. negative comments

At some point however, the Applicant was somehow admitted to the Bar, because on June 8, 1990 the BEC moved to revoke the Admission on the ground it was improvidently granted. This is obviously a case where due to the unique procedure for admissions in Connecticut, the left hand constantly does not know what the right hand is doing. The end result is that the Bar consistently ends up looking foolish. The Court determines that the Applicant was denied procedural due process because the Committee gave no reasons for its conclusion that he lacked good moral character. It then remands the case back to the BEC. The following portion of the opinion is nothing less than pathetically sad or funny depending on how you look at it. If it weren't for the unjust impact upon the Applicant, I would opt for funny, but the impact of the BEC's stupidity on the Applicant precludes such a stance. The Court states:

> "the Committee was concerned about . . . **a law school incident involving an argument over a cup of coffee . . . .**
>
> Applying the Committee's own definition of good moral CHARACTER, **it is the holding of the court that the law school incident concerning the cup of coffee is insufficient standing alone to support a conclusion of the absence of good moral CHARACTER**. It is further the holding of the court that the letter from . . . not only is insufficient standing alone . . . but appears in the transcript never to have been directly discussed with Mr. . . . . The treatment of this letter appears to be the most glaring example of a lack of due process at the administrative hearing. . . .
>
> . . . The Committee should not find <Applicant> . . . to lack good moral CHARACTER based solely on **the law school incident concerning the argument over the cup of coffee** nor should it find him unqualified based solely on the comments of . . . **nor should it find him unfit based solely on any combination of the cup of coffee incident and the . . . letter."** [217]

The BEC's denial of admission on moral character grounds is so pathetically stupid, I refrain from making further comments on this case. The only thing "improvidently granted" in this case, was giving such State Bar nitwits the authority to assess moral character.

DISTRICT OF COLUMBIA

333 A.2d 401 (1975)

OBJECTIVE TESTS ARE ALWAYS BETTER

The Applicant was denied admission on character grounds. He contended that the standard of good moral character was unconstitutionally vague and the Committee's findings were wrong. He was essentially attacking the Bar admissions process at one of its' weakest point. The Court's opinion is therefore understandably short for strategic reasons. The Court states:

> "It is true that the term "good moral character" is a term of **broad dimensions** and, as has often been said, can be **defined in many ways**. . . No doubt satisfaction of the requirement of moral character involves an **exercise of delicate judgment** . . . that it expresses "an intuition of experience which **outruns analysis and sums up many unnamed and tangled impressions**,- impressions which may **lie beneath consciousness** without losing their worth."

The Court's opinion concludes by holding as follows:

> "So, it would appear that appellant must meet the historic standard of "good moral character"- **there being no better test** for the purpose known to us; and the Committee on Admissions, and upon occasion this court, **must apply the standard judiciously**." [218]

It is ironic the Court would render an opinion recognizing the primary reasons why the character standards are unconstitutionally vague, and then remarkably arrive at the irrational conclusion that they are constitutional. I disagree with the Court's determination that there are "no better tests." Objective tests are always better than those which are subjective and "lie beneath consciousness" being of "broad dimensions." The test I propose is simple and objective. **An individual who has never been convicted of a crime triable by jury (contempt is typically not triable by jury and would therefore be excluded), or subject to professional discipline meets the moral character standard. Period**. An individual who has been convicted of a crime or disbarred has their moral character assessed in light of the conviction or disbarment with appropriate emphasis on rehabilitation. Simple, objective, fair and uniform to everyone applying without the need to apply "unnamed and tangled impressions." **Even assuming other matters are sufficiently important to justify inquiry, the standards of justice mandate that such inquiries be made periodically of all judges and attorneys.** Not just Nonattorney Bar Applicants.

494 A.2d 1289 (1985)
538 A.2d 1128 (1988)

This is one of the few cases where the Court grants admission and I am not so certain that I agree. It involves three Applicants. What is remarkable is that the Applicants were granted admission in this case, while countless others are irrationally denied admission for only trivial matters.

The first Applicant in this case was convicted of voluntary manslaughter. The facts were undisputed. In 1970 he pled guilty to driving with a suspended license and served 3 days in jail. In 1971 he was convicted of disorderly conduct and driving while intoxicated. In 1972 he was convicted for possession of controlled substances and sentenced to 60 days. Near the end of 1972, he agreed to assist a friend in getting back drugs they believed were stolen by another student. They threatened the student with a knife and pistol-whipped him. Two acquaintances of the student showed up unexpectedly and the Applicant used chloroform on them, which killed one. The Applicant evaded arrest for 4 months. He was indicted for first and second degree murder and felony murder, but entered into a plea bargain for voluntary manslaughter. In 1973, he was sentenced to 15 years in prison.

While in prison, he became a jailhouse lawyer, completed his bachelor of science degree and tutored other inmates. He participated in group therapy and ultimately became a co-therapist. He was paroled in 1976 and entered a paralegal training program. In 1977 he served an internship with a program formed to combat racial bias. After his parole ended in 1979, he enrolled at Antioch School of Law in Washington, D.C. where he served as editor of the Prison Law Monitor. He also worked as a part-time law clerk with a local law firm. He completed his law school studies one semester early. There were no incidents of subsequent criminal behavior.

He passed the 1982 D.C. Bar exam and then attended several hearings on his moral character. He presented testimony from over 20 persons including lawyers, paralegals, and law professors. All were aware of his prior convictions. The judge who sentenced him for manslaughter wrote the Committee a favorable letter stating:

> "I was of the opinion then and now that he did not intend to cause death. . . . As far as I am concerned, he has paid his legal debt to society for his unlawful conduct . . . . If you find him to be sincere and trustworthy, I certainly would not criticize you if you were to grant him admission to the bar."

The six members of the Committee were divided evenly and each group submitted a report. The District of Columbia Court of Appeals first decides in 1985 to remand the case back to the Committee for further proceedings. A strong Dissent is written by three Judges indicating that remand is inappropriate because the Applicant is unfit for admission based on his convictions. After further proceedings, the Bar Committee recommends admission with one Dissent. The case is then consolidated with two other Applicants, also convicted of serious felonies, and another opinion is rendered by the District of Columbia Court of Appeals in *538 A.2d 1128 (1988).* All three Applicants are granted admission. The Court notes that the first Applicant had already been admitted to the Michigan Bar, the state in which he committed the homicide.

A few facts about the other two Applicants. One attempted to rob a bank at gunpoint in 1970. He fired several inaccurate shots at an armed bank guard, who returned the fire. The Applicant was seriously wounded. He entered a guilty plea to a charge of attempted armed robbery and was sentenced to twenty years imprisonment. He served seven and was paroled in 1977. After his parole, he attended Antioch law school and helped start a law journal. He had excellent references and for over a year worked as a clerk at a large law firm. He was not a member of any Bar when the Court rendered its opinion.

The third Applicant was arrested ten times between 1959 and 1966 for offenses related to his addiction to heroin. In 1962 he received a felony conviction for sale of narcotics. He served more than two years before parole in 1965. One year later he was convicted of narcotics distribution. This conviction was later vacated and the indictment dismissed on the ground of entrapment. He served five years in prison before the conviction was reversed. While in prison he acquired his high school equivalency diploma and completed several college courses. After his release, he finished his college education, obtained a masters degree from John Jay College of Criminal Justice and a law degree from Rutgers University. He also performed numerous social service activities and had numerous recommendations from reputable individuals. In 1985, he was admitted to the New York and New Jersey bars. Ruling in favor of all three Applicants, the Court states as follows:

> ". . . all the other jurisdictions of which we are aware have eschewed a per se rule of exclusion for previously convicted felons, opting instead for case-by-case determinations . . .

Regarding the first Applicant convicted of manslaughter the Court states:

> "It is now more than ten years since <Applicant>. . . was released from prison. We are persuaded that his rehabilitation is genuine and complete. . . . The sincerity of his remorse has impressed not only his friends and business associates but the Committee investigator . . . . He is attempting to atone for his act by dedicating his life to improving the lot of prisoners. . . . The quality of his good works touches every aspect of his life, and includes neighborhood teenagers as well as acquaintances and friends."

Regarding the second Applicant convicted of attempted armed robbery the Court states:

> "We also accept the Committee's recommendation and admit <Applicant>. . . . The Committee found that . . . single criminal episode, the attempted armed robbery of a bank, occurred when . . . emotionally immature. . . ."

An interesting facet of the Court's opinion concerns the fact that it adopts a different standard for admissions compared to disbarment. The Court had held in *424 A.2d 94* (D.C. 1980) that an individual convicted of an offense involving moral turpitude must be permanently disbarred and never reinstated unless pardoned. The Court now addresses whether that holding precludes an initial admission. It states as follows:

> "We are satisfied that this court can adopt a rule for the admission of applicants who have committed felonies that differs from the rule it employs in connection with the application for readmission of a former attorney who was disbarred for committing a felony. . . .
> . . .
> . . . Apparently, only one state, New York, has a mandatory, permanent disbarment provision similar to that of the District of Columbia. Under New York law, any attorney convicted of a felony, "shall upon conviction, cease to be an attorney." . . . The court in New York have the power to vacate or modify an order of disbarment only upon the reversal of a conviction or a pardon. . . .
>
> We know, however, that New York has admitted some persons previously convicted of felonies to its bar. . . .

Thus, the only jurisdiction other than the District of Columbia that disbars and precludes the readmission to the bar of all felons has adopted a more lenient rule for those previously convicted of felonies who apply for the first time for admission to the bar. . . ."

Two Judges filed a Concurring Opinion approving of the ultimate decision, but have difficulty with the foregoing contradiction. They state:

"I have difficulty with the idea that a lawyer has a higher obligation than a lay person not to violate the law. But, even if there is merit to that idea, I do not believe it should serve, in any way, to justify admission . . . . if convicted of the same crime after admission, would have to be disbarred permanently. **I believe the same policy, whether eligibility to apply (or reapply) . . . should apply in both situations."**

Two Judges file Dissenting opinions. They would deny admission on the basis of the convictions. One of the Dissents notes that the serious nature of the crimes raises a presumption of bad moral character that would need to be overcome by clear and convincing evidence (not merely a preponderance of the evidence). An interesting footnote reads as follows:

"I note with dismay the seeming indifference of most of the organized bar to these cases. Before oral argument, the court entered an order inviting "any sections or committees of the District of Columbia Bar," as well as six voluntary bar associations, to file amicus curiae briefs. None of the voluntary bar associations responded, and only two of the twenty sections of the unified Bar filed a brief; the other eighteen remained lamentably silent." [219]

My decision? I would probably with some hesitation, grant admission to the third Applicant convicted of narcotics distribution based on the facts set forth in the opinion which appear to indicate rehabilitation. I would disregard the arrests not resulting in convictions.

The other two Applicants, one convicted of voluntary manslaughter and one convicted of armed robbery, I would with some hesitation deny admission. They are no doubt difficult cases. The crimes however, are too violent and serious in nature and there is no doubt the Applicants committed them. Convictions resulted. I really could not foresee granting admission to anyone convicted of such violent offenses, with one exception. I would be amenable for purposes of assessing a Bar application to consider whether the Applicant was really guilty of the crime they were convicted of. It would take powerful substantial corroborating evidence. In these two cases, the Applicants pled guilty. Assuming hypothetically, that they had pled innocent and continued to assert their innocence during the admissions process, I would review the appropriate factual matters to make an independent examination.

In summary, my position is as follows. Conviction of a crime does not automatically preclude admission. The application however must be considered in light of the conviction. For this purpose, the Committee should assess the nature of the crime, rehabilitation and also whether the Committee independently believes the Applicant really committed the crime. If you've never been convicted of a crime, there should be a presumption that you have moral character sufficient for admission.

Most of the other questions on the Bar application which are unrelated to the commission of crimes are designed solely to enhance the economic interests of the attorneys. And that is the reason why similar inquiries are not made periodically of licensed attorneys.

564 A.2d 1147 (1989)
579 A.2d 668 (1990)

These two cases deal with the trials and tribulations of one Applicant. They are a remarkable contrast to the prior set of cases dealing with convicted felons.

The Applicant in this case apparently wasn't particularly fond of Judges. In 1985, after being found guilty of assault, he was then found guilty of contempt for expressing his displeasure with the verdict. The assault conviction was subsequently reversed, leaving only the contempt conviction. At some point, he was investigated by the Texas Bar for engaging in the unauthorized practice of law, but no charges were filed. He sat for the 1982 and 1983 Bar exam, but did not pass. He then petitioned for re-grading and passed. You may recall from the Arizona case, how much the Bars like it when an Applicant petitions for re-grading. (See Ronwin Case in Arizona Section herein) There seems to be a direct correlation between an Applicant's respectful exercise of legal means for redress and a finding by the Bar Examiners of lack of moral character.

The Applicant's father was a member of the New Mexico Bar and DC Bar. The Applicant worked as a law clerk in his office and participated in the deposition of a witness. His participation resulted in a hearing before a New Mexico Judge. He purportedly represented to the Judge that he had passed the DC Bar, when in actuality he was still awaiting formal action on his petition for regrading. He also represented that he had graduated from Antioch Law School, when in actuality he attended Antioch for two years, before transferring to Potomac School of Law. The Judge held him in contempt for participating in the deposition, but permitted him to purge the contempt by paying the expenses of the other party.

In sum, you have an Applicant with one minor contempt conviction in Texas and that's it. The New Mexico contempt conviction had been purged and the assault conviction was reversed. No heinous offenses or serious criminal convictions of any nature. He does however, have an "attitude" that the Bar doesn't like.

After admitting convicted felons in the prior case, the DC Bar Committee denies admission in this case on character grounds. The Applicant appeals and what happens next is incredible. The Court first renders an opinion ordering admission. Judge Belson Dissents however. Judge Belson is the same Judge that wrote the majority opinion one year previously in the case admitting the convicted felons. Now, he doesn't feel an individual with a minor, contempt conviction should be admitted. That is pure hypocrisy. He writes as follows to justify the irrational assertion that an individual convicted of contempt should be denied admission, while one year before he wrote the lead opinion admitting three felons convicted of serious crimes:

> "In its discussion, the Committee indicated that it remained of the opinion that the entry of the Texas judgment of contempt . . . is evidence of the applicant's lack of respect for the judiciary and reflects poorly upon his competence to comport himself in the manner expected of a member of the District of Columbia Bar. . . The Committee also expressed its grave concern about statements in his brief which, in the Committee's view, indicated his lack of respect for the judiciary. The Committee was referring to the following passage in . . . support of his application for admission :
>
> > "Furthermore, the Applicant is in agreement with the Committee's statement that "his actions shows (sic) his lack of respect for the Rockwall County judiciary.
> >
> > **The Applicant cannot respect a judiciary system set on political favors, a system in which the judge has no legal qualifications, of one that uses the law for their own personal gain, and on (sic) which attempts to intimidate and humiliate those who**

are willing to speak the truth.

. . .

The Applicant further states that he cannot have respect for any institution that is undeserving of its respect. The Applicant states that for this he does not need to apologize (sic).”

Frankly speaking, I love what he wrote. Nevertheless, he is penalized for being a passionate individual with strong opinions that tends to tick off pompous, hypersensitive members of the Judiciary. There was absolutely no valid ground to deny his admission. The fact that the Committee would do so after recommending admission in the convicted felon cases demonstrates that admission decisions are based on who is willing to be subservient to State Bar economic interests, as opposed to who the Bar irrationally concludes has a bad “attitude.”

The admission decision is not predicated on one’s “acts,” but rather upon their willingness to be submissive to the Bar’s anticompetitive interests. After the Court's first opinion ruling in the Applicant’s favor, the case is heard again “en banc.” This time the Court rules in favor of the Bar Committee and admission is denied. It is clear there are a lot of political games going on by both sets of Judges. Judge Belson, previously the Dissent, now writes the majority opinion. Judge Terry who Dissented in the convicted felon cases, was in the majority in the Court's first opinion in this case. Now he writes a beautiful Dissent that sums the case up quite well, along with my position:

> “I cannot, in good conscience, join my colleagues in refusing to admit <Applicant>. . . to our bar. My views are essentially the same as those expressed in the Per Curiam opinion for the division . . . . Unlike the majority today, **I believe the only matter that we may properly consider on the issue of “good moral character” is the contempt conviction in Texas,** . . . . Though it cannot be ignored entirely, **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 today 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> . . ., whose major flaw seems to be that he has difficulty controlling his temper.**
>
> **In particular, I think the majority goes too far in attaching any weight at all to the alleged unauthorized practice** . . . I say this because the . . . authorities . . . have never seen fit to bring charges . . . as a result of that incident . . . . Such overreaching by the Committee should not be countenanced by this court.
>
> After all is said and done, I am left with the firm conviction that an injustice has been done . . . . It would be inaccurate to describe him as a diamond in the rough; he is a good deal more rough than diamond like. . . . tends at times to speak without reflecting on the impact of what he says. He is not a particularly good writer. As another member of the court remarked at oral argument before the division, he is “his own worst enemy.” But none of these traits should preclude his admission to the bar. . . . Nevertheless, I cannot help feeling that if <Applicant>. . . were a bit more polished or had gone before the Committee with a bit more deference (or a lot more), he would not still be fighting for admission to the bar seven years after passing the bar examination.” [220]

Judge Terry's Dissent for the most part sums the situation up extremely well. His position is wholly consistent. He Dissented in the cases that admitted the convicted felons, but would admit this individual with one contempt conviction. As indicated in the foregoing case dealing with the convicted felons, I probably would have admitted at least one of them. But how can you possibly admit three felons convicted of serious and violent offenses, and then deny admission in this case? That is irrational, arbitrary, capricious and conclusively demonstrates that whether the ability to practice law is classified in form as a "Right" or "Privilege," it is in substance treated like a "Privilege" to be granted only upon the grace and favor of the licensing organization.

By denying admission in this case, Judge Belson and the majority divested the convicted felon cases of what could otherwise have been their legitimacy. This saddens me, because as I indicated, I truly believe at least one of them should have been granted admission. I am also very open to considering the circumstances of particular convictions that don't deal with heinous, violent crimes, or the circumstances surrounding the legitimacy of a conviction. By flip-flopping in the above case however, the majority totally invalidated the legitimacy of the admissions process.

579 A.2d 676 (1990)

The Applicant graduated from law school in 1975. After eleven unsuccessful attempts to pass the California bar exam, he took and passed the 1980 Georgia bar exam and was admitted to the Georgia Bar. He went on to fail the California exam five more times. In 1981, he was admitted to the Tax Court Bar and the Bar of the United State's Court of Military Appeals. He was admitted to the Utah Bar in 1987. In 1985, he filed an application for admission to the DC bar. He was attempting to obtain reciprocity admission, pursuant to rules that allowed such without sitting for the bar exam. The issue was whether the DC reciprocity rule required him to demonstrate that he had actively engaged in the practice of law for five years.

The NCBE (National Conference of Bar Examiners) report indicated difficulty in obtaining references that could verify his law practice in Georgia. The DC Committee asked him to attend an informal hearing in 1986. It asked him to provide documentation relating to his Georgia practice, for the five years preceding his application, along with the names of clients or attorneys who could furnish information regarding his practice in Georgia. They also requested copies of his income tax returns. The Applicant requested a formal Hearing and one was held on June 2, 1987. At the Hearing, the Committee asked for the names of his Georgia clients. He responded that there were three. His girlfriend, and two Atlanta attorneys whom he had served in an "of counsel" role regarding tax issues. He was then asked why he disclosed on his application only his first unsuccessful attempt to pass the California Bar exam, when in fact he had taken and failed the exam sixteen times. He explained that as he understood the question on the DC application it required him only to list each state in which he had applied for the bar, and not each time within each state. Applying an objective standard his interpretation was reasonable. The question read as follows:

> "**List every state** to which you have ever submitted an application to be admitted by exam, motion or diploma privilege (or reinstated) to the bar, even if you subsequently withdrew the application. For each application indicate the date it was submitted **or the first exam taken** and its ultimate disposition (admitted to the bar, withdrew application, or not admitted). Explain any withdrawals or applications or failures to be admitted **(other than those due to failing the examination)."**

The phrase "other than those due to failing the examination" would seem to objectively clear the Applicant on this issue. Following the Hearing, he sent a letter to the Committee refusing to provide copies of his income tax returns. He also asserted that by requesting his tax returns the Committee was questioning his veracity under oath, which he felt was a direct challenge to his "religious convictions."

The Committee denied certification. It relied on two grounds in its' Report of Findings and Conclusions on Moral Character. The first was that he had not been actively engaged in the practice of law for five years. The second was that his evasiveness and lack of candor in responding to inquiries demonstrated a lack of good moral character.

The standard of review adopted by the Court was that it would give some measure of deference to the Committee's factual findings, and accept those findings, unless they were unsupported by substantial evidence. Regarding the Committee's interpretation of Court Rules however, the Court held there was no obligation to defer to the Committee. The reciprocity Rule at issue stated:

> "Any person may, upon proof of good moral character . . . be admitted to the Bar of this court without examination, provided that such person:

> (i) Has been an active member in good standing of a Bar . . . for a period of five years immediately preceding the filing of the application"

The Rule makes no mention of a requirement that the Applicant was engaged in the practice of law. The Court writes:

> "Thus, in plain and simple terms, all that this provision required . . . was active membership in good standing of the State Bar of Georgia. As the record shows, at the time of his application <Applicant>. . . met this requirement.
>
> . . .
>
> **Despite the clarity of the Rule and its history, the Committee contends in its Report on Remand that by dropping the practice of law requirement from Rule 46 we did not mean to permit the admission of applicants "without regard for whether the applicant actually practice law." We disagree; that is indeed what we meant. . . .**
>
> **The Committee further contends that admitting applicants who have not actively practiced law for five years may prove constitutionally infirm. According to this argument, a requirement that an applicant under Rule 46(c)(3)(i) be no more than a dues-paying member of another bar would be arbitrary and, thus, not rationally related to "an applicant's fitness or capacity to practice law. . . . Since active membership in the Bar, without more, is no indication of fitness to practice law, the Committee contends, admission on that ground alone might be deemed discriminatory as against applicants seeking admission under Rule 46 (c)(ii) . . . We find the Committee's argument to be flawed.**
>
> We do not share the Committee's view that active membership in a bar means nothing more than paying dues. We take judicial notice of the fact that some thirty-five jurisdictions in the United States now require Mandatory Continuing Legal Education ("MCLE") for active bar members . . . . Further, in many jurisdictions active membership in the bar entails responsibilities such as court appointments, listing with lawyer referral services, and client-fund handling regulations. . .
>
> .
>
> As is true of "bright line" rules generally, the "active member in good standing" test contained in Rule 46(c)(3)(i) is not perfect. It may result in the admission of candidates whose qualifications are less than ideal. Likewise, it may exclude candidates whose qualifications are otherwise exemplary. As the Supreme Court has said:
>
> > "if the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality. . . .
> >
> > . . .
> >
> > As we said in . . ., "this court has previously noted that the term good moral character is of **broad dimension** and . . . can be **defined in many ways**."

The Committee argues that the Applicant was not truthful during the application process, and was evasive in two respects. First, his responses concerning the nature of his practice in Georgia. Second, his refusal to provide federal income tax returns. The Court initially addresses the heart of how nondisclosure or misstatements should be handled, but then avoids deciding the issue:

"Like other qualifications for admission, the requirement of good moral character is not standardless. **For an omission or misrepresentation to be evidence of an applicant's lack of moral fitness, the omission or misrepresentation must be material. . . . Counsel for the Committee and advocacy amici . . . both agree on this. They differ, however, on the test of materiality.**

Amici argue that for misrepresentations to be material, they must in fact be false. . . . According to amici, such omissions or misrepresentations must also be of the magnitude to indicate a lack of good moral character. . . . finally, amici contend that an intent to deceive is required. . . . Amici conclude by contending that since questions about "active practice" were irrelevant. . . .neither the Committee's questions nor . . . answers were "material" to his application. . . .

On the other hand, the Committee contends that misrepresentations and lack of candor are material . . . except perhaps when the subject of the questions is invidious or otherwise manifestly improper. . . .

We need not dwell on the issue of materiality and intent to deceive, however, because we are satisfied that <Applicant>. . . satisfied his burden of proving good moral character.
. . .
Momentary lapses of memory during an examination by five questioners do not a reasonable basis for a finding of evasiveness make." [221]

The Court rules in favor of the Applicant and orders that he be admitted. The opinion is nevertheless disappointing and frankly speaking, a bit cowardly. The Court outlined the opposing positions on the critical issue of materiality, and then simply dropped the matter stating, "We need not dwell on the issue of materiality." They should have decided the matter. Amici's position, which I subscribe to, asserts that if a question answered affirmatively will not affect the admissions decision negatively, then the failure to answer the question is not material. A nondisclosure in such an instance would not and should not reflect poorly upon moral character, since it is the question that is improper. The Committee's irrational definition of "materiality" ultimately has the result of substantially negating the concept of "materiality."

One last noteworthy point on the issues of candor, truthfulness and evasiveness with respect to this case. The Committee had interpreted Rule 46 to include a requirement of engaging in the active practice of law for five years. The express language of the Rule however, contained no such requirement. Their interpretation, conclusively held to be false by the Court, exemplifies how the Committee lacks candor, if their own standard of materiality is applied to their interpretation of the Rule. They were saying the Rule contained a requirement which it clearly did not. Were they lying? Apply the standard suggested by amici on the issue of materiality, we can let the Committee off the hook. It works better for everybody. But it's unfair to hold the Applicant to one standard of materiality and candor, while allowing the Committee to be held to a different standard.

596 A.2d 50 (1991)
630 A.2d 1140 (1993)

In 1977, while an employee of the Justice Department and evening law school student, the Applicant began using cocaine. By 1980, he was addicted and turned to dealing to support his habit. In 1984, he was convicted of conspiracy to possess cocaine with intent to distribute. The Committee recommended his admission. The Court however, disagreed in a 1991 opinion and denied admission. They felt denial was appropriate due to the relatively short period of rehabilitation compared with the three Applicants in the convicted felon cases. The distinction is valid and I do not believe the 1991 opinion in this case conflicts with the convicted felon cases.

Subsequent to his conviction, the Applicant began attending Narcotics Anonymous and Alcoholics Anonymous. He also volunteered in the Lawyers Counseling Program of the DC Bar. In comparing this case with the convicted felon cases the Court writes as follows:

> ". . . this court admitted to the bar three applicants who many years earlier had committed serious crimes. We reiterate strongly that . . . is not a signal that henceforth it will be relatively easy for persons who have committed offenses less heinous than manslaughter, armed robbery, or illegal drug transactions to become members of the District of Columbia Bar. . . . In general, "an applicant with a background of a conviction of a felony or other serious crime must carry a very heavy burden in order to establish good moral character. . . .
>
> . . . All three applicants had demonstrated their respective rehabilitations over a period of fifteen years or more from the time of their convictions until the time we admitted them. All had led exemplary lives for over eleven years from the time they had been released from the prison system. . . ." [222]

The Applicant in this case, subsequently reapplied for admission and received a unanimous recommendation from the Committee. The Court addressed his application in a second opinion in 1993 and granted admission. By then, the Applicant had been drug free for eight years, and participated in numerous community projects. I wholeheartedly agree with both of the Court's opinions pertaining to this Applicant. Sufficient time had lapsed since the conviction and rehabilitation had been demonstrated. Denial of admission was the proper decision in the first opinion, and the granting of admission was the proper decision in the second opinion.

614 A.2d 523 (1992)

IF THE COMMITTEE IS EVENLY DIVIDED,
JUST REPLACE THE MEMBERS VOTING IN FAVOR OF THE APPLICANT

The Applicant was admitted to the West Virginia Bar in 1980. He was suspended from the practice of law in 1985 because of his conduct in a Maryland case where he allegedly engaged in witness tampering. In 1987 he passed the District of Columbia bar exam. He disclosed his suspension.

Another attorney alleged the Applicant had contributed to the break-up of his law firm by encouraging former members to steal firm clients.

A Hearing was held on his character in 1988. The same attorney testified that the Applicant had engaged in the unauthorized practice of law in the District of Columbia after being suspended in West Virginia. Subsequent hearings were held, after which the Committee was evenly divided on whether to recommend admission. The Committee further investigated his conduct as an attorney. His representation of a criminal defendant had led to a charge of obstruction of justice against him. The Applicant was convicted by a jury, but the conviction was set aside by the trial court, and he was acquitted at a second trial. Prior to being indicted, he filed a civil suit against the local prosecutor and others seeking fifteen million dollars in damages. After acquittal, he pursued the claim and a directed verdict was entered in favor of two defendants, with the jury finding in favor of the third. Attorney fees were assessed against the Applicant.

In another case, he was sanctioned and the Court of Appeals affirmed the sanction. The Bar Committee requested his income tax records for the years 1982-1987 and discovered that he earned nearly the same gross income in the year he was suspended as in prior years. This information was used as evidence to support the allegation that he had engaged in the unauthorized practice of law. Three members of the Committee recommended in favor of admission, and three recommended against.

Now here's where it gets really interesting. Or perhaps I should say political, and "smelly." The Court determines in its first opinion that some crucial questions needed to be answered and therefore remands the case back to the Bar Committee. Footnote 8 of the opinion states as follows:

> **"We are aware that two members of the Committee who participated in the preparation of the recommendations have since been replaced.** Portions of the hearing may have to be reopened; however, we will leave that determination to the judgment of the Committee."

Apparently, the members that were replaced were the members who had recommended in favor of admission. After remand, the new Committee unanimously recommends against admission. In the earlier hearings, the Applicant's brother in law refused to endorse his application. The Applicant alleged his brother-in-law abused drugs. During the new hearings the Bar Committee confronted the Applicant regarding this allegation, but did not provide him with notice that it would be an issue. The Applicant challenges the fairness of the Committee's tactics and conclusions. The Court rejects the Applicant's argument stating:

> "The Committee was not required to give him notice of every question they might ask him. The underlying issue was . . . conduct and candor, and allegations such as he made . . . if unfounded, were relevant to the inquiry."

The Applicant's counsel files a motion to disqualify one of the Bar Committee members. The Committee then refused to allow his counsel to answer questions pertaining to the motion. They then coerced the Applicant into testifying about the motion. The Court discounts this objection on the ground that the Committee was in the best position to determine the Applicant's credibility. The

Applicant challenged the Committee's finding that he has a "history of engaging in witness tampering" and a "willingness to submit pleadings containing highly inappropriate personal attack." The Court states as follows:

> "While the finding of a "history" of witness tampering, supported by only one proven incident . . . may go too far, any exaggeration in this regard was harmless because past witness tampering played only a minor role in the Committee's recommendation. It rested instead primarily upon his practice, past and present, of "asserting improper personal attacks and making inappropriate allegations against others," and upon his lack of candor with the Committee."

The Applicant also asserted that the Committee's findings amounted to "impermissible discrimination," by "disciplining a black individual more harshly than a comparable white individual." The Court ruling in favor of the Bar Committee states:

> ". . . Despite his assertion that he has been forthright with the Committee in these proceedings, his filings with the Committee have exhibited a serious lack of candor. He has refused to accept responsibility for his conduct and shifted the focus at each opportunity to an asserted bias against him lurking in the Committee's proceedings and recommendation. In this sense his conduct parallels that of the applicant in . . . whom we denied admission substantially for those reasons." [223]

This case smells bad. The Applicant was never convicted of a crime. The only legitimate ground supporting denial of admission was the West Virginia suspension, but it was determined by both the Committee and the Court to not be a ground warranting denial. Although I am not so certain that I would have discounted the West Virginia suspension as readily as the Committee and Court, once it is eliminated, there is no valid reason to deny admission.

The changing of members on the Committee looks suspicious. The inadequacy of Notice looks suspicious and wreaks of deprivation of due process. The idea that notice requirements are satisfied just by indicating in a general manner that the issues to be examined were conduct and candor suffers from vagueness and ambiguity. It does not sufficiently apprise the Applicant of the matters that will be the subject of the hearing. The most disturbing aspect of the proceedings, is how the Bar Committee demonstrated a lack of candor by misrepresenting one incident of witness tampering as a "history" of witness tampering.

The Court analogized this case to *579 A.2d 668 (1990)*. The analogy is appropriate. As I indicated previously in that case, it also demonstrated a lack of candor on the part of the Bar Committee and was decided incorrectly. Both cases resulted in denial of admission based on attitude, rather than acts. In light of the individuals who were convicted of serious felonies and admitted (some of which as noted, I agree with the decision to grant admission), the denial of admission to this Applicant as well as the Applicant in *579 A.2d 668 (1990*) was wrong.

631 A.2d 45 (1993)

OH SISTER, SISTER

During law school, the Applicant served as co-chief justice of the law school's moot court program and shared access to the program's checking account. Between 1990 and 1991 he converted $ 3500 to his personal use. He disclosed his misconduct to a law school professor and to the Committee. After an investigation, the university was satisfied that he made full restitution and merely issued a letter of censure. The Bar Committee recommended in favor of admission, noting they were impressed by his honesty. The Court disagreed due to the short period of time since the misconduct.

It is a horrible decision. The Applicant was never convicted or charged with any crime. He made full restitution to the satisfaction of all parties involved and cooperated fully with the Bar Committee. This being the case, what we are left with is an Applicant who has an otherwise sparkling record and no convictions. He made one stupid screw up as a Nonattorney. It certainly wasn't the brightest thing in the world to do, but also not that horrible.

It is noteworthy that his reasons for taking the money, were not wholly without basis. He took $ 1,000 to pay Bail for one of his sisters, and $ 750 to lend another sister so she could leave an abusive husband. These facts in no manner excuse the misconduct, but they are mitigating. The Court's opinion flies directly in the face of the convicted felon cases in 1988, the 1993 convicted felon case, and the convicted felon case following in 1994. It does however confirm once again the arbitrary nature of the admissions process, which is devoid of consistency. [224]

649 A.2d 589 (1994)

THE FAMILY BUSINESS

In 1977, when the Applicant was eleven years old his mother and father started an escort business. In 1982, when he was sixteen years old, he began assisting by answering telephones. He continued through his second year of college. In 1985 at the age of nineteen, he began assisting his uncle with marijuana farming. Shortly thereafter, he was indicted on federal charges related to the marijuana operation. He pled guilty in 1987 at age twenty one. He received a suspended sentence and was placed on probation for five years. That same year he was convicted of aiding and abetting interstate prostitution. The Court suspended sentence and placed him on two years probation.

The Court grants this Applicant admission to the Bar on the ground that the conduct giving rise to his conviction occurred approximately ten years previously. In addition, the Court notes that the conduct occurred prior to law school during the teenage years of sixteen to nineteen.

I view the applicable time periods, for purposes of assessing rehabilitation differently than the court. The period of time to be measured should be from the date of the conviction, not the date of the conduct. The fact the conduct occurred prior to law school is irrelevant, but the fact that it occurred during the teenage years is very relevant. This is because logic dictates that adults be held to the same standard whether they are in law school or not. Conversely, Non-Adults (teenagers) have historically been granted a degree of leniency in our justice system. This case is a very close call. Measuring from the date of conviction to the date the Bar Committee issued its positive recommendation is about six years. Measuring to the date of the Court's opinion is about seven years. The crimes are very serious, but do not involve honesty. They are also not violent crimes or armed offenses.

Admittedly, with some hesitation, and particularly due to the age during which the conduct took place, I would give the Applicant the benefit of the doubt and admit him just as the Court did. I do so however, based on a substantially different analysis. Specifically, I consider the Applicant's age when the conduct took place for purposes of mitigation, but I measure the time period from the date of conviction rather than the date of conduct for purposes of assessing rehabilitation. Ultimately, I arrive at the same conclusion, and probably with the same degree of uncertainty the Court had. In any event, the major problem with the Court's opinion, is that it is wholly inconsistent with their opinion in *631 A.2d 45 (1993)* where an individual who had never been convicted of a crime was denied admission.[225]

District of Columbia Court of Appeals, No: 01-BG-192 (Mar. 22, 2001)

The Applicant passed the 1998 Bar exam. In 1992, he had pled guilty to conspiracy to distribute marijuana for which he was sentenced to a year of incarceration. The admissions committee recommends in favor of admission and the Court agrees. I too agree, and further believe the opinion written by the Court is excellent in virtually all regards. In fact, it is one of the best admission opinions that I've come across.

The Court focuses on the length of time since his conviction which was almost ten years and the fact that he engaged in no other criminal conduct during that time. The crime itself, while serious, was not violent or particularly heinous in nature. More than anything else, it was just stupid. Additionally, the Court notes the criminal conduct occurred when the Applicant was approximately age 20, and that he had engaged in some community service as evidence of rehabilitation.

The opinion in this case is important because it is one of the few cases in the contemporary McCarthylike Bar admission environment, in which an Applicant with a criminal conviction is admitted. The Court also notes that the Florida Bar had denied admission to this Applicant on moral character grounds. I believe the DC Court of Appeals is to be strongly commended for, substantively and properly ignoring the ridiculous conclusions and irrational decision made by the Florida Bar and State Supreme Court.

The DC Court of Appeals in this case arrives at the right decision and for precisely the right reasons. It's a pleasant rarity to read a Bar admission opinion like this one. [226]

DELAWARE

464 A.2d 881 (1983)

DOES NONDISCLOSURE OF INCIDENTS BEARING <u>POSITIVELY</u> UPON YOUR CHARACTER CONSTITUTE LYING ?

The Applicant, a Maryland attorney filed an application for admission in 1982. The application included a catchall character question previously referred to herein, as a GAQ (Garbage Admission Question). The question stated:

> "31. Is there any other incident in your background, not otherwise referred to in the answers to this Questionnaire, which may have a bearing upon your character or fitness for admission to the Bar ?"

The Applicant answered the question, "No." Four days before filing his application, he met with a Delaware attorney who was to be his preceptor. Delaware required the certificate of a preceptor for admission. The preceptor was typically a Delaware attorney that performed a limited character review and served as the Applicant's sponsor. After meeting with the potential preceptor (PCR hereafter), the PCR contacted the Maryland Commission as a routine matter to request information which might assist him in assessing the Applicant's moral character. Typically, the reason for such an inquiry would be to uncover negative information such as ethical complaints. The Maryland Commission advised the PCR that a waiver from the Applicant was necessary before it could release any information. The PCR requested a waiver from the Applicant. The Applicant submitted a carefully worded waiver authorizing the Commission to:

> "advise . . . as to whether or not there have been any charges, past or pending, made by this office against me to the Maryland Court of Appeals and as to whether at any time my license to practice law in Maryland has been suspended, revoked, or if there have been any public sanctions issued against me."

The Commission in response informed the PCR that there were no public sanctions issued against the Applicant, nor any charges, past or pending, in the Maryland Court of Appeals, but that because the waiver was limited to public matters the Commission could not inform him of other complaints. To do so, it required a broader waiver. The PCR then obtained a broad and unequivocal waiver from the Applicant and the Maryland Commission informed the PCR of five ethical complaints. One resulted in a private reprimand, three resulted in a warning, and one was pending. The Delaware Board concluded that the Applicant's explanations were "disingenuous" and stated that his:

> ". . . lack of candor and forthrightness with respect to the Maryland ethics charges has manifested itself in the following critical respects:
>
> a. Although he believed that the Board required disclosure of the Maryland ethics charges in response to Question 31 of his application . . . intentionally did not disclose that information in response to that question;
>
> b. . . . intentionally did not tell . . . of the existence of the Maryland ethics charges;

c. . . . submitted an artfully drawn waiver drafted in a way he knew would not permit the disclosure of the Maryland ethics charges;

d. offered testimony attempting to justify the foregoing instances of lack of candor on ground that were neither credible nor forthright."

The Applicant attempted to justify his nondisclosure of the Maryland ethics charges on the basis that they did not have a bearing upon his character. He asserted that responding affirmatively to Question 31 would have implied that his prior actions were unethical. He further indicated that he assumed in the ordinary course of processing his application inquiry would be made and any questions raised could be properly reviewed. Thus, he contended an affirmative answer to Question 31 superfluous. The Court rules in favor of the Board and denies admission. It applies the concept of materiality in the narrowest manner possible stating:

> ". . .<Applicant> suggests that **the Maryland ethics charges, even if they had been fully disclosed, were not of sufficient gravity to warrant denial of his application. But we do not address that.** Any such question was rendered irrelevant by . . . conduct. Instead, the issue is one of integrity, based on . . . concealment, which he materially compounded by the disingenuous explanations he later offered.
> **. . .**
> Any lessening of this standard would permit an applicant subjectively to relate past events in such a manner that the Board could not properly perform its duties under Supreme Court Rule 52(a)(1). Thus, it is not proper for an applicant to give either a highly selective or sketchy description of past events. . . . An applicant who violates this rule may be denied admission to the Bar."

The opinion is pure crap. Its' irrationality can be exemplified as follows. First, let's review the application question again. It states:

> "31. **Is there any other incident in your background,** not otherwise referred to in the answers to this Questionnaire, **which may have a bearing upon your character** or fitness for admission to the Bar?

The operative phrase in the question is "which may have a bearing upon your character." Take note, the question does not limit itself to any time frame and therefore encompasses incidents that occurred when the Applicant was a child. Further take note, the **question does not limit itself to those incidents that bear negatively on an Applicant's character.** It incorporates incidents that reflect positively on one's character. Applying the Court's irrational reasoning, an Applicant who fails to disclose that they perform charitable work would be denied admission for failing to disclose such. An Applicant who once saved someone's life that fails to disclose such, similarly. The vagueness, overbreadth and ambiguity in the question could not possibly be more monumental. It is a constitutionally infirm question in violation of the First Amendment. Two other phrases in the opinion warrant analysis. Attempting to justify its' irrationality the Court contends:

> "Any lessening of this standard would permit an applicant subjectively to relate past events"

The Court then states in the case of such nondisclosure:

"An applicant who violates this rule **may** be denied admission"

The operative term is "may." According to the Court, denial of admission, is thus not certain when nondisclosure occurs. It only "may" be denied. The term imposes a discretionary standard, rather than the obligatory duty that would be imposed by the word "shall." There are two logical problems with this. First, while the Court purports to prohibit an Applicant from answering the question based on subjective interpretation, it inconsistently grants the Bar the ability to subjectively assess the impact of nondisclosure by using the term "may" instead of "shall." More importantly, by using the term "may" the Court negates its' own statement that failure to disclose renders the impact of the answer's substance irrelevant. Remember, the opinion stated:

> ". . . suggests that the Maryland ethics charges, even if they had been fully disclosed, were not of sufficient gravity to warrant denial of his application. But we do not address that. Any such question was **rendered irrelevant** by . . . conduct." [227]

If indeed the impact of nondisclosure was **"rendered irrelevant**" then any Applicant who violated the rule should definitely be denied admission. But the phrase used was <u>may be denied</u>, so application of the discretionary standard, must inescapably be predicated on the substance of the answer.

In sum, the opinion contradicts itself. In addition, the question is patently unconstitutional because it is not limited to a time period and not limited to incidents reflecting negatively on character.

475 A.2d 349 (1984)

THE LEGAL ETHICS PROFESSOR

The Applicant was a member of the Pennsylvania Bar for over nine years and a law school professor from 1977-1980. Ironically, he taught a course in legal ethics. In 1982, he applied to the Delaware Bar and was denied admission on character grounds for lacking truthfulness. The Board found that during 1981 while employed by a Delaware attorney, he went to a car dealership that was the plaintiff in a lawsuit brought against a client of the firm. He represented himself as an official from a state consumer agency to gain information, even though he knew the dealership had retained counsel. He admitted this misconduct to the Board, but claimed he was under the influence of alcohol at the time. He also apparently borrowed $ 2500 from a close personal friend, but did not pay it back immediately. Nasty words were exchanged between the two. The Board further noted that although he was not admitted to practice law in Delaware, he appeared pro hac vice before various Delaware courts on 24 occasions. He did so after receiving notice of an Order specifically prohibiting him from further appearances. The Applicant asserted that the Board failed to fully advise him of the subject matter of the Hearing, thereby violating notice requirements of the Board's own rules. He contended the Board erroneously measured his moral character. He also contended the Chairman of the Board failed to recuse himself despite personal knowledge of disputed facts. The Court rules in favor of the Board on all issues.

This case is a bit difficult for me. It hinges on the issue pertaining to the unauthorized practice of law (UPL). Generally speaking, I believe many UPL prohibitions are anticompetitive and infringe on First Amendment rights. Nevertheless, if the Court did enter an Order against the Applicant, he had an obligation to comply with it, unless he was challenging it's constitutional validity. The opinion clearly states he made no attempt to obtain suspension of the Order. This troubles me. By the same token, the question plagues my mind that if he truly did violate the order, then why wasn't he held in contempt? Some facts seem to be missing here.

Similarly, the Board's emphasis on the personal loan issue troubles me, because the Board apparently concluded that his broken promise amounted to fraud. That is a great deal of overstretching by the Board. If in fact, it was "fraud" then why didn't the Board fulfill its' duty to refer the matter for prosecution? The answer is obviously that the Board wanted to make it appear to be "fraud" for purposes of the admissions process, but really knew it didn't meet the legal elements for a "fraud" prosecution.

In sum, I am uncomfortable both with the Applicant and the Board. They both seem to lack candor. I am concerned that if the Applicant really did the things the Board says he did, he should have been prosecuted. I sense the Board is overstating matters to fit their decision, but by the same token there are facts incriminating to the Applicant. Important facts seem to be missing from the Court's opinion. I am unable to make a decision on this case without having the benefit of the record before the Board, since the matters outlined in the Court's opinion do not seem to present fully the position of both parties. [228]

553 A.2d 1192 (1989)

THE ALL TIME BIGGEST BAR ADMISSION WHOPPER OF A LIE

This case is incredible. The Applicant, a Lieutenant in the Military Intelligence Branch of the U.S. Army Reserve was found guilty of plagiarism while in law school. He was suspended for one semester and disclosed it on his Bar application. A Hearing was scheduled. He testified that the plagiarism incident was a cruel hoax perpetrated against him by a fraternity for which he had been dormitory supervisor. He then claimed that his version of the episode was verified by the U.S. Government prior to granting him a top secret security clearance.

Now, the guy goes all the way. The Hearing was scheduled for July 1, 1988. The Applicant presented the Board with a letter purportedly signed by a U.S. Army Brigadier General. It had a return address on it. He also submitted memorandum, purportedly signed by a U.S. Army Captain with the same return address. The memorandum referred to three confidential documents which were allegedly the product of the U.S. Government's investigation of the plagiarism incident. It further stated that these documents had been taken from files of the Central Intelligence Agency.

After the Hearing, a Board member wrote a letter to the Army Captain requesting he contact the Board to arrange an appearance. The Board member had the letter hand-delivered to the return address on the envelope. It was discovered that the return address was actually the location of a privately-owned commercial "post office" that rented out mailbox numbers. On July 12, 1988 the Board member wrote the Applicant by certified mail informing him that the Panel would give him additional opportunity to authenticate the memorandum. The return receipt indicated the letter was delivered on July 13. The next day July 14, an envelope addressed to the Board member was received at the post office. The envelope contained a letter dated July 11 and an affidavit purportedly signed by the Army Captain. It stated:

> "As you know, I will not be able to appear before the Board of Bar Examiners of the State of Delaware.
>
> I have therefore prepared an affidavit which will supply the Board with the necessary authentication of my correspondence of June 30, 1988."

The affidavit was purportedly notarized by a District of Columbia notary public. That same day, a member of the Board received a letter from the Deputy General Counsel of the Central Intelligence Agency which stated:

> "The Central Intelligence Agency has no record of . . .<Applicant> . . . currently holding a security clearance, having been a subject to a background investigation by this Agency, or of any past or present association between . . . and the CIA. Furthermore, the copy of the letter he sent you on letterhead using the CIA's seal and name, appears to be a forgery; no such stationery is in use by this Agency. In addition, there is no record in this Agency of the individuals who allegedly signed the documents . . . provided to you ever having been employed by this Agency . . .
>
> I hope this information is of use to you. This Office intends to report this matter to the U.S. Department of Justice as a possible violation . . . ." [229]

Later that same day, the Board member received a letter by telecopy from the Assistant to the General Counsel of the Department of the Army informing the Board that the United States Army had no record of either the alleged Brigadier General or the Captain being in either the active or reserve components of the Army. The Board then learned there was no Army unit containing the designation given by the Applicant and that the District of Columbia had no record indicating the existence of the Notary Public.

Subsequently, the Board confronted the Applicant who withdrew his application. Prosecution of the Applicant was then pursued. The facts of the case are obviously quite incredible. In light of existing Bar rules, there is no doubt that the Board did exactly what they should. This Applicant irrefutably should not be an attorney.

I present this case for a particular reason. It exemplifies a flaw in the objective standard I have proposed, that an individual never convicted of a crime and never professionally disciplined should presumptively be determined to pass the moral character standard. The Applicant in this case satisfies my proposed objective standard, but basic common sense indicates he should not be an attorney. It is conceded that my objective test would have resulted in admitting this man and he obviously is not morally qualified. My objective test fails with respect to this Applicant.

No system is absolutely perfect. I must own up to the fact that using my system, there will be a certain number of people admitted who shouldn't be. Similarly, under the current system there are countless individuals who are admitted and immediately proceed to steal funds from client trust accounts. Overall however, when balancing out the number of people that would be wrongly admitted under my objective standard, against the number of people unjustly denied admission under the Bar's current subjective standard, plus the number of people wrongfully granted admission under the Bar's current subjective standard, the benefits of having an objective standard far outweigh the detriments. It is not a perfect system, but it is an immensely better one.

After an individual is admitted, they can be disbarred. To the limited extent my objective standard results in the admission of morally unqualified individuals, as would have concededly occurred in this case, they will be subject to disbarment as soon as they step out of line. Conversely, the unjust denial of admission of many morally qualified individuals deprives those Applicants of a career, and the clients they would have served of a good attorney. In addition, the current subjective nature of the character process allows the application of a lenient standard upon the Bar, and a strict standard upon the Applicant. This makes the Judiciary branch look hypocritical and lacking in candor.

Ultimately, the viability of any proposed system must be viewed by balancing the benefits against the detriments. Overall, an objective standard is better than a subjective one. By the same token, I do concede that as illustrated in the foregoing case, there will be a certain number of Applicants who will be admitted that should not be. Frankly speaking, I believe the number of individuals who would concoct a story like this Applicant did is fairly small. It's definitely a Whopper.

561 A.2d 992 (1989)
583 A.2d 660 (1990)
143 E.D. PA Sup. 84 (1985)
877 F.2d 56
826 F.2d 1056
875 F.2d 311
625 F. Supp. 1288, 884 F.2d 1384
Civil Action 91C-03-255 (1992)

SET-UP AND AMBUSHED BY THE LAW SCHOOL

This is a sad series of cases concerning one Applicant victimized by the irrationality of the Bar's admission process. The Applicant when applying to law school in 1979 answered "no" to a question asking if he had ever been a patient in a mental, penal or correctional institution. The accuracy of his answer became an issue of dispute. Although he had been institutionalized in 1975 in a mental institution, it was voluntary. The law school which seemed to have a personal vendetta against the Applicant, later sabotaged his hopes of becoming an attorney by communicating to various state bar examiners that the answer he gave was incorrect. Ultimately, he was denied admission to numerous State Bars.

He then sued virtually everyone in sight. As one of the Court opinions states, "An avalanche of litigation . . . ensued." This case became a hot topic in the media. In 1990, The Philadelphia Inquirer published an article detailing the controversy, "1 answer thwarts his law career." The Applicant filed a complaint with the Office for Civil Rights of the U.S. Department of Education which concluded that the question violated federal law. Several law schools indicated that it was debatable whether the law school should have notified the bar examiners. One Stanford University law professor stated:

> **"This is not only an inappropriate question, this is a cruel question. . . . It's putting cruel pressure on people to lie**. . . . I would be very, very reluctant to tell the bar."

A law professor from the University of Pennsylvania stated that:

> "We probably would have decided that this is a kid,. . . It was a stupid thing . . . a foolish peccadillo."

After graduation, he applied to the DC Bar. In 1983, he applied to the Pennsylvania and New Jersey Bars and later to Maryland and Delaware. Each time he passed the written section of the Bar exam, but when the law school's letter was sent to the Bar examining committees, the approval process slowed to a crawl. They were clearly conducting themselves in an irrational, vindictive manner out to get him. Pennsylvania, Washington and Maryland refused to admit him.

His dispute with the New Jersey Bar was most amazing. In the spring of 1983, he passed the written section. In April, 1984, it seemed his dream had come true. The clerk of the New Jersey Supreme Court issued him the official certificate, in Gothic print and sealed with the court's gold emblem stating his name and that he was:

> ". . . constituted and appointed an Attorney at Law of this state on April 2, 1984"

He then received a certificate of good standing from the Supreme Court of New Jersey dated April 25, 1984. **Days later however, he received a one page letter from the New Jersey Supreme**

Court that there had been a mistake and the certificate was sent to him in error. The letter indicated it was void and he had no right to practice law. That smells real bad. The Bar's Character Committee apparently was still reviewing whether he was fit to be an attorney. The New Jersey Character Committee's transcripts showed that the letter from the vindictive law school was the central issue blocking his application. During the hearings, there was no suggestion that he misled the examiners. A New Jersey Committee member told him that she was concerned about his inclination to file lawsuits. Another member asked him if his past mental health problems influenced "your filing of lawsuits at the present time or your feeling of persecution that may be existing at this time." He filed during the period, approximately 20 - 30 lawsuits, each time representing himself.

This series of cases reminds me very much of the Arizona Ronwin case. It is a perfect depiction of the improper use of a subjective standard. This Applicant was never convicted of a crime. He just was not willing to play ball with the Bar examiners like they wanted. He wouldn't submit his will to them and instead took them to Court. They responded in an irrational manner by punishing him in the form of denying admission. They ostensibly predicated denial on the assertion that his answer to one question lacked candor. In truth however, his attitude and voluminous record of instituting litigation. He graduated from law school in 1979. Eighteen years and dozens of lawsuits later he was still trying to get into a State Bar with the most recent case coming to this author's attention dated June, 1997.

In 1992, the U.S. Supreme Court in *Martin v District of Columbia Court of Appeals*, 506 U.S. 1 (1992) rendered the following "Per Curiam" opinion regarding this Applicant:

> "Pro se petitioner . . . requests leave to proceed *in forma pauperis*. . . . We deny this request pursuant to our Rule 39.8. Martin is allowed until November 23, 1992, within which to pay the docketing fees. . . . We also direct the Clerk not to accept any further petitions for certiorari from Martin in noncriminal matters unless he pays the docketing fee. . . .
>
> Martin is a notorious abuser of this Court's certiorari process. We first invoked Rule 39.8 to deny Martin *in forma pauperis* status last November. . . . At that time, we noted that Martin had filed 45 petitions in the past 10 years, and 15 in the preceding 2 years alone. . . . all of these petitions were denied without dissent. . . . "he has repeatedly made totally frivolous demands on the Court's limited resources." . . . Unfortunately, Martin has continued in his accustomed ways.
>
> Since we first denied him *in forma pauperis* status last year, he has filed nine petitions for certiorari with this Court. . . ."

Justices Stevens and Blackmun filed a Dissenting opinion regarding the above Order. They wrote as follows:

> ". . . The theoretical administrative benefit the Court may derive from an order of this kind is far outweighed by the shadow it casts on the great tradition of open access that characterized the Court's history prior to its unprecedented decisions in *In re McDonald*, 489 U.S. 180 (1989)(per curiam) and *In re Sindram*, 498 U.S. 177 (1991)(per curiam). I continue to adhere to the views **expressed in the dissenting opinions** filed in those cases. . . ."

The case cited above by the Dissent, *In re Sindram*, 498 U.S. 177 (1991) included the following Dissent by Justices Marshall, Blackmun and Stevens:

> "Moreover, indigent litigants hardly corner the market on frivolous filings. We receive a fair share of frivolous filings from paying litigants. Indeed, I suspect that, **because clever attorneys**

> **manage to package these filings so their lack of merit is not immediately apparent**, we expend more time wading through frivolous paid filings than through frivolous *in forma pauperis* filings. . . .
> **. . .**
> . . . Our longstanding tradition of leaving our door open to all classes of litigants is a proud and decent one worth maintaining. . . .
>
> . . . As Justice Brennan warned, "if . . . we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim." *In re McDonald*, supra, 489 U.S. at 187. By closing our door today to a litigant like . . . we run the unacceptable risk of impeding a future Clarence Earl Gideon. **This risk become all the more unacceptable when it is generated by an ineffectual gesture that serves no realistic purpose other than conveying an unseemly message of hostility to indigent litigants**."

One final note about the Bar application question that gave rise to this series of cases. What business is it really of the Bar whether an individual has received psychiatric assistance? By incorporating the topic into the Bar admission process, the Committee creates an incentive for a prospective lawyer to decline seeking psychiatric help when they need it, since it may adversely affect upon their Bar application. That is wrong, unjust, unconstitutional and as the one law professor said, "cruel." In this regard, it typifies the Bar admissions process. By the mid 1990s many cases addressed this issue and the question has arguably been found to violate the American with Disabilities Act (ADA).

Plus, let's face it. No one's more Nuts than attorneys generally, and the State Bars specifically.[230]

FLORIDA

397 So.2d 673 (1981)

DON'T YOU KNOW THAT WE DON'T CARE WHAT JURIES SAY?
WE'RE THE FLORIDA BOARD OF BAR EXAMINERS.

The Applicant, a female was charged with shoplifting and acquitted. The Board denied her admission on the ground that she was guilty of the charge, notwithstanding her acquittal. They also concluded that she lied to the Board by professing innocence. She appeals and the Florida Supreme Court rules in her favor. The primary issue was whether denial of an allegation for which one was acquitted, can still be deemed to constitute "lying." The Court writes:

> **"Petitioner's jury acquittal . . . has special significance with regard to the Board's conclusion that petitioner lied three times in asserting her innocence**. That is, the jury's conclusion vindicated petitioner's declaration of innocence of the crime charged before and at the jury trial. Her **acquittal would continue to justify her protestation of innocence at her subsequent Board hearing,** even though the Board might have thought it advantageous to make a showing of repentance."[231]

Supreme Court of Florida, Docket No. 63,161 ; Versuslaw 1983.FL.622

YOU DO HAVE A RIGHT OF PRIVACY.
IT JUST DOESN'T APPLY IN OUR BAR ADMISSION PROCEEDINGS.

This case is a good follow up to the Delaware case dealing with unconstitutional application questions pertaining to Applicants that receive counseling. The Applicant applied to the Florida Bar, but refused to answer question 28(b), which inquired:

> "Have you ever received REGULAR treatment for amnesia, or any form of insanity, emotional disturbance, nervous or mental disorder?
>
> Yes or No
>
> If yes, please state the names and addresses of the psychologists, psychiatrists, or other medical practitioners who treated you. (Regular treatment shall mean consultation with any such person more than two times within any 12 month period.)"

The Florida Board refused to process his application until he answered the question. He sought review by the Supreme Court of Florida on the ground that the Board's action violated his right of privacy and his right to due process of law. The Court irrationally rules against the Applicant. It determines that his right of privacy is implicated by the question, but then states:

"The extent of his privacy right, however, must be considered in the context in which it is asserted and may not be considered wholly independent of those circumstances. He has chosen to seek admission into the Florida Bar. **He has no constitutional right to be admitted to the Bar. Rather, the practice of law in this state is a privileg**e. . . . In this case, the applicant's right of privacy is circumscribed and limited by the circumstances in which he asserts that right."

The Court's decision is predicated on their false determination that the ability to practice law is a privilege, rather than a right. As previously discussed herein, the U.S. Supreme Court has held otherwise, on numerous occasions. The Florida Court's opinion was therefore nothing short of a usurpation of the U.S. Supreme Court's authority, that violated the rule of law. A Dissenting opinion is filed that states:

". . . I agrees with the majority that the state's interest in ensuring that only those fit to practice law are admitted to The Florida Bar is a compelling state interest. However, I must agree with the petitioner's assertion that the authorization and release form and item 28(b) are unnecessarily overbroad. . . . **At a minimum I feel there must be some time frame incorporated in question 28(b)** . . . In addition, I feel the form of the question seeking information . . . could be phrased in terms which elicit information with regard to problems which, . . . impact on one's fitness to practice law. . . ." [232]

650 So.2d 34 (1995)

CATCH-22

The Applicant, a female, was denied admission due to an incident in which she allegedly cheated in law school. She fully disclosed it on her Bar application. She also had disclosed it on an application to the New Jersey Bar and was admitted. The Florida Board however, determined that her continued protestations of innocence, notwithstanding her open disclosure of the allegations, constituted "lying." The Court properly disagrees with the Board's irrationality, writing:

"<Applicant> did not deny or conceal the cheating incident. There is no record evidence that <Applicant> lied or was less than candid to the Board. She admitted the incident, but maintains her innocence, which is consistent with the agreement that she entered with the university. The Board is recommending denial of admission because she steadfastly maintains that she did not cheat on the exam. However, <Applicant> protestations of innocence explain both her answers on the bar application and her testimony to the Board. Thus, **the Board has presented <Applicant> with the ultimate Catch-22: by maintaining her innocence, <Applicant> can never meet the Board's standard of candor."** [233]

Supreme Court of Florida, No. 86,148 ; Versuslaw 1996 .FL. 798 (1996)

IT'S NOT ENOUGH TO DISCLOSE.
YOU HAVE TO DISCLOSE THE <u>WAY</u> WE WANT YOU TO.
SO MAKE SURE YOU GUESS CORRECTLY ABOUT HOW WE WANT YOU TO DISCLOSE

The Applicant was denied admission on moral character grounds. While an undergraduate in 1988, he was arrested for petty theft, pled no contest and was placed on probation. Thereafter, a civil suit was instituted against him related to the theft and a judgment entered in the amount of $ 1500. He disclosed the matter on his application, but was found to lack candor since he did not provide a sufficiently detailed response in the form preferred by the Board. That smells bad.

In 1990, he was detained for driving with a suspended license. His license had been suspended in January, 1990 but reinstated in March, 1990. The detention also occurred in March, 1990 the month of reinstatement. He disclosed the incident and asserted the police officer "erroneously believed him to be in possession of a suspended drivers license." In addition, he had been cited for sixteen traffic violations.

The Court denies admission. It does so based on the petty theft incident which occurred eight years earlier in 1988. The Court rendered a very poor opinion. He definitely should have been admitted. Eight years had passed. It was one minor incident and he was a young student at the time. The traffic citations are irrelevant. Absolutely no valid reason to deny admission. The fact that the Bar Committee found him to lack candor because they didn't like the way in which he disclosed matters and felt his disclosures lacked sufficient detail, reflects poorly on the Committee's character, not the Applicant. It demonstrates the State Bar's propensity to falsely overstate the severity of an issue.

To this extent, specifically due to their groundless assertion that he lacked candor, the Committee itself lacked candor which could reflect on their moral character. [234]

Supreme Court of Florida, No. 91,134; Versuslaw 1998.FL.1830 (1998)

YOU LIED TO US BY TELLING US YOU DIDN'T LIE

The Applicant allegedly cheated on the Bar exam in 1988 and his scores were impounded. He then filed an updated application in 1994 and appeared for a Hearing on his character in 1996. The Board alleged as follows regarding the Applicant:

1. Cheated on the 1988 Multi-state Bar exam
2. Made false statements in support of a claim for unemployment benefits in another state while attending law school in Florida.
3. Falsely denied cheating on the 1988 Bar exam
4. Lied about his visual acuity
5. Made false statements regarding an insurance surcharge that resulted in the suspension of his driving privileges in another state
6. Assaulted an individual with a gun and damaged the individual's truck (charges dropped)
7. Made false statements on his bar application regarding the alleged incident of assault
8. **Made false statements regarding his reasons for not pursuing his initial bar application**
9. Made false statements on a homeowner's insurance application
10. Financially irresponsible with regard to student loans and consumer credit accounts
11. **Invested money in a house, instead of using it to pay his debts**

In reference to the alleged cheating incident the Court states:

> "The proctor testified that during the afternoon session of the exam, he saw <Applicant>. . . looking back and forth between his answer sheet and the answer sheet of the applicant sitting at the table ahead of him and to his left. He also testified that . . . appeared to have moved his chair six to eight inches toward the center of the table--closer to the answer sheet of the suspected source. . . ."

A purported expert testified that the degree of similarity between the Applicant's responses and the suspected source was well outside the degree normally expected to occur by chance. The expert also testified that of fifteen erasures, fourteen were to change an answer to that given by the suspected source. The Court states in reference to the Board's assertion that he falsely denied cheating:

> "The Board is certainly justified in requiring absolute candor from applicants for admission and in considering a lack of candor when making its recommendation. **However, a charge and finding that an applicant falsely denied an act which, . . . had not yet been proven, puts the applicant between the proverbial "rock and a hard place,"** with a choice either to maintain innocence and fail to meet the Board's standard of candor or admit the charge, though it may not be true, and relieve the Board of its burden of proof in the bar admission proceedings." [235]

The Court cites three other cases in which the Florida Board irrationally concluded that an Applicant lied simply by denying allegations. Ultimately however, the Court rules in the Board's favor and denies admission based on the cheating incident and the alleged assault. I would admit the Applicant. He has never been convicted of a crime or professionally disciplined based on facts set forth

in the opinion. **It is particularly troubling to me that the Florida Board persists in finding that when one denies an allegation, the denial itself constitutes lying.** While doing so once, although incorrect might be understandable, the Board's failure to **rehabilitate** itself, coupled with its' failure to obey State Supreme Court's opinions on the issue demonstrates a marked disregard and lack of respect for the rule of law. The Florida Board was usurping the authority of the Florida Supreme Court by continuing to disobey that Court's holdings.

A ridiculous assertion was made by the Board that the Applicant should have paid his debts rather than investing in a house. It is none of the Board's business how an Applicant handles their own personal financial affairs, so long as within the law. The Applicant committed no illegal act with respect to his debts. The issue does demonstrate how the Bar wants their fingers in all personal aspects of an Applicant's life. Finally, the alleged assault incident is irrelevant. If the Applicant had been prosecuted and convicted, I would immediately agree to denial of admission. Absent a conviction however, all that exists is a mere allegation. Similarly, the cheating incident was not conclusively proven. It was predicated on assertions that the Applicant moved his chair, raised his head, and the testimony of a purported expert witness who was obviously paid to promote the Board's position. In light of the Board's transgressions which demonstrate a marked lack of respect for State Supreme Court opinions, by their continuous irrational insistence that Applicants lie merely by claiming to be innocent, the Board's credibility on the cheating issue is extremely circumspect.

I would admit the Applicant and Suspend the Board from the practice of law, for a period of two years with reinstatement contingent on their demonstrating the proper degree of rehabilitation, remorse and willingness to comply with State Supreme Court rulings.

1. Supreme Court of Florida, No.SC95286; Versuslaw 2000.FL.0043403 (2000)
2. Supreme Court of Florida, No.SC95308; Versuslaw 2000.FL.0043745 (2000)
3. Supreme Court of Florida, No.SC95835; Versuslaw 2000.FL.0043747 (2000)
4. Supreme Court of Florida, No.SC95855; Versuslaw 2000.FL.0046466 (2000)

The four cases listed above involve four separate Applicants. The cases all have certain things in common. First, in each one of these cases, the Bar denies admission based on alleged conduct even though licensed Florida attorneys and Judges are either not prohibited from engaging in the same conduct or would not be disbarred for such. Rationality therefore mandates the conclusion that Florida Bar Applicants are held to a higher standard of moral conduct than licensed Florida attorneys and Judges. It must then be accepted that all of the State Supreme Court's statements that these individuals should be denied admission in order to protect the general public are nothing more than a bunch of Bullshit. Stated simply, the Supreme Court lacks candor when making such statements, because if in fact protection of the public interest mandates denying these Applicants admission, then it similarly mandates disbarring licensed Florida attorneys and Judges who engage in the exact same conduct.

The second similarity of these cases is that the State Supreme Court relies on an irrational process of accumulation of conduct to deny admission. Essentially, the concept is that although a particular instance of conduct does not constitute grounds for denying admission, when combined with other similar conduct, admission denial is warranted. The logical flaw in this reasoning is that zero plus zero does not equal one. An instance of conduct either constitutes grounds for denying admission (such as criminal convictions) or it does not. The concept of accumulating various types of conduct which standing by themselves do not justify denial, for the purpose of transmogrifying their nature to then justify denial is ridiculous. Such trickery and deception reflects adversely on the moral character of the Bar and State Supreme Court.

It is particularly noteworthy that a major contested issue in these cases, is whether the Applicant really did engage in the alleged conduct. Just because the Bar concludes they committed the conduct in question, does not in fact mean the Applicant did so. Keep in mind, that if the Bar is amenable to holding Applicants to a higher standard of moral character than licensed attorneys and Judges, they probably would also be willing to reach unsupported and false conclusions that Applicants committed alleged conduct. Interestingly, the Supreme Court's opinion in each of the above cases, fails to disclose sufficient facts justifying the conclusions reached by the Bar. Instead, the Court relies for the most part on the Bar's self-serving conclusions. For ease of reference, I refer to each Applicant by the SC number delineated above.

In SC95286, the Bar denied admission based on the following alleged conduct of the Applicant :

1. In 1989, eight years prior to the date of his Bar application, the Applicant damaged a door in his fiance's father's home after the father's dog tried to attack his fiance's pet chinchilla. Charges dropped.
2. Applicant shot and killed the dog that attacked his fiance's pet chinchilla. Charges dropped.
3. In 1987, twelve years prior to the date of his Bar application, arrested for DUI on two separate occasions. Charges dropped with respect to first, and he was acquitted at trial with respect to second.
4. One year after filing his Bar application, and while application was pending, arrested for DUI. Not prosecuted.

The conclusion that must rationally be reached in the case of SC95286, is that unless the State Bar and Supreme Court disbar Florida attorneys and Judges for mere arrests, without convictions of crimes alleged, the Bar Applicant is held to a higher standard of conduct that the licensed Florida attorney or Judge.

In SC95308, the Applicant filed an application in 1995. The Bar denied admission based on the following alleged conduct of the Applicant:

1. The Board determined that Applicant violated a court order regarding child support. However, there does not appear to be any Contempt proceeding ever instituted for nonpayment of child support, or any Contempt judgment entered.

2. The Board determined that Applicant failed to timely file federal income tax returns and timely pay taxes from 1987 - 1990. However, there does not appear to be any federal charges ever filed against the Applicant and the opinion fails to disclose whether the tax returns were on extension.

3. The Applicant failed to disclose an arrest for DUI on his law school application.

4. The Applicant allegedly falsely represented himself to be an attorney in a letter to a creditor. However, the Court's opinion fails to disclose the actual language used in the letter and the veracity of the Bar's finding on this issue is therefore questionable.

5. The Applicant bounced some checks, due to his financial difficulties. No charges ever filed.

The conclusion that must rationally be reached in the case of SC95308, is that unless the State Bar and Supreme Court disbar Florida attorneys and Judges when they fail to pay child support, bounce checks, or file income tax returns late, the Bar Applicant is held to a higher standard of conduct than the licensed Florida attorney or Judge. The Supreme Court's opinion in this case states:

> ". . . the citizens of Florida are entitled to more than excuses when we certify the character and fitness of our lawyers."

The Court lacks candor. They are not trying to protect the citizens of Florida. If they were, then all Florida attorneys and Judges would be held to the delineated character standards. What the Bar and Court are really trying to do is deny admission for the purpose of reducing the competition amongst lawyers, so that legal fees will be higher for the general public. Stated simply, the Court is attempting to do precisely the opposite of what it contends. The Court is harming the public, not protecting them. The Court's false characterizations and lack of candor reflects adversely upon the moral character of the Justices.

In SC95835, the Bar denied admission based on the following alleged conduct of the Applicant:

1. From 1978 - 1983, allegedly engaged in multiple acts of domestic violence in his first marriage, second marriage, third marriage, and fourth marriage. However, no convictions appear to have resulted, as no mention of a conviction is disclosed by the Court.

2. Represented himself in child custody litigation, and the judge in the case stated that his position was "absurd."

3. Allegedly failed to pay child support. However, no Contempt Judgment appears to have ever resulted, as no mention of such is disclosed by the Court.

4. In a 1996 lawsuit, Applicant failed to serve a copy of an Answer upon the plaintiff's attorney in violation of the rules of civil procedure.

5. Allegedly engaged in the unauthorized practice of law. No conviction.

6. Applicant allegedly misrepresented what had been told to him by the State Bar.

7. Applicant allegedly displayed malice and ill feeling toward members of State Bar staff.

The conclusion that must rationally be reached in the case of SC95835, is that unless the State Bar and Supreme Court start to disbar Florida attorneys and Judges when they fail to pay child support, are accused of domestic violence without any resulting conviction, or fail to comply with service of process rules in litigation, the Bar Applicant is held to a higher standard of conduct that the licensed Florida attorney or Judge. Concededly, based on the multiple allegations of domestic violence, the Applicant may have committed such on at least some of the occasions, but in the absence of a conviction, they are all nothing more than mere allegations.

The Bar and Court have relied totally on a process of accumulating numerous incidents, in the hope of reaching an unsupported conclusion that Zero plus Zero Equals One. Frankly speaking, I would be more inclined to support the Bar's decision to deny admission in this case, solely on the ground that by getting married four times, the Applicant was stupid. Since however, that's also not a valid ground, he should have been admitted.

In SC95855, the Bar and State Supreme Court must have tried to look like complete, irrational nitwits. They were dealing with an Applicant who had financial problems. Nothing more. They denied admission based on the following alleged conduct of the Applicant:

1. Failed to pay child support
2. Failed to maintain health insurance for his daughter
3. Failed to financially satisfy a default judgment
4. Bounced a check
5. Defaulted on student loan
6. Incurred unnecessary academic expenses
7. Was delinquent in paying his health club membership account
8. Did not maintain a checking account from 1995-1997
9. Incurred an extravagant expense by leasing a Mazda Miata for $ 340 per month

The conclusion that must rationally be reached in the case of SC95855, is that unless the State Bar and Supreme Court start to disbar Florida attorneys and Judges when they fail to pay their debts, the Bar Applicant is held to a higher standard of conduct that the licensed Florida attorney or Judge. Both the Bar and Court look particularly irrational by asserting the Applicant lacks moral character because he leased a Mazda Miata, and incurred academic expenses. The Supreme Court truly makes it difficult in this case, for citizens to have any degree of respect or confidence in the Florida State Supreme Court.[236]

Supreme Court of Florida, No.SC95639; Versuslaw 2000.FL.0044476 (2000)

The Bar denies admission in this case based on the following alleged conduct of the Applicant:

1. **Before entering law school**, Applicant stole compact disks from his employer and pled no contest to third degree grand theft.

2. Applicant's explanation of (1) above was false and misleading because he denied doing anything illegal. Applicant stated that his plea of no contest, was one of convenience.

As a preliminary matter, I would note that in this case, unlike the four absolutely ridiculous Florida cases discussed in the last section, there is at least a plausible ground for denying admission. The Applicant in this case, pled "No Contest" (which is the equivalent of a guilty plea), to third degree grand theft. His protestation of innocence carries minimal weight in light of his plea, however his assertion of innocence does not reflect adversely on his moral character, as the Florida Bar falsely contends. Rather instead, his assertion of innocence should simply have been disregarded.

The conviction of third degree grand theft should be assessed in light of the factor of rehabilitation and the amount of time lapsed since commission of the crime. The Applicant submitted evidence that he participated extensively in city and neighborhood volunteer activities, had a good reputation working with children, and a good reputation in law school. In addition, he worked for the Royal British Legion, a charity for members of the armed forces, and helped another attorney on a volunteer basis to perform legal work for the Haitian community. He also participated in several other charity and community events.

The Court denies admission (of course, in Florida they almost always do). I would admit the Applicant for the following reason. The opinion in this case was rendered in the year 2000, and his application for admission was filed in 1997. Consequently, the earliest he could have entered law school was in 1994. The Theft conviction therefore, had to have occurred prior to 1994, since the opinion indicates it occurred before he entered law school. Such being the case, at least six years have lapsed since the theft and it appears to be his only conviction. This fact, coupled with his efforts at rehabilitation, would lead me to grant admission without hesitation. [237]

Supreme Court of Florida, No.SC96664; Versuslaw 2000.FL.0048817 (2000)

NO QUALIFICATION TO JOIN THE BAR IS MORE IMPORTANT THAN TRUTH & CANDOR;

NO QUALIFICATION TO BE A STATE SUPREME COURT JUSTICE IS MORE IMPORTANT THAN SECRECY & A LACK OF CANDOR

The Applicant whose name is falsely presented as "John Doe" in the Court's opinion was denied admission. He was already a licensed attorney and member of the Bar of another state, but the Court "fails to disclose" the name of the State. He was denied admission to the Florida Bar for three reasons.

First, in 1990 (almost ten years prior to the Court's decision in this case) he answered "no" on a law school admission application to the question inquiring whether there were any criminal charges "pending . . . against you." In fact, a battery charge was pending against him at the time. It was subsequently Dismissed. He testified at the Board hearing that he honestly believed "his criminal case **had been** or was about to be, dismissed." Second, the Board alleged that he falsely denied every being "placed on scholastic . . . probation, . . . or advised to discontinue your studies." In 1990, while attending law school he was physically ill during his first semester and failed two courses. On the exact same date that he voluntarily withdrew from law school for medical reasons, the School's Academic Standing Committee sent him a letter advising him that he was academically excluded from further studies. He did not receive the school's letter until after he voluntarily withdrew. Thirdly, the Board alleged that he testified falsely at the Bar's investigative hearing that the law school only suggested that he withdraw, when in fact he had been academically excluded.

The Court irrationally rules in favor of the Bar and denies admission. The issue pertaining to the pending criminal charge should have been excluded from consideration for the following reasons. First, it was too remote in time having occurred almost ten years prior to the Court's opinion. Second, the charge was in fact ultimately dismissed. Third, the question was on a law school application and not a Bar admission application. Fourth, the question was unconstitutional since pending charges which are ultimately dismissed, are irrelevant to one's fitness to practice law. They are in fact, a worse reflection upon the agency that brought the charge, compared to the individual unfairly victimized by having to go through the time and trouble to obtain dismissal.

The issue pertaining to academic exclusion appears to indicate the playing of some "hanky-panky" by the law school. Since the school's letter was sent on the exact same day the Applicant voluntarily withdrew (and received by the Applicant later), it is highly likely the letter was sent in response to his withdrawal. The Bar and Court's characterization of the incident based on the manner in which it is presented in the opinion appears to lack candor. In sum, you have an Applicant who was already a licensed attorney in another state, with no criminal convictions, and the Bar's presentation of two minor incidents that were almost ten years old. The Board's conclusions suffer from numerous infirmities of rationality. The Applicant definitely should have been admitted. The Court's opinion indicates that the Bar stated it would recommend admission in two years without further proceedings if the Applicant satisfied three criteria, one of which was as follows:

"submit an essay to the Board on the importance of candor for lawyers."

That condition is crap. The Bar wants the essay for the purpose of establishing its' own egotistical dominance over the Applicant. They want to probe his beliefs in violation of the First Amendment, and leverage him into becoming one of their irrational "followers." Essentially, they are indicating that in order for him to be admitted, he will have to adopt a definition of so-called "candor," that is in accordance with their irrational notion of it. They want an essay demonstrating his remorse and loyalty, so they will be able to control him as an attorney. They want the essay, because they want

his "will and soul." This Applicant has no reason to show the Florida Bar remorse. A truthful essay on the importance of "candor" would necessarily entail delineating the Florida Bar and Supreme Court's lack of candor in their handling of this case, which would ultimately result in another denial of admission.

The Court lacked "candor" because they "failed to disclose" the name of the other jurisdiction where this Applicant was a licensed attorney. The Court lacked "candor" because they "failed to disclose" truthfully the name of the Applicant. The opinion states:

> "no qualification for membership . . .is more important than truthfulness and candor."

Yet, Footnote 1 of the Court's opinion states:

> > "John Doe is a fictitious name. We use it because we exercise our discretion to keep this file confidential as to the applicant involved."

An essay on the importance of candor? To the Florida Supreme Court it is obviously important for Bar Applicants to be subjected to an unreasonable and irrational standard of candor, while the Court itself has no obligation to be "candid" with the general public in its' opinions.[238]

Supreme Court of Florida, No.SC96374; Versuslaw 2000.FL.0048821 (2000)

The Applicant in this case was denied admission. In 1994, she unlawfully obtained a refund in the amount of $ 92.28 from a department store for a purse she had not purchased, unlawfully removed a $ 155.00 wallet from the store, and failed to timely file income tax returns in 1989, 1990 and 1991. She entered a deferred prosecution agreement with respect to the retail theft which ultimately resulted in the charges not being prosecuted. As a result, no conviction resulted. No prosecution was ever instituted with respect to the income tax return late filings.

She should have been admitted. The purpose of a "deferred prosecution agreement" is specifically to provide a criminal defendant with the opportunity to satisfy a certain set of criteria, in order to avoid the stigma and consequences of a criminal conviction. If the State wants a person to suffer from the consequences of a conviction, then it should not enter into such agreements, but instead should proceed with prosecution. The bottom line is that this Applicant was never convicted of a crime. It is disingenuous for the Bar and Court to attempt to stigmatize the Applicant with "guilt" pertaining to her conduct, while simultaneously proceeding to uphold the legitimacy of "deferred prosecution agreements." Such agreements are a deal; a contract so to speak. By falsely asserting that the Applicant is still responsible for the ramifications of an admitted criminal act, even when no conviction is obtained, the Bar and Court undermine the criminal justice system and the viability of deferred prosecution agreements. This reflects adversely upon the character of the Bar and Courts. A person is either convicted of a crime or they're not. If they're convicted, the Bar can consider the matter. If they're not, the matter is irrelevant. That is the standard our society has adopted to assess an individual. The opinion notably indicates that the Bar alleged as follows:

> "in a 1997 amendment to her Florida Bar application, <Applicant> **falsely stated that she left a department store without realizing** she was holding a wallet."

She disclosed the fact that she left without paying. The Bar's allegation contested her accompanying assertion that she failed to pay "without realizing" it. It is totally impossible for any person, to accurately discern whether one who commits an act "realized" they were doing so, or did so "without realizing" it. It is therefore the Bar's allegation which was "false," not her statement. Notably, the incidents in this case which are fairly minor in nature occurred almost seven years prior to the Court's opinion. They are therefore too remote in time anyway to function as a valid basis to deny admission. [239]

Supreme Court of Florida, No.SC95555; Versuslaw 2000.FL.0048819 (2000)

FIVE THOUSAND DOLLAR?? THEY'VE GONE BONKERS!!

This case involves an individual's application for readmission. He was previously disbarred in 1993, for what it appear to be valid reasons. In order to reapply for admission he was required under Florida Rule 2-27 to pay a $ 5000.00 application fee. That's crap. The imposition of such an irrationally, exorbitant fee simply to file an application can do nothing else than make the State Bar and State Supreme Court look like anticompetitive, economic protectionist, money-grubbing scum.

I recommend that the members of the Florida State Bar Committee and Justices of the Florida Supreme Court be suspended from the practice of law until such time as they submit an essay on the importance of the Judiciary to be fair, just, constitutional and compassionate. (See Florida SC96664 above on essay requirement for Applicant).[240]

GEORGIA

247 S.E. 2d 64 (1978)

ONE PERSON'S WORD AGAINST ANOTHER.
BUT THE ATTORNEY'S WORD IS WORTH MORE

The Applicant was certified to take the February, 1977 exam. While awaiting the results, an incident that occurred in September, 1976 was reported to the Board of Bar Examiners. A Georgia attorney had taken the Applicant's deposition in connection with a case for a client he represented, that was accused of shoplifting. The accused shoplifter was not the Applicant. The Applicant had worked as a security guard at the store where the alleged shoplifting occurred.

About a month after the deposition, the Applicant called the attorney and came to his office on two occasions. It is at this point, testimony of the Applicant and the attorney differ. The attorney testified that the Applicant offered to give testimony favorable to his client for the sum of $ 1500. The Applicant testified that he only offered to do investigative work. He said the attorney indicated he would pay $ 200 for investigative work related to the shoplifting case. The Applicant further testified that he did not intend to convey the impression he would be willing to give false testimony.

Based on this incident, the Applicant was denied certification on character grounds. The State Supreme Court gave no explanation for accepting the attorney's version of the story and simply concluded there was "ample" evidence to authorize denial of certification.

The Applicant should have been certified. What you have here is a situation where a member of the State Bar got mad at an Applicant for some reason related to a case they were both involved in. They each presented different versions of what occurred. A straightforward situation of "he said and he said." One person's word against the other.

In the absence of substantial corroborating evidence, the matter should not preclude certification. There was no valid reason to accept the attorney's word over the Applicant. The Court dropped the ball and the weakness of their position is exemplified by the fact they failed to disclose supporting analysis or justification in their opinion. [241]

252 S.E. 2d 615 (1979)

WE DON'T JUST WANT THE WHOLE TRUTH. WE WANT MORE.
WE WANT YOU TO ANSWER THAT WHICH WE DON'T EVEN ASK.

The Applicant disclosed a misdemeanor conviction for marijuana. The Board found that in doing so he lacked honesty, because he failed to disclose that it became a misdemeanor only after being reduced from a felony. Issues pertaining to his candor were also raised by the manner in which he made disclosure regarding charges and convictions for drunk driving, and whether his responses were designed to conceal the status of his child support payments. The Applicant contended that any errors were inadvertent. A Hearing was held and counsel appeared on his behalf. The Board found that because of the nature and number of errors and omissions, the contention of inadvertence should be rejected. The Court rules in favor of the Board.

I would admit the applicant. The Board is penalizing the Applicant because it doesn't like the form in which he disclosed matters. By adopting such a stance, the Board penalizes what is essentially known as good "lawyering." Typically, the best lawyers will assert that when asked a question, one should respond with the minimum amount of information that satisfies the question's inquiry. The Applicant did no more than engage in "traditional trial tactics" which have been given the express approval of numerous Federal Appellate Courts within the context of litigation. He answered the questions. The fact he omitted to disclose that the misdemeanor was actually a "felony conviction later reduced to a misdemeanor" is irrelevant. The fact is that it was reduced. Therefore, it was a misdemeanor. Simple as that. For the Board to expect more is irrational on their part, and would be "bad lawyering" by the Applicant. I would be more concerned about the quality of representation an attorney will provide to clients, if they disclose more than the limited scope of a direct inquiry on a Bar application.[242]

The Board was in the woods on this case. I guess it would be the "Georgia woods."

282 S.E. 2d 298 (1981)

INNERMOST FEELINGS AND PERSONAL VIEWS?

The Applicant was never convicted of a crime based on the facts set forth in the Court's opinion. He is denied certification on the ground he engaged in questionable business practices while acting as president of a mortgage company that filed for bankruptcy. Those practices consisted primarily of trying to expand the company, when he lacked sufficient information. The Court rules in favor of the Board. In its' opinion the Court makes the following statement which demonstrates the unfettered discretion and subjective nature of the Board's inquiry process:

> **"In his final enumeration, applicant asserts that he was denied due process because "the Board is not bound to strictly observe the rules of evidence but consider all evidence deemed creditable in an effort to discover the truth without undue embarrassment to the applicant." . . . We cannot agree.** Bar admissions hearings are not criminal proceedings. . . . "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 feeling 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." [243]

When I read the phrase, "for the purpose of acquainting the court with the **applicant's innermost feelings and personal views,"** I am almost unable to continue writing. It's absolutely unbelievable! What business is it of theirs? For those members of State Bar admissions committees reading this book, you want to know my "innermost feelings?" You want my "personal views?" They're in this book. And I'm betting that when you're through reading, you'll wish I hadn't expressed them.

481 S.E.2d 511 (1997)

The Board denied certification on moral character grounds. They determined the Applicant was not fiscally responsible. She graduated from George Washington School of Law in 1992. When she filed her application she disclosed defaulted student loans. The Board informed her of its policy not to grant certification until she demonstrated that she had contacted creditors and made arrangements to pay existing debts. Instead, she filed for bankruptcy. The bankruptcy court denied discharge of two of the student loans. She then reached settlement agreements with certain loan creditors in 1995. She succeeded in discharging other student loans and $ 17,000 in consumer debt.

She failed to disclose addresses for her three most recent employers and account numbers for four creditors. This was determined by the Board to demonstrate a lack of candor. The Court affirms the Board's decision based on the conclusion that she did not show good faith to meet her obligations.

I would admit the Applicant without hesitation. There is no law requiring one to pay their debts. Creditors can sue debtors. That is the proper recourse. None other. This Applicant has done absolutely nothing illegal or immoral. She couldn't pay her bills. Many people are in the same situation. The Court's conclusion smacks of hypocrisy for one crystal clear reason. Licensed attorneys and Judges are not required to demonstrate on a regular basis that they are meeting their financial obligations.

The result of this Court's irrational reasoning is that you must pay your bills before gaining admission, and then once you've been admitted you have the freedom to stop paying your bills. It is a clear violation of the Equal Protection Clause. It provides a favored status to licensed attorneys in comparison with Bar Applicants regarding payment of debts, and does so without any rational basis. The Dissent submits the following perspective on the issues:

> ". . . By means of a letter from the Director of the Office of Bar Admissions, the Board informed . . . that "an applicant's lack of fiscal responsibility alone is sufficient cause to deny certification"
>
> **. . .**
>
> . . . I believe the Board, when it bases a denial of certification on a ground not raised in the specifications, and **This Court when it affirms such a denial, acts in a procedurally defective manner.**
>
> . . . In essence, the Board determined that . . . incurring debt for a legitimate purpose, her filing of a petition for bankruptcy and having four student loans discharged therein, . . . was tantamount to a "lack of fiscal responsibility" which reflected a lack of the character and integrity expected. . . .
>
> **. . .**
>
> **There is no suggestion in the Rules of the State Bar of Georgia, the rules of any court, or any other relevant source that it is an expectation of members of the Bar, either as an expectation subject to disciplinary sanction or even a simple statement of the expectation as an aspirational goal, that a lawyer will not aggregate debt beyond the lawyer's ability to pay or that the lawyer has any obligation to pay the lawyer's debts,** other than debts arising out of the handling of client funds; or that the lawyer may not take advantage of bankruptcy remedies to discharge those debts. . . ."

In reference to the Finding that the **failure to disclose addresses of three employers and account numbers for some credit cards** demonstrates a lack of candor**,** Footnote 8 to the opinion states as follows:

> "There is no evidence that the listing provided by the Applicant in her original application and amendments was materially incorrect. . . . **There is no evidence that the Applicant had any more complete information than was provided. . . . The Office of Bar Admissions was unable by its direct inquiries to obtain any information greater than was provided by Applicant**. . . . The evidence does not reflect a lack of candor. . . . There is not the slightest suggestion of any additional adverse information which Applicant was attempting to conceal."[244]

I would immediately Admit the Applicant to the Bar, and give serious consideration to Suspending the Board members for misrepresenting the nature of her minor, innocent and immaterial omissions which reflects negatively on their character. I would then grant the Board members permission to apply for reinstatement in two years upon demonstrating an appropriate degree of rehabilitation and remorse. Principally, I would want to ensure that the Board would no longer engage in making false accusations with an intent to deceive.

Supreme Court of Georgia, Case No. S98A0627; Versuslaw 1998.GA.209 (1998)

The Applicant was never convicted of any crime based on facts set forth in the Court's opinion. The Board denied certification based on an unprosecuted 1990 incident in which the Applicant allegedly entered unlocked cars with the intent to steal, and an alleged plagiarism incident in which he was determined to be innocent by his law school. The initial hearing officer recommended certification, but the Board rejected that officer's findings. The Board concluded that the Applicant's assertion of innocence with respect to plagiary demonstrated a lack of understanding of the meaning and consequences of his actions. This is notwithstanding the fact that he was exonerated by his law school. The Court rules in favor of the Board and denies admission. The irrational opinion states:

> "Likewise, plagiarism is a serious matter which, if proved would authorize a denial . . . . In that regard, the evidence did not demand a finding that . . .<Applicant> . . . committed plagiarism. **Indeed, he was exonerated of that charge by the law school. However, the Board was not bound by the law school's determination, and the only issue for resolution is whether there is any evidence to support the Board's contrary determination . . . . The record shows the existence of such evidence. . . ."** [245]

Viewing the Court's opinion in the light most favorable to the Court, it must rationally be categorized as "CRAP." The Applicant positively should have been admitted. He was never been convicted of a crime and was exonerated from the plagiary incident by his law school. There was not a shred of legitimacy in the Board and Court's conclusion. In my view it takes a colossal degree of hypocritical gall for the State Bars on one hand to contend that an Applicant found guilty of an offense is lying when they continue to profess innocence; while on the other hand they contend an Applicant found innocent of an offense may still be found guilty by the Bar Committee.

1999.GA.0043307 (VERSUSLAW)
S99A1828 (1999)

THE AGE OLD STAR CHAMBER TACTIC. OBTAIN A CONFESSION REGARDING A MATTER THAT FOSTERS STATE BAR ECONOMIC INTERESTS, AND THEN USE IT TO SHOW NO MERCY WHATSOEVER, BUT INSTEAD TO DEMOLISH THE ACCUSED.

This case sadly demonstrates the contemporary degenerated state of the Bar admissions process, well over sixty years since the NCBE's magazine, the "Bar Examiner" published articles promoting the notion of State Bar "group thought" to enhance the power and economic interests of the legal profession.

The Applicant was granted certification in 1993. That certification was suspended in 1996 after the Board received a letter of complaint from an Administrative Law Judge (ALJ) about the Applicant. The letter pertained to his allegedly unprofessional conduct during the course of representing himself Pro Se in a worker's compensation case. A formal hearing was held at which it was determined his conduct in the case was:

2. "inappropriate, threatening and an abuse of the legal process"
3. showed "a total lack of judgment and common courtesy."
4. "frivolous, unwarranted, lacked justification and lacked integrity"

The opinion provides virtually no information addressing what the Applicant specifically did that "lacked integrity," "common courtesy," "justification" etc.. Notably, the Court's opinion does nothing more than provide unsubstantiated inflammatory and irrational conclusions, as no facts are given to support them. Perhaps no material facts existed to support them. Perhaps facts did exist. If so, the Court was "evasive" in "failing to disclose" such facts.

The Applicant was apparently fearful of not being admitted and ultimately wrote letters of apology to the ALJ and opposing counsel. The events remind me of how plea bargaining often works. Extract a confession from an innocent man under threat of a stiffer penalty in the absence of a guilty plea. Then utilize the technique of parsing words, to construe the plea bargain in a manner different than understood by the Defendant, so that the stiffer penalty is imposed anyway. In this case, the Court denied admission even after the Applicant apologized. The bottom line is that they didn't want this guy in the Bar because they felt he was a "rabble-rouser." He probably was. Often, they make the best attorneys.

And that's the last thing the Bar needs. An attorney who actually represents his clients zealously, instead of conducting himself in accordance with the requisite courtesies (sell-outs), appropriate behavior (kissing a corrupt judge's ass), and integrity (allowing opposing counsel to get away with a lie). **The best part of the opinion is Footnote 2 which reads as follows (BOLDING by author)**:

> "It is noteworthy that had <Applicant> been a member of the State Bar when he engaged in the conduct at issue, his conduct **could** have subjected him to discipline." [246]

It's a critically important footnote. This Applicant was denied admission to the Bar on character grounds. If he had been attorney though, the Court notes that his conduct **"could"** have subjected him to discipline. Notably, the word used is **"could,"** and not **"would."** The Court is stating that there is only a **possibility** that a licensed attorney would be disciplined for the conduct, although it is a **certainty** that admission is denied for such. Of equal importance, is the fact that if the conduct were committed by a

licensed attorney, the Court gives absolutely no suggestion that it either **would** or **could** result in disbarment. Essentially, disbarment appears out of the question for such conduct by a licensed attorney, but admission denial is a certainty for a Bar Applicant.

In light of the foregoing, are licensed attorneys in Georgia held to a lower standard of ethical conduct during the course of litigation, than a Nonattorney, Pro Se litigant? You betcha!! And that's exactly how they want it.

1999.GA.0043580 (VERSUSLAW); BAR ADMISS. DOCKET NO. 193 (11/1/99)

"MAYBE THE GEORGIA BAR, SHOULD DISCIPLINE THE FLORIDA BAR"

The Applicant was a member of the Florida Bar and applied for admission to the Georgia Bar. During the process the Florida Bar falsely represented to the Georgia Bar that he was a member in "good standing." The Florida Bar also falsely represented that an injunction entered against the Applicant did not constitute attorney discipline. In reliance on the multiple false representations of the Florida Bar, the Georgia Bar issued a temporary certificate of fitness entitling the Applicant to sit for the Georgia Bar exam.

They also requested the Florida Bar to "clarify" his disciplinary history. The Florida Bar wrote back that their previous letter was in error and should be disregarded. They represented that the injunction entered against the Applicant (prohibiting him from soliciting individuals associated with the Valujet air disaster), constituted attorney discipline. Based upon this new information in which the Florida Bar retracted their prior false statements, the Georgia Bar revoked the certificate of fitness and determined that the Applicant could not sit for the Georgia exam. On appeal, the Applicant contended the Florida Bar was mistaken in ultimately concluding the injunction constituted attorney discipline. The Georgia State Supreme Court concluded as follows:

> "However, **we believe that Florida Bar officials are in the best position to construe the rules** . . . and we will not interfere with the Florida officials' construction of their own rules in this matter."

My conclusion is that since the Florida Bar initially provided false representations to the Georgia Bar regarding the injunction, they were far from being "in the best position to construe" the rules. It is clear they had substantial uncertainty regarding whether the injunction was a form of attorney discipline. It was unfair to penalize the Applicant for the Florida Bar's lack of candor and dissemination of false information. Footnote 1 of the Georgia Supreme Court's opinion states:

> "Regarding the other two inquiries against <Applicant>, . . . **the other had no disposition entered**, but nonetheless appears to have resulted in a disciplinary sanction being imposed by Florida Bar regulators."

Two points are relevant regarding the footnote. First, if the other inquiry resulted in a sanction, the Florida Bar's failure to enter a disposition, constituted an evasion of disclosure of the matter's determination. Second, the Georgia Court's conclusion that it resulted in a sanction, notwithstanding that no disposition was entered, undermines their earlier assertion that they would not interfere with conclusions of Florida officials. If the Florida Bar did not enter a disposition, deference would mandate a conclusion that no disposition was made.

The Georgia Court thus lacked candor by previously asserting they would rely on Florida officials, because in fact, Georgia concluded on its' own that a sanction appeared to have been imposed.[247]

IDAHO

780 P.2d 112 (1989)

THE ABILITY TO PRACTICE LAW IS A PRIVILEGE, NOT A "NATURAL RIGHT" OR "CONSTITUTIONAL RIGHT." IT'S A RIGHT, BUT A RIGHT THAT'S REALLY A PRIVILEGE. IT KIND OF LOOKS LIKE A RIGHT AND SEEMS LIKE A RIGHT, BUT IT'S NOT A REAL RIGHT. THE U.S. SUPREME COURT DIDN'T MEAN IT WAS A REAL RIGHT IN SCHWARE, JUST KIND OF LIKE ONE OF THOSE MAKE-BELIEVE RIGHTS THAT ARE REALLY PRIVILEGES AND NOT RIGHTS. RIGHT???

The Applicant, a 42 year old member of the Washington State Bar had previously applied for admission to the Idaho Bar in 1986 and was refused permission to sit for the bar exam on character grounds. He then applied again in 1987 and was denied permission. After a Hearing, the Commission denied the application without delineating specific findings of fact. Instead, they vaguely stated:

> ". . . exhibited conduct substantially evidencing **an inclination** to violate reasonable rules of conduct and to fail to exercise substantial self-control . . ."

The Idaho Supreme Court first holds that the practice of law is a Privilege and not a Right. It states:

> "Recognizing that the practice of the legal profession is a privilege granted by the state and not a natural right of the individual, it is deemed necessary as a matter of **business policy** and in the interests of the public to provide laws and provisions covering the granting of that privilege . . .
>
> Quite recently, the Supreme Court of Iowa articulated the same principle as follows : "**The right to practice law is not a natural or constitutional right, but is in the nature of a privilege** or franchise." . . .
>
> **However, the right to practice law is not a matter of grace.** We cannot exclude a person from the practice of law for reasons that contravene the due process or equal protection clauses of the United States Constitution. Schware v. Board of Bar Examiners, 353 U.S. 232 . . . (1957). . . ."

Two aspects of the foregoing, strike me as lacking in logic. First, the Court holds that the ability to practice law is a Privilege and not a "natural right" or a "constitutional right," yet they contradict themselves by referring to it as a Right when they cite *Schware* for the premise:

> "However, the right to practice law is not a matter of grace. . . ."

The Court's reasoning requires one to inescapably reach the conclusion that when the U.S. Supreme Court referred to the ability to practice law as a "Right," it did not mean it was a constitutional right. The U.S. Supreme Court's opinion in Schware however, was predicated on *Ex Parte Garland*, supra , which irrefutably concluded otherwise. The Idaho Court's reasoning is thus illogical.

Secondly, it is incredible that to justify their irrational position that the ability to practice law is a Privilege, the Idaho Court relies first on "business policy" and only secondly the "interests of the public." They expose their hand. They have tacitly confessed that admission requirements are a

matter of protecting the economic interests of lawyers first, and the interests of the public, second. This diminishes the legitimacy of their opinion.

The Applicant contended that the Commission's failure to formulate Findings of Fact violated Idaho law and renders their decision inherently arbitrary and capricious because it prevents him from rebutting specific allegations. He contends that Bar Applicants must be given reasonable opportunity to defend themselves against charges. By failing to state findings, the Commission violates the most basic predicate of due process incorporated in the 14th amendment. The requirement of notice. On the Findings of Fact issue, the Court agrees with the Applicant. It states:

> "We agree that the Commissioner's failure to issue findings of fact and conclusions of law was in error. . . . the United States Supreme Court has held that "the requirements of procedural due process must be met before a State can exclude a person from practicing law." **Willner v. Committee on Character and Fitness**, supra (1963). . . .
> . . .
> **This Court has held that findings of fact are necessary to fulfill the requirements of due process of law** . . .
> **. . .**
> Here, the failure of the Commission to make findings of fact deprived <Applicant>. . . of his right to due process of law. His interest in practicing law in Idaho is a substantial interest. . . .
>
> The attempt by the Commission to state findings of fact in its brief did not fulfill this requirement. . . .
> . . .
> The current administration of moral character criteria is, in effect a form of **Kadi justice** with a procedural overlay. . . (defining Kadi justice as informal judgments rendered according to individual decisionmaker's ethic or practical valuations).) **Politically nonaccountable decisionmakers render intuitive judgments, largely unconstrained by formal standards** and uninformed by a vast array of research that controverts the premises on which such adjudication proceeds. **This process is a costly as well as empirically dubious means of securing public protection.** Substantial resources consumed in vacuous formalities for routine applications, and non-routine cases yield intrusive, inconsistent and idiosyncratic decision-making. . . . **Only a minimal number of applicants are permanently excluded from practice, and the rationale for many of those exclusions is highly questionable. . . ."** [248]

The Court then remands the case back to the Commission with instructions that they make Findings of Fact, stating particularly what acts or omissions of the Applicant make him unfit. The Court does make some excellent and very correct statements. It elegantly describes the key problems with the bar admission process in general. It then drops the ball by remanding back to the Commission. The Court should have forthrightly ordered admission. Assuming the Court's statements about the manner in which the Commission conducted itself are correct, and I believe they are, then the Commission has essentially lost its credibility.

Nevertheless, the Court sends the case right back to the Board that is guilty of violating the Applicant's constitutional rights. That Board having been made to look blatantly foolish to the State Supreme Court now has an incentive to get even. To properly neutralize the Commission's "Kadi" tendencies, the matter should have been taken wholly out of their hands and conclusively decided. By doing otherwise, the Court displayed a marked lack of fortitude and decisiveness.

One other point needs to be made. The Commission as stated previously, violated the Applicant's due process constitutional rights by failing to issue Findings of Fact. This point can mean

only one of two things. Either the Commission did so intentionally, or alternatively they were not aware of their legal obligations under the law to state Findings of Fact. The former reason manifests an intent on their part to violate the law.

The latter reason demonstrates a general incompetence on their part with respect to the admissions process. *Willner* and *Schware* were landmark U.S. Supreme Court cases. The Commission should be expected to be aware of them. Previous case holdings in Idaho had stressed the importance of Findings of Fact in licensing cases. To remand the case back to a Commission that was either intentionally violating the law, or was simply too incompetent to administer it, made no sense.

ILLINOIS

488 N.E. 2d 947 (1986)

WE'RE REALLY NOT MUCH MORE THAN BALL-BUSTERS HERE AT THE ILLINOIS BAR

The Applicant was denied admission on the ground that his application contained inaccurate information regarding his high school education and omitted some of his residences. In addition, he had 200 to 400 parking tickets which he disclosed. The Committee also found that on two occasions he had falsely represented himself to others as a police officer. Purportedly, he did so while in a tavern with friends, and once in 1977 when he asked a college classmate who was a police officer, if he could borrow his badge and gun to arrest some persons he saw smoking marijuana. Whether these incidents were done in jest is not clear from the Court's opinion.

The Applicant discounted the significance of the parking tickets and asserted that many were unfairly given, such as when he put money in the meter and received a ticket anyway. He also pointed out that parking meter revenue was an important source of revenue for the city.

He listed dates of attendance for a high school from 1970-1974, although the actual years were 1971-1975. This he attributed simply to making a mistake in filling out the forms. In reference to the residence issue, he indicated that he had resided at his parents' home for the last 10 years, when in actuality he lived at five different addresses in Chicago. He occupied those places for only short periods, ranging from one day to eight months and generally was not required to pay rent. He explained this by asserting that the application called for a list of domiciles which remained his parent's residence at all times.

The Court denies admission. Attempting to artificially inflate the importance of all the piddly allegations, the Court states:

> "Remarkably, on his application he provided incorrect information regarding his high school attendance, and he failed to list his numerous residence. . . ." [249]

There were no valid grounds of any nature to deny this Applicant admission. He made two minor and immaterial clerical mistakes on his application. Those errors are more attributable to the Bar unconstitutionally requiring an Applicant to provide information going back well over a decade, than to any issues pertaining to his candor. The incident regarding impersonating a police officer may well have just been a matter of joking around with friends. It doesn't seem to have ever amounted to anything more than an off-the-cuff statement, perhaps made with a smile, to close acquaintances.

Regarding the parking tickets, you could not possibly get more piddly. The Applicant disclosed them and apparently paid them. They don't reflect on character at all. They are a chief source of revenue for municipalities and the average citizen including myself, adopts the standpoint, that if you get a ticket you pay it, and that's it. Both the Bar and Illinois Supreme Court simply look like ball-busting-twits out to bust the chops of an Applicant.

Now you want to talk about lack of character and fitness in the Illinois Judiciary? Well, then you should really talk about what was known as "Operation Greylord" (a Justice Department investigation of corruption in the Illinois judiciary) in the late 1980s, or what the ABA which is based in Illinois, has done to this nation.

518 N.E. 2d 981 (1987)

BEING GENERALLY INCOMPETENT, WE AT THE ILLINOIS SUPREME COURT TRY HARDER TO LOOK LIKE IDIOTS

This case is an Illinois "beauty." The Applicant born in 1947 filed his application in 1984. While a student in high school he was suspended approximately 23 times. On his first job, he was discharged for stealing money from vending machines. He was charged with robbery, but as an alternative to conviction, was given an opportunity to enter the military service. He enlisted in the Marine Corps. While in the marines, he was absent without leave for 71 days and given an undesirable discharge. His record included convictions for disorderly conduct, selling marijuana, possession of heroin and cocaine. On his law school application he failed to reveal convictions for disorderly conduct and theft. His last arrest occurred more than 11 years prior to the Court's decision on his application.

During his law school years he was an excellent student. He worked with a U.S. District Judge in an extern program and the Judge testified that he believed the Applicant was an individual of great integrity. The Judge further testified that he knew of the Applicant's experience with drugs, alcohol, his arrests and undesirable discharge and still believed him to be of good character. Two law school professors testified that the Applicant was completely rehabilitated and recommended admission.

My reasons for presenting this case are not for consideration of the character issues involved, but instead for demonstrating the games that are played by Courts and Bars during the admissions process. Because what happened in this case is absolutely incredible. It is incredible whether or not one believes this Applicant should be admitted, and reflects on the Illinois Supreme Court in a most pathetic manner. First, I think we can all agree that for the Bar to certify this Applicant who has a lengthy criminal record, while denying certification to the Applicant in the last case discussed (488 N.E.2d 947 1986) is inconsistent. That however, is also not the point of presenting this case.

The key issue in this case focuses on Illinois Supreme Court rule 708(c). Under that rule as it existed at the time, once the Applicant was certified by the Committee, he was expressly "entitled to admission." The rule contained no provision for review of a decision favorable to the Applicant. Who could or would appeal it? Certainly, not the Committee that certified the application and certainly not the Applicant who was "entitled to admission."

The Applicant in this case was remarkably certified by the Committee. The Court then decided "sua sponte" (on its' own) that it didn't like the Committee's decision. It granted the Applicant leave to file a petition addressing the question of character, and directed the Administrator of the Attorney Disciplinary Commission to file a response. Stated simply, the Illinois Supreme Court blatantly violated its' own rule, thereby creating its' own litigation. The Applicant naturally contended that the court's rule expressly stated that the matter was to be determined by the Committee and that there was no provision in the rule for review of a favorable decision. The Court, apparently intent on diminishing any semblance of respect that should be accorded to its own rules, decided to violate the rule in an express manner and denied admission. The opinion states:

> **"Petitioner argues, with justification, that a denial of admission without further procedures following certification would constitute a denial of due process.** It should be noted that here, the court, sua sponte, provided an opportunity for petitioner to appear and persuade the court that the record before the committee did, indeed, support the conclusion that he had been fully rehabilitated and was fit to be admitted to the practice of law.
>
> . . .
>
> **We consider next petitioner's contention that under Supreme Court Rule 708(c), having been certified by the committee, he is entitled to admission to the bar.** A rule, like a statute,

must be construed to avoid an absurd or unconstitutional result. Were we to construe Rule 708(c) in the manner urged by petitioner we would face the absurd situation that, confronted with the record here, we were powerless to consider the correctness of the decision to certify and would be required to blindly admit petitioner. . . . **To read literally the language of the rule would divest this court of jurisdiction to review the finding of the committee and thereafter deny admission** . . . ."

The Court then goes on to deny admission on character grounds. What happened in this case is quite clear. The Court didn't know how to draft its' rules properly. They did an incompetent job writing the rule, discovered that it had an absurd result, and so violated the "literal language" of the rule. They opined that it was not proper:

"To read literally the language of the rule . . ."

I do not contend that this Applicant's character warrants certification. Nevertheless, if the rule mandates admission, then as a matter of law there really is no choice. What if citizens conducted themselves similarly with respect to laws? If the Court can expressly break its own rules, can I as a citizen break laws? Why can't citizens violate dumb and stupid court orders, if the Illinois Supreme Court can expressly violate its' own admittedly "absurd" court rule? This opinion is a prime example of the Court holding itself above the law. It's particularly incredible because it holds itself above the law, as unilaterally promulgated by the Court itself. The Dissent nails the issue perfectly. Before addressing the Dissent however, its' importance is best laid out by a specially concurring opinion that states:

"The author of the dissenting opinion has, inadvertently I hope, used innuendos, general accusations, and emotionally charged language, which were seized upon by segments of the media, expanded and used to create a cause celebre over a "reformed drug addict and petty thief" whom this court has refused to license to practice law. **I feel I must respond to the misleading and unfortunate statements by the author of the dissent, which have caused the media and the public to challenge the integrity of those who joined in the majority opinion."**

The Dissent's statements are wholly fortunate, rather than misfortunate, and not at all misleading as they succinctly and correctly point out the reasons why the majority's integrity is in truth highly questionable. The Dissent quoted at length, states:

"This is the first time this court has deviated from its own rules and case law by reviewing, sua sponte, a bar application . . . the Committee on Character and Fitness has certified as fit to practice law. **In so doing, the majority ignores this court's prior decisions which limit review of the committee's findings.** . . . **In addition, the majority disregards the clear directive of Supreme Court Rule 708(c), which it shrugs off as "unfortunate language"**. . . . Rule 708(c) has been amended effective August 1, 1987, but no one suggests the amendment applies. . . . **By its opinion the majority has significantly changed the admissions process without first notifying applicant . . . law students, the bar, and the public.**
The majority justifies its decision to review . . . with the conclusory statement that to do otherwise would be both absurd and unconstitutional. . . . **It would be unconstitutional, according to the court, "to read literally the language of the rule" . . . .**

. . . Of course, the court has the authority to alter or repeal its rules, but it did not bother to do so here until first departing from the existing rule. **Due process demands that we follow our own rules while they remain in force, and they are binding on this court the same as a on litigants. . . . United States v. Nixon** (1974), 418 U.S. 683 . . . .

Without explanation and on its own motion, the court issued an order on June 4, 1986, after the committee had already certified . . . . **The order, which also set a date for oral argument, was seriously deficient for several reasons.**

It failed to advise . . . how this matter even came before us. **Nothing in the record indicates the source of the information which triggered this extraordinary proceeding.** Such review has not taken place--in even a single instance--since I have been a member of this court. Moreover, as the majority concedes, there are no formal procedures for keeping the court apprised of an applicant's interaction with the Committee on Character and Fitness. . . . **The only way this court could have been advised . . . therefore, was through an informal communication. The possibility that this unusual proceeding was initiated on the basis of rumors and gossip turns the entire admission process into a sham. . . .**

. . .

. . . **<Applicant> will not be permitted to practice law in this State, not because he has failed to follow the rules, but because we have.** The court's departure from any concept of fairness or regularity has been complete, and I would say, **almost Kafkaesque.** . . . The court has misused its authority, and I dissent. [250]

Bravo to the Dissent in this case. As for the majority, one can not help wonder if they decide other types of cases in Illinois in such an unlawful manner.

561 N.E. 2d 614 (1990)

WE AT THE LAW SCHOOL FIRST GIVE YOU A "PRELIMINARY" APPLICATION. THEN ONCE WE GET TUITION MONEY, WE GIVE YOU THE REAL APPLICATION

The Applicant, born in 1956, misrepresented his age in 1970, to enlist in the Army. He was about 14 years old. After his mother learned that he was in the service, she was able to secure his release and he was honorably discharged in 1971. For the next two years, he lived on his own without parental supervision. As a minor he was charged in about a dozen different delinquency proceedings, all of which were stricken or dismissed. Then, in 1973, at age 16, he pled guilty to rape and robbery. He was sentenced to four to six years of imprisonment, and released in 1977. In 1980, he again enlisted in the army. He received two punishments. First, when he disobeyed an order directing him to send an allotment of money to his wife and the second when he left his post without permission. Subsequently, he was the subject of a summary court martial proceeding for stealing the wallet of another soldier and served 30 days confinement. He was discharged in 1982 under less than honorable circumstances. In 1983, he enrolled at Chicago State University and completed work for a Bachelor of Arts in May, 1985. That same year, he was invited to enroll at the Southern University Law Center in Louisiana. He graduated from law school in 1989. On his law school application, he answered a question inquiring whether he had ever been charged with a criminal offense by checking both the "yes" and the "no" box, and then notating "See Il.R.S. chap. 38 12-13". The statute he cited was criminal sexual assault.

Before the Hearing panel, he testified that he initially marked the "no" box, and then immediately decided to correct it and wrote in the statutory citation for the offense of rape. He explained that he made the correction with a different ink color because he wanted to highlight the matter. Several months after submitting his preliminary application for admission to law school, the Applicant completed a more extensive application form, in which he failed to disclose his convictions and court martial. The Applicant testified that he did so because he feared he would be dismissed from law school if he responded truthfully. On his Bar application, he disclosed his criminal history in a comprehensive manner. He also presented testimony and affidavits from about 20 people in support of his admission. All were aware of his criminal record.

The circuit judge who sentenced him for rape characterized his academic achievements since prison as unique. The public defender who represented him, a woman who had since become an associate judge, supported his application. Since being discharged from the service in 1982, he had also participated as a volunteer to a number of charitable causes. The Bar committee noted that he expressed remorse for the offenses in 1973, but had particular concern with his failure to reveal the criminal record on his law school application. The Court stated:

> ". . . petitioner contends, as a preliminary matter, that the findings and recommendation of the committee's hearing panel should not be accorded their customary deference . . . because not all the members of the panel were present throughout the proceedings. . . . In support of this contention, petitioner notes that **only one member of the seven-member panel was present throughout the entire course of the two-day hearing;** of the six other members, five were absent during portions of the hearing, and one was not able to attend at all. . . ."
>
> . . . **the panel members' absences may indeed serve to lessen the deference appropriately paid to the members' resolution of factual issues. . . ."**

Based on the foregoing, the Court adopts a more comprehensive consideration of the application. In reference to the character issues, the opinion states:

"As a minor, petitioner was the subject of repeated delinquency actions, most of which were ultimately dismissed or stricken. **Petitioner insisted, as an explanation for many of those matters, that he and his friends were routinely charged by police with a variety of meritless offenses. . . .** As we have stated, the committee characterized petitioner's attitude toward his criminal history as "cavalier."

The Court apparently is unimpressed with the fact that the Applicant disclosed his criminal history on the Bar application. It states:

"Petitioner emphasizes that he was candid on his application for admission to the bar. . . . It may be noted that counsel for the committee has made no challenge to the accuracy or completeness of the information submitted in this regard by petitioner.

. . . in providing truthful and accurate answers to the questions on the bar application, petitioner simply did what was expected of him, and in that way avoided the potentially serious consequences of later disclosure and discipline. His candor in revealing his criminal record on the bar application cannot be said to constitute strong evidence of rehabilitation."

The Court denies admission stating:

"Certification of petitioner would, we believe, deprecate the seriousness of past offenses and tend to undermine the integrity of the profession he wishes to practice.

In the alternative, petitioner contends that several aspects of the procedures followed in the present matter by the hearing panel and by the full committee failed to comport with the requirements of due process . . .

With respect to the actions of the hearing panel, **petitioner complains that those who took part in the decision did not attend all the sessions. . . .**

With respect to the action of the full committee, petitioner first complains that he was never advised of the votes cast by the individual members of the full committee, and that he was not told what materials concerning the case were provided to the members prior to their decision. Again, we do not consider that public disclosure of those votes is necessary. In addition, we note from the record that the parties' briefs and the transcript of the hearing were made available to the committee members.

Petitioner also notes that less than a quorum of the full committee voted on the hearing panel's recommendation. . . . 10 of the 26 persons who serve on the committee were present when the hearing panel recommendation was adopted in this case**. At oral argument, counsel for the committee acknowledged that the committee has not specified what quorum is necessary for the committee to act.** Petitioner observes that under the rule at common law, a simple majority of the members of a body constitute a quorum, in the absence of a contrary provision. . . .

If there was a defect in the proceedings below, it lay in the failure of a quorum of the full committee to make the certification decision. . . ."

It is clear from the foregoing, that the committee lacked a quorum to render its decision. Action of any nature by this committee was illegal in the absence of a valid quorum. As indicated above, counsel for the committee even conceded that:

> **". . . counsel for the committee acknowledged that the committee has not specified what quorum is necessary for the committee to act."** [251]

It's kind of a theory like, "let's just keep it easy, loose and free, so we can do whatever the heck we want." From a perspective of establishing a body of law that the public can have faith and confidence in, this is nothing more than pure amateurish crap. The Court then goes on to irrationally dance its' way out of its' new procedural mess by relying on what case, other than, of course, *518 N.E. 2d 981* (1987) discussed previously herein. That's the case where the Court blatantly violated its' own admission rule and the Dissent questioned the majority's integrity. I am forced to concede that *518 N.E. 2d 981* (1987) does definitely stand for the premise that the Court can chuck court rules and due process into the garbage. If you accept that case, you might just as well let all citizens judge the law on their own.

Addressing now the substantive issue, I would admit the Applicant. The conviction for rape in 1973 is extremely serious, and I am admittedly close to denying admission on the basis of it. Nevertheless, seventeen years have lapsed. The Applicant was actively involved in community and charitable affairs and expressed remorse. In summary, notwithstanding the heinous nature of the offense, it is far remote in time, and both remorse and rehabilitation have been demonstrated. I would admit.

Three other facets of this case should be pointed out. First, the Committee seems to focus more on the issue of nondisclosure with respect to the law school application than the rape offense. The law school application disclosure issue was minuscule in importance compared with the rape offense. When reading the opinion, one can not help conclude that if the Applicant had disclosed the rape offense on the second of his two law school applications, he would have been admitted. Apparently, just disclosing it on the first however, was insufficient.

Second, in reference to the disclosure issue, he did disclose the statute he violated on the first law school application. The Committee's concern focuses on the second law school application prepared after he had already begun law school. Apparently, the law school had a policy whereby it let a student begin law school on the basis of an initial application, and then once he started taking classes, a more comprehensive application had to be completed. That's pure crap! They apparently want the student to relocate geographically, grab their law school tuition dollars, and then once the student is already in and taking classes, they demand what apparently is the "real application?" At that point, the student is committed, and the law school has unfairly leveraged him. The Bar Committee should have been more concerned with the lack of equity in requiring completion of a second law school application.

Thirdly, the failure of the Hearing panel members to actually attend the Hearing demonstrates a callous indifference and lack of respect for the Applicant, his rights and their duties as panel members. They were spitting in his face. In this regard, even if one assumes arguendo, that the warped nature of Bar admission proceedings was constitutionally valid, the Committee members displayed the wrong "attitude" and were not entirely "candid" with respect to fulfillment of their duties.

568 N.E.2d 1319 (1991)

ADMISSION TO THE MEDICAL PROFESSION DOES NOT THREATEN THE ECONOMIC INTERESTS OF OUR ATTORNEYS.
SO, WE CAN RENDER CONSTITUTIONAL OPINIONS IN THIS AREA

This case is not a Bar admissions case. It is however, a beautiful case to demonstrate how the Courts hypocritically deal quite differently with admission into other professions, compared to the State Bar. This case addresses moral character with respect to a medical license application. While the Court as demonstrated herein, is amenable to "evading" constitutional fairness when assessing Bar applications, they adopt an extremely different "attitude" in regard to the other professions.

The Applicant was denied a medical license on "moral character" grounds. A question on the application inquired whether he had ever been denied a license, permit or privilege of taking an examination by any licensing authority. He answered, "No." At an informal conference, he revealed that he had in fact applied for licensure in Indiana, South Dakota and Pennsylvania and had not been granted a license in any of those States. In addition, he failed to disclose his attendance at an occupational school. The Illinois Department of Professional Regulation provided him with notice that it intended to deny his application for reasons, including the following:

"1. You have made false statements to the Department in connection with your application."

Remember, how the Illinois Court denied admission to Applicants to the practice of law on grounds of nondisclosure, or omitted information? Well, now when dealing with Applicants to the medical profession, they are more sensitive to the Applicant. It's almost like they don't want members of the general public to know how they administer the Bar admissions process. They think that by judging other professions in accordance with constitutional standards, they can hide their hypocrisy with respect to the legal profession. Compare the following statements dealing with a medical license application with the preceding cases addressing a law license in Illinois:

> **"We also agree with the plaintiff's contention that the Board's finding that the plaintiff had made "numerous misstatements of material facts" is vague and ambiguous. Even after oral argument, it was not clear to us precisely what statements or conduct on the part of the plaintiff the Board relied on in determining that he had made misrepresentations of material fact.** Consequently, we have been required to examine the entire record. That examination discloses that the procedures followed by the DPR were unusual and, in large measure, unfair to the plaintiff. **Indeed, we conclude that the procedures followed made a shambles of due process."**
>
> **. . .**
>
> **The wish of the hearing officer for the "smallest manageable proceeding" was ignored. Instead, the proceeding on September 9, 1987, was expanded and became both accusatorial and inquisitorial and personally insulting to the plaintiff.**
>
> **. . .**
>
> At one point in the proceedings, the plaintiff's attorney made a proper objection to which the attorney for the Board said this:
>
> > "If I may, I would respectfully suggest that your client's proclivity to lie and perjure himself on applications is very germane to the issue of his character and fitness to be licensed . . ."

We must first address what appears to be a misconception of the law on the part of at least one of the Board members and the attorney for the DPR. The attorney for the DPR argued in this court that a distinction is to be made between actions to revoke or suspend a license and actions to deny an application. . . . Insofar as due process requirements are concerned, there is no distinction. . . .

. . .

The plaintiff argues generally and correctly that administrative proceedings are governed by fundamental principles of due process. . . . He does not, however, point out, as we do, the denials of procedural due process. We anticipate that the DPR will maintain that we have raised an argument that has not been raised by the plaintiff. We concede that may be so. But the rule that points not argued in the appellate court are waived is an admonition to the parties, not a limitation upon the jurisdiction of a reviewing court. This is so because of the responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent. . . .

. . .

The Department concedes that, if the plaintiff had informed the DPR that he had previously been denied a license in Indiana, South Dakota and Pennsylvania, the denials of a license in those States would not be a ground for denying him a license in this State. . . . **Because truthful answers would not have barred the plaintiff from being licensed, it is our judgment that any misrepresentation would not be material. In order for a misrepresentation to be material it must appear that the party to whom the misrepresentation was made would have acted differently if he had known the true facts. Lytton v. Cole** (1964), 54 Ill. App. 2d 161."

My gosh, where to begin with this case. It just boggles my mind that Illinois Courts could adopt such a stance with respect to medical licenses, when you consider how they treat law licenses. My favorite part of the opinion is the part cited above that reads:

> **"Because truthful answers would not have barred the plaintiff from being licensed, it is our judgment that any misrepresentation would not be material. In order for a misrepresentation to be material it must appear that the party to whom the misrepresentation was made would have acted differently if he had known the true facts. Lytton v. Cole (1964), 54 Ill. App. 2d 161."**

They sure didn't adopt that premise in all the other Illinois cases discussed previously. Such a proper and correct constitutional standard, apparently does not apply to the legal profession, just the medical profession. In *488 N.E.2d 947 (1986),* the Applicant was denied admission for citing his high school attendance dates as 1970-1974, instead of 1971-1975; along with failing to disclose some residence addresses and having parking tickets. Apply the standard used in this medical license case to that Bar Applicant, and he would have been admitted. The other part of the opinion that's great states:

> "He does not, however, point out, as we do, the denials of procedural due process. **We anticipate that the DPR will maintain that we have raised an argument that has not been raised by the plaintiff. We concede that may be so.** But the rule that points not argued in the appellate court are waived is an admonition to the parties, not a limitation upon the jurisdiction of a reviewing court. This is so because of the responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent. . . ." [252]

In the Illinois Bar admission cases, the Court trashes procedure with respect to Rule 708(c) in *518 N.E.2d 981 (1987)*, with respect to quorums and other committee procedural deficiencies in *561 N.E. 2d 614* (1990). Now however, with respect to the medical profession, procedure is the hip thing of the day. In fact, the Court in this case goes so far as to virtually represent the Applicant. It considers arguments the Applicant himself didn't even make. The opinion overall, I have to admit is good. Frankly speaking, I probably wouldn't have gone so far as to make the Applicant's case for him, but other than that it's right in line with the constitution. In comparison to the Bar admission cases however, it is the most blatantly hypocritical thing you could possibly read in your wildest imagination. They do what their supposed to do for the medical profession, but not the legal profession.

646 N.E.2d 655 (1995)

DEFINITELY, A BAD IDEA TO EXPRESS AN INTEREST IN DATING A FELLOW LAW STUDENT

This case involves a Bar Applicant (Plaintiff) who institutes a defamation claim against the Dean of the law school who refused to certify his character. The Dean refused to certify his character in reliance on statements made by a law professor and a law student. The Plaintiff was nevertheless admitted to the practice of law and then filed a defamation action against the individuals who vindictively attempted to sabotage his application. The facts are as follows.

The problems focused on certain friendships the Plaintiff had. He was friends initially with a law professor and a female law student because all were interested in the pro-life movement. Apparently, the Plaintiff also had an interest in the female law student that went beyond the pro-life movement, and was rebuffed. The law student complained to the law professor that he was sexually harassing her. The law professor informed the Dean of the law school. The professor's communication to the Dean stated that he was not morally fit to practice law.

He alleged the following in his lawsuit. He asserted that the Dean had informed him that he was not furnishing the Board of Examiners with the usual certification related to character. Additionally, the Dean solicited comments from faculty regarding the Plaintiff, but took no steps to verify the charges. Much of the information solicited related to personal relationships and public statements he had made related to public policies. The Dean denied the existence of the file, despite requests from the Plaintiff and his representative. The Dean then forwarded portions of the file to the Bar Committee, but withheld portions that were exculpatory in nature. The Dean assured the Committee that the withheld documents would not add significantly to the information already received. The Trial Court dismissed the Complaint without leave to reinstate. Apparently, the Plaintiff's case hit a sensitive area in the legal profession. It is difficult to delineate the reasons for dismissal, because the Appellate opinion states as follows:

> "(The discussion of the court's dismissal of counts III and IV is not to be published pursuant to Supreme Court Rule 23.)
>
> Material nonpublishable under Supreme Court Rule 23
> . . .
> (The discussion of the court's reasoning in dismissing counts VI and VII and imposing sanctions is not to be published pursuant to Supreme Court Rule 23.)
>
> Material nonpublishable under Supreme Court Rule 23."

Now that's American justice in Illinois at its' best. The Appellate Court of Illinois does make the following statements which are interesting regarding the practice of law :

> "There is a **constitutional protection of the right to practice law** if the national requirements of bar admission are met. . . .
>
> . . .The right involved in this case was the right to practice law in Illinois. This right could only be granted or prohibited under the provisions of the rules of the supreme court of this State." [253]

I present this case because it demonstrates how the admissions process adversely affects even those who are admitted. The Plaintiff had to go through the time, trouble and expense of a Bar Hearing and the associated delay that such entails, simply because he apparently expressed a romantic interest in a fellow law student who got offended. That resulted in an apparently baseless claim for sexual harassment by a fellow student (no charges appear to have been filed or any suit instituted against the Plaintiff). The Plaintiff naturally, as would be expected got defensive. The Dean and the law professor got ticked off and tried to sabotage his legal career. The Court does note that the ability to practice law is a right. And yes, they even said it was a constitutional right.

SUPREME COURT OF ILLINOIS, No. M.R.16045; Versuslaw 2000.IL.0042979 (12/01/2000)

WE AT THE STATE BAR LACK CANDOR WHEN WE EMPHASIZE REHABILITATION; IT REALLY DOESN'T MEAN ANYTHING TO US

The Applicant was convicted in 1988 of insurance fraud, and sentenced to 30 month's probation As a condition of probation, he was required to complete 950 hours of community service, and pay $ 5000.00 in restitution. His probation was satisfied in 1990. On his law school application, he failed to disclose three previous misdemeanor convictions. He graduated from law school in 1994 and was denied character certification in 1995 on the ground that he had not adequately demonstrated that he was rehabilitated.

The Bar Committee falsely concluded that "*specific*" evidence of rehabilitation was lacking. At the Bar Hearings, he submitted the following "*specific*" evidence in support of showing rehabilitation. He had engaged in volunteer and charitable activities beyond those necessary to comply with the terms of his probation. "*Specifically*," he worked in the community defender office and served as a teacher of English as a second language at a local community college adult education program. "*Specifically*," he also performed work caring for elderly and infirm patients. He presented the "*specific*" testimony of seven character witnesses. An Illinois Associate Circuit Judge testified that he had worked at the community defender office on an "as needed" basis. The director of the community defender office also testified that the Applicant was honest, trustworthy and dedicated. The program director for volunteer adult education teaching described his work at the college. She testified that he was generous in donating his time, dedicated to his students and trustworthy. A Chicago police officer and two law school professors also testified on behalf of his character. In addition, he presented affidavits from a U.S. District Judge and the Dean of the Law School, both of whom supported his application and attested to his fitness. He also testified that he was truly remorseful for his prior conduct and intended to continue his volunteer work regardless of the Bar's decision on his admission.

How much more "*specific*" evidence the Applicant could possibly have submitted is truly beyond my comprehension. The Bar's conclusion that "*specific*" evidence was lacking, was blatantly false, demonstrating a lack of candor and truthfulness on their part. This is a fact whether or not the "*specific*" evidence he presented was sufficient to demonstrate rehabilitation.

The majority opinion of the Court affirms the Bar's decision to deny admission. An extremely well-written Dissenting opinion possesses the logic and rationality that is markedly absent from the irrational majority opinion. The Dissent writes eloquently as follows:

> "As I studied and pondered the majority opinion, one lingering question always remained: What more could petitioner have done that he did not already do to enable him to be allowed the privilege to practice law? Stated otherwise, is there anything petitioner failed to do to justify refusing him a license to practice law. The majority does not answer this essential question. . . .
> . . .
> The analysis employed by the majority in assessing the merits of petitioner's admission petition does not adhere to this court's prior pronouncements with respect to evaluating whether an individual has shown sufficient rehabilitation. . . .
> . . .
> . . . Inexplicably . . . both the Committee and the majority discount the value of this uncontradicted evidence, and instead resort to mere speculation and unsupported conclusions as the basis for denying petitioner's application for admission to the bar.
> . . .

. . . the majority has determined that regardless of the amount of positive evidence presented in petitioner's favor, the nature of petitioner's offense automatically precludes his admission to the bar.

The clear and unmistakable effect of denying the opportunity to sit for the bar examination is to impose additional punishment upon him after he has been tried and served the sentence which was deemed appropriate by agreement of the court and the prosecution in the criminal case. . . . "Once an offender has served his sentence, the punishment must stop." . . . In the case at bar, the punishment has not stopped, but continues. . . ."[254]

INDIANA

585 N.E. 2d 1334 (1992)

DISCLOSING ANY INCIDENTS OF A "DEROGATORY NATURE" INCLUDES WHAT YOU DID IN GRAMMAR SCHOOL

The Applicant (Respondent) filed an application for admission to the Indiana Bar in 1982 and was admitted. Years later, he was charged in disciplinary proceedings with making a material false statement and failing to disclose a material fact in connection with his application. Question 11 of the application asked the Applicant to list other states in which he had applied for admission. He failed to disclose that he had applied to the Rhode Island Bar and was denied admission because he had not graduated from an ABA law school (Indiana apparently did not require graduation from an ABA law school). Question 18 inquired about any incidents of a derogatory nature and the Respondent answered, "none." He failed to disclose in 1973 (9 years before his application and nineteen years before the Court's opinion) that he had been arrested for his alleged role in a drugstore robbery. The charges were dismissed. In 1976, he was arrested for breaking and entering a motor vehicle, but was found not guilty at the probable cause hearing. In 1978 he was arrested for possession of stolen property and the case was dismissed. The Supreme Court of Indiana's opinion states:

> "At his very first encounter with a situation calling for sound professional ethics, this Respondent embarked on a path of deception. The nature of this violation indicates a serious lack of candor which reflects negatively on a lawyer's integrity and professional status." [255]

The Court suspends him from the practice of law. I see this case quite differently than the Indiana Court. Since his Rhode Island admission was denied because he had not graduated from an ABA law school, rather than on character grounds, disclosure would not have affected Indiana's decision. It is therefore immaterial, applying the proper constitutional standard for nondisclosure.

The issues pertaining to Question 18 which makes inquiry about "any incidents of a derogatory nature" are much more serious and reflect quite negatively on the issue of character. The character of the Bar and State Supreme Court, that is. The question is garbage suffering from constitutional infirmity due to vagueness, overbreadth and ambiguity. The question based on its express mandate, would require listing of derogatory incidents dating back to an Applicant's birth. Derogatory incidents such as when they were four years old and took a cookie from the cookie jar, when they were in second grade and lipped off to a teacher, threw some food in the school cafeteria at age seven, spit up at the dinner table when they were 9 months old, took a leak in a back alley after drinking beer with friends at age eighteen (while underage), and the list would be completely endless.

Also, what's considered derogatory to one person, may not be derogatory to another. I think the manner in which Bar committees usurp the constitution is conduct of a derogatory nature. I assume however, the State Bars disagree with me. Similarly, I assume they would believe the ideas I express in this book reflect poorly on me. Naturally, I disagree.

Determining what is "derogatory" is not an easy thing to do. Some people think certain comedians tell derogatory jokes in bad taste, while others think those same comedians are hilarious. Some people think lawyers are scum, while the Bars seem to feel the practice of law is a time honored profession exemplified by respect and dignity. Some people think that those who call the legal profession an "honored profession" lack candor and are being untruthful.

Furthermore, if different people consider different things to be derogatory, does that mean disclosing something you <u>think</u> is derogatory, but which the Bar determines is not derogatory,

constitutes lying? The listing of an incident ultimately determined by the Bar to not be derogatory, would then have the effect of reflecting worse on the Applicant's candor, than failing to disclose. Let's now apply the requirement of listing "any incidents of a derogatory nature" to the Respondent's failure to disclose his arrests for three incidents, two which were dismissed, and one of which he was found not guilty. My analysis is as follows:

> The U.S. Constitution presumes a person is innocent until proven guilty. The Respondent in this case was therefore, as a matter of law innocent since he was never found guilty of any the charges. Since the Respondent was innocent, the incidents, do not reflect upon him in a derogatory manner. Therefore, if the Respondent does list the arrests, he is answering the question incorrectly. To this extent, listing the arrests would constitute an improper attempt to classify his innocence as derogatory in nature. Since however, he failed to disclose the arrests, he was being completely and absolutely truthful.

Admittedly, in the foregoing passage I play the same manipulative game of logic that the Bars play. But it shows how subjective standards are unworkable. The question, simply put, was garbage. To discipline this man was an abuse of authority by the Supreme Court of Indiana in an arbitrary and capricious manner.

Supreme Court of Indiana, No. 49S00-9512-DI-1329; Versuslaw 1996.IN.469 (1996)

YOU DID A VERY GOOD JOB FAILING TO DISCLOSE INFORMATION ON YOUR APPLICATION, SO WE'LL ONLY GIVE YOU A REPRIMAND. YOU PLAYED BALL WITH US, SO WE'LL PLAY BALL WITH YOU.

The Applicant (Respondent) filed an application to the Indiana Bar in 1993 and was admitted. He was subsequently charged with failing to provide full disclosure on his application. Question number 17 of the application requested that he provide a listing of every civil court proceeding in which he had been a party. He failed to disclose that he had been the defendant in three lawsuits. Question number 18 made numerous inquiries that included traffic offenses. He failed to disclose that he had received a speeding ticket. Question number 19 inquired about arrests. He failed to disclose that he was arrested in 1984 for public intoxication. No charges resulted. He failed to disclose on his Florida Bar application that he had two delinquent debts. These were his nondisclosures. Three civil lawsuits, one speeding ticket, one 9 year old arrest and two past due debts. He was given the sanction of a public reprimand. The Court states:

> "The parties agree that the respondent's misconduct was the result of negligence rather than an intent to deceive. . . . In attorney disciplinary actions, a "negligent" state of mind, where a lawyer "fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that reasonable lawyer would exercise in the situation," is viewed as the least culpable of mental states." [256]

The Court distinguishes the sanction in this case (a public reprimand) with the nondisclosure sanction of a one year suspension in *585 N.E. 2d 1334 (1992)* , on the ground that the nondisclosures in this case were a result of negligence, rather than intent. The cases considered together raise a more disturbing issue.

I have indicated herein that I believe the admissions process is unconstitutional because the application inquiries are unconstitutional. Most particularly, they violate Freedom of Speech protections and the Equal Protection Clause of the Fourteenth Amendment. Nevertheless, if we work from the assumption (even though it is an invalid assumption) that I am incorrect and the admissions process is wholly constitutional and the questions entirely proper, these two cases raise an ethical dilemma.

Quite simply put, both Applicants benefited by failing to disclose matters on their application. They got admitted. Then once admitted, after their purported nondisclosures were discovered, they received respectively a one year suspension, and a public reprimand. It is clear, that even assuming the admissions process was constitutional (which I do not believe it to be), an Applicant is better off lying during the process if he thinks he can get away with it, even if that lie may be discovered subsequent to admission. This I find to be an unacceptable result.

The Bar rewards the admitted Applicant with public reprimands, while penalizing Applicants caught during the process by denying admission. It is an absurd result. Rather than condoning such an absurd result, unconstitutional questions should not be asked during the admissions process. It is none of the Bar's business to inquire about an individual's personal debts, arrests resulting in no conviction, residences or jobs extending more than five years back prior to the application, or speeding tickets. The Bars are just setting themselves up to look hypocritical and foolish.

In attempting to squeeze all personal information out of the Applicants, the Bars jeopardize the foundation of their legitimacy. They play an imprudent game which once publicized can not help but lead to a divestment of their power which otherwise would have been uncontested.

Supreme Court of Indiana, #43S00-9709-DI-479;Versuslaw 1999.IN.0042503 (1999)

WE'RE NOT CONCERNED AS MUCH ABOUT YOUR CONVICTION FOR VIOLATING FEDERAL LAW, COMPARED TO THE BIGGER ISSUE OF NOT UPDATING YOUR BAR APPLICATION

The Applicant applied to the Indiana Bar for admission. In September, 1995, while his application was pending, he was "interviewed" by the FBI about downloading child pornography on the Internet. At the time, he was a law student. After the interview, he believed nothing further would come of the matter. He was also unaware that such downloading violated federal law, which was a believable contention in 1995, during the early years of the Internet.

He did not inform the Indiana Bar about the FBI interview, or update his application. He was admitted to the practice of law in October, 1995. In April, 1996, he was charged with the downloading of the images, pled guilty and was sentenced to 15 months in prison. Disciplinary action was then instituted against him by the Indiana Bar for failing to update his Bar application regarding the FBI interview. He was suspended for a minimum period of two years. The two application questions that allegedly addressed the matter were (19) and (20). Question 19 stated:

> ". . . I have been accused of the following violations of law (Note: (a. Set out date, city and state, name of person who made the accusation against you, the law enforcement agency involved, if any, and any disposition. (b. Give specific details of the accusation and a full description of the incident. . . .)"

The foregoing question positively does not encompass the FBI "interview." He was only "questioned" by the FBI in September, 1995. At that time, no formal accusation was made. As a matter of law, an accusation by a law enforcement agency requires a "charge." Without a "charge," there is no "accusation." At most, there was a suspicion or belief that he committed a crime. He was therefore technically correct to not update his response to Question 19. Question (20) inquired as follows:

> "Within the meaning of the term "good moral character" and "fitness" to practice law . . . I have read and understand, since I became 18 years of age the only incidents in which I have been involved **where there was any challenge to my honesty and integrity** are as follows:"

The downloading did not challenge his "honesty" or "integrity." No doubt, it was a serious violation of federal law, but it was not related to honesty or integrity. In any event, Question (20) is constitutionally infirm. The inquiry focuses on "incidents" challenging one's honesty and integrity, since age 18. It is ambiguous, vague and suffers from substantial overbreadth. It requires a subjective analysis of what constitutes "good moral character," and what constitutes "any challenge."

For instance, if you tell a friend you will meet them at 5:00, and then arrive at 5:15, does their statement that "you said you would be here by 5:00" constitute a challenge to your honesty. The question is clearly impossible for any human being to answer. To even attempt such would require submission of hundreds of pages detailing numerous interactions with friends and family members over a long period of years.

My conclusion therefore, is that the Applicant was not required to provide additional information as a result of the FBI interview. The matter was simply not covered by the scope of either Question (19) or (20), and Question (20) was unconstitutional suffering from substantial overbreadth, vagueness and ambiguity in violation of the First Amendment.

The foregoing conclusion I have reached does not mean however, that he should escape discipline with respect to the matter. Quite to the contrary. He was convicted of a serious crime. That in and of itself, warrants severe disciplinary action. Stated simply, the Bar and Court should have disciplined him solely based on the conviction, rather than trumping up a lame allegation that he failed to update his Bar application to reflect the FBI "interview."

One last point on this case. It is noteworthy to point out that even if he did have a responsibility to update the application (which he did not based on the questions included on the application), from a strategic perspective he made the right decision in not doing so. The reason is as follows. By failing to update the application, he succeeded in gaining admission to the Bar and was then suspended for two years. If however, he had updated the application, he probably would not have been admitted at all. It is clear that the admissions process rewards a failure to disclose, if one successfully conceals the information until after they are admitted. The process is therefore irrational. [257]

IOWA

Versuslaw 2001.IA.0000318; No. 53/01/0002

BAD ATTITUDE

The Applicant in this case was denied admission simply because the Iowa State Supreme Court didn't like his attitude. He was denied admission to take the Nebraska Bar exam, and then applied in Iowa. The Court's opinion states:

> "His problems in both states result from his failure to establish he is a person of honesty, integrity, and trustworthiness. . . ."

The Court's statement lacks candor, and raises substantial question as to the Court's honesty, integrity and trustworthiness. Based on facts set forth in the opinion, the Applicant was denied admission because he consistently utilized appropriate legal means to stick up for his constitutional rights.

The Applicant had two arrests. One arrest was for shoplifting a $ 3.99 socket wrench at a Sears store and the other for failing to display proper license plates. In response to the Sears arrest, he then sued Sears for false arrest, negligence in failing to adequately supervise its personnel, and conspiracy to batter and slander. The Applicant's wife was interestingly, having her own application to take the bar examination challenged at the same time. She also sued Sears and employees. Both the Applicant and his wife then moved to Disqualify the trial court judge. I like this couple very much.

The suit was ultimately dismissed. The Sears lawyer then expressed his opinion that the Applicant lacked the integrity to be admitted. Oh my, isn't that so very surprising? Opposing counsel in a litigation is not in favor of admitting the opposing party to the State Bar. The testimony of the Sears lawyer with respect to the issue of character in the Bar admission proceeding was not in my view, worth Dogshit. Or perhaps, that was precisely what it was worth. He was the opposing lawyer. Anything he says should automatically be ignored. Regarding the second arrest, the Court writes:

> "He was stopped on February 20, 1993 for not having proper license plates. He demanded a jury trial, and the jury found him guilty. He filed a motion for new trial, which was denied, and he then appealed the conviction. . . . The litigation spawned by the traffic citation lasted over six years."

The foregoing is absolutely meaningless with respect to the issue of his admission to the Bar. First of all, the charge was essentially trivial in nature. Second of all, he was absolutely entitled to utilize legal means to oppose his conviction. It's simple as that. For the Iowa Supreme Court to hold doing so against him, reflects adversely on the moral character of the State Supreme Court Justices. Most notably, the Iowa Supreme Court states as follows:

> "An applicant has no natural or constitutional right to practice law in this state. . . ." [258]

By making the foregoing irrational and mentally unbalanced statement, the Iowa Supreme Court usurped the authority of the U.S. Supreme Court, engaged in false disclosure, misleading disclosure, and evaded the truth. The simple fact of the matter is that the ability to practice law is a fundamental constitutional right. Any State Supreme Court Justice that says otherwise is nothing less than a liar. This was nothing more than a bad attitude case. The Iowa Supreme Court had a very bad attitude.

LOUISIANA

SC-LA Case No. 97-OB-1004 ; Versuslaw 1998.LA.42812 (1998)

NO ONE KNOWS WHY

Discussion of this case will be quick. The reason is that the Supreme Court of Louisiana issued an opinion that does not in the slightest manner disclose the facts of the case or the reason for denying admission. It's a four paragraph opinion. The Applicant graduated from law school and applied for admission. The Committee declined to certify based on issues pertaining to his moral fitness. What those issues were, you can not tell from the opinion. After oral arguments, the content of which is unknown, he was denied admission. One year later, he reapplied for admission and was again denied certification based on character issues. He filed a response, the contents of which are unknown from the Court's opinion. Oral argument was conducted, the substance of which is unknown. After considering the commissioner's recommendation, the briefs of the parties and the evidence, the Court concluded he failed to provide satisfactory evidence that he is of good moral character. [259]

Why? I have absolutely no idea, after reading the Court's purported opinion. That's crap!!

485 So.2d 171 (1986)

The Applicant (Plaintiff) instituted suit against an attorney, his law firm and his clients seeking damages for alleged defamatory remarks contained in a letter written by the attorney to the National Conference of Bar Examiners (NCBE) in response to an inquiry relating to his application to the District of Columbia Bar. The Louisiana Court of Appeal's opinion states as follows:

> "Although we find that the remarks contained in the letter were defamatory and false, we hold that plaintiffs are not entitled to recover because of lack of malice on the part of the defendants, conditional privilege, a release of liability executed . . ."

The letter written to the NCBE accused the Applicant of furnishing data that was false and misleading in a sales presentation to defraud purchasers of a company who were clients of the attorney. The attorney had represented people in a lawsuit in which the Applicant was the opposing party. This case demonstrates how the admissions process is utilized in unrelated litigation to "get even" with an opposing party. The letter sent by the attorney to the NCBE stated in part:

> ". . . Concisely, the "legal qualifications" of <Applicant>. . . are severely impugned by his lack of business integrity, and it is the opinion of the clients of this firm that he is not of good moral character and that his legal qualifications are of a low nature, considering the additional factor that . . . did not keep and maintain requisite corporate documents . . .
>
> In conclusion, the moral character of <Applicant> . . . is seriously attacked by the clients of this firm and his legal qualifications are therefore subject to his lack of moral turpitude and character. . . .

> In the opinion of the clients of this firm, if a similar request for response were made by the Bars of California and Louisiana, they would respond that he should not maintain his membership and should be disbarred for his acts and conduct. . .” [260]

In my opinion, the Bar should not allow solicitation of such information. Here you have a bitter attorney, who is presented with a carte blanche opportunity to sabotage the career of an opposing party in a lawsuit. Once the Applicant executes the liability release required by the NCBE, opposing counsel can vindictively defame him with no risk. That’s wrong. The admissions process must be kept separate from unrelated litigation. To this extent, it should not allow inquiry into such litigation as this case amply demonstrates.

If an Applicant’s conduct during litigation is illegal, then assuming they are prosecuted and convicted, it would become part of the application process. If the Bar requires the Applicant to disclose unrelated litigation and inquiry is then made of opposing counsel, basic predicates of human nature create a high likelihood that such inquiry will result in negative feedback. The admissions process becomes a tool of leverage to be used against the Applicant in unrelated litigation. Opposing counsel typically has interests that are naturally adverse to those of the Applicant. Otherwise, their would have been no litigation.

The defamatory letter in this case, in all likelihood resulted in unjustly lengthening the admissions process. A shameful textbook example of perverting the admissions process. Shameful to the extent that solicitation of information from opposing counsel was allowed, and also that disclosure of the litigation was required by the Applicant.

1999.LA.42293 (1999)
No. 97-OB-1564

The Committee opposed admission of the Applicant, who was a female. The Court also denied admission, with the majority failing to disclose facts supporting their conclusion. The Dissent however, presents the applicable facts which are most enlightening.

Her character was initially certified and she passed the Bar exam. Loyola University later objected to her admission stating that she was the subject of an investigation involving embezzlement of funds from law student accounts. The Dissent writes as follows in regards to the proceedings before the Louisiana Bar and Court which appear to have been most unconstitutional in nature:

> “**This entire process fails to satisfy due process requirements because the commissioner we appointed to this case allowed Loyola University to take over these proceedings**. I would await a final resolution of these embezzlement charges by the petitioner’s accuser before reaching a decision on her moral fitness.” [261]

The Dissent was right. The majority looked like cowards for not presenting the facts, and was over eager to foster the anticompetitive interests of the Bar by denying admission, before the embezzlement issue was even resolved.

2000.LA.0043085; No. 00-OB-2676 (La. 10/04/2000)

The Court's opinion states:

> "On his application, petitioner disclosed an unpaid child support judgment, and he provided . . . a detailed explanation of the circumstances surrounding the judgment. **However, petitioner failed to provide "written proof of a payment plan" with his former wife**; as a result, the Committee informed him that he did not satisfy the burden of establishing good moral character. . . .
> . . .
> . . . we conclude petitioner is eligible to be **conditionally** admitted to the practice of law in Louisiana, subject to a probationary period of eighteen months. During this period, petitioner shall provide evidence to the Committee, on at least a quarterly basis, demonstrating that he has made a good faith effort to satisfy his financial obligation to his former wife. . . ."[262]

Unless the Louisiana Supreme Court is amenable to Disbarring or placing on Probation, each and every licensed Louisiana attorney and Judge who is behind on child support payments, they are way out of line with their opinion. The conditional admission and terms of probation are irrational Judicial crap. The Applicant should have been admitted outright.

MARYLAND

316 A.2d 246 (1974)

This is a reinstatement case somewhat similar to the Hiss case in Massachusetts. The Applicant was admitted to the Maryland Bar in 1941. In 1952, he was convicted of "conspiracy to teach and advocate and to organize the overthrow of the government by force or violence in violation of the Smith Act." He was disbarred in 1955. In 1973, eighteen years after disbarment, he filed a petition for reinstatement. The Maryland Bar Association supported reinstatement. Similar to Hiss, during the reinstatement proceedings, the Applicant continued to assert his innocence. The opinion states:

> ". . . this panel cannot consider as having any effect Petitioner's testimony before us that his conviction was founded on insufficient evidence and that he was innocent of the crime charged. Rather he remains a convicted, unpardoned felon.
>
> Proceeding from this restricted basis, what consideration can this panel give to the nature and circumstances of Petitioner's original misconduct? We find relevant the position taken by the Maryland State Bar Association that Petitioner's misconduct which resulted in his conviction was largely political in nature. . . . We find it amply demonstrated that developments in the law have necessitated a change in judicial and prosecutorial attitude. **We also believe that since Petitioner's disbarment public acceptance of the change in legal attitude, public attention to civil rights generally and the right of dissent particularly,** and public emphasis on detente with communist nations in our foreign affairs all have tempered the attitude of the public toward one in the Petitioner's position. . . ."
>
> **. . .**
>
> **"As to Petitioner's reformation, the Baltimore Bar Association raises the philosophical question of how Petitioner has proven his reformation when he refuses to recognize the existence of any misconduct from which to reform. Since Petitioner is adamant in his belief in his innocence, he is consistent in not expressing any repentance. While he seems to hinder his cause by not taking what might be the easier way of confession and contrition, the intellectual honesty of his position must be recognized."**

The Court then reinstates him. The Dissent makes an interesting statement as follows:

> **"While the courts have repeatedly said that it should require much stronger proof of good character to restore a disbarred lawyer than that required on admission, nevertheless, lawyers are continually being reinstated, after disbarment, for conduct which any character committee would have unquestionably held to preclude their original admission. Instances of this kind, often manifestly unjustified, are most injurious to the reputation of the bar in the eyes of the public."** [263]

While I agree with the majority's decision to reinstate, I also agree with the point made by the Dissent. The solution to bringing the reinstatement standard into conformity with the original admissions standard, is to restrict character inquiries to convictions, and eliminate the questions pertaining to litigation, demeanor, attitude etc..

It is noteworthy to mention again, that licensed attorneys in many states when sending in annual renewal forms, are not even required to inform the Bar whether they have been convicted of a crime. If the Applicant must provide voluminous amounts of character information, how can the failure to require renewing attorneys to even disclose whether they have been convicted of a crime be justified? It is an egregious violation of the Equal Protection Clause.

It is wholly irrational to require Nonattorneys to submit overly broad character information, when licensed attorneys are not required to do the same periodically. By the same token, it is not practical to require licensed attorneys to submit complete character questionnaires with renewals, since the Bar would be logistically unable to review the massive volume of information. The solution therefore is to only require disclosure of convictions by both Nonattorney Applicants and renewing attorneys. For the most part, that should be it. Just like the CPA boards do.

Then the admissions process would no longer be in violation of the Equal Protection Clause, as well as the First Amendment. It also would not wreak of inconsistency.

387 A.2d 271 (1978)

CRIMES OF THE CENTURY!!
THE $4.99 TAPE MEASURE HEIST. THE BOTTLE OF RUM CONSPIRACY THEFT

The Applicant entered college at age 16. He disclosed that in 1966, at age 19, during his junior year in college, he was arrested for stealing a bottle of rum. He also disclosed that in 1971 he was arrested for stealing a $ 4.99 tape measure. During the Bar Hearings, he testified that he stole the bottle of rum after meeting two young women while on a vacation in California. He did it on a "dare" to impress them. He took the bottle of rum from the supermarket and concealed it under his shirt. He was caught, charged with petty theft and the case was dismissed. Notwithstanding the dismissal, he readily admitted to the Bar Committee that he was guilty of the offense.

He entered law school at age 20 (this guy is incredible, in my opinion). After his first year he left and entered a medical school in Spain. At that time, he had strong feelings against the Vietnam War. He said he was disillusioned that the truth was not being told to the American people. He said he lacked respect for American institutions, opposed capitalism, the Dow Chemical Company and bombs. In May, 1971 during his senior year of law school, he participated in the May Day demonstrations in Washington, D.C.. Along with other demonstrators, he was picked up by police, briefly detained, but not arrested. He graduated from law school in 1971 at age 24.

With three other law school graduates, he began a communal farm on a 30-acre plot of land. They began building their communal house and needed a tape measure. The Applicant went to a department store and took a tape measure worth $ 4.99 by placing it in his pocket. He said that stealing the tape measure was an act symbolic of his disrespect for the system. He was arrested for shoplifting, obtained counsel and the case was dismissed. He then became a carpenter. Shortly thereafter, he left the farm and found work as a busboy, waiter, and law clerk.

He testified that after his arrest in 1971 he began to undergo a transformation. He came to see how the law worked and that it was really made for the people and to protect the people. He passed the 1976 Bar exam. At the time of the hearing on his application, he was 29 years old. He was no longer rebellious, and characterized his criminal transgressions as immature, idiotic and a mistake. He was contrite and remorseful, and freely admitted his guilt even though the charges were dismissed. The Character Committee concluded he was of good moral character and recommended admission. The State Board of Law Examiners decided that grounds existed for denial of admission. They stated:

> ". . . We are of the opinion that applicant learned little from the California arrest, which of itself should have prevented the Montgomery County arrest. Further, the Board is not persuaded of the sincerity of applicant in describing the act in Montgomery County as being a symbolic act, since his subsequent conduct was inconsistent with such a motivation. In this regard, the Board is of the opinion that in his testimony before the Board and before the Character Committee, applicant was less than candid. . . . He attempts to explain away the California incident as a youthful prank and an attempt to impress new-found friends, he describes the Montgomery County incident as a symbolic act. . . .
>
> The Board has considered the many letters of recommendation submitted by outstanding citizens; the testimony of his character witnesses . . .; the unanimous opinion of the Character Committee . . . . On the basis of the record before us, we conclude that the applicant has not met the burden of proving his good moral character. . . ."

The Court grants admission. In reference to the Board's assertion that he lied by classifying the tape measure theft as a symbolic act, the Court writes:

> **". . . To conclude on such a flimsy foundation that the applicant lied to the Board as to his reason for committing the 1971 offense . . ."**

In my opinion, this case borders on the ridiculous. It exemplifies the arbitrary nature of State Bar decision-making. You could not possibly have an Applicant who was more forthright. **He disclosed the arrests even though the charges were dismissed.** As a matter of law, he was innocent. Nevertheless, he owned up to committing the offenses. **Yet he is still irrationally classified as a "liar" by the Board, <u>because they believe he didn't state the proper reason for the theft.</u>** The theft of a $ 4.99 tape measure. A moronic Dissent writes as follows:

> **"Since the time of Moses, if not before, "Thou shalt not steal" has been understood as one of our basic legal and moral tenets. . . ."**

This very first sentence in the Dissent illegitimates it. It is a blatant violation of the constitutional principle mandating separation of Religion and State. As for the bottle of rum incident, the Dissent states as follows:

> ". . . four young people traveling together, though they had enough money to pay for what they wanted, chose not to use it, and instead **conspired** . . . they would enter a supermarket for the specific purpose of stealing. . . ."

Conspired? Now the Applicant is accused of being involved in a Conspiracy for stealing a bottle of rum? The Dissent later writes:

> ". . . The day upon which the Board recommends to this Court the admission to the Bar of a person whose candor and truthfulness the Board itself does not believe--the day the Board affirms the present moral character of a person while at the same time doubting the sincerity of the very statements that person makes to it--will indeed be a day upon which the Board stands the law upon its head."

The Dissent closes as follows:

> ". . .The point, however, is that **it is only the Board, and not this Court, which is in any position to determine whether he genuinely entertained those beliefs**. . . ." [264]

392 A.2d 83 (1978)

ARBITRARY and INCONSISTENT

The Applicant in 1968, at age 18 was charged with breaking and entering. He was found Not Guilty and the arrest record expunged. At age 19, he was charged with assault and battery upon his father. The charge was dropped and the arrest record expunged. In 1971 at age 20, he was charged with aiding and abetting shoplifting. The charge was not prosecuted. That same year, he was charged with stealing a watchband. He pled no contest and was placed on probation for one year. He admitted his guilt of this offense during the Hearings. While on probation, he was charged with attempting to steal a tape deck from a car. He again pled no contest, was fined $ 100 and his probationary status was continued. He admitted his guilt of this offense also during the Hearings. He had fully revealed his criminal record on the application. In 1972, he was employed as a computer programmer by the Social Security Administration. In his application for employment he stated under oath that he had not been convicted of any criminal offenses. He explained that his negative answer to this inquiry was based upon advice of two different lawyers, that the court's acceptance of his nolo contendere ("no contest") pleas did not constitute convictions. He presented corroborating letters from each of the lawyers consulted.

He graduated from law school in 1976 receiving several awards and honors. He was not involved in any criminal conduct since his arrest in 1972. He told the Character Committee that his criminal conduct was "a result of my stupidity and immaturity." He said that he changed the direction of his life and was fully rehabilitated.

The Character Committee concluded he did not possess the necessary moral character, but the Board of Law Examiners concluded that he did. Although I agree with the Board's decision, I am unable to reconcile their conclusion that this Applicant with two "no contest" pleas, possesses the necessary moral character, when they determined that the Applicant in the preceding case who had two arrests and no convictions did not. The Board's decision is wholly inconsistent with their position in *387 A.2d 271 (1978)*. It exemplifies the arbitrary nature of the Board's decision making process. The Applicant with a cleaner record is denied admission, while the Applicant with the equivalent of two convictions is recommended. Conversely, the Character Committee's decision in this case although incorrect, was not inconsistent with the prior case. The Court ultimately denies admission. The Court, similar to myself compares this case with *387 A.2d 271 (1978)*. Both involved petty thefts. This case however resulted in "no contest" pleas, while the former resulted in dismissals.

I would admit the Applicant in this case, but it's a close call. Since the 1972 incident, he worked on a volunteer basis with the County Mental Health Association. He was President of the Student Bar Association while in law school and was treasurer for one year. He seems to have rehabilitated himself and his record has been clean since 1972. The offenses were not heinous in nature, although they were not trivial either. A close call, but since the burden should rest with the Bar when depriving an Applicant of the fundamental constitutional right to practice law, and since that burden was not met here, I would admit. [265]

407 A.2d 1124 (1979)

CHICKEN, CHEESE and STEAK IN YOUR PANTS?

This is an interesting case, particularly in light of the prior Maryland cases involving petty thefts. The Applicant was born in 1949. He served as president of student government at the University of Maryland, as president of the Inter-residents Hall Association and president of the Hill Area Council. Later he was designated as chief justice of the Honor Court of the University of Baltimore Law School. Question 11 of the Bar application required submission of a record of any criminal proceedings which involved him. He was instructed however, to not "report any arrest or court proceedings, the record of which expunged pursuant to law." Question 17 required him to list "**any unfavorable incidents in life**, whether at school, college, law school, business or otherwise, **which might have a bearing upon his character** or fitness to practice law. . . ."

He informed the Board in a letter that he was twice involved in shoplifting incidents, but the records of both incidents were expunged. In 1974, at age 24 he was arrested in a supermarket for taking chicken and cheese. The Court grants admission in a brief opinion that includes the following:

> "The two petty theft offenses, for which the applicant was placed on probation without verdict, having been legally expunged under the provisions of Maryland Code . . . and **the State Board of Law Examiners having declined to consider such offenses** in determining the moral character of the applicant for admission to the Bar . . .

I agree generally with the Court's opinion, but find it remarkable that the Board would not even consider the two petty theft offenses in this case, when they made a character determination against the Applicant in *387 A.2d 271 (1978)*, whose petty theft offenses were dismissed. I do agree that since the offenses were expunged, they could not legally be considered. Nevertheless that does not resolve the inconsistency with the Board's stance in *387 A.2d 271 (1978)*. The solution to achieve consistency is to consider only convictions. Otherwise, the Board is inconsistent by not considering petty theft offenses, or alternatively breaks the law regarding expungements, if it does consider them. The applicable Maryland Code expungement provision stated:

> "makes it "unlawful for any person having or acquiring access to an expunged record to open or review it or disclose to another person any information from it without an order from the court which ordered the record expunged. . . ."

The bulk of the opinion in this case is written by a stinging Dissent. It first states:

> "Because the order in this matter reflects none of the facts, I shall set forth such as are necessary to a clear understanding of the matter before the Court."

I wholeheartedly agree with this point of the Dissent. The opinions must recite all relevant facts to render a clear understanding. Otherwise, the Court looks Machiavellian. The Dissent then outlines facts, including the line of questioning that took place during the Bar hearings. The following transpired with reference to the chicken and cheese shoplifting incident:

"Q. Where did you place it that time?

A. Down my pants.

Q. And when you say "down your pants," how did you --

A. Down the front of my pants.

Q. Down the front of your pants?

A. Yes."

Then with reference to the second shoplifting incident:

"Q. All right. So you went into the store, and if you can picture yourself in the store at that time, did you walk directly to the meat counter?

A. No. . . . went to get some sodas and then I went to the meat counter . . . I said, "I am going to pick up some steaks," and I put them down my pants."

Other minor incidents came out during questioning, which demonstrate the improper manner in which the admission committee proceeded:

"Q. I am going to ask you this other question. **I don't know whether it is even a fair question,** but I am going to ask it to you. Have you--after the age of 17, did you ever shoplift anything else other than at these two times?

A. **You asked me that when we met the last time, and then said, "No, I don't want to hear the answer."** I stated somewhat to the effect that -- . . . "I did it ten times or five times.". . . I know it would never have been anything but food. . . .

The Applicant later described a raid that he and other members of the Allegany High School football team made on a food table set out by the alumni of Bruce High School. He described a series of incidents in high school associated with cokes, cookies and soft drinks sold on the honor system. He recalled being accused of taking 2 roasts from the faculty lounge at the University of Maryland (I would love to have attended this hearing). Chicken, cheese, steaks, roast, cokes, and cookies! Admit this guy to the Bar, just don't invite him to the annual State Bar banquet! The Dissent miserably drops the ball, in an embarrassing manner when it states:

"Mr. Justice Field said for the Court in Ex Parte Garland . . . "The admission or <the> exclusion <of persons as attorneys> is not the exercise of a mere ministerial power. It is the exercise of judicial power. . . ."

. . .

. . . In my view, however, since such an evaluation is a judicial function **the expungement of the criminal record is of no significance** and the General Assembly is without power to specify otherwise as to a potential member of the Bar."

What the Dissent is suggesting, is that he believes Judges do not need to abide by laws enacted by the General Assembly. He says, the "expungement of the criminal record is of no significance." Black's law dictionary defines the term "expunge" as follows:

> Expunge - To destroy; blot out; obliterate; erase; efface designedly; strike out wholly.

The Maryland Code on expungement at the time read:

> "makes it "**unlawful** for any person having or acquiring access to an expunged record **to open or review it or disclose to another person** any information from it without an order from the court which ordered the record expunged. . . ."

Based on the above cited Maryland Code expungement provision, the Court of Appeals broke the law by even including facts pertaining to the expungement in its opinion. While Courts should disclose necessary facts relevant to supporting their opinion, they should refrain from presenting facts which they are precluded by law from considering. The Dissent flimsily tries to refute this premise by stating:

> ". . . It does not say that we may not take cognizance of the conduct there involved in determining whether an applicant for admission to the Bar of this Court is possessed of good moral character. . . ."

In order to "take cognizance of the conduct" the information had to have been "disclosed." The Bar in this case, violated the law by obtaining "disclosure" of the expunged incident, since the Maryland Code made such disclosure "unlawful." Finally, it is noteworthy that the Dissent relies on *Ex Parte Garland* for the premise that the power to admit attorneys is the exercise of judicial power. The Dissent conveniently declines to point out that *Garland* stands for the premise that the ability to practice law is a "Right". Apply both of these predicates of *Garland*, and even under the Dissent's reasoning, the Applicant would be admitted. The Dissent then closes with the following:

> ". . .An unfaithful bar may easily bring scandal and reproach to the administration of justice and bring the courts themselves into disrepute." [266]

I agree. The big question I have in this case, is where did the Board member get off to ask questions that he clearly knew were improper as indicated by his own statement previously quoted:

> "I am going to ask you this other question. **I don't know whether it is even a fair question,** but I am going to ask it to you."

It is quite clear that the Board member knew what he was doing was wrong.

408 A.2d 1023 (1979)

THE DISSENT SEEMS TO SUGGEST THAT MURDER IS NO WORSE THAN PETTY THEFT

The Applicant was born in 1941. At age 16 he began drinking an addictive cough syrup. In 1958, he was suspended from high school for violating administrative rules. In 1959, he was suspended for being in an unauthorized wing of the school building. He was then suspended again for leaving school grounds without permission. Subsequently, he began using heroin. In 1959, he was arrested for possession of barbituates and given probation. In 1960, he was charged with larceny and the case was dismissed. In 1961, he was arrested for possession of a narcotic. He received a five year suspended sentence and was placed on unsupervised probation. Later that same year, he was arrested again for possession and larceny of narcotics. He was sentenced to a mandatory five year term of imprisonment and served 44 months. In 1966 he was charged with shoplifting cigarettes, and received a three month suspended sentence.

Since 1966, he had not been charged with any crime. Since 1967 he had not used drugs. In 1968 he enrolled in College and by 1970 was working as an Addiction Counselor. He received his undergraduate degree in 1973 and began law school.

In 1978, he was granted an executive pardon for his criminal convictions and ten months later completed law school. He passed the 1979 Bar exam. The Character Committee unanimously recommended in favor of his admission to the State Board of Law Examiners and the Board agreed. The Court also agreed. The Character Committee, Board and Court all agreed this Applicant should be admitted. Consequently, their does not seem to be any case or controversy warranting the litigation. The majority justifies publishing the opinion by stating:

> "The Board's recommendation that the applicant possesses the requisite moral character is entitled to great weight. . . . In considering its recommendation, however, the Court makes its own independent evaluation of the applicant's present moral character based "upon the records made by the Character Committee and the Board." Rule 4c of the Rules Governing Admission . . "

Unlike the Illinois case, where the Court sua sponte and in violation of a valid court rule, wrote an opinion, the Court in this case had a validly enacted rule giving it authority to hear the case. Nevertheless, since the Character Committee, Board and Court all agreed, the opinion seems unnecessary, if it were not for the Dissent. That is the reason for the majority opinion. They are responding to the Dissent.

As a preliminary matter, I note that I would admit the Applicant also. He was pardoned, there was a substantial lapse of time since his last conviction, the offenses while serious were not heinous, and there is substantial evidence of rehabilitation. The Dissent however, does not agree with either myself or the majority. The Dissent states:

> "It is with regret that I once again dissent from the admission of an individual to practice before this Court. . .
>
> Part of the problem apparently is a difference between my colleagues and me as to what constitutes good moral character. **They seem to be of the belief that one can be said to possess good moral character if he has not violated the law lately**. I do not see it that way. . . .
>
> . . . **Do my colleagues propose permitting convicted murderers to become Maryland lawyers since they have not killed anyone lately ?"** [267]

A rather stinging point at first glance. Meritless however, after logical consideration. The analogy between an individual convicted of petty theft or drug abuse, to one convicted of murder is invalid. I would throw the point right back to the Dissent as follows:

Does the Dissent suggest that murder is no worse than petty theft or drug abuse?

Admitting individuals convicted of petty theft over a decade earlier or drug possession a decade earlier, does not in any manner mean that convicted murderers should be admitted. The Dissent's analogy is logically infirm.

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433 A.2d 1159 (1981)

THE BABY PICTURE PILL CAPER

This is another petty theft Bar admissions case. Maryland definitely developed an affinity for them in the 1970s and 1980s. The Applicant in 1977 obtained a job selling baby pictures, by calling on customers at their homes. In the course of a sales visit, he would request permission to use the bathroom where he would search for, and steal pills from the medicine chest. He was caught, entered a plea of guilty and received a 30 day sentence with 12 months probation. In 1978, he was charged with leaving the scene of a property damage accident. He denied having any problem with drugs or alcohol. Both the Character Committee and the Board of Law Examiners recommended admission. The Court disagreed on the ground that he had not demonstrated complete rehabilitation.

I would not admit this Applicant. He was convicted of a crime less than four years prior to the Court's opinion. According to the Court's opinion he denied having a problem with drugs or alcohol. There has been an insufficient lapse of time since the conviction. If the Applicant avoided criminal conduct for an additional two or three years, I would then admit him. The Character Committee and the Board's decision to admit are inconsistent with their decisions in cases denying certification of Applicants who committed crimes that were far more remote in time than four years. Once again, this demonstrates the arbitrary, irrational and inconsistent nature of the Bar admission process.[268]

434 A.2d 541 (1981)

BIGAMY? THAT'S BIG OF YOU.

The second sentence of the second paragraph of the Court's opinion states as follows in reference to the Applicant:

"He was raised by his grandparents who maintained moral values in circumstances of poverty." [269]

How do they know this? Perhaps, it's true. I really don't know. In any event what do the grandparent's moral values have to do with the Applicant's character and fitness? Great, good, medium, bad or poor, the moral values of the grandparents are irrelevant.

The Applicant was elected president of the student government. While in college, he married one woman and three weeks later married another which constituted bigamy. He was admitted to law school in 1971. While in law school he was elected president of the student bar association and selected by the faculty for a leadership and character award. He was very active in his church, taught Sunday school and worked with the choir. In 1974, using a fictitious name he obtained an Amoco credit card. Subsequently using fictitious names, he obtained other credit cards. In November, 1975 a search warrant was executed at his home and evidence seized. In June, 1976 he pled guilty to mail fraud.

The Board of Bar Examiners recommended admission, but the Court disagreed. Once again, I am unable to understand how the Board could be so inconsistent as to recommend this Applicant for admission who pled guilty to mail fraud, while not recommending the Applicant in *387 A.2d 271 (1978)*, who was charged with stealing a $ 4.99 tape measure and a bottle of rum, when both prosecutions were dismissed.

439 A.2d 1107 (1982)

DON'T BLAME THE APPLICANT FOR THE BAR'S POORLY WRITTEN QUESTIONS

In 1964 at age 17, the Applicant dropped out of the tenth grade and enlisted in the army. He was honorably discharged in 1966. In 1967 while at a bar, he met two men who planned to commit a bank robbery. The Applicant drove the get-away car. He pled guilty to armed robbery and was sentenced to a 10-year prison term. He was incarcerated for six years, during which he was classified as a "management problem." While in prison, he became an avid reader and took courses offered by the University of Georgia. He was released in 1974 and married in 1975. In 1977, he received an undergraduate degree in political science graduating with Honor. In 1977, he applied to the University of Maryland School of Law. In response to a question on his application for admission that requested an account of occupations since high school, he listed "U.S. Federal Prison." He explained his imprisonment and the bank robbery in detail writing:

> ". . .My motives were confused, even then. But more importantly any explanation of motive would be more an excuse than a reason. At my trial I did not deny my guilt, nor do I deny it now; nor do I dismiss criminal action as a natural channel of the poor and oppressed . . .
>
> I spent six and one-half years in prison. I was sent to prison because I robbed a bank, I was kept because I could not conform, or would not. But I read, and as I read living grew in importance. It became an end in itself; not the quantity of life, but its quality. The more I learned of living, the more I wanted to live, the more I wanted that life to be full and involved.
>
> I decided on college in prison . . . . And it was as inevitable that once involved in the Political Science Department that I would turn to law.
>
> . . .The past cannot be mitigated, but a man's life can. If given the opportunity to study, I will do so gladly and with aggression and enthusiasm. Gentlemen, I can achieve. I ask only for the chance."

On his application for admission to the Bar of Maryland, his answers to two questions became points of controversy. Question 5 required an Applicant to list every "residence" where they lived during the last 10 years. He did not list anything for the period during which he was incarcerated. Question 11 inquired:

> "The following is a complete record of all criminal proceedings (including traffic violations other than an occasional parking violation) to which I am or have ever been a party. . . . Nature of . . . Disposition. . . .

Under the heading of "Court" the Applicant placed "U.S. District Ct. for the District of Maryland." He provided no other information. During an admissions interview he stated that he was convicted of a felony and sentenced to 10 years in prison. His admission was not recommended on the ground that he failed to give complete answers. A Hearing was then held. The Committee determined that his answers were adequate and unanimously recommended him to the State Board. The Board then held a Hearing. He indicated that his failure to provide a "residence" for the period of incarceration occurred because he did not consider the federal penitentiary to be a residence. He stated as follows:

". . . **I had no reason to believe that the U.S. Federal Penitentiary was a residence of mine. I never considered it a residence.** I never considered it a place where I lived. I always considered it a place that I was confined. . . ."

Regarding the question that required a record of criminal proceedings, he indicated that his failure to provide detail of the nature and disposition of the proceeding occurred because he was in a hurry to complete the application, rather than to conceal his conviction. He pointed out that when his failure to fully disclose was called to his attention, he provided all of the information. The following exchange is illustrative:

"Q. . . . Did you have any intent whatsoever, **either consciously or unconsciously**, . . . to fail to disclose to the Court of Appeals . . . that you had been convicted of a Federal crime. . . .

A. **I certainly can't answer that question in terms of unconsciously**, but consciously I never intended to omit anything. I intended to disclose everything fully and I saw it as my duty to disclose everything fully.

Q. Are you telling this Board that it never entered your mind in answering either question 5 or question 11 that perhaps not actually answering those may allow the petition to slide by?

A. I don't see how the petition could have slid by."

The Board ultimately recommended admission. The Court agrees. This case presents a unique situation for me. The Character Committee, the Board and the Court all agree this Applicant should be admitted. I would deny admission. I will delineate my reasons shortly, but first address a few aspects, that actually militate in favor of admission. An interesting part of the opinion states as follows:

". . .it appears that the Applicant failed to elaborate the bank robbery in Question 11, providing instead notice which would suffice if a thorough review was made, but not information which would immediately and certainly attract attention. . . ."

That is precisely what good attorneys are supposed to do. Provide information you're required to, but nothing more. That is "good lawyering." "Traditional trial tactics" is a concept approved by numerous Federal Courts of Appeal. The lawyer who completely opens up and provides an opposing party (and yes, the Bar admissions committee is an opposing party) with everything, is not providing good representation. Constitutional questions should be answered correctly. By the same token, when information is not provided because a question is poorly written, the fault lies with the inquirer.

In reference to the "residence" question, I am in full agreement with the Applicant. The Federal Penitentiary is not a "residence." He was correct to leave that section blank. In fact, if he had listed the "Federal Penitentiary" as a "residence," that would not be truthful. What if he tried to make it appear to be a "residence" by writing in the address with no further delineation? He didn't do that. He left it blank. The question was worded poorly and he did the right thing leaving it blank.

His answer to the "criminal proceeding" question is my reason for denying admission. That question asked for a "disposition" and he had a responsibility to disclose that he was "convicted." My conceptual overview of the admissions process is generally very critical of the Bars and Courts. I provide leeway for the Applicants with respect to questions that are unconstitutionally vague, ambiguous, overbroad, discriminatory or phrased poorly. On the issue of criminal convictions however,

I am not so lenient. They must be disclosed. Period. That is the key area where an Applicant is not "candid" if they fail to disclose. That is what society has established as our assessment of "guilt." The conviction. I leave room for rehabilitation, as well as considering the seriousness of a crime, and the time lapsed since conviction. The conviction however, must be disclosed. Period. I do not have a problem with his listing "U.S. District Ct. for the District of Maryland" under the heading "Court." It is in the "Disposition" section where he was not candid and I simply don't buy into the excuse that he was in too much of a hurry to complete the most critical and incriminating aspect of his application.

Were it not for his failure to provide an answer under the "Disposition" heading, I would admit him. There was a sufficient lapse of time since conviction and substantial evidence of rehabilitation. One thing is certain though. This case again demonstrates the inconsistent nature of admission decisions. This Applicant, convicted of armed robbery is recommended for admission while others who committed petty offenses were not. The Dissent makes some interesting points. It states:

> "I had looked forward with pleasurable anticipation to penning my final words as a member of this Court in an opinion considering a much more tranquil subject than is involved here, ... However, such is not to be, for I am so appalled by the action the Court takes today in rolling out a red carpet in order that an unpardoned armed bank robber may tread smoothly on his way to becoming a member of the Bar of this State, that I am impelled to raise a loud voice, albeit an expiring one, in protest. This revulsion to the action of the majority here is not an aberration on my part, for I have consistently expressed similar views in the past . . . it has merely been **intensified to the point of shock** when I contemplate that an applicant who has committed such a dastardly crime as armed robbery is soon to become a member of the Maryland Bar. . . .
>
> **Since the time of Moses**, if not before, "Thou shall not steal" has been understood as one of our basic legal and moral tenets. The majority nevertheless apparently believes that there is no great harm in having a thief or two . . . . With its action, I believe the Court takes a giant leap backward, **abdicating its high responsibility** to assure the public that nothing in the background of an applicant for bar membership has been discovered to reasonably indicate that the prospective attorney might not be possessed of the basic qualities of honor . . . .
>
> The **right** to membership in the legal profession is not one that adheres to every citizen as does the right to engage in an ordinary trade or business. It is a **unique privilege** extended only to those who demonstrate that they have ascended a special plateau . . . . **Moreover, once admitted to the bar, an attorney is subject to far less intense official scrutiny concerning his character than that which occurs during the application process. . . .**
> **. . .**
> . . . There must be offenses so serious that the applicant committing them cannot again satisfy the court that he has become trustworthy; if there are such crimes, this is surely one of them. . . . "total frankness throughout the application procedures is . . . a sine qua non for admission to the Bar.". . . "

Where to begin with this troubled Dissent? First off, the phrase, "Since the time of Moses" suggests a blatantly unconstitutional ground for judging a Bar admission in violation of the First Amendment. It was obviously written by the same Justice that I previously criticized for making the same statement in another case. The Dissent makes this statement believing it will strongly illustrate an important point. However, it simply makes the Dissent look ridiculous.

It is interesting that the Dissent believes the Court is "abdicating its high responsibility." That's a pretty incredible statement which I will let stand on its own. He characterizes the ability to practice

law as a "right to membership" and then as a "unique privilege." "Right" and "Privilege" are adverse to each other. The dichotomy between "Right" and "Privilege" is in many respects determinative of the heart and soul of the admissions process. The ability to practice law cannot logically be both. I also disagree with his assertion that:

> "total frankness throughout the application procedures is . . . a sine qua non for admission to the Bar.". .

"Total frankness" is only the "sine qua non" to the extent the questions asked are constitutional. One has no legal responsibility to frankly answer unconstitutional questions. The Dissent makes the following point which exposes the biggest problem with the admissions process:

> **"Moreover, once admitted to the bar, an attorney is subject to far less intense official scrutiny concerning his character than that which occurs during the application process. . . ".**

The attorney is purportedly subject to the ethical rules of conduct and therefore should not be subject to "far less official scrutiny" than the Nonattorney Bar Applicant. By the same token, attorneys should not be disciplined just because they don't play the "get along with the other lawyers game." In closing, the Dissent makes the following characterization about the Bar:

> ". . . a bar which, from the mid-seventeenth century, has enjoyed such an illustrious stature." [270]

I disagree. State Bars and lawyers have not enjoyed an illustrious stature. Throughout history they have been consistently disdained, scorned and justifiably ridiculed by law abiding members of society. The Dissent lacked candor by asserting otherwise.

462 A.2d 1198 (1983)

DID YOU GUYS GET PAID FOR WRITING AN OPINION THAT SAYS NOTHING?

The Court's opinion is very brief. The Applicant was convicted of attempted armed robbery and sent to prison. The date of the conviction is not in the Court's opinion. Both the Character Committee and the Board of Law Examiners recommended admission. The Court disagreed and denied admission. The entire opinion is about six sentences long. It notes that one Judge would have admitted the Applicant. I am unable to make a determination whether he should be admitted, since the opinion is so brief and does not even include the date of conviction. I present this case to make only one point. The Character Committee, the Board and one Judge on the Court felt this Applicant should be admitted. In view of such, it is inexcusable that the Court published an opinion that did not include at least the bare essential facts. Clearly, it was not a slam dunk case, since numerous purportedly responsible State Bar officials, Committee members and a Judge believed he should be admitted. [271]

499 A.2d 935 (1985)

I ASSUME YOU GOT PAID FOR THE LAST OPINION THAT SAID NOTHING, SINCE YOU WROTE ANOTHER

This is another short opinion. All you can tell from reading it is that the Character Committee favorably recommended the Applicant and the Board of Law Examiners then made an unfavorable recommendation. The Court rules in favor of admission. I have no idea what issues were involved. The Court makes one brief comment that is characteristic of Bar admission cases when it states:

> ". . . having considered the fact that the burden rests at all times upon the applicant to prove her good moral character . . ." [272]

The question I present for reflection is this:

> How can the burden logically rest at all times upon the applicant, if the Bar admissions process is not a product of the grace and favor of the State?

Placing the burden on the Applicant substantively results in treating the ability to practice law as a "Privilege," rather than a "Right," regardless of the fact that it may be classified in form as "Right."

511 A.2d 516 (1986)

BAD, BAD, LITTLE GRIEVANCE COMMISSION. SHOW SOME REMORSE AND REHABILITATION.

The Attorney Respondent in this disciplinary proceeding was admitted to the Maryland Bar in 1981. Bar counsel instituted disciplinary proceedings on the frivolous ground that she failed to properly answer Question 17 on her admissions application which read:

> **"Are there any unfavorable incidents in your life**, whether at school, college, law school, business or otherwise, **which may have a bearing upon your character** or fitness to practice law, not called for by the questions contained in this questionnaire or disclosed in your answers?" [273]

I have reviewed numerous cases herein, that address this type of ridiculous question. It is blatantly unconstitutional. No disciplinary proceeding pertaining to such a question is legitimate. When Legislatures draft laws that even faintly approach such vagueness they are declared unconstitutional. The irrational Bars however persist in using these questions, as if they are above the law. Their mere attempt to use such questions challenges the legitimacy of the Bar. They are doing something they <u>know</u> is unconstitutional. Briefly stated again, two reasons for the question's unconstitutionality are:

1. "Unfavorable incidents" - The term "unfavorable" will mean many different things to many different people. Suffers from vagueness, ambiguity and overbreadth.

   Example : While I am certain the Bar's use of this question is an "unfavorable incident" that reflects negatively on their character. I assume they disagree with me.

2. There is no time frame limitation on the question's scope. The question therefore irrationally mandates disclosure of "unfavorable incidents" that occurred when one was a child or even a baby.

In this particular case, the Respondent properly answered "no" to the question. At age 18, she was given probation for possession of heroin **and the charge was expunged**. The Attorney Grievance Commission nevertheless irrationally asserted that her failure to disclose the incident was a "material false statement."

Their false assertion raises an interesting issue. Most citizens would view an "expungement" as bearing <u>*favorably*</u> upon an individual who had been convicted of a crime. Thus, it is disclosure of the incident, rather than nondisclosure that would have constituted a false answer. The question inquired about "unfavorable incidents," rather than "favorable." The expungement is favorable.

Question 11 made inquiry about all criminal proceedings in which the Applicant was a party, but contained a caveat to <u>not report</u> any court proceeding the record of which was expunged. The Grievance Commission here was obviously playing a diabolically deceptive game. They were trying to penalize the Respondent for nondisclosure <u>when the application itself expressly mandated nondisclosure.</u>

That's crap. Bad, bad, grievance commission! Show some remorse and rehabilitation. The Court rules in favor of the Good Respondent and against the Bad Grievance Commission.

545 A.2d 7 (1988)

THE CHARACTER COMMITTEE SCHMUCKOs!

Here's another beauty !! The admissions process at its best, (worst?). The Applicant applied to the Bar in 1984. In 1982, he had filed for bankruptcy and the Bankruptcy Judge in a memorandum wrote about him:

> "appears to have a good grasp of accomplishing delay through bankruptcy filings."

The Character Committee assigned an attorney to interview the Applicant. The attorney informed the Committee that he had a conflict of interest because a partner in his law firm represented a client suing the Applicant. The Applicant later appeared before a Character Committee panel. **The same attorney who had informed the Committee he could not interview the Applicant, because he had a conflict of interest, was a member of the panel.** The Applicant's counsel asserted that the attorney should remove himself, but the attorney refused. The **Chairman of the Committee irrationally ruled that he would not be disqualified.** The character issues were as follows:

1. An arrest that was in the process of being expunged for stopping payment on a check.
2. The civil suit where the opposing party was represented by a law firm that employed the attorney who was on the Character Committee.
3. The bankruptcy filing in 1982
4. A deposition given by the Applicant regarding an automobile accident, in which he purportedly lied in describing his injuries.

The Applicant presented evidence demonstrating that his arrest had been expunged. In regard to the bankruptcy, he argued that he was acting under advice of counsel. He further demonstrated that the civil suit involving the attorney in question had been settled and that it never amounted to more than mere allegations.

The Character Committee did not recommend admission. In *439 A.2d 1107 (1982)*, the Committee recommended admission of an Applicant convicted of armed robbery and in earlier cases for Applicants convicted of Theft. Looks pretty inconsistent and arbitrary. Not exactly a model application of objective standards applied evenly and fairly. Rather instead, subjective decision-making predicated on the grace and favor of the Committee. Admission to the Bar being kind of like a "present" that is awarded by the State.

The Court which admitted felons and convicts (some cases in which I note, I agreed with their decision), denies admission to this Applicant. An Applicant never convicted of a crime, with one arrest that was expunged, and who appeared before a Character Committee that included an attorney panel member whose firm had represented an opposing litigant. Previously, that attorney had even notified the Committee he could not interview the Applicant because of a conflict of interest. He apparently saw no reason however, for excluding himself from the final decision-making process. The Court writes irrationally as follows regarding the attorney who refused to disqualify himself:

> **"We find that . . . should not have been named as a member of the Character Committee panel charged with investigating . . . application for admission** . . . . As we see it, this conclusion is palpably clear in light of the fact that . . . is a partner in a small law firm which had filed a lawsuit on behalf of a client against . . . . This lawsuit was ultimately a topic of the Character Committee's inquiry.
>
> **. . .**

> **Clearly, under ordinary circumstances, we would be constrained to remand this matter for a new Character Committee hearing. However, in this case, the Board has conducted what is in effect a de novo hearing and disregarded the . . . issue . . . as having any impact on its findings and/or conclusions. We are, therefore, satisfied that the process afforded** . . . by the Board was sufficient to ensure . . . that an unbiased record would be submitted to this Court for its review.
>
> **. . .**
>
> We are also concerned with the comments made by Judge . . . of the Bankruptcy Court that . . . improperly utilized that court to delay foreclosure proceedings. Again, the root of the problem is . . . inability to maintain financial stability. . . ." [274]

In light of the Court's prior admission of convicted felons, constitutional standards required admission of this Applicant. It is incredible to me that the Court would concede the attorney in question should not have been on the Committee, but still affirm their decision. It's similar to concluding that a trial judge should have disqualified himself, and then proceeding to affirm his decision. Considering the Character Committee's failure to disqualify the attorney and the Court's blatant whitewash, this Applicant got screwed up the butt.

The Character Committee lacked a requisite trait to make a fair and constitutional decision. Character.

558 A.2d 378 (1989)

JUDICIAL CHICKENS

A brief opinion, apparently because the Applicant hit the heart and soul of the admissions process. Minimal facts are stated in the opinion other than that the Character Committee, the Board of Law Examiners and the Court all believed he lacked the requisite character. It does state however the following points which appear to demonstrate the reason for denial:

> "The Court having also considered various constitutional arguments presented by the applicant to justify his admission to the Bar, **namely that the holdings of the Board and the Committee constituted a denial of his constitutional right to equal protection, due process, privileges and liberties**, and **his right to have the Court give full faith and credit to a "Certification of Relief from Disability" granted to him by the State of New York**, absolving him from all civil liabilities and disabilities, resulting from a conviction for armed robbery in that State . . ." [275]

The sad part about this case, is that the Court lacked the strength in character and fortitude to even discuss the constitutional arguments. It's obvious they wanted to hide them. I have no idea whether I would admit this Applicant, since the Court chickened out from presenting the relevant facts.

649 A.2d 599 (1994)

CHICK, CHICK, CHICKETY

The Applicant withdrew his original application and then filed a second application in 1988. The Board issued a Report recommending against admission. In 1994 (six years later), the Court conducted a Hearing, where the Applicant indicated he no longer intended to take the Maryland Bar exam. He indicated his purpose for applying was to "clear his record." The Court determined that it would be a meaningless exercise to rule on the application since the Applicant had no intention of becoming a member of the Bar. To do so, was in effect asking the Court, it stated:

"to render an advisory opinion, a long forbidden practice in this State." [276]

I disagree with the Court. The negative character decision rendered by the Board, constitutes an actionable injury to the Applicant since it would need to be disclosed on future Bar applications to other States. The Court was just looking for a way to bail out of doing its' job.

663 A.2d 1309 (1995)

APPLICANTS TO THE BAR MUST PAY THEIR DEBTS TIMELY,
BUT LICENSED ATTORNEYS DO NOT HAVE TO

The Applicant became a member of the California Bar in 1993. On his Maryland application, he disclosed that in 1986, he was convicted of failure to file sales tax returns arising from operation of a restaurant. He also disclosed that he failed to remit payroll withholding taxes in connection with the same restaurant. **In 1992, he served as an unpaid intern in the Public Defender's Office, and performed work without pay for other legal organizations. The Board concluded that his failure to work for pay was to avoid garnishment.** In my opinion, that's a pretty dismal outlook towards volunteer work. After a Hearing in 1994, the Character Committee recommended admission. The Committee concluded he accepted responsibility for the non-payment of taxes. It further found he had served the required time in jail and fully paid the taxes owed. The State Board of Law Examiners however, recommended that he not be admitted. It found he did not appreciate the seriousness of his activities and that there were troubling issues of candor and credibility raised by his testimony. It found he made evasive statements. The Court agreed with the Board and found his testimony before the Character Committee and Board was inconsistent. The opinion states:

> "Absolute candor is a requisite for admission to the Bar of this State. . . .
>
> While there is no litmus test by which to determine whether an applicant for admission to the Bar possesses good moral character, we have said that no moral character qualification for Bar membership is more important than truthfulness and candor.
> . . .
> The conduct of an applicant in satisfying his or her financial obligations and exhibiting financial responsibility is an important factor in assessing good moral character. . . .
> . . .
> **. . . Despite his sizeable I.R.S. debt upon entering law school, the applicant financed his education mainly through student loans and declined to seek any employment for pay while in school. . . .**
> . . .
> **. . .Likewise, his commendable performance of volunteer legal services has also impacted adversely on his ability to satisfy his financial obligations. . . ."** [277]

The Court treads on most imprudent ground. Essentially, it criticizes the Applicant for performing volunteer legal services. I can not foresee the Court gaining public respect with such an outlandish stance. It also holds the fact against the Applicant that he financed his law school education with student loans, when he had a sizeable IRS debt. Perhaps, the Justices would be better off writing their Congressman if not satisfied with Federal criteria for obtaining student loans.

Most importantly, in the absence of the Bar and Court regularly reviewing the debt paying records of licensed attorneys in the State of Maryland, it is ridiculously hypocritical to impute such a requirement upon Bar Applicants. Stated succinctly, there is no legal requirement in America that a citizen pay their debts on time. For those citizens, who do not, creditors have the right to sue, but that's it. The Court is inching its' way in this case towards acceptance of Debtor prisons, a concept long ago supposedly determined to be barbaric. With the operative term being, <u>supposedly</u>.

533 A.2d 278 (1987)

The Bars won't discipline attorneys for failing to pay debts, but they will discipline attorneys who purportedly made a "material false statement" or "failed to disclose a material fact" when applying to the Bar. The Respondent attorney was admitted to the Pennsylvania Bar in 1974 and the Maryland Bar in 1981. The Maryland application was submitted pursuant to Rule 14 which provided for admission of attorneys licensed in other States without taking the Bar exam. The Rule required the Out-of-State attorney to represent:

> "(iii) that for at least five of the seven years immediately preceding the filing of his petition he has been regularly engaged . . . as a practitioner of law . . . ."

The Respondent attorney represented that he met the rule's requirement and had been a "SOLE PRACTITIONER." In answering Question 12 regarding employment held within the last five years, the Respondent answered "NON APPLICABLE." In fact, during the period, he was employed as a full time claims adjuster in Baltimore, Maryland. The Judge determined that the Respondent deliberately made false and material misstatements in answer to the questions. The Respondent did not dispute the underlying facts or the materiality of the withheld information. Rather instead, his argument was that he did not deliberately fail to disclose the facts. The Court determines that it could reasonably be inferred that he deliberately concealed his full-time employment so the board would be unaware it was his principal livelihood, rather than the practice of law. The Court Orders disbarment.

I present this case to address the issue of materiality, even though the Respondent failed to dispute the materiality of the withheld information. That was a major strategic error on his part. The Court addresses materiality, but defines the term incorrectly, stating:

> "**A material omission, . . . is "one that has the effect of inhibiting the efforts of the bar to determine an applicant's fitness to practice law**. . . . For present purposes, we may rephrase the . . . language to define a material omission as "one that has the effect of inhibiting the efforts of the board to determine whether an applicant's practice of law has been extensive enough to justify his enjoyment of the Rule 14 privilege. . . .
>
> Even more to the point, had the board been informed of (and checked into) . . . employment at . . . during the critical 1972-1980 time frame, the Rule 14 application would undoubtedly have been rejected. . . . He admitted that in his Pennsylvania practice he handled but "ten to fifteen cases a year" and "worked about fifteen hours a week . . . on the practice."

The Court's definition of materiality is incorrect. It mistakenly focuses on whether the omitted information has the effect of "inhibiting the efforts" of the bar to determine fitness. That is a meaningless standard. Anything could subjectively be asserted as "inhibiting the efforts." What constitutes "inhibiting?" The term itself is ambiguous. It means different things to different people. The proper definition of "materiality" is whether the missing information would have affected **the ultimate decision** and was **intentionally not disclosed.** In applying the materiality concept, the Court states:

> **"Even more to the point**, had the board been informed . . . the Rule 14 application **would undoubtedly have been rejected."** [278]

Assuming the application would indeed have been rejected, the Court's application of materiality is proper, notwithstanding the fact that it defined the term incorrectly. **The Court uses the phrase, "Even more to the point" because it knows that is the only important point.**

Versuslaw 2001.MD.0000105; April 10, 2001, Misc. Docket No. 8 (2001)

THE LOOPHOLE

This case is hilarious. Follow the facts closely. The Applicant was a member of the District of Columbia Bar and filed an application for admission to the Maryland Bar as an out-of-state practicing attorney. By applying as an out-of-state attorney he qualified to take an attorney examination, which is typically easier than that given to initial Applicants. He passed the attorney exam and was scheduled to be admitted to the Maryland Bar on 12/12/85. On 11/27/85, in accordance with standard procedure, he filed an oath reaffirming information on the character questionnaire previously submitted. Two days before being admitted on 12/10/85 (14 days after reaffirming his character questionnaire), he informed the Maryland Board that he had become the subject of disciplinary proceedings in the District of Columbia. Apparently, this information came to his attention between 11/27/85 and 12/10/85. On 12/11/85, the Maryland Board noted that he would not be admitted and wanted to investigate the District of Columbia grievance complaint pending against him. He then declined to pursue the Maryland Bar admission further, and was not admitted at that time.

Six years later, in 1991, he was Disbarred by the District of Columbia Court of Appeals. Seven years after that, in 1998, he simply contacted the Maryland Bar Board to inquire about the date he had successfully passed the attorneys' examination. He then simply asked about the procedures for admission, as if nothing had ever transpired 13 years earlier in 1985. He was told that documents would be forwarded to him for completion and subsequently received those documents from the Maryland Clerk of the Court of Appeals, along with a letter approving his petition for admission.

It was absolutely unbelievable. He had simply called them on the phone and never mentioned his Disbarrment or the 1985 investigation. The Maryland Court of Appeals just simply went ahead and approved his admission. Two and a half years after that, in September, 2000 the Maryland Bar Board became aware for the very first time that he had been Disbarred in the District of Columbia in 1991. They then moved to revoke his law license on the ground that he was admitted in error.

He was ultimately Disbarred in Maryland, but the legitimacy of the Maryland Disbarrment was in my view, highly questionable. He made an exceptionally good argument to the Court. He noted that he had never lied about being Disbarred in the District of Columbia, because quite simply he was never asked about it. Additionally, the express language of the Maryland rule providing for admission of out-of-state attorneys simply did not contain any provisions requiring the updating of a Bar application. He further noted that the Maryland Bar was unable to point to any rule in existence that prevented a Disbarred lawyer, who had passed the attorney examination and met the requirements for admission of out-state-attorneys prior to Disbarrment, from being admitted. Then finally, he strongly emphasized that he had merely relied on the Clerk of the Maryland Court of Appeals who had informed him of the procedure for admission.

There is little doubt that in considering this case, one must inescapably reach the conclusion that the Maryland rules certainly should have contained a provision to prevent a debacle like this from occurring. The concept that a Disbarred attorney could be admitted pursuant to admission rules for licensed out-of-state attorneys is undoubtedly ludicrous. By the same token however, that is irrefutably what the Maryland rules as written provided for. The bottom line is that the Respondent in this case was in fact, correct. The rules were written poorly, he had found the loophole, and he had taken advantage of it. The rule certainly should be amended, but the Court lost a tremendous amount of credibility by violating the rule in order to secure this man's Disbarrment. The Court's opinion even states:

> "The respondent has repeatedly stated that he was under no obligation, so far as the Rules prescribed, to update his application. As to whether the rules prescribed such an obligation, he may be right." [279]

MASSACHUSETTS

IN THE MATTER OF ALGER HISS, 333 N.E. 429 (1975)

Alger Hiss. Now there's a name etched into the annals of American history. In 1950, Alger Hiss was convicted of two counts of perjury for testifying that he had never turned over documents of the U.S. State Department to Whittaker Chambers. Chambers was the chief accuser of Hiss during Hearings held prior to a grand jury investigation by the Committee on Un-American Activities of the House of Representatives. Following affirmance of Hiss' conviction, the Supreme Court of Massachusetts disbarred him. Twenty-four years later in 1974, at age 69 Hiss filed a petition for reinstatement. Three fundamental questions were considered by the Court:

1. Were the crimes of which Hiss was convicted and for which he was disbarred so serious in nature that he is forever precluded from seeking reinstatement?

2. Are statements of repentance and recognition of guilt necessary prerequisites for reinstatement?

3. Has Hiss demonstrated his fitness to practice law?

The Court decides in Hiss' favor with respect to (1) above stating:

> ". . . **we cannot now say that any offense is so grave** that a disbarred attorney is automatically precluded from attempting to demonstrate through ample and adequate proofs, drawn from conduct and social interactions, that he has achieved a "present fitness" . . ."

The Court then describes what it considers to be the purpose of disbarment stating:

> ". . . Its purpose is to exclude from the office of an attorney in the courts, for the preservation of **the purity of the courts** and the protection of the public . . . The position of the Bar Counsel presupposes that certain disbarred attorneys, guilty of particularly heinous offenses against the judicial system, are incapable of meaningful reform which would qualify them to be attorneys . . . **Such a harsh, unforgiving position is foreign to our system of reasonable, merciful justice.** It denies any potentiality for reform of character. A fundamental precept of our system (particularly our correctional system) is that men can be rehabilitated. . ."

The Court then decides in Hiss' favor with respect to (2) above stating:

> ". . . **because Hiss continues to insist on his innocence, the board recommended that his petition for reinstatement be denied. Neither the controlling case law nor the legal standard for reinstatement to the bar requires that one who petitions for reinstatement must proclaim his repentance and affirm his adjudicated guilty**. . . . The legal standard for reinstatement to the bar is set forth in S.J.C. Rule 4:01 . . . . **There is no mention of repentance as a prerequisite for admission**. . . . The continued assertion of innocence in the face of a prior conviction does not, as might be argued, constitute conclusive proof of lack of the necessary moral character to merit reinstatement. . . . We also take cognizance of Hiss' argument that miscarriages of justice are possible. **Basically his underlying theory is that innocent men**

conceivably could be convicted, that a contrary view would place a mantle of absolute and inviolate perfection on our system of justice, and that this is an attribute that cannot be claimed for any human institution or activity . . . . Thus, we cannot say that every person who, under oath, protests his innocence after conviction and refuses to repent is committing perjury.

Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary, he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as a perjury to prove his worthiness to practice law. . . . "Circumstances may be made to bring innocence under the penalties of the law. . . .

Accordingly, we refuse to disqualify a petitioner for reinstatement solely because he continues to protest his innocence of the crime of which he was convicted. . . ." [280]

The Court proceeds to determine that Hiss demonstrated he is currently of good present moral character and he is reinstated. Overall, it is an excellent opinion. I present it for its' relation to an initial bar admission. Certainly, a licensed attorney should be held to a higher standard of moral character than a Nonattorney. Hiss' actions (whether guilty or innocent) took place during a time when he was a licensed attorney. If during reinstatement proceedings, innocence may be asserted (as this opinion mandates) with respect to convictions that occurred while a licensed attorney; logic mandates that one be allowed to assert innocence in an initial bar admission proceeding with respect to convictions when a person is a Nonattorney.

The rule would work well and can be outlined as follows. Convictions must be disclosed on the Bar application. Incidents that do not result in a conviction (such as mere arrests or civil litigation, etc.) need not be disclosed. Further inquiry may be made into the circumstances of convictions, including whether the Applicant is sufficiently rehabilitated and depending upon the circumstances of the case, appropriate weight given to assertions of innocence.

This proposed rule differs immensely from that currently applied by most Bars. Currently, most Bars during initial admissions proceedings treat continued assertions of innocence with respect to convictions as constituting "lying." In other words, when the Applicant discloses the conviction, but says he was innocent and wrongly convicted. The admissions committee not only holds the conviction against him, but also the continued assertion of innocence. That is unjust.

To make matters worse, although the Bars hold that convictions may not be contested and penalize Applicants for assertions of innocence, they inconsistently adopt a contradicting standard for mere arrests not resulting in convictions. In such circumstances, the Bars ignore the constitutional premise that one is innocent until proven guilty. They independently review the facts to determine if the Applicant was guilty, notwithstanding his exoneration. What you are left with from the current system can be summarized as follows:

1. If you are convicted of a crime, continued assertions of innocence are deemed to constitute lying. Assertions of innocence, introducing evidence of prosecutorial misconduct, police misconduct, or new evidence penalizes the Applicant.

2. If you are not convicted of a crime, you may still be found guilty of the offense by the Bar admissions Committee.

It seems to me that either the Bars need to respect the Judgments of Courts, or alternatively not respect them (which obviously would be wrong). To respect convictions, but not acquittals and dismissals is inequitable. The Bars should either have faith in the courts in both instances, or not have faith in both instances. The way they do it currently, is nothing more than a backstreet city shell game. Presumably, near a Bar.

392 N.E.2D 533 (1979)

The Applicant took the 1977 Bar exam. A score of 50 was the passing grade, but her score was 49.5. The essay portion of the exam was re-graded. She then appeared on November 17, 1977 for an "informal" interview. As a result of that interview, a formal Hearing on her character was scheduled. The Court's opinion actually phrases it as follows:

> "the Bar Examiners decided to grant the applicant a formal hearing"

The term "grant" is misleading. It correlates to the term "Privilege." It creates the false appearance that the Board is doing her favor. They're not recognizing her "Right" to a Hearing, but rather instead they're "granting" a Hearing. The mere use of such a disingenuous word smells bad to me. The opinion then states in reference to the Hearing:

> ". . . witnesses testified to the conduct and demeanor of the applicant in and around the courthouses in several counties. Thereafter, on May 13, 1978, the Bar Examiners held a further hearing as to complaints filed by the applicant with the Board of Bar Overseers against three attorneys who testified at the February 24 hearing. At the hearing, the applicant stated that she was contemplating the filing of further complaints.
>
> Subsequently, the Bar Examiners reported to this court that the applicant is not qualified for admission as an attorney. . . . The Bar Examiners thereafter found, inter alia, that the applicant has used judicial processes in a way inconsistent with the standard to be expected of a lawyer. . . .
>
> We accept the applicant's premise that the license to practice law may not be withheld arbitrarily or discriminatorily. Nevertheless, we have reviewed the transcripts of all proceedings, and we think that the Bar Examiners' conclusions were clearly warranted. . . ." [281]

The opinion has a stench about it. She first gets the essay exam re-graded. This probably annoyed the Board, so they scheduled an interview. One thing leads to another. The Board doesn't have squat on the Applicant, so they deny admission based on nebulous reasons such as "demeanor" and "used judicial processes in a way inconsistent with the standard expected." The Court agrees that the license to practice law may not be withheld arbitrarily, and then proceeds to do precisely that. Hypocrisy under the guise of legitimacy. Concede the rule, but then apply it in a manner violating the rule's express mandate.

661 N.E.2d 84 (1996)

A "RIGHT," "NATURAL RIGHT," "INHERENT RIGHT," "CONSTITUTIONAL RIGHT," "PRIVILEGE," "RIGHT IN THE NATURE OF A PRIVILEGE," "PECULIAR PRIVILEGE?" HOW ABOUT JUST OWNING UP TO THE FACT THAT YOU REALLY DON'T KNOW WHAT IT IS?

The Applicant, a son of immigrants was born in 1947. He attended Bowdoin College from 1965-1969 and was a member of Phi Beta Kappa. He graduated summa cum laude. From 1971-1972 he attended Harvard University as a graduate student, where he began smoking marijuana. Over a period of six years, he organized and led a large-scale international drug smuggling operation using several aliases. He was indicted in 1983 and convicted in 1988 of several drug felonies. He received a suspended sentence with probation for five years. Seven years lapsed between his conviction and the Court's opinion. In 1991, while still on probation, he received permission from the Federal court to apply to law school. While in law school he was a member of the Law Review and worked for legal aid. He applied to the Massachusetts Bar in 1994 and passed the exam. During this time frame he clerked for the Supreme Judicial Court of Maine.

He was then, as the Massachusetts' opinion states, "invited" to appear at an oral interview. What a great invitation for one to receive! A very "misleading" term. (Please, take me off the invitation list). More truthfully stated, the Court should have said, "he was required to attend an interview to have any chance at all for admission."

The Applicant's primary argument was that he was rehabilitated. The Board agreed and certified his character on January 6, 1995. Six months later on June 30, 1995 a single Justice of the Supreme Court reported the case to the full court for a determination and the Court disagreed with the Board's certification. This case is presented for its' extensive discussion of the standards to be applied for convicted felons in original bar admission proceedings and their relation to the Hiss case. Remember, the Hiss case was a reinstatement proceeding, while this case is an initial admission proceeding. Both involved individuals convicted of serious felonies. Hiss was admitted, this Applicant is not. Applicable portions of the opinion read as follows:

> ". . . The rules governing original admissions to the bar, promulgated prior to development of the rules governing reinstatement, have no reference to the integrity of the bar or the public interest . . . . These directives set out a procedural scheme rather than substantive guidelines for bar admissions. Thus, it is appropriate, despite the lack of specific directive, to consider the public perception of and confidence in the bar when determining the fitness of original applicants to practice law. . . .
>
> . . . **Authorities differ on whether those seeking to enter the profession have a lesser burden in showing moral fitness than those seeking reinstatement after disbarment**. . . . **This court, however, has suggested that the standards for original admission and readmission after disbarment should be the same**. . . . The Hiss factors allow the court to balance circumstances surrounding the misconduct against the action the applicant has taken to show his rehabilitation . . . . We thus apply the Hiss factors . . . ."

The Court holds that reinstatements and original admissions are subject to the same standard. Reinstatements concern acts committed by individuals who were once licensed attorneys. Original admissions however, typically concern acts committed by Nonattorneys. The Courts almost unanimously hold that in a disbarment proceeding the burden of demonstrating a lack of good moral character is on the Bar. However, in an admission proceeding the burden of demonstrating good moral character is on the Applicant. That is irrational. Why place the burden of proof on a Nonattorney who

is not bound by the ethical rules of conduct, while the licensed attorney who is bound by ethical rules is relieved of that burden? Since the ability to engage in the practice of law is constitutionally a "Right" in accordance with *Ex Parte Garland*, the burden of proof in an original admission proceeding should rest with the Bar, not the Applicant. Even if one disagrees on this point, it can not be rationally argued that it makes sense to provide a lenient moral character burden for the licensed attorney, compared to the Nonattorney. The Court later addresses the issue of whether the ability to practice to law is a "Right." It states:

> "The **right to practise law** is not one of the **inherent rights** of every citizen, as is the right to carry on an ordinary trade or business. It is a **peculiar privilege** granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character. All may aspire to it on an absolutely equal basis, but not all will attain it. Elaborate machinery has been set up to test applicants by standards fair to all and separate the fit from the unfit." [282]

In other cases it has been discussed, whether the ability to practice law was a "right," a "natural right," a "constitutional right," a "privilege or a "right in the nature of a privilege." We now have some additional entries in this case. An "inherent right," and a "peculiar privilege."

The Courts clearly suffer from great confusion in this area and require enlightenment. It's a "Right." Period. That's what the U.S. Supreme Court said in "*Ex Parte Garland*" over 125 years ago and the case has never been overturned.

Otherwise, the Courts should just say what they really mean. It's a "smelly privilege," to be granted upon the grace and favor of the state. A "present" so to speak. A gift that the State may wrap up with a nice, neat bow to give those possessing the demeanor, attitude and ideological beliefs that are in accordance with the economic interests of the legal profession and fortification of State Bar power.

In rendering my own conclusion regarding this Applicant, I would admit him. The offenses are serious but he presented substantial evidence of rehabilitation and seven years lapsed between the date of conviction and the Court's opinion. If during that time however, he had been convicted of any other crime, even a misdemeanor, I would deny admission.

It is a close case. It was also decided under the incorrect rule of law. The ability to engage in the practice of law is not a "peculiar privilege." It's a fundamental constitutional right.

MICHIGAN

285 N.W.2d 277 (1979)

HOW ABOUT A LITTLE 69?

The State Bar instituted a disciplinary action against a Judge. He was reprimanded for allegedly answering inaccurately in his admission application that he had not been a party to a divorce proceeding. The question's scope was limited to divorce proceedings in which one was charged with "immorality" or "other dishonorable conduct." Before addressing the case, the question itself is a blatant First Amendment violation. A person's divorce is not the State Bar's business. This case appears motivated by political interests of the Bar. At a Hearing by the Supreme Court, the State Bar representative argued that the Bar's Hearing panel should have revoked his license to practice law for inaccurate answers concerning his divorces, rather than just reprimanding him. The question on the Bar application read:

> "Have you ever been:
>
> "a. **A party to divorce** or support proceedings or to any legal action or proceeding, civil or criminal, **in which you were charged with fraud, embezzlement, immorality, or other dishonorable conduct**?"

The question contains important limitations. It does not simply inquire whether one has ever been a party to divorce or support proceedings. Rather instead, it limits itself to divorce or support proceedings where the Applicant was charged with:

> ". . . fraud, embezzlement, immorality, or other dishonorable conduct . . . ."

This case actually had its' origin prior to institution of the Bar disciplinary action. The origin of this case confirms its' political nature and how the Bar attempted to promote its' own political interests by issuing what in constitutional terms must be viewed as a frivolous reprimand. While he was a Judge, the Judicial Tenure Commission filed a complaint alleging judicial misconduct. That complaint made numerous allegations including one which is somewhat remarkable. The Commission felt the Judge engaged in misconduct because he:

> **"9. Brags of his sexual prowess openly."**

Judges of America, you now have a guideline. If you brag of your sexual prowess do so discreetly. If you lack sexual prowess and can't get it up, you're on safe ground. Start telling the other Judges that you're a great lover though, and you'll probably be hearing from the Judicial Commission. Ultimately, the Commission recommended that he be removed from office. The State Supreme Court suspended him from judicial office for five years. The State Bar Grievance Board then filed its own complaint against him. Obviously, a prime example of "get him while he's down."

In reference to the divorce proceeding question, as an Applicant he had answered it in the negative. In fact however, he was a defendant in two divorce proceedings in which he allegedly engaged in sexual misconduct and one divorce proceeding in which he was accused of non-support. The question's scope remember, was limited to those proceedings in which the Applicant was "**charged**" with:

> ". . . fraud, embezzlement, immorality, or other dishonorable conduct . . . ."

Based on the facts as set forth in the Court's opinion, I believe the Applicant answered the question correctly. There are irrefutably no facts stated in the Court's opinion even suggesting that he was "charged" with fraud or embezzlement. The focus therefore is primarily on the term "immorality," the phrase "other dishonorable conduct, and the term "charged." Typically only prosecutors can "charge" an individual with violating the law. Litigants in civil proceedings can make "allegations," but they can't "charge" the opposing party. The above facts concerning his divorce proceedings do not include evidence of a formal "charge." Rather instead, it appears there were mere allegations.

Addressing the nature of the allegations, many difficulties are evident. What constitutes "immorality or other dishonorable conduct?" Let's back up even further though. Before addressing the vagueness of the terms "immorality" and "other dishonorable conduct," what constitutes "sexual misconduct?" Is sexual misconduct immoral and dishonorable if your spouse is also engaging in it? The opinion does not provide any facts with respect to the type of alleged "sexual misconduct" or whether there were mutual allegations of "sexual misconduct" being committed by his former spouse. Maybe he wasn't even cheating on his spouse, or vice versa.

Does engaging in what is known as, "69" constitute "sexual misconduct?" Most people including myself would probably give that a strong "No" vote, but others may disagree. How about a blowjob? Former President Bill Clinton probably feels it doesn't. Does the answer depend on whether the blowjob is given by a beautiful topless dancer ? Make mine one with large, shapely breasts and a great smile. Does the answer depend on whether you ejaculate? While I haven't researched these issues quite as thoroughly as I'd like, it's my guess that many religious Puritans would assert a mere blowjob constitutes "sexual misconduct," regardless of who gives it. Threesomes? Foursomes? Sex on the kitchen table? Sex on the beach? Sex in public view? It is easy to see that the term "sexual misconduct" means very different things to many different people. This being the case, it is irrefutable that the Bar is trying to impute vague qualitative characteristics ("immorality and other dishonorable conduct") upon an alleged behavior ("sexual misconduct") that is itself vague in nature. Few people I believe would dispute that the Bar treads on imprudent ground by injecting sexual conduct into consideration of a Bar application.

On the issue of nonsupport, the opinion does not indicate that he was guilty of nonsupport, but does say that he was "charged" with it. The statement in the court's opinion however, appears to be in the nature of restating a mere allegation. Once again, depending on the circumstances and who you ask, nonsupport may or may not be considered as "immorality and other dishonorable conduct." Was paternity proven? Was visitation an issue? Was the allegation a lie and he had checks proving he made payments? These facts are unknown from the opinion. It is also noteworthy that the Court's opinion states as follows:

> **". . . respondent's testimony that he had explained his divorces in an interview with the Committee on Character and Fitness of the State Bar of Michigan was unrefuted by the Administrator."** [283]

Apparently, the divorce proceedings had already been considered during the admissions process. The State Bar accepted his explanations and admitted him. Then years later, notwithstanding the rubber stamp of approval given by the State Bar, the Grievance Board attacks him on the exact same issue again. The ethical dilemma they face is obvious. **By attacking the Respondent for lacking candor during the applications process, years after the Bar has approved his explanation, they are substantively attacking the decision-making process of their own State Bar admissions committee.**

It may be that the Judicial Tenure Commission suspended the Respondent from being a Judge for engaging in judicial misconduct with good cause. I don't know. After doing so however, the Grievance Board's action against him in his capacity as an attorney smacks of being wholly political in nature, based upon the obvious inherent constitutional infirmity of the application question they attack him under, and the overall manner in which they launched their payback.

MINNESOTA

279 N.W. 826 (1979)

THE CONSTITUTION PRECLUDES DENIAL BASED ON APPLICANT'S BANKRUPTCY, BUT WE CAN DENY ADMISSION BASED ON THE FACT HE DIDN'T PAY DEBTS

The first sentence of the opinion's first paragraph reads:

> **"**The Supremacy Clause of the United States Constitution **precludes the denial of admission to the bar on the basis of a prior bankruptcy or on the basis of an applicant's unwillingness to pay debts** previously discharged in bankruptcy**."**

The first sentence of the second paragraph then reads:

> **"Applicants . . . who** flagrantly disregard the rights of others **and default on serious financial obligations, such as student loans, are lacking in good moral character** if the default is neglectful, irresponsible, and cannot be excused by a compelling hardship that is reasonably beyond the control of the applicant."

The Court goes on to justify denying admission based on a discharge of student loans in bankruptcy. Am I missing something here? Isn't that what the Court conceded that it could not do in the first sentence of the first paragraph ? The Court irrationally attempts to justify what it lamely purports to be the logic of its' position by asserting that conduct prior to bankruptcy, such as defaulting on student loans can be considered in the admissions process. Apparently, the Court's position is that while the bankruptcy itself can not be considered, the failure to pay the debt which was discharged in bankruptcy can be considered. The logic is ridiculous, and no, I am not kidding, that is the Court's so-called "opinion." I quote the various self-contradicting provisions of the Court's opinion at length as follows:

> ". . . he was requested by the Board of Law Examiners to appear before them to review the circumstances surrounding the discharge in bankruptcy of certain student loans obtained . . . to finance his education. After formal hearing, the Board determined <Applicant> . . . did not meet the standards required of applicants for admission . . .
>
> There is nothing connected with <Applicant's> bankruptcy to suggest that there was any fraud, deceit, or conduct which could be considered to involve moral turpitude. However . . . the Board of Law Examiners found in part :
>
> > "XXIII.
> >
> > **"Procuring discharge of this indebtedness (and no other) with so little effort to repay . . . while neither illegal nor constituting action evincing moral turpitude, nonetheless is conduct would could cause a reasonable man to have substantial doubt concerning applicant's honesty, fairness, and respect for the rights of others and for the laws of this state and nation amounting thereby to a lack of good moral character . . . ."**

The fact of filing bankruptcy or the refusal to reinstate obligations discharged in bankruptcy cannot be a basis for denial of admission to the bar. . . . **Any refusal so grounded would violate the Supremacy Clause of the United States Constitution since applicable Federal law clearly prohibits such a result.** The leading case on this issue is Perez v. Campbell, 402 U.S. 637 . . . . In that case, the Supreme Court considered the constitutionality of a state statute which precluded a person from driving if he had an unsatisfied judgment arising out of an automobile accident. In effect, a person who had such a judgment discharged in bankruptcy could not drive unless he reaffirmed the discharged debt. The court held the statute violated the Supremacy Clause . . . .

. . .

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. **In other words, we cannot declare bankruptcy a wrong when Federal law has declared it a right.**

Thus, in the present case, . . . conduct prior to bankruptcy 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, nor may his present willingness or ability to pay the loans be considered because under Federal bankruptcy law, he now has a right to not pay the loans.

. . .

. . . The Florida court has considered the issue twice, and the contrast in the cases is instructive. . . . The Florida Supreme Court . . . stating . . . :

> "The petitioner's admittedly legal but unjustifiably precipitous action, initiated before he had obtained the results of the July bar examination, exhausted the job market, or given his creditors an opportunity to adjust repayment schedules, indicates a lack of the moral values upon which we have a right to insist for members of the legal profession in Florida. . . .
>
> To foreclose any misconstruction of this decision, we must emphasize that this ruling should not be interpreted to approve any general principle concerning bankruptcies nor to hold that the securing of a discharge in bankruptcy is an act inherently requiring the denial of admission to the bar. . . .

. . .

In the second Florida case, . . . the court held that an applicant who had discharged his student loans in bankruptcy should nevertheless be admitted because the circumstances surrounding his default were justified. . . .

. . .

In these two cases, the Florida court failed to squarely address the constitutional issue of denying . . . licenses on the basis of bankruptcy. **We have reservations as to whether it was constitutional for the Florida court to consider the morality of any motivations for filing bankruptcy when the Federal Government has declared the bankruptcy proceeding to be legal and presumably beneficial to the welfare of the individual and society.**

. . . We hold that applicants who flagrantly disregard the rights of others and default on serious financial obligations, such as student loans, are lacking in good moral character . . . .

. . .
. . . We have based our decision solely on the circumstances surrounding . . . default on the student loans and the resulting failure to satisfy this important obligation. . . . subsequent conduct of obtaining discharge in bankruptcy and release from the default is of no concern to us." [284]

My view of this case? The Minnesota Supreme Court did precisely and exactly what they conceded would violate the Supremacy Clause of the constitution, in the very first sentence of the opinion. They denied admission to an Applicant on the basis of his unwillingness to pay debts discharged in bankruptcy. The Court's attempt to justify its' position by playing transparent manipulative word games with logic just makes them look ridiculous.

433 N.W.2d 871 (1988)

NOW, WHO REALLY ENGAGED IN THE "CONTINUED DECEPTION?"

The Applicant plagiarized a paper while in law school. The professor informed him the paper was unacceptable because it was plagiarized and recommended that he be expelled. In a subsequent interview with the Associate Dean, he was informed that he would receive an "F," but could remain in school. When he applied for admission, the following question was on the application:

> "Were you ever placed on probation, disciplined, dropped, suspended, or expelled from school, college, university or law school?"

The Applicant submitted a detailed explanation of the law school incident noting that he received an "F" and "no other action was taken." A Hearing was held. The professor and Associate Dean testified and the Applicant admitted the plagiarism. He explained he had been under the stress of time pressures, had just begun a new job, his wife was injured in an automobile accident, and his 16 year old son had run away from home. When his son returned, he had to address his son's truancy at school. The Professor maintained the plagiarized paper was a "crystal clear case of plagiarism" and affirmed that he had recommended expulsion. The Associate Dean on the other hand, considered the failing of the class a severe sanction.

The Board concluded that not only had he plagiarized the paper, but also that he had attempted to deceive the Board with his detailed explanation of the incident on his application. In addition, they concluded he continued to attempt to deceive the Board at the formal Hearing. Their irrational assertion of deception was predicated on the following response the Applicant gave to the application question:

> ". . . Applicant was notified . . . that the paper was unacceptable because of endnoting omissions. It was pointed out to the applicant that no authority had been cited for a lengthy direct quote and other endnotes were incomplete. Applicant subsequently received an F grade for the class, no other action was taken. **Dean of Students . . . found that the paper defects were ones of omission rather than intent.** Applicant admits his failure to scrutinize the papers content due to family problems."

His explanation did not include, the word "plagiarism," and as a result the Board concluded his response was untruthful. This was notwithstanding that the Dean's letter confirmed the issues were ones of omission and incomplete citations. The Court rules in favor of the Applicant. It is a well written opinion and states:

> ". . . We think that the disclosure of the incident on the application was sufficient to alert the Board . . . .
>
> **. . .**
>
> At the hearing, counsel for the Board dissected the paper line by line and phrase by phrase. Again and again, petitioner admitted responsibility as he initialed each plagiarized passage. Petitioner also attempted to explain the incident to the Board at the hearing. He cited his wife's health, computer problems, stress in his family. **He had not raised all of these explanations during his brief interview with <Dean> at a time when he was noticeably upset. Yet we do not think the record supports the Board's conclusion that these omissions amounted to petitioner's continued deception of the Board."** [285]

This was the Board's concept of "continued deception." When the Applicant spoke with the Dean, he explained about the time pressures. He had not however, explained each and every element giving rise to the time pressure. When he tried to do so with the Board, they contended he engaged in deception. The Court sees the Star Chamber tactic being used.

An equally important issue is raised by this type of case. If the Bar is going to engage in tactics such as labeling good faith explanations accompanied by an admission of guilt, as "continued deception," then how can we really trust the Bar? Can we assume the Bar's general lack of a sense of justice and fairness is isolated to this case? Or is it evidence of a greater pattern of deceit and manipulative trickery being employed by the Bar on a wide scale basis? Stated simply, does the Bar itself possess the requisite character to regulate the legal profession, if it does so by concealing its own inadequacies at the expense of others?

The Applicant should obviously be admitted. He screwed up with footnotes on a paper. That's it. He wasn't trying to get the paper published. He wasn't trying to sell the paper, or make it look like he was a brilliant author. He was hoping to grab a quick "C" or "D" grade with little effort, because he had many family problems at the time. If State Bars simply screwed up on their footnotes, I wouldn't even be writing this book. They do a lot more. **They pervert the admissions process of a branch of government to foster the economic interests of their attorneys in violation of the Constitution and antitrust laws. They assert that their regulation of attorneys provides the public with competent and zealous representation, when in fact those attorneys regularly sell out and betray their clients. They enact Unauthorized Practice of Law rules that are designed to foster anticompetitive interests, and then falsely inform the public that those rules are enacted for the purpose of protecting the consumer. In doing so, they lack candor, moral character and truthfulness.** They regularly violate their own rules of procedure in the hopes of applying a strict standard of justice to litigants and Applicants, while allowing themselves to be the beneficiaries of a liberal standard. Omitted footnotes? I'd be thrilled if that were all the Bars were guilty of.

The professor in this case was correct to point out the deficiencies, but for the most part appears to have been essentially a Chop Buster by attempting to get the guy expelled for such an isolated and relatively speaking, minor matter.

451 N.W.2d 330 (1990)

I'M GUILTY. WAIT, I MEAN INNOCENT.
IF YOU SAY YOU'RE INNOCENT, YOU'RE GUILTY OF LYING.

In 1985, the Applicant was arrested for setting a fire at a radio station where she was employed. In 1986, at age 21, she pled guilty to setting the fire. She graduated from law school in 1988 and was informed by the Bar that it decided tentatively to not recommend admission. A formal Board Hearing was held on August 25, 1989. She testified at the Hearing that she was innocent of the offense to which she had pled guilty. Why plead guilty if one is innocent ? She explained that the prosecutor offered a deferred sentence with expungement on completion of probation, and that although her attorney felt she would be acquitted, the attorney also advised her there was a risk she would not. Weighing the alternatives, she felt the risk of trial was too great.

The Board concluded that she committed arson and also lied under oath by denying her guilt. It concluded that her application should be denied. During the Hearing, two other incidents came to the Board's attention based on the testimony of the arresting officer in the arson incident. From 1982 - 1983, the Applicant was employed at a different radio station. She reported to the Sheriff's Department that people at the radio station were harassing her. The officers concluded the allegations were false and as a result, her employment was terminated. The Board noted that she failed to disclose the job termination on her application. She countered by noting that she did not have to disclose her employment at the first station because the application inquired only about employment "held within the last five years." She was terminated by the first station on April 14, 1983 and her application to the Bar was dated April 14, 1988, one day outside five years. [286]

The Court denies admission. My decision would be dependent on whether the conviction had been expunged. If it was expunged, then it can not be considered. If it had not yet been expunged, I would also deny admission. Her assertion of innocence at the Hearing is unpersuasive for the following reason. Although she raises a valid point that criminal defendants often plead guilty because they are afraid to take the risk of a stiffer penalty by going to trial, it is irrefutable that she did plead guilty. The dilemmas related to guilty pleas of people who may be innocent, are problems to be resolved outside the Bar admissions process. The basic concept I have stressed throughout this book is that the objective standard to be used, is whether one has been convicted of a crime. That is the standard our society has adopted. If you've been convicted of a serious crime, I am substantially less lenient, than in other areas which are sensitive to subjective interpretation.

She was convicted, and that is what matters to me. The crime she was convicted of was serious. It was arson. A small amount of time had passed between the conviction and her application (about 2 years), and also the date of the Court's opinion (less than five years). The opinion indicates that when she pled guilty, the prosecutor agreed that upon completion of probation, the criminal record would be expunged. The opinion does not however, indicate whether the expungement had yet occurred. In my view, that is the determinative factor. When the criminal record is expunged, she need not even disclose the incident on her application. That is what an expungement is supposed to do. It is supposed to wipe the incident off your record. For the Bar to assert otherwise, places it in a position of receiving preferential treatment, compared to the licensing agencies of other professions regulated by the other two branches of government. That is unacceptable.

One other point. Although I would not admit her, if the conviction had not yet been expunged, the Bar's assertion that she lied under oath by professing innocence is untenable. As long as she disclosed the conviction, I see no ethical dilemma in her continuing to profess innocence. When assessing her application, I would only give minimal weight to her assertions of innocence. By the same token, not giving substantial weight works both ways. Assertions of innocence do not constitute lying under oath, so long as she discloses the conviction. Essentially, the Applicant should be entitled

to explain why she believes the conviction was unfair, and to assert that she was innocent. In the absence of presenting substantial corroborating evidence supporting such assertions, minimal weight should be given to her assertions, but they certainly do not constitute lying.

This conclusion I believe must be reached in view of the fact that innocent people do often plead guilty, because they are afraid of the punishment to be inflicted if they take a case to trial. It is a conclusion non-adverse to my previous point that such dilemmas should be resolved outside the admissions process. I only conclude it is justification for allowing assertions of innocence, not as proof of innocence itself. The rules to be gleaned, with respect to Applicants who have pled guilty to a crime, should be as follows:

1. Conviction of a serious crime is grounds for denying admission, but does not conclusively bar admission. The determination should be based on assessing the factors of remorse, rehabilitation and the period of time lapsed since the conviction.
2. The Applicant does not lie when they profess innocence, even if they previously pled guilty
3. Minimal weight should be given to assertions of innocence after a guilty plea, in the absence of substantial corroborating evidence
4. Expungement relieves the Applicant of any responsibility to disclose a crime which they have pled guilty to

470 N.W.2d 116 (1991)

The Applicant submitted a lengthy application that was prepared with assistance of legal counsel. The issues focused on his involvement in litigation involving the sale of tax shelters. During the litigation, a default judgment was entered against him. Subsequently, he appeared pro se and was held in contempt of court for failure to comply with an order to supply information. A federal district court judge found he was one of three principal participants in a series of attempted real estate transfers which were "sham, devoid of economic substance and a contrived device to defraud the United States of its claim upon the property. . . ." The court concluded that he perpetrated the fraud through shell corporations. In a separate case, the U.S. Tax Court concluded his testimony was not credible. In another case, a jury convicted him of second degree assault, while his Bar application was pending. The Board found that he failed to provide them with an update of the status of his litigation. They denied admission. The Court also denied admission.

I would also deny admission. In view of his conviction for second degree assault, the decision is pretty much a slam dunk. It falls squarely into the category of an individual who should not be admitted because they have been convicted of a serious crime, with an inadequate lapse of time, and no evidence of rehabilitation.

This case is much more difficult if we **hypothetically** assume the Applicant did not have the assault conviction. Under such a hypothetical, using my proposed objective standard of character assessment, an individual who was found in a civil action to have committed "fraud" and given testimony that was "not credible," would be admitted to the Bar. Such a conclusion would appear initially to be incorrect. First glances however, are deceiving and my rebuttal would be as follows. If indeed, the Applicant committed "fraud," then he should have been criminally charged with such. If indeed, his testimony was "not credible" and can be proven to be not credible, then he should have been charged with perjury. In the absence of such criminal charges, however, I am left wondering whether the Applicant really did commit "fraud" or give testimony that was "not credible." If he committed those acts, why weren't criminal charges filed? Certainly, it seems that if the Judge was correct in his findings in the civil case, criminal charges were warranted.

In the last admissions case presented, I indicated I would deny admission to an Applicant who professed innocence in spite of guilty plea. I asserted that the protestation of innocence should be given minimal weight when accompanied by a conviction. The rule works both ways. I give negligible weight to purported civil findings of "fraud" and so-called findings that testimony is purportedly "not credible" if they are not accompanied by criminal charges and a conviction. If the Applicant in this case, truly committed the acts which the Judge said he did, then he should have been criminally charged. In the absence of criminal charges and a conviction, it is the legitimacy of the Judge's conclusions that cause me concern. [287]

502 N.W.2d 53 (1993)

IF THE BAR ADMISSION STANDARDS ARE DESIGNED TO PROTECT THE PUBLIC, THEN WHY DON'T THE SAME STANDARDS APPLY TO LICENSED ATTORNEYS?

The Applicant was a member in good standing of the Wisconsin Bar. In 1990, he applied to the Minnesota bar but failed to pass the exam. He applied again in 1991 and passed. On both occasions he completed an application that asked if he had any unsatisfied judgments, debts over 90 days past due, if he had ever been arrested or questioned regarding the violation of any law, and if he had ever been a party to or witness in any legal proceeding, civil, criminal or administrative. He answered all these questions, "no."

The Board received a report that in 1986 he was arrested on a bench warrant related to a paternity action for a child he fathered at age 17. He apologized for his failure to inform the Board. He was then asked to explain his failure to disclose the paternity proceedings. He explained that he thought the application question meant being "a party in litigating a matter from start to finish," and that he only appeared before an assistant court commissioner, not a judge. He thought the paternity action was extra-judicial in nature. The Board obtained copies of the complete file of the paternity proceedings. The files included a judgment for past support of $ 4196.17, but postponed repayment until further order from the court. It also imposed reporting requirements on him.

It appears the Applicant was never convicted of a crime based on the court's opinion. The Board did not recommend admission and he requested a Hearing. The Board concluded that he intentionally failed to disclose the paternity action, the unsatisfied judgment and his arrest on a bench warrant. The Board further concluded that his explanations lacked candor. The Applicant testified that he did not disclose his arrest because he thought it had been expunged. He testified that he did not disclose the paternity action because he thought it was extra-judicial in nature. The Court denies admission.

This case is a good example of how the admission process is not consistent with the standard applied to licensed attorneys. If a Bar is going to deny admission to this Applicant for failing to disclose a paternity proceeding and to pay support obligations, then that same Bar has a responsibility to suspend licensed attorneys who fail to inform it of their paternity proceedings or unpaid support obligations. Basic principles of fairness, equity and justice demand that Bar members be held to an equal or greater standard of conduct than Nonattorneys.

Otherwise, the Bar is hypocritical. The result is that when it purports to act in the public interest, imputation upon the Bar of its own standards results in the conclusion that the Bar lacks candor and truthfulness. The fact is that Bar Applicants are held to a higher, moral standard than licensed attorneys. The obvious hypocrisy precludes acceptance of the disingenuous assertion that Bar admission standards are designed to protect the public. Instead it demands a conclusion that the Bar admission standards are designed to enhance the economic, anticompetitive interests of the Bar. A strong Dissent in this case outlines the problem perfectly :

> **". . . in determining who shall practice law in this state and the conditions under which they shall be permitted to practice, we must be consistent, and we must be fair. In denying petitioner's admission, we are not being consistent or fair. If petitioner were currently admitted to practice law in Minnesota and was subject to discipline for the same acts for which we now deny him admission, I do not believe the result would be as harsh as here . . . . I believe, based on the facts before the court, that this applicant to the bar should not be subject to a far more harsh sanction than licensed attorneys who have, in addition to breaking the trust of their clients, committed forgery, perjury, or misappropriated client funds.**
>
> **. . .**

Judging from this court's recent actions, petitioner's acts would not merit such severe discipline if he was already a member of our bar. . . . In . . . 498 N.W.2d 256 (Minn. 1993), we suspended for a mere 45 days an attorney whose acts were much more egregious than those of petitioner. . . . numerous trust account violations, including the misuse, misappropriation, and commingling of funds. . . falsely certified to this court on his attorney registration fee statements that he properly maintained such books and records; and engaged in an ongoing pattern of neglect and noncommunication with regard to three separate client matters entrusted to him. . . .

In . . . 430 N.W. 2d 663 (Minn. 1988), we held that conduct which included preparing a false deed and causing it to be forged, notarized and filed, and issuing a false title opinion based on that deed warranted only a six-month suspension for a lawyer who had received three previous disciplinary admonitions. . . .

In . . . 403 N.W. 2d 239 (Minn. 1987), we suspended for only 90 days a lawyer who had . . . prepared and submitted to the court as evidence false affidavits, and who attempted to cover up this conduct by giving perjured testimony.

In contrast . . . the conduct which underlies the allegations against petitioner involved his personal affairs. He did not misuse client funds, engage in any misconduct in representing a client, or engage in any conduct of a criminal nature. **If the appropriate sanctions for these individuals were 6 month, 90 day and 45 day suspensions, respectively, I fail to see how we can say that petitioner is unfit to practice law in Minnesota. . . ."** [288]

MISSISSIPPI

No. 94-CA-00185-SCT (1994)

THE DOUBLE STANDARD

The Applicant was accused during the 1991 Bar exam of possessing study materials when she exited from the ladies room. Another Applicant said that she observed this in the hallway. The Applicant appeared before a review committee on March 1, 1991 to determine the necessity for a formal Hearing. The review committee felt she was not truthful and recommended a formal Hearing. She was determined to have cheated on the exam. The Applicant asserted to the Court that she was denied procedural due process because the notice of the meeting dated March 1, 1991 did not apprise her of the specifics of the charge or the identity of the witness accusing her. She was properly contending that the Board was evasive and misleading by "inhibiting her efforts" to rebut the evidence. The Court sees it differently and states:

> "However, the purpose of that meeting was to determine the necessity of a formal hearing, not to actually hold a hearing. . . . At no point has <Applicant>. . . indicated that were she given more advance notice and a greater opportunity to be heard, she could have presented additional or other information. **She has failed to show that in any way she could have presented a better or more persuasive case on her own behalf . . ."** [289]

This is typical of the standard applied by State Supreme Courts when the Bar is at fault. The standard of materiality adopted above is as follows:

> **The Bar's errors are harmless, unless the applicant shows she could have presented a better or more persuasive case.**

If the foregoing premise is valid, then why isn't the rule applied to Applicants stated as:

> **Omissions on the Bar application are harmless, unless the Bar shows that such omissions would have affected the final decision.**

The Courts hold that while the Bar's errors, omissions and evasiveness are harmless unless the Applicant could have presented a better case, the Applicant's errors and omissions warrant denial of admission because they inhibit the efforts to discover other information. The Courts are wrong and unfair. The Applicant in this case was unfairly condemned based on a mere unproven allegation from a future, fellow competitor. The Court applied two different standards of moral character. A lenient standard for the State Bar and a strict standard for the Applicant.

MISSOURI

807 S.W.2d 70 (1991)

ZERO + ZERO + ZERO = 1?

Missouri had a requirement that law students who anticipated taking the Bar exam, be subjected to a character review. The Applicant was born in 1939 and filed an Application for Law Student Registration in 1988. He was approximately 49 years old at the time of the application. He had been married and divorced three times. **The application asked him to state the grounds for each divorce.**

He asserted the three divorces were the fault of his ex-wives. (What a surprise.) He alleged the first committed adultery, the second left him for another man, and the third was addicted to drugs. He listed over twenty different employments after leaving high school. He disclosed three lawsuits in which judgments were entered against him, the largest being a $ 23,000 default judgment. He claimed the default was the result of misleading information supplied by a court clerk. He disclosed eleven lawsuits since 1980 in which he was a party. He had been charged with assault, theft and tampering with a utility meter. All charges were dismissed. He declared bankruptcy in 1970 and again in 1982. He stated he had several minor traffic tickets during the last 32 years, but did not specify the dates. The Board denied his application on character grounds. The sparks then began to fly. He requested a hearing in a letter that stated:

> **"Your letter to me . . . provides additional evidence that you, the other members of the State Board of Law Examiners, the 13th Judicial Circuit Bar Committee . . . and certain judges within the Circuit Court . . . the Missouri Court of Appeals . . . and the Missouri Supreme Court have been presently engaged in a criminal conspiracy to deprive me of civil and fundamental rights . . . because I have been openly critical of the corruption and judicial bias which exists within several Missouri and Illinois court . . . and because I have repeatedly attempted to exercise my rights."**

He cited several examples of corruption and judicial bias. He accused a U.S. District Court judge of coercing a clerk into perjuring herself, an Illinois state attorney of presenting perjured testimony, and various judges of permitting surprise, unfair advantage and deceit in a lawsuit he filed. He referred to the Board's letter as nothing more than the:

> **"pompous braying of a legal jackass in furtherance of the criminal conspiracy to oppress me for attempting to exercise my constitutional rights."**

In the last paragraph of his letter, he stated:

> "I hereby serve notice on all parties concerned as detailed above that I will immediately file appropriate charges with the United States Attorney General's office, and then I will sue in federal court each conspirator individually for actual and punitive damages."

Shortly thereafter, he made good on his commitment, naming, as defendants the members of the Board. He filed documents with the Board seeking answers to interrogatories, requests for admission and a motion for production of documents. The Board did not respond. At the Hearing, he asserted that when faced with his allegations, the appellate judges had no choice but to grant relief or join the conspiracy. The Board rules against him and the Supreme Court of Missouri affirms. The Court's opinion states:

> "The divorces, bankruptcies, criminal charges, multiple employments, traffic convictions, emotional problems and participation in litigation **may not, as individual incidents, be indicative that . . . is unfit or of immoral character. However, the incidents are not examined in isolation,** but in connection with each other and in connection with the unfounded charges of personal and professional impropriety against unpersuaded judges and opposing litigants . . .
> **. . .**
> Consistent with his approach in other legal proceedings, he repeatedly accuses the surrogate of bias and intentionally misquoting facts. As previously noted, the factual findings of the surrogate are not binding. This Court conducts an independent review of the record . . . The arguments attacking the surrogate's findings need not be addressed.
>
> . . .<Applicant> has failed to establish that he has the moral character and general fitness . . . . Accordingly, the decision of the surrogate for the Board of Law Examiners denying his application for registration as a law student is affirmed."

The Board and Court were wrong. They had nothing on this guy. He was never convicted of any crime, based on facts set forth in the opinion. The divorces were none of their business. He engaged in a lot of litigation, but that is his constitutional right. Lawyers do it all the time. That's how they earn a living. He declared bankruptcy and that is a federal right. The traffic offenses are immaterial. The arrests all resulted in dismissal.

Since the Bar had nothing on him, the Court adopted a logically flawed approach. **To keep him out of the Bar, it reasons that an accumulation of minor, immaterial incidents equates to a material reason for denying admission. They are wrong. Zero plus zero is still zero, not "1" as the Court here asserts.** The fact that he was openly criticizing the Judiciary in exercise of his First Amendment rights, makes the Court's motivations in this case more circumspect. They have motive and opportunity through the admission process to impose a payback. The Court included within its accumulation of facts theory, the issue of "multiple employments." **The Court appears to be suggesting that having numerous jobs over a period of time and not staying with one employer reflects negatively upon the character of an individual. Such a suggestion, whether viewed from a perspective of law or morality (noting that the two are often quite dissimilar) is insulting.** The Applicant was about 49 years old. He had over 20 different employments since leaving high school. That's 20 jobs over about 31 years. Approximately a year and a half per job. Admittedly, somewhat lower than the national average, but not immensely lower. In any event, the matter is irrelevant. **There is nothing criminal or immoral about leaving jobs. Often it personifies a person who is individualistic, creative, searching for something better, new and exciting, and unwilling to adopt a lifestyle where they settle for less.** Some people like frequent change in their lives. The Court is way out of line to suggest that multiple employments constitutes grounds for denial of admission.

One last point. The following portion of the opinion is particularly disturbing:

> "he repeatedly accuses the surrogate of bias and intentionally misquoting facts. As previously noted, the factual findings of the surrogate are not binding. This Court conducts an independent review of the record . . . **The arguments attacking the surrogate's findings need not be addressed.**
>
> . . . the decision of the surrogate for the Board of Law Examiners denying his application for registration as a law student is affirmed." [290]

If his arguments attacking the surrogate's findings were correct, the likelihood that the admissions process was unfair, is increased. Consequently, equity and justice mandate that the Court's "independent review" include consideration of those arguments. Assessing the propriety of the admissions process, requires consideration of arguments attacking the findings. How can you not address them? They form the basis for the decision. How can the Court rationally affirm a decision without considering arguments that attack its' foundation? They can not do it rationally, only irrationally.

NEBRASKA

508 N.W.2d 275 (1993)

THE PETTY LITTLE BABY BAR

The Applicant was denied admission on character grounds. He disclosed that in 1991 he was disciplined in law school for making personal use of student funds. He also disclosed that in 1992 he was charged with speeding while his license was suspended. He did not disclose, that in 1982 he encountered the justice system for writing a bad check and that in 1991 he was charged with shoplifting. The first of the above incidents occurred on March 20, 1991 when, as treasurer of the student chapter of a lawyer's association he wrote a check to himself for approximately $ 300.00. Although no one confronted him, he repaid it within a week and notified the chapter president of his actions. He explained that his father suffered a stroke in 1990 and as a result he took responsibility for managing his parents' household. During this time he was serving as a law clerk, president of a student organization and was active in political campaigns. The transmission in his automobile then went out. Being between paychecks, he felt he was between a rock and a hard place. He stated:

> "If I did not repair my car, I could not work, and could not get to classes. If I did not work, I could not earn money to repair my car."

When questioned by the commission, the following took place:

> Q. Do you feel that what you have told us about this situation excuses your action?
>
> A. Oh, no. There is never an excuse for that action. I think there are mitigating factors that perhaps should enlighten on why I acted the way I did. No, I never expect to be excused for the wrongs that I have done.

Absolutely, a great answer. In reference to the speeding ticket, it is too trivial to even consider. The bad check charge was dismissed. The shoplifting charge related to taking a pack of cigarettes at a restaurant. He said that he accidentally left without paying. He completed a pretrial diversion program and performed 30 hours of community service. It appears no conviction resulted due to his agreement to participate in the pretrial diversion program. In describing these matters the Applicant told the commission:

> "I'm not asking you to bury your head in the sand or look the other way with the transgressions I had in the past or with my omission because they're all serious and you're justified in raising the questions about them . . . . I would never intentionally hide something from this Commission because . . . I knew that I would come under scrutiny because I know the things that --the two very serious things that were reported were quite serious and you would take a look at them."[291]

This Applicant knew the Bar admissions game very well. His answers are perfect. The Court denies admission. I would definitely admit him. He has no convictions. The incidents are all fairly trivial. When I read the part of the opinion indicating that he participated in **"political campaigns"** I can not help but wonder whether he was a Democrat or Republican, and whether the Nebraska Board and Court were comprised of members of the opposing party. The guy drove fast, wrote one bad check

over a decade in the past, wrote a check to himself that he shouldn't have, which he paid back before anyone confronted him, and took a pack of cigarettes. No convictions. He should be admitted.

The Board and Court were probably annoyed that he was too much of a political smoothy. I myself concede that I don't buy into the excuse that he accidentally left the restaurant without paying for the cigarettes, but in the absence of a conviction, the Court lacked sufficient grounds to deny admission.

Supreme Court of Nebraska, No. S-34-950003 ; LLR No. 9604023.NE ; Versuslaw 1996.NE.200 (1996)

WHAT HAPPENED TO ALL THAT STUFF ABOUT MISLEADING INFORMATION REFLECTING ON CHARACTER?

This is a great case because it demonstrates how the Bars don't like it when rules are applied strictly to them, and how Courts adopt liberal standards when interpreting their own misleading rules. It is not a character case. It deals with educational qualifications. It's a perfect example of the double standard that I have been discussing throughout this book. The Applicant qualified for admission to the Bars of Michigan, Indiana and the District of Columbia. Nebraska Supreme Court Rule for Admission of Attorneys (5c) read as follows:

> "Educational Qualifications . . . . Every applicant must have received at the time of the examination **a professional degree** from a law school approved by the American Bar Association."

The Applicant had a "professional degree" from a law school approved by the American Bar Association. Although he had graduated from an unaccredited law school, he then received a **master of laws (LL.M.) degree from the University of San Diego School of Law, an ABA approved law school.** He received a letter from the State Bar admissions clerk that read as follows:

> "Under the Nebraska rules for admission of attorneys, **an attorney admitted in another state may be admitted in Nebraska without examination if he or she** . . . is a **graduate of an ABA approved law school and was admitted in another state** after an examination similar to the examination administered in the State of Nebraska. . . ."

The Applicant asserted that he was:

> **"duped by the cover letter into believing that he satisfied the requirements for admission"**

The Bar and Court had screwed up drafting Rule (5c) when they used the phrase, "professional degree." What they really had wanted to require was a juris doctor degree from an ABA law school. The Court, rather than owning up to its own carelessness, writes an opinion that reads:

> **"While the use of "professional degree" rather than "first professional degree" may have appeared to be a loophole through which graduates of non-ABA-approved juris doctor programs could gain access to the Nebraska bar, we hold today that "professional degree" contemplates only a juris doctor degree."**

In reference to the Applicant's claim that he was "duped" by the cover letter, the Court writes:

> "This argument fails. As the letter states, a copy of the Nebraska Supreme Court Rules for Admission of Attorneys -- which included rule 5--was enclosed for . . . review. **As an attorney, <applicant> should understand that the question of his admission would be governed by Supreme Court rules and not by a summary of those rules in a cover letter.** We will not fault the state bar commission for <applicant's> failure to read the rules that were provided for his review and were referenced in the very cover letter that he claims misled him." [292]

Hold on!! What happened to all that stuff about "false representations" bearing upon one's character and fitness? What happened to all that stuff about being "misleading?" **Looks to me like we now have a pretty different standard when incorrect information is provided by the Bar. As for the Court's statement that the Applicant should have just read the rule. He did. The Court acknowledged that the rule didn't mean what it said. The rule said "professional degree." It didn't say "juris doctor degree." An LL.M. is a "professional degree."** The Court was "misleading," "evasive," and lacking in "candor." The Court screwed up when it enacted the rule, and was seeking to correct its' own screw-up by manipulative use of word interpretation in a post hoc manner.

One thing is irrefutably certain. If you apply the same standard for assessing misleading information upon the Justices of the Court regarding Rule 5(c), as applied to Applicants by the Bar, you would have Nebraska State Supreme Court Justices that would not be admitted into their own State Bar on moral character grounds.

Supreme Court of Nebraska, Case No. S-34-950002 ; LLR No. 9603025.NE; Versuslaw 1996.NE.137 (1996)

THE OBNOXIOUS BAR APPLICANT

The Applicant at various times was admitted to the Bars of Colorado, Iowa, Nebraska, Texas, Virginia and the District of Columbia. He permitted his Nebraska membership to lapse in 1978 and applied again in 1994. He did not disclose his prior admission to the Nebraska Bar.

He also failed to list any employment from October, 1990 through October, 1994. He later wrote in a letter that he was unemployed during the period and then another letter stating he was employed in temporary jobs. Question 11 of the application inquired if any civil actions or judgments had been filed against him. He answered affirmatively, but did not attach the necessary forms to the application.

The Commission then received information indicating that he exhibited confrontational, obnoxious, paranoid and threatening behavior. Apparently, in 1995 while attending a BAR-BRI Review course, he could not locate his keys and accused other students of taking them. He threatened to fight a male student and was asked to not participate further in the course. A few other similar incidents were disclosed. None resulted in arrests, charges or convictions. He just seemed to argue a lot in an abrasive manner. The following exchange during the Bar Hearings is indicative:

Q. Well, it was a stormy night that night, is that correct?

A. No, it was not. We're going to talk about the weather now(?)

. . .

Q. Aren't you glad you didn't go outside with him?

A. I think that's kind of a silly question.

. . .

Q. What's the title of the one that was published?

. . .

A. . . . I don't see what relevance this has . . .

He then wrote some letters to the Bar Commission, that apparently went over about as good as a turd in a punch bowl. Some examples are as follows:

> **"I do not think slanderous innuendoes constitute sufficient grounds to deny me a license to practice law in the State of Nebraska. . . . I note your sarcastic use of the phrase "working with dispatch" in your letter. If the Commission had worked with dispatch on my application, the investigation would have been completed by now. . . .**
>
> **. . . Apparently, my failure to fail has again found your side "delaying the game". I use the words "your side" because this process has taken on the characteristics of a football match, not an administrative inquiry. Are you hoping that if you delay long enough, something negative will happen to disqualify me for admission?**

It was a good letter! I like it. The Court apparently didn't though and denies admission. Why admit someone that doesn't like you, unless the constitution requires it? The Court's opinion states:

"Also of concern is his belief in various conspiracies being aligned against him. In his interview in January 1995, . . . asserted that because as an attorney he had taken on powerful interests in Texas and because Colorado is dominated by Texas investors, Texas businessmen, and Texas finance, there was an effort on the part of various people in Colorado to politically harass him. . . . stated that the reason a judge in Colorado Springs filed an ethics complaint against him was out of political animosity because "she's a conservative judge in a conservative county. . . .

. . . also implies that the commission was politically motivated in its investigation of his character and fitness. **This assertion had been made earlier in a letter . . . to the commission, in which he objected to the "inquisitorial approach to <his> Bar admission . . . .**
. . .
Apparently, . . . is arguing that abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent conduct does not reflect on his "honesty, trustworthiness, diligence, or reliability." He is wrong.

. . . Canon 7, EC 7-37, provides that although ill feelings may exist between clients in an adversary proceeding, such ill feeling should not influence a lawyer in his or her conduct, attitude, and demeanor toward opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

The requisite restraint in dealing with others is obligatory conduct for attorneys. . . .

. . . When members of the public engage attorneys, they expect that those attorneys will conduct themselves in a professional and businesslike manner. **Attorneys who routinely exhibit abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior toward others involved in the legal system are not worthy of such trust and confidence. . . .**

Moreover, the qualities listed in the rule are merely illustrative; "the fact is that in reviewing an application for admission to the bar, the decision as to an applicant's good moral character must be made on an ad hoc basis." . . . We therefore join other courts in holding that abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is a proper basis for the denial of admission to the bar. . . .

Even if we assume, arguendo, that . . . believes he is the victim of conspiracy which encompasses various interests, ... Belief unrelated to reason is a hallmark of fanaticism, zealotry, or paranoia rather than reasoned advocacy. . . .

Verbal abuse, unfounded accusations, and the like have no place in legal proceedings. . . ."

The Court then addresses the issue of what it purports to be a lack of candor as follows:

"Question 7 of the application read : "List every job you have held for the ten year period immediately prior to the date of this application or since the age of 18, beginning with your present employment, if any. . . . **<Applicant> explained that he had failed to list the Colorado temporary employment because he held simple common labor jobs, and he may have either**

> **misread the question or forgotten about the jobs. We agree with the commission's determination that such an explanation is not credible. . . .**
>
> In addition, not only did <applicant> fail to list his former membership in the Iowa bar, but he failed to reveal that he had previously been a member of the bar of this state, ...
>
> **Contrary to the commission's implication**, **we have never held that in order to be found to have lacked candor in filling out an application, an applicant must have had an intent to deceive.** On the contrary, . . . we observed that "false, misleading, or evasive answers to bar application questions may be grounds for a finding of lack of requisite character and fitness." While an intent to deceive will reflect on whether such answers are false, misleading, or evasive, . . . an applicant who recklessly fills out an application . . . is just as culpable of lacking candor . . . as is the applicant who intends to deceive the commission."

A strong Dissent makes excellent comments. Before addressing them however, I have a few comments of my own in reference to the above passage. The Court's opinion, I believe is characterized by a general lack of understanding of what litigants seek from their attorneys. The opinion is embodied by a fundamental hypocrisy, lack of candor, and constitutional infirmities. I will dissect portions of their opinion on a piecemeal basis. In doing do, I will apply the Court's own standard of what constitutes a "lack of candor." The Court states:

> **". . . When members of the public engage attorneys, they expect that those attorneys will conduct themselves in a professional and businesslike manner.** Attorneys who routinely exhibit abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior toward others involved in the legal system are not worthy of such trust and confidence. . . .
>
> Moreover, the qualities listed in the rule are merely illustrative; "the fact is that in reviewing an application for admission to the bar, the decision as to an applicant's good moral character must be made on an ad hoc basis." . . . We therefore join other courts in holding that abusive, disruptive, hostile, intemperate, intimidating, irresponsible, threatening, or turbulent behavior is a proper basis for the denial of admission to the bar. . . ."

The Court is wrong!! **When members of the public engage attorneys, they want one thing and one thing only. They want an attorney who will do everything legally possible to fight on their behalf and win their case. The litigants could not care less whether their attorney exhibits abusive, disruptive, intimidating or turbulent behavior. In most cases, quite to the contrary, the litigant will view such as a positive attribute of the attorney. They will see an attorney who cares about their case and is fighting for their position.**

The Court's false characterization of what the public desires must be considered in the following light. Either the Court knew what it was saying was false, or at best the Court did so inadvertently because it lacked a general understanding of what litigants want. The former is manifested with an intent to deceive, the latter is not. Since this Court, however believes that finding a lack of candor does not require the element of an "intent to deceive," then in either instance, the inescapable conclusion is that the Court lacked candor. The Court does not survive scrutiny under its' own standard of candor.

An attorney has an ethical responsibility to not commit a summary contempt and to not commit an illegal act. For the most part, that's it! Purported unconstitutional notions of verbal civility, serve to foster a view of the legal profession by the public as a "Club." A "Club" where the attorneys

consistently waive objections and get along with each other, while the litigants pay the price. The legal profession in this nation is supposed to be an adversarial system. That means the public is hiring at their financial expense, lawyers who are supposed to fight, fight, fight, on their behalf. Not Kiss the Ass of opposing counsel! In reference to the omissions issue, the Court states:

> "Question 7 of the application read : "**List every job you have held for the ten year period immediately prior to the date of this application or since the age of 18, beginning with your present employment, if any**. . . . <Applicant> explained that he had failed to list the Colorado temporary employment because he held simple common labor jobs, and he may have either misread the question or forgotten about the jobs. We agree with the commission's determination that such an explanation is not credible. . . .
>
> In addition, not only did <applicant> fail to list his former membership in the Iowa bar, but he failed to reveal that he had previously been a member of the bar of this state, ..."

The omission is immaterial because the question is unconstitutional suffering from overbreadth. "Since the age of 18" is an unreasonable period of time to request an employment history from a man who is obviously at least middle-aged. The question is also vague and ambiguous as to whether the employment history is required for the last ten years or alternatively since the age of 18. It states according to the Court's opinion:

> "List every job you have held for the ten year period immediately prior to the date of this application **or** since the age of 18,. . ."

The operative term is "or." Which portion of the rule applies? I can't tell from reading it. Finally, regarding what constitutes a lack of candor the opinion states:

> **"Contrary to the commission's implication, we have never held that in order to be found to have lacked candor in filling out an application, an applicant must have had an intent to deceive. . . ."**

If the Court is correct, then the commission's faulty "implication" that intent to deceive is a required element constitutes a "lack of candor." This assumes of course, that one judges the Commission using the Court's own definition of what constitutes a lack of candor. The Dissent states:

> **". . . Until today, . . . being obnoxious, having a quick temper, and being hard to get along with were not grounds for the extreme sanction of denial of admission to the Nebraska bar. The majority reaches far beyond the current rules governing admission . . . .**
>
> **. . . While I do not approve of such characteristics, there are no bar admission rules for excluding an applicant on such grounds.**
>
> **. . .**
>
> . . . Rule 3 provides authority for the bar to deny admission for behavior which manifests "a significant deficiency in the honesty, trustworthiness, diligence, or reliability" of an applicant. Obnoxious and rude behavior by definition simply do not reflect on one's character . . . .
>
> **Dishonesty and incivility are two vastly different behavioral traits. Rule 3 reaches the former, but simply does not reach the latter.** Nothing in the record suggests that . . . has

manifested dishonesty toward clients, adversaries, courts, or others . . . . Rule 3 is not a catchall exclusionary rule reaching all sorts of personality defects in applicants.

The majority explains that we must preclude . . . from membership in the bar in order to protect the public**. However, <Applicant>. . . has practiced law in a number of states since being admitted to practice in 1977. Whatever interpersonal problems . . . may have, they apparently have not led to injury to his clients.**

. . . <Applicant> is accused of lacking candor based on two omissions on his bar application. First, . . . failed to report approximately 60 to 100 hours of temporary employment during a 5-week period in 1993. . . .

Second, . . . failed to report that he was formerly a member of the Iowa and Nebraska bars. . . . noted that there were only three lines available on the application for listing past or current bar memberships. . . . speculated that once he filled in those three lines . . . he intended to attach an extra sheet listing these memberships, but forgot to do so . . . .

Whatever the case, an allegation of lack of candor is only probative of one's character for honesty if there is evidence of some intent to deceive, or at least purposeful evasiveness. The record does not show any such intent or even any motive . . . .

Nevertheless, the majority concludes that an applicant who "recklessly" fills out an application--and as a result the application contains false answers--is just as culpable of lacking candor in the application process as an applicant who intends to deceive the commission. . . .

If the goal of the "lack of candor" standard is to ensure that potential attorneys are not dishonest, then a rule which holds that lack of candor can be established without showing any culpable state of mind is a rule that does not advance its own purpose.

Moreover, such a rule completely ignores the "use of information" instructions that we have issued to the commission. . . "the following factors should be considered in assigning weight and significance to prior conduct: . . . 10. **the materiality of any omissions or misrepresentations." The majority's approach to application omissions ignores factor No. 10. . . .**" [293]

The Dissent wrote an exceptionally fine opinion that should have been the majority opinion. It makes a few points that require a bit of further comment on my part. **The Dissent notes that in reference to omitting temporary employment history the Applicant failed to report approximately "60 to 100 hours of temporary employment during a 5-week period in 1993." Apparently, the majority's characterization of the temporary employment as being between 1990 - 1994, was "misleading."** The majority was obviously attempting to falsely inflate the importance of the omitted employment history by quantifying it in terms of years, rather than the number of hours actually worked. The majority also "failed to disclose" in reference to the omitted State Bars, that only three lines were provided on the application. The number of lines provided were not even sufficient to fit the six Bars which the Applicant had been a member of. It appears the majority was trying to "evade" disclosure of this point and "lacked candor" in their characterization of it. And, what about the Court's own Rule 10 cited above by the Dissent for the premise that the materiality of omissions is a factor to be considered in assigning significance to prior conduct. The majority had ignored the rule. The express language of the Court's own rule directly contradicted the manner in which they defined "lack of candor" in the opinion.

1999.NE.0042260; 258 Neb. 159 (1999)

I still can't believe this case when I read it. There are many cases discussed in this book that are somewhat similar. But none other in which the Court states their position so blatantly. The Bar and Court expressly revealed their diabolical goals intentionally in this case. The Court's holding states:

> **"Notwithstanding the First Amendment** to the U.S. Constitution, **speech** and conduct of an applicant to the bar **may be considered by the Nebraska State Bar Commission to the extent such speech** and conduct **reflects upon the moral character** and fitness of an applicant to practice law."

The Applicant contended that his admission was denied, based on his speech which was protected by the First Amendment. The facts are as follows. As part of the admissions process, he was required to request the Dean of his law school to submit a form certifying completion of his law school studies. The form to be given to the Dean contained the following question:

> "Is there anything concerning this applicant about which the Bar Examiners should further inquire regarding the applicant's moral character. . .?"

The Dean answered the question "Yes" and subsequently disclosed the following information. After completion of his first semester at the University of South Dakota Law School the Applicant sent a letter to the assistant dean and closed the letter with the phrase, "Hope you get a full body tan in Costa Rica." He also wrote letters to her about receiving grades lower than he earned in an appellate advocacy class for the purpose of requesting assistance to appeal the grade. He then sent a letter to the South Dakota Supreme Court regarding an appellate advocacy professor's incorrect characterization of his legal arguments and indicated that copies of the letter were being sent to two federal court of appeals judges. He sent letters to various other people regarding the grade appeal. At the admissions Hearing he testified that no formal appeal of the grade was ever filed and the grade was never adjusted. He prepared a memorandum which he submitted to his classmates urging them to recall another "incident" where a professor lashed out at him in class, which he asserted reflected poorly on that professor's "professionalism."

He wrote a letter to a newspaper in South Dakota regarding a proposed fee increase at the USD law school. He then began investigating the salaries of USD law professors and posted a selected list of professor salaries on the student bulletin board. In his study carrel at the USD law library, he posted a photograph of a nude woman. When the librarian removed it, he contacted the ACLU and received a letter indicating that the photo might be protected expression under the First Amendment. He then accused law school authorities of unconstitutional censorship and redisplayed the photograph, which was once again removed by the law librarians. He filed an ethical complaint with the North Dakota Bar Association against the law school Dean which was dismissed. He contacted the press, and the president of USD referring to the law school Dean as incompetent. He contacted the student newspaper alleging that USD's student health insurance program was engaged in health insurance fraud, and that USD had suppressed an investigation of its health insurance carrier. He applied for an internship with the U.S. Attorney's Office in South Dakota and after the law school rejected his request, he sent a letter of complaint to all USD law school faculty members.

He indicated he would likely be filing a lawsuit against the law school Dean and warned other students that all lawsuits in which they were involved would need to be reported when they applied for admission to the Bar. Finally, he produced and marketed T-shirts on which a nude caricature of the law school Dean was shown sitting astride a large hot dog. The shirt contained the phrase, "Astride the Peter Principle" and he sent a memo to all law students in which he noted that his "Deanie on a Weanie" T-

shirts were in stock. Based on facts set forth in the Court's opinion, it appears he had no criminal convictions of any nature. The Court begins its analysis with the following misleading statement:

> "<Applicant> first assigns as error that the Commission's determination should not stand because it is based in large part upon **speech** that is protected by the First Amendment. Thus, the threshold question we must answer is whether **conduct** arguably protected by the First Amendment can be considered by the Commission. . . ."

The Court is incorrect right from the start. The Applicant was assigning as error whether his **"speech"** was protected. The Court immediately without basis reclassified his **"speech"** as **"conduct."** From a perspective of law, this is an absolutely critical distinction. The U.S. Supreme Court has held in numerous cases that **conduct** is subject to substantially less protection under the First Amendment than **speech.** The state regulatory agencies have an incentive to label what is in truth, "speech," as "conduct." The speech-conduct dichotomy is relied on by State Bars to irrationally justify Unauthorized Practice of Law prohibitions. The assertion they make is that when a person "speaks" in order to convey legal information, they are actually engaging in "conduct," not "speech." Rationality and reason mandate otherwise.

The distinction between what constitutes "speech" or "conduct" is both critical and ambiguous. When you talk to someone, your "speech" unavoidably contains elements of "conduct." Your facial expressions, hand movements, or even a raising of the eyebrows are elements of "conduct" that accompany your "speech." If they can be used to reclassify your "speech," as "conduct," your First Amendment free speech protections are diminished. That is what's going on in this case.

The Court wants to irrationally reclassify the Applicant's letters and statements as "conduct," rather than "speech," because this will allow them to bring such into the realm of regulation during the admissions process. The Court knows it treads on virtually sacred constitutional ground here. This case is a colossal attempt to grab power and sustain State Bar exemption from the U.S. Constitution that is unparalleled by any other case in this book.

The Court first reviews all the U.S. Supreme Court cases dealing with State Bar admission. Its' deceptive purpose in doing so, is to nullify those opinions by a manipulative use of logic and therefore constitutes a usurpation of the authority of the U.S. Supreme Court. Their diabolical brilliance comes up with the following:

> **"An investigation of <Applicant's> moral character is not a proceeding in which the applicant is being prosecuted for conduct arguably protected by the First Amendment, but, rather, "an investigation of the conduct of <an applicant> for the purpose of determining whether he shall be <admitted>." . . . <Applicant's> reliance upon cases where a judgment was invalidated at least in part because it was based on conduct protected by the First Amendment is therefore misplaced."**

The Court has now taken a second step. It is distinguishing between prosecuting an individual for engaging in what it calls "conduct arguably protected by the First Amendment" and investigating conduct of an Applicant. If however, the speech or conduct is protected by the First Amendment, then it is protected for purpose of either an investigation or a prosecution. The Court then writes:

> "Were we to adopt the position asserted by <Applicant> in this case, the Commission would be limited to conducting only cursory investigations of an applicant's moral character and past conduct. **Justice Potter Stewart**, writing for the majority in **Law Students Research Council v. Wadmond**, supra, noted that the implications of such an attack on a bar screening process are that no screening process would be constitutionally permissible beyond academic examination

> and an extremely minimal check for serious, concrete character deficiencies. . . . **Assuming but not deciding that <Applicant's> conduct may have been protected by the First Amendment. . . Wadmond, supra, makes clear that a bar commission is allowed to consider speech** and conduct **in making determinations of an applicant's character** and that is precisely what has occurred in the instant case. . . ."

It is a paragraph that warrants the same degree of respect as the despicable Dred Scott opinion which gave approval to slavery. As I indicated previously, I don't use profanity often, but do use it on occasion. This is a good occasion. The above paragraph written by the Nebraska Supreme Court is nothing but complete BULLSHIT. The reasons are as follows.

First, the U.S. Supreme Court case of ***Wadmond*** , which I discussed at length in a separate section herein on U.S. Supreme Court cases, positively does not stand for the premise that protected speech may be used by a Bar commission in making determinations of an applicant's character. The Nebraska Supreme Court has LIED by suggesting such.

Second, the Court in this case has essentially conceded that the Applicant's speech is protected. They stated**, "Assuming but not deciding that <Applicant's> conduct may have been protected by the First Amendment."** They made this statement because they know his speech was protected.

Third, if the speech or conduct is protected by the First Amendment, then the Court is violating the First Amendment by considering it for purposes of denying admission. Fourth, the character screening process should be used only for purposes of discovering serious, concrete, objective character deficiencies. It should not be used in a dangerous, subjective, arbitrary manner which is what the Nebraska Bar and Court are seeking to achieve in order to further anticompetitive interests of the legal profession. To do so, utilizes the character review process as a "dangerous instrument" which the U.S. Supreme Court warned about in the ***Konigsberg*** case.

Finally, it is important to note that the Nebraska Court cites Justice Potter Stewart with respect to the ***Wadmond*** case. As you may recall, when I discussed the three U.S. Supreme Court cases on admission handed down on the exact same day in 1971, I wrote at length about Justice Stewart. He ruled in favor of the Applicants in ***Stolar*** and ***Baird***, but in favor of the Bar in ***Wadmond***. He was undoubtedly the swing vote in those cases. They were all decided by narrow 5-4 margins.

I indicated that I could not conceive how Stewart could vote in favor of the Applicants in two cases and in favor of the Bar in the third, when the three cases were so similar. The Nebraska Court is correct in citing the importance of Stewart, but they are incorrect that he would have supported their crappy opinion in this case. Stewart voted in favor of the Bar in ***Wadmond***, based on a narrowing construction of a New York Rule and in fact, conceded himself that without such a narrowing construction, it would have probably been unconstitutional. Stewart most importantly properly recognized that protected freedoms can not be compromised during the Bar admissions process. Stewart wrote in ***Wadmond***:

> "If all we had before us were the language of Rule 9406 . . . this would be a different case. For the language of the Rule lends itself to a construction that could raise substantial constitutional questions, both as to the burden of proof permissible in such a context under the Due Process Clause of the Fourteenth Amendment. . . and as to the permissible scope of inquiry into an applicant's political beliefs under the First and Fourteenth Amendments. . . . But this case comes before us in a significant and unusual posture. . . .
>
> The appellees have made it abundantly clear that their construction of the Rule is both extremely narrow, **and fully cognizant of protected constitutional freedoms."**

That is the reason Stewart voted in favor of the Bar in *Wadmond*. Because the Rule was interpreted in a narrow fashion that was "fully cognizant of protected constitutional freedoms." Not because, the State Bar is allowed to circumvent constitutional freedoms as the Nebraska Supreme Court falsely asserts when it LIES on the issue.

While the best opinions written in the three U.S. Supreme Court cases handed down the same day in 1971 were by Justices Black and Marshall, arguably the most significant single statement was made by Justice Harlan in the *Stolar* case. Harlan for over a decade had been an unwavering supporter of the State Bars, and consistently opposed Justice Hugo Black who wrote the best opinions overall in this subject area. Harlan was weakening however, and just beginning to see the error of his ways, notwithstanding his votes in favor of the State Bars in 1971. In *Stolar*, Justice Harlan, the man who was the most absolute, staunchest supporter of the State Bars, wrote the following in reference to the *Wadmond* and *Baird* cases, suggesting he was beginning to see that there might come a time when the State Supreme Courts needed to have their pompous butts put in line:

> ". . . I have little doubt but that the candidates involved in *Wadmond* will promptly gain admission to the Bar if they straightforwardly answer the inquiries put to them without further ado. And I should be greatly surprised if the same were not true as to Mrs. Baird and Mr. Stolar in Arizona and Ohio. **But, if I am mistaken, and it should develop that any of these candidates is excluded simply because of unorthodox or unpopular beliefs, it would then be time enough for this Court to intervene."**

The Nebraska Supreme Court did not merely drop the ball in this case. They intentionally deceived the public, specifically for the purpose of grabbing a massive constitutional exemption for the Judiciary. Their opinion is nothing short of a total travesty. Ultimately, they deny admission to the Applicant on the ground that his "conduct" indicated he was prone to "characteristics which are not acceptable." They include the following statement in their conclusion:

> "The profession's insistence that counsel show restraint . . . is more than insistence on good manners." [294]

My opinion is as follows. It is apparent based on the record that the Nebraska Supreme Court can not be trusted since their manipulative use of the law indicates they lack good moral character by attempting to subjugate society to the economic interests of the legal profession. I recommend their removal from the bench and disbarment with permission to apply for reinstatement in five years upon a showing of remorse and rehabilitation. And as you know, my standard of candor and materiality is lenient compared to that applied by the State Bars.

NEW JERSEY

104 A.2d 609 (1954)

A FULL DISCLOSURE OF ONE'S PERSONAL LIFE

This case is an attorney discipline action. It exemplifies the State Bar's irrational mindset regarding the admissions process, which is best summarized early in the opinion as follows:

> **"A full disclosure of one's personal life and his affairs should be made by every prospective candidate. . . ."**

After the Respondent was admitted, it was discovered that during the admissions process he did not disclose his past criminal record. The problem was that the application form did not inquire into whether one was ever convicted of a crime. The Court adopted the irrational expectation that an Applicant should disclose something about which an inquiry was never made. The opinion states:

> **"While the question does not specifically ask whether or not the applicant has ever been convicted of a crime,** there can be little doubt but that the respondent knew **its implication**. . . .
>
> Parenthetically, it might be well that **in the future the direct question** of whether or not the applicant has ever been convicted of crime **should be asked**. . . ."

The question in my mind is that if the "implication" is so clear, then why was it necessary to ask the question directly in the future? The answer is obvious. It was necessary to ask the question directly in the future because the Court's logic was flawed when it suggested there was little doubt of the "implication." **The simple fact is that there was <u>substantial doubt</u> about the "implication." If you want to know something, you ask it directly. It is unfair to expect an Applicant to read into the mind of the Bar Committee.** The Court then states:

> "The fact that respondent had been convicted of a crime is not the most serious aspect of this case. It is the fact of his non-disclosure . . . ."

How can you rationally fault the guy for non-disclosure of a question never asked? Furthermore, even if the question were asked, it is the conviction which would be most serious. I believe the public is more concerned about the nature of crimes our attorneys are convicted of, rather than the way they answer application questions. **Does the Court suggest that an individual convicted of armed robbery who discloses it, has better moral character than an individual who doesn't disclose a speeding ticket? The nature of the crime convicted is the prime issue. The issue of nondisclosure is secondary.** Nondisclosure of criminal convictions, I do believe is grounds for denying admission, but only when the direct question is asked. The Court notwithstanding its assertions of an "implied" duty of disclosure, even in the absence of inquiry, recognizes the weakness of its logic when imposing discipline. It states:

> "This is the first disciplinary case of its kind which has come before us and our disposition of it must serve as a salutary warning to all future applicants for admission to the bar. With this warning **those transgressing in like manner can expect nothing short of disbarment.**
>
> The judgment of the court is that the respondent be **suspended form the practice of law for a period of two years . . . ."** [295]

The Court in no uncertain terms stated that it believed disbarment was the appropriate sanction, but then simply suspended the accused. It did so on the ostensible ground that this was the first case of its nature. It is obvious however, that the real reason was because in the future direct inquiry about convictions would be made expressly, rather than through inquiry by "implication."

462 A.2d 165 (1983)

BROKEN RULE

The Applicant while in law school was allegedly involved in a fraudulent investment scheme although no charges were ever filed and he was never convicted. After investigating, the Character committee certified his admission. The Court "sua sponte" decided to review his character certification. The Applicant contended that the Court could not conduct a review after his certification by the Committee, since it had no rule or procedures in place for such a review. The Court nevertheless proceeded and its' opinion addressed the issue as follows:

> "At the outset, we must address . . . contentions that the Court is foreclosed from conducting a definitive review of the merits of his case. He asserts initially that the Court has no legal authority to withhold certification. . . . <Applicant> argues that under R.1:27-1 *fn6 the Court has delegated the examination of a bar applicant's character to the Committee . . . and is bound to admit those applicants whom the Committee has certified as possessing good character. . . . <Applicant> also suggests that the regulations governing the Committee on Character, approved by this Court, . . . provide for appellate review by the Supreme Court only when certification has been denied by the Committee on Character. . . .
>
> We reject this contention. . . . This constitutional authority cannot be delegated in their entirety to the Board of Bar Examiners. . . . **Although the current rules do not define a formal procedure for cases like <Applicant>, the Court has inherent jurisdiction to review any determination concerning an applicant's fitness to practice law. . . .**
>
> **. . .**
>
> Finally, <Applicant> claims that he was denied procedural due process because the order to show cause does not adequately indicate the grounds upon which the applicant's fitness was to be reviewed. At oral argument, however, counsel conceded that he was fully aware of the issues in dispute . . . ."

Rule 1:27-1 read as follows:

> "(a) Qualifications for Licensure. No person shall be admitted to the bar of this State unless the following shall first have successfully occurred in the manner prescribed by the rules of the Board of Bar Examiners :
>
> **. . .**
>
> (2) Certification of good character by the Committee on Character . . . ;
>
> **. . .**
>
> (b) Report of Board to Supreme Court. The Board of Bar Examiners shall report to the Supreme Court the names of those applicants whose qualifications accord with these rules. **The Supreme Court shall then admit such applicants . . . ."**

The Applicant was absolutely right. **In order to review his application, the Court had to violate its own rule.** The written rule imposed a legal duty upon the Court to admit him. The operative term in the Bolded passage above is "shall." The rule was poorly written and obviously should have provided for judicial review, but the fact is that it didn't. One other aspect of the opinion requires mentioning regarding the Right-Privilege dichotomy. The Court states:

> "This Court has consistently held bar membership to be a **privilege** burdened with conditions. . . .This requirement was outlined in New Jersey well over a century ago, On

Application for Attorney's License, 21 N.J.L. 345 (Sup. Ct. 1848) . . . ." [296]

To the extent the Court relied on the above cited case, their interpretation was logically flawed since the 1866 U.S. Supreme Court case of ***Ex parte Garland***, trumps any 1848 New Jersey case.

467 A.2d 1084 (1983)

EXPUNGEMENTS APPLY TO OTHER BRANCHES OF GOVERNMENT, BUT NOT THE JUDICIARY

The Applicant was arrested and charged in criminal actions which were dismissed. He was also a party in numerous lawsuits. He submitted two certified statements to the Bar denying the criminal and civil actions. In a third certified statement he still failed to disclose one arrest. Initially, a subcommittee of the Committee on Character concluded he was not fit to practice law, but subsequently the Committee determined he was remorseful and certified him. The Board agreed. The State Supreme Court reversed certification.

The lawsuits involved a 1976 and 1977 action in which he successfully opposed termination of his parental rights and adoption of his son by a stepfather, a 1977 suit concerning visitation and support, a 1978 suit in which his fiancé sued for injuries sustained while a passenger in a car he was driving, possession of a diseased animal, a tenancy complaint, a suit for insurance proceeds, and as Administrator in a survival action.

He claimed he did not disclose the arrests resulting in dismissals because he was not guilty. As a reminder to the reader, a basic predicate purportedly incorporated within our legal system is that one is "innocent until proven guilty." If such be the case, then why would an Applicant have to disclose matters which impute no guilt? With respect to one of the incidents he claimed that he was expressly advised by the Public Defender that after completion of a Pretrial Intervention Program the matter would be "void ab initio" and he would not have to disclose it. The Public Defender denied giving such advice.

The Committee noted that even if an expungement or sealing order was entered, disclosure was required. Apparently, the Committee was of the irrational notion that the State Bar had a special exemption from an Order of expungement. Expungement in their view only protected an individual with respect to agencies under the Legislative and Executive branches. The Applicant also had four motor vehicle citations, and warrants for his arrest had been issued with respect to such. After he was stopped by police however, it was determined that he had paid the citations. The Court states:

> ". . . **Unless evidence of unfitness is clear and convincing, any lingering doubts are resolved in favor the applicant** and his or her admission to the bar. . . .
>
> The heart of <Applicant's> misconduct is not his possible involvement in embezzlement, forgery, or larceny. Given the lapse of time, it is impossible to determine the truth of these charges. We are concerned therefore solely with <Applicant's> complete and continuous lack of candor to the Committee and the Board.
>
> **. . .**
>
> The Committee finds that . . . falsely supplied the answer that his employment had been terminated with the State in order to return to school, with a purpose of concealing the fact that the State had terminated his employment either because of excessive absenteeism or because of an alleged embezzlement.
>
> **. . .**
>
> **. . . We have long and firmly held that "there is no place in the law for a man or woman who cannot or will not tell the truth, even when his or her own interests are involved. In the legal profession, there must be a reverence for the truth. . . ."** [297]

Read the last paragraph above again. As an individual reading it, how should it be viewed in light of the prior case discussed? The Court here states that "there is no place in the law" for one who

does not tell the truth even when there own interests are involved. In the last case however, they had a Rule that stated : "The Supreme Court **shall** then admit such applicants . . . ." But, since the Court didn't like the result of the rule in that case, they didn't do what they said they would.

I would admit the Applicant in this case. The inquiries into arrests resulting in dismissals and civil actions as a whole, are unconstitutional. **Nondisclosure of a constitutionally infirm question results in what can fairly be phrased as an "ethical wash."** The question should not have been asked. The result being that both the question and the answer should not be considered.

524 A.2d 813 (1987)

IF YOU LIE, THEN YOU MUST BE TELLING THE TRUTH

This was a disciplinary action asserting that when an attorney applied to the Bar, he misrepresented that he had not been:

> "disciplined, reprimanded, suspended, expelled or asked to resign from any educational institution."

The second paragraph in the opinion reads as follows:

> **"Apparently, the Committee had misplaced the law school certificate known as Form #3 that is part of the application for admission to the bar. . . . Through an oversight, the Committee certified that respondent was fit to be admitted to the bar, and he was admitted on December 20, 1984."**

As I read the above paragraph, my first thought is that no matter what the Applicant did, the Committee was on awfully lame ground trying to revoke an admission that occurred due to their own screw-up. It is also interesting to me that the Committee's "oversight" is characterized as inadvertence, while Applicant errors are typically characterized as "misleading," or "lacking in candor." The Applicants are certainly not given the liberality of construction, afforded to the Committee.

The Court revokes his law license, notwithstanding the obvious embarrassment the situation presents them with. In so far as the substance of the character issue goes, the Applicant did two things. First, he falsely stated on his law school application that he was a member of a minority to improve his admission chances. Second, while in law school, he apparently falsified his résumé and included a law school transcript that inflated his grades, to get a job. The law school administration found out and he signed an agreement that included the following provision:

> "in consideration of the Law School of the University of Pennsylvania's **refraining from bringing a Disciplinary Proceeding** against me, **agree to withdraw** from the Law School . . ."

He was not suspended. He was not expelled. He was obviously not disciplined since the agreement specifically stated:

> "in consideration of . . . refraining from bringing a Disciplinary Proceeding"

He withdrew. His withdrawal does appear to fit within the language of the admissions question that reads, "or asked to resign." The NJ Committee sent Form 3. It included the above inquiry to St. Louis Law School which the Applicant attended after leaving Pennsylvania. St. Louis Law School disclosed the information on the Law School Certificate. The problem was that the Bar Committee lost the certificate. The opinion reads:

> "This material had been received by the Committee on Character administrative office on June 11, 1984 but apparently was misplaced. **Respondent was informed by the Committee on Character in late October 1984 that if the required information was not received, he would not be certified for admission to the bar. . . . On October 22, 1984 the Committee on Character certified that respondent was fit to be a member of the bar.** When respondent received word that he would be sworn in as a member of the bar, he assumed that the dean . . . had sent in all the information. He was admitted to the bar of this state on December 20, 1984."

Now, you have a second embarrassing screw up. First, the Committee misplaced the Certificate. Next, they expressly told the Applicant that he would not be admitted if it wasn't received, and then they admitted him anyway. These are instances of the Bar not diligently processing an application.

At the Hearing, the Respondent insisted his negative answer to the question was correct. He contended that his was a voluntary withdrawal. Neither the Court, nor myself agree. The agreement he executed fell within the scope of the portion of the question that read, "or asked to resign." The Respondent further contended that even if his answer was wrong, it was not an effort to deceive the Committee. The opinion states with reference to such:

> "Respondent stated he had filled out the application and left that particular question blank for about two weeks. . . .
>
> . . . He anticipated that the committee, having received the information from St. Louis, would then have conducted a hearing regarding his character. . . . Since respondent was certain St. Louis would furnish the adverse information to New Jersey, he did not signal his answer to this question with an asterisk and a brief explanation.
>
> . . . Respondent believed that one of the purposes of the agreement he signed . . . was to enable him to answer negatively a question such as the one at issue. . . ."

The issue on intent to deceive is close. The Respondent is contending that he wasn't certain for a time how to answer the question. He had doubts. He was fairly certain that the law school would answer affirmatively, but he appears to have had a good faith belief (albeit an incorrect one) that it should be answered in the negative. His explanation is reasonable and I would rule in his favor on the issue of intent to deceive. It is a close call though. The Court relies in part on the most disturbing sentence in the first New Jersey case I discussed (**104 A.2d 609 (1954)**). It states again in 1987:

> **"A full disclosure of one's personal life and his affairs should be made of every prospective candidate** and it can be generally stated that there is no place in the law for a man who cannot, or will not, tell the truth even when his own interests are involved."

Full disclosure **of one's personal life and affairs**, is none of the State Bar's business. In so far as the aspect of truth goes, if an Applicant is scrutinized under the strictest definition possible, the Committee should be also. The Committee would not pass muster under such scrutiny. They specifically informed the Applicant in "late October 1984 that if the required information was not received, he would not be certified . . . ." They expressly stated they would not certify him, but did so anyway. This fact however, the Court does not find to be lacking in candor, but rather chalks up as an honest mistake.

The rule one is left with is simple. Applicant misstatements are lies, but Character Committee misstatements are merely inadvertent errors. After giving the Committee the benefit of the doubt, the Court had an ethical obligation to give such benefit to the Respondent. He answered the question

incorrectly, but his explanation was reasonable. The bulk of the mistakes in this case rest with the Committee. The Court makes one other statement worth noting, when it closes as follows:

> **"A defense that a fairly detailed question did not precisely embrace his particular factual situation does not excuse a fundamental requirement** that he be as truthful and candid as possible." [298]

I disagree. The Court's assertion is incorrect. One does not have a constitutional, moral or ethical obligation to answer a question that is not asked. In fact, one who does so would be a bad lawyer. If a particular factual situation is not embraced within the question, logic mandates that the question may be answered in the negative.

This author asserts that the exact opposite of what the Court suggests, embraces the truth. **Answering a question affirmatively that is not covered by a particular factual situation, is what would constitute a lack of candor. If the factual situation is not embraced by the question, then an affirmative answer would be a misstatement. The Court's reasoning results in the absurd conclusion that one has an affirmative duty to misstate the truth, by answering affirmatively to questions not covered by particular factual situations. If you lie, then you're telling the truth.**

577 A.2d 149 (1990)

HOW TO CONTROL A LAWYER

In the last case, the Court did not accept as credible the Applicant's explanation for answering a question "No" that was unrelated to criminal conviction. In that case, he executed a written agreement with his law school that could reasonably be construed to suggest a negative answer was appropriate. I indicated myself, the correct answer was "yes," but the reasonableness of his explanation, coupled with the Committee's own mistakes should have absolved him from a finding that he intended to deceive.

In this case, the Court likes the Applicant. As a result, it accepts as credible his explanation for incorrectly denying that he was charged with fraud, on the ground that he "misread" the question. The Court states:

> "**We also accept as fully credible respondent's explanation** that he had denied being charged with crimes involving fraud and larceny **because he had misread the question** on the Certified Statements as addressing criminal convictions by a controlled business enterprise. . . ."

While I agree with the Court's decision on this issue, it is inconsistent with their stance in the prior case. The public is left with an unreliable body of case law pertaining to admissions, that appears predicated on the "grace and favor" of the State, in violation of *Ex parte Garland.*

The Applicant in this case was convicted of several crimes committed between 1969 and 1971. In 1970, while in high school he was convicted of possession of a dangerous weapon, larceny and defacing property. He was sentenced to probation. Despite his substance abuse and convictions, he achieved remarkable academic success and was awarded a full scholarship to Brown University. While at Brown, he drank alcohol five to seven times a week, smoked marijuana, and used heroin. To support his drug habit, he stole from fellow students. He was then convicted of breaking and entering, assault with a dangerous weapon, and intent to commit larceny. He was suspended from school. At this point, based on the court's opinion he appears to have six serious criminal convictions. The Applicant in the prior case was never convicted of a crime.

In 1971, the Applicant in this case was arrested and charged with possession of a narcotic drug. Prior to trial he fled and remained a fugitive until 1977 when he surrendered. He pled "nolo contendere" which is essentially the equivalent of a guilty plea. He received one year of unsupervised probation. In 1978 he enrolled at the University of Iowa and received a bachelor's degree in 1981. While a student there, he drank alcohol four to five times a week and smoked marijuana regularly. Subsequently, he enrolled in Rutgers University School of Law. His law school years were similarly marked by drug and alcohol abuse including the use of cocaine, and poor academic performance. He graduated from law school in 1984. During the Bar hearings the following exchanges took place:

> Q. Have you ever been addicted to, or received treatment for the use of narcotics, drugs, or intoxicating liquor?
>
> A. No.
>
> Q. Have you . . . ever been charged with fraud, larceny, embezzlement, . . . or similar offenses . . .?
>
> A. No.

In 1985, he was arrested for possession of cocaine and narcotics paraphernalia. He did not immediately notify the Character Committee. The charges were dismissed. According to the Applicant, the 1985 arrest was the final "jolt" that made him realize he suffered from substance abuse. From August, 1985 to April, 1987 (approximately 1 ½ years) he was drug free. The Conference Panel unanimously recommended that certification be withheld. Concern was expressed for his lack of candor, misleading and deceiving demeanor and lack of repentance. It further concluded that he possessed a **"personality flaw."** A Review Panel conducted Hearings in 1989. Two members recommended that he be certified, subject to the following conditions for three years:

1. He may engage in the practice of law only as a partner, shareholder, associate or employee of at least one other member of the Bar.

2. He attend at least one meeting per week of Lawyers Concerned with Lawyers and five meetings per week of Alcoholics Anonymous.

3. He undergo and bear the expense of random urine testing

4. He submit quarterly affidavits to the Committee

The Court grants admission, subject to the above conditions. I have major objections to their decision. I would not admit this Applicant. He has been convicted of at least six serious crimes. His rehabilitation began only after he filed his Bar application, which concerns me. I would disregard the 1985 arrest, since the charges were dismissed. Such being the case, over a decade has passed since his last conviction. The time lapse since his last conviction is sufficient. The problem is that there is virtually no evidence of rehabilitation during any period when a Bar application was not pending. I am concerned that the evidence of rehabilitation that does exist, was intended for the sole purpose of attaining membership in the Bar, at which point he will revert to his old ways.

The concern I have expressed, is obviously a concern the Court has also. That is why they admitted him subject to very stringent conditions. And that is my second objection. You're either in the Bar or you're not. To admit someone, and then hold a gavel over their head is garbage. How could this Applicant possibly be a zealous, passionate, aggressive attorney knowing that if he makes one false move, he'll lose his license? The State Bar owns this Applicant's soul as a result of the conditions they imposed. And that's what they wanted.

They have acquired the substantive ability to control many aspects of his lifestyle and therefore, the manner in which he litigates. My primary focus here is not so much on the Applicant, but the result it has on his clients (the litigants). The Court seems to forget them. How will a client feel if they learn that their lawyer is subject to licensing conditions that opposing counsel is not subject to? He has no ability to be aggressive with opposing counsel in a case. Opposing counsel has leverage over this lawyer, and therefore has leverage over this lawyer's clients. The guy's license is hanging by a thin thread.

The conditions are crap. State Bars are regulatory agencies, not babysitters. You're either in or you're out. You don't give someone a pseudo-admission for the purpose of controlling their lifestyle, conduct and litigation. The decision itself in the case is close. Both the Court and myself agree that there are problems with admitting this Applicant immediately. Both the Court and myself agree that within just two or three years if he stays on the right path, he should be a licensed attorney without conditions attached. The Court and I depart however on the concept of conditions. In the interest of protecting the ability of litigants to hire aggressive, passionate, zealous counsel the concept of admitting someone subject to conditions that other attorneys are not subject to is absolutely unacceptable. Control the lawyer, and you control litigation outcomes. That's what the Bars seek to accomplish.[299]

1996.NJ.216 (VERSUSLAW) (1996)

THE JOKER

This case exemplifies how the Bar punishes Applicants for their attitude, which carries with it the requisite corollary that they are being punished for their beliefs and opinions in violation of the First Amendment. In this case, the Applicant may or may not have disclosed, a 1985 arrest for larceny. Whether he disclosed it became an issue of dispute. In any event, the opinion indicates the incident did not result in a conviction. When confronted with the alleged nondisclosure, the Applicant requested a copy of his application. This mere request contributed to the Committee's ultimate decision, as the Court states:

> "<Applicant> requested a copy of his application papers because he had not kept one, even though all candidates are instructed to save a copy for their records."

He then sent the Committee an affidavit in 1994 with a one-page attachment claiming that he originally submitted information pertaining to the arrest. It appears his request for a copy of the application was not based upon his failure to maintain a copy, but rather an attempt to determine whether the Committee had lost the attachment.

It should be recalled that in **524 A.2d 813 (1987)**, the Committee had misplaced a law school certificate. The Court there determined such to be mere inadvertent error. They are obviously therefore, in no position to chastise the Applicant in this case for either inadvertently failing to keep a copy of the application, or inadvertently failing to submit an attachment. Particularly, since he may have submitted the attachment which the Committee might have lost.

It is further noteworthy that the records pertaining to the undisclosed arrest were claimed to be under seal. Such being the case, the Committee probably was not even legally entitled to them. In support of his contention that the attachment pertaining to the arrest was submitted and then lost by the Committee, the Applicant claimed that when he prepared the attachment he showed it to various individuals. He produced two witnesses who testified they had seen or heard about the substance of the attachment. The Committee noted there were stylistic and formatting differences between papers submitted with the original application and the arrest attachment. They were suggesting he prepared the attachment on a post hoc basis.

The Applicant did disclose a 1994 Hoboken arrest for disorderly conduct that was dismissed. The facts according to the Committee were as follows. The Applicant was on the front steps of the Hoboken Police Department around 2:30 a.m., early Sunday morning accompanied by friends, waiting for another friend who had been arrested earlier. He was intoxicated and using abusive language. He had apparently been out partying on a Saturday night with his friends. Upon being asked to leave and after refusing, he was arrested.

The Applicant's explanation was that the incident began when he launched into a monologue consisting mainly of jokes about police officers and donuts. He stated as follows:

> "**<a> few minutes later, when I was nearing the apex of my comic ability, Detective . . . approached me** and told me to take my comedy act somewhere else."

The Committee found that his characterization of the arrest as a "peaceful political protest" was disingenuous. This is notwithstanding that the trial court ruled the charge against him was unconstitutional. The next area of attack that the Committee focused on, involved purportedly improper dealings with his auto insurer. The Applicant registered two cars using his parents' address in New York, even though he lived in New Jersey. During 1993, his auto license was suspended for

nonpayment of insurance premiums and suspended again in 1994 for operation of a vehicle without insurance. No arrests or convictions resulted.

In summary, he had two arrests, and no convictions. One arrest was definitely disclosed. The other arrest may or may not have been disclosed. He was denied admission. Why? He is denied admission for one primary reason. He was a smart aleck. No smart alecks in the legal profession. The opinion states:

> "<Applicant's> responses were intemperate and inappropriate; the content and tone of his communications were **sarcastic, flippant, and snide; his attitude condescending and disrespectful.**
>
> An example relates to the panel's concern about the differences between . . . the attachment to the Candidate's Statement and that of the subsequently-submitted document explaining the 1985 Brighton arrest. . . .
>
> > <Candidate>: They are the exact same--we can carbon-date them if you would like, . . .
> >
> > <Panelist. . .>: I assume you are being facetious.
> >
> > <Candidate> : I was being facetious.
>
> The record reveals another instance when the candidate was impatient and snide with the panel members. . . .
>
> > <Panelist . . .> : . . . have you ever abused alcohol subsequent to that time?
> >
> > <Candidate > : In what respect abused alcohol?
> > . . .
> > <Candidate > : I have never attempted or been asked to touch my nose while drinking, that would not be the point. However, I would certainly concede that on occasion I perhaps would not have been able to touch my nose accurately, if asked to do so. As well, walking a straight line, I would probably -- probably there have been times, and if you are asking, . . . yes, guilty as charged."
>
> As these exchanges indicate, **the candidate acted as if the panel's questions were amusing, irrelevant, or unimportant**. . . . Nor does his apology following the offer to "carbon-date" his submissions appear to have been genuine: he later characterized that exchange as follows: <a>t this point <I> was interrupted and roundly chastised by Panelist . . . for having introduced science into the realm of rank speculation, and was never given the opportunity to expand upon his explanation." **His correspondence with court personnel** following the hearing provides more extreme examples of **sarcasm, flippancy, and inappropriate responses** about certain matters. **For example, <Applicant>, complaining of delay, described . . . the Assistant Secretary of the Board of Bar Examiners, as . . . "either a liar or an incompetent, perhaps both," adding "<t>hough Christian charity demands that I resolve my doubts in <Secretary's> favor, and simply attribute his inaction to mere sloth and an ability deficit, I suspect that his torpor is motivated by ill-disguised hostility towards my application."**

In response to his correspondence, the Clerk of the Court sent a letter to him that stated:

". . . I set your correspondence aside for a time to allow first impressions to fade. I wanted to be able to respond to the merits of your request and not the hyperbole and intemperate remarks that clouded the otherwise reasonable basis for your inquiry; that is, the amount of time it was taking to resolve your matter before the Committee."

He then wrote back as follows:

"I acknowledge your assurance that . . . Committee members have no "interest in delaying the process." Nevertheless, the implication that my suspicions were unwarranted is as untenable as the statement that "the Panel members wish to resolve this matter as expeditiously as possible" is comical.

. . .

. . . I accept your tacit apologies for the delay and anticipate that you personally will act to see this disgraceful affair through to its conclusion in an expeditious manner. Further I expect that you will promptly advise me of an anticipated date of completion, and that you will cleave unto that date with a resolve that rivals <Panelist> unwavering commitment to lethargy.

. . .

How's that for intemperate hyperbole?"

The Court states as follows:

"**We note at the outset that the candidate protests that he is not yet an attorney and thus must be judged as an average person**, not by the standards imposed on the members of the Bar. . . . The argument is fatuous. . . . Good character does not emerge on licensure. It is absurd to suggest that good character is not revealed until a person becomes an attorney.

. . .

Lack of candor is also reflected by the candidate's disingenuous characterization of the Hoboken disorderly persons arrest. Although the panel found that the 1994 arrest for disorderly conduct was a "minor incident," the panel was disturbed by the applicant's attempts to glorify the incident as a "free speech" matter. This Court recognizes that the statute under which <Applicant> was first charged was unconstitutionally broad. However, to characterize the conduct that led to the arrest as a "peaceful political protest" is a transparent deceit. . . .

The basis for this Court's concern is not the gravity of the misconduct that led to . . . arrest. <Applicant's> own moving papers in the original proceedings indicate that was engaged in police-baiting. It is his self-serving statement that his conduct was a "peaceful political protest" that is inaccurate and misleading. This description was intended to camouflage the unflattering incident. . . .

. . .

In this case, the instances of duplicity are more than isolated occurrences; rather, they constitute a pattern of behavior that demonstrates a clear and convincing lack of "reverence for the truth." . . . **Though each episode of dishonesty or lack of candor is not particularly egregious, taken as a whole**, the pattern reflects insensitivity and indifference to the need for full and accurate disclosure. . . .

. . .

The . . . <Applicant> argues a "lack of notice" with regard to the consideration of his **demeanor** in his dealing with the Committee Panel and other court employees. That contention lacks merit. . . . <Court> **opinions clearly teach that the "applicant's attitude as expressed in**

hearings before the Board of Bar Examiners and any reviewing courts" will be a factor in determining the candidate's present fitness. . . .

. . . He denigrated inquiries into substance abuse. . . . He treated dismissively observations and comments by panel members intended to elucidate their inquiry. Also, **he twisted** highly relevant questions seeking the truth . . . . **compared the panel to the infamous inquisitor, Torquemada, and characterized the proceedings as a "ritual slaughter" and a "pharisaical inquiry". . . .**

. . . We have previously noted that :

Contempt comprehends **any act** which is calculated to or tends to **embarrass**, hinder, impede, frustrate or obstruct the court in the administration of justice, or which is calculated to or has the effect of lessening its authority or its **dignity**; . . . or which otherwise tends to bring the authority and administration of the law **into disrepute** or disregard. In short, **any conduct is contemptible** which **bespeaks of scorn** or disdain **for a court** or its authority.

. . .

In . . . we recognized a "**requirement that lawyers display a courteous and respectful attitude** not only towards the court, but towards opposing counsel, parties in the case, witnesses, court officers, clerks--in short, **towards everyone and anyone who has anything to do with the legal process." . . .**

. . .

. . . Respect for and confidence in the judicial office are essential to the maintenance of an orderly system of justice. . . ." [300]

There are additional comments the Court makes along the foregoing lines, but I believe the point is adequately made. My own comments on this case, are brief. The case involved a smart-aleck. He wasn't a bad guy. He was just a comedian, more or less. He is a man that I also believe, has now lost a great deal of faith and confidence in the legal profession. The Court took someone who was essentially a law-abiding citizen and instilled a reason to completely abandon faith in the American system of justice.

It based its opinion on the need for respect and confidence in the judicial office. Respect however has to be earned, and can never be demanded or it's not genuine respect. I sadly believe the Court diminished, rather than built respect for the Judiciary in this case. No one that has ever unconditionally demanded respect has gotten it, but rather instead such demands typically result in a loss of such.

In so far, as it's characterization of contempt, I do not agree with the Court and believe their irrational definition cuts directly into First Amendment protections. To accept their definition, would result in the immediate arrest and conviction for contempt of literally thousands of on-stage comedians, actors and actresses. Their definition did not limit alleged contemptuous acts to those committed in the presence of the Court. Rather the Court's definition was:

"**any conduct is contemptible** which **bespeaks of scorn** or disdain **for a court** or its authority."

I assume the Court's failure to limit such matters to those which occur in the presence of the Court was merely inadvertent error. But such being the case, let the Bar applicant have the same liberal construction or better yet, as I suggest, don't ask questions unless they are completely objective in nature and address the most "material" aspects of character.

1998.NJ.42048 (1998)

The Applicant's Certified Statement for admission disclosed civil suits, child support arrearages and what the Court phrased as "**intemperate interaction with the New Jersey Board of Bar Examiners**." It is another example of wrongful admission denial based on "attitude" assessment. The opinion states:

> "In determining that <Applicant> was unfit to practice law, the Statewide Panel relied on findings that the candidate had made insufficient efforts to reduce arrearages of $ 14,000 in child support; . . . had **demonstrated disrespect** for judicial personnel, procedures; and institutions **by engaging in a course of litigation challenging bar admission procedures; . . ."**

It is noteworthy that even in the Arizona case **555 P.2d 315 (1976)** discussed herein (the Ronwin case), the Court declined to hold that the institution of litigation against the Bar, in and of itself constitutes a deficiency in character. It is most imprudent ground for the Judiciary to determine otherwise, as such cuts directly into the citizen's right to redress grievances by resort to appropriate legal process. That right is a cornerstone foundation of American values and constitutional principles. The Court's opinion states further:

> "Although his credit litigation may have been justified, his **intemperate exchanges** with Bar Examiners personnel and his litigation against the Bar Examiners and his law school demonstrated an unwillingness to accept any personal responsibility for his difficulties. . . . In one letter to the Secretary of the Bar Examiners, **<Applicant> characterized all communications with the Bar Examiners as "marked by petty cruelty." He added that a court order compelling him to pay the examination fee was a "fraud and deceit," and that the Bar Examiners had committed acts of "purposeful harassment and cruelty. . . . His suit against the Bar Examiners exhibited a callous disregard for the rights of others. . . . <Applicant> filed three separate federal suits, one of which sought injunctive relief to strike down the requirement of passage of a bar examination as a prerequisite for a license to practice law.** These bar-related suits were all summarily dismissed by federal and state courts." [301]

His admission is denied. The reason is clear. He instituted suit against the Bar.

SUPREME COURT OF NJ, No. E-110; Versuslaw 2000.NJ.0042443; (2000)

THE BAR WAS RIGHT, YOU LACK GOOD MORAL CHARACTER
(Psst: Don't Worry, We're Really Admitting You)

You can obtain an immense amount of information simply by looking at the date on which a Court opinion is issued. This case is nothing more than ridiculously amusing.

The Applicant was a licensed Massachusetts attorney who placed his license on "inactive" status while working for a very large and purportedly prestigious New Jersey law firm as a Senior Associate. He was a graduate of Harvard Law School. He was working in the Acquisitions and Mergers department of the New Jersey firm, handling general corporate matters, under the direction, supervision and control of licensed New Jersey attorneys. He applied to sit for the New Jersey Bar exam in 1992, but as the exam date approached was informed by the firm's managing partner that there was no particular necessity for him to take the bar exam in New Jersey in order to practice corporate law in New Jersey.

The information given to him by the firm's managing partner was false. He was also "politely" requested not to take the February bar exam, because the firm was preparing to close an unusually large transaction for which his services would be required. Accordingly, he withdrew from sitting for the 1992 exam. He worked for the law firm from 1991 to 1998, at which time he left for a firm in New York. In July, 1999 he sat for the New York and New Jersey Bar exam. The New Jersey Bar concluded that for the seven year period of 1991 - 1998, he had engaged in the Unauthorized Practice of Law which rendered him morally unfit for character certification.

The Court realized that the issue of interstate practice and multi-disciplinary practice is an extremely complicated one, particularly as it affects the anti-competitive issue of the Unauthorized Practice of law. What the Court did was amusing. They affirmed the Bar's decision, but wrote as follows:

> "With regard to <Applicant's> application for admission, we agree with the Committee on Character that <Applicant's> earlier failure to abide by the details of our admission and practice rules reflected negatively on his fitness to practice. . . .
>
> . . .
>
> We note that <Applicant's> application to be admitted to the bar in New Jersey has been pending since the July 1999 bar examination. The delay in his certification should underscore to this candidate the seriousness with which we view his earlier improper practice. . . .
>
> . . .
>
> The Court adopts the recommendation of the Committee on Character that certification . . . be withheld, **but . . . . the Committee's recommendation is modified to permit <Applicant's> certification . . . effective January 2, 2001."** [302]

The Court as a matter of substance, knew the Bar was on an exceptionally weak ground by denying admission on moral character grounds in reliance on a lame allegation of engaging in UPL. Nevertheless, as a matter of form they wanted to provide justification that the Bar was right.

So what they did was issue an opinion on December 1, 2000 that denied moral character certification, but then allowed such certification on January 2, 2001 (a mere one month later). The end result being that as a matter of substance the Applicant acquires the character certification he needs for admission, and the State Bar as a matter of form acquires the egotistical "win" that it wanted. It's a rather ridiculous opinion, that is more amusing than anything else.

You can obtain a lot of information just by looking at the date of a Court's opinion.

NEW MEXICO

646 P.2d 1236 (1982)

IT'S NOT A TOPLESS BAR

The Applicant was denied admission on character grounds based on information disclosed on her application pertaining to several arrests. She had one conviction that was reversed on appeal, for conspiracy to transport stolen securities interstate. The conviction was reversed in 1971, eleven years prior to the Court's opinion and approximately eight years prior to her application. In 1975, she was arrested and charged with conspiracy to sell heroin. The opinion does not indicate that she was convicted. In 1979, she was arrested twice for dancing nude (apparently in topless bars). In 1979, she was also arrested for driving while intoxicated and possession of drugs. The charges were dismissed.

In sum, it appears she had five arrests, and her only conviction was reversed on appeal. The arrests focused on drugs and topless dancing. The Bar Panel concluded in regards to the 1975 arrest, that even though the charges were dismissed, she was culpably involved. In essence, they reached their own little verdict, notwithstanding that the matter was dismissed by the Court.

Based on their conclusion, they further surmised that her characterization of the 1975 arrest, constituted a failure to testify truthfully and candidly. An interesting concept. The charges are dismissed. The Bar then not only determines the Applicant was guilty, but further contends their characterization of the incident was untruthful. **The logical flaw in such reasoning is that it leads to the inescapable conclusion that the Bar Panel believes the Court let a guilty person go free. The Bar therefore exhibits an immense lack of faith and confidence in the justice system, when it determines on its own that a person is guilty even though the charges were dismissed.** The Court makes two general statements about the standards to be used in assessing Bar applications which are:

> ". . . A particular case must be judged on its own merits, and an **ad hoc** determination in each instance must be made by this Court. . . .
> **. . .**
> . . . **Reasonable doubts are resolved in favor of the applicant."** [303]

The phrase "ad hoc" is demonstrative of the arbitrary nature of Bar admission proceedings. The concept that reasonable doubts are resolved in favor of the Applicant is contradictory to the legal predicate that the burden of proving good character is on the Applicant, rather than the Bar. In any event, it is a concept that certainly wasn't applied in this case. They denied admission to an individual whose only conviction was reversed. She therefore has a clean record from a legal perspective when principles of law are applied correctly. The Applicant should have been admitted.

NEW YORK

97 A.D. 2d 557; 467 N.Y.S.2d 289 (1983)

NO TOPLESS DANCERS, SMART ALECKS, OR COMEDIANS, OH, YOU'RE A THIEF, COME ON IN

You can't be a topless dancer, a smart aleck, comedian or have a bad attitude and demeanor. You can however, steal money from your clients as this case demonstrates. The Applicant was admitted to the North Carolina Bar. In 1982, he was given a private reprimand by the North Carolina State Bar. While a partner in a law firm, he received a check for $ 6,400 in connection with the claim of a client. Instead of depositing it in a trust account, he used the money to pay personal debts. He then did the same thing with funds received on behalf of another client. After admitting his acts, he replaced the converted funds. The New York Court grants admission. Their opinion states:

> ". . . We do not condone the serious and regrettable violations of the Code of Professional Responsibility evinced by petitioner's conversion of client funds in the State of North Carolina. Nor do we take lightly our responsibility to ensure that those admitted to the Bar of this State possess the character fitness required for the practice of law. . . . In this case, however, we prefer to focus on certain mitigating factors clearly evident from the file. First of all, with regard to his misconduct in North Carolina, petitioner confessed his defalcations to his partners and promptly made restitution. He then reported his actions to the North Carolina State Bar and cooperated with that body in its investigation of the matter. . . ." [304]

Frankly speaking, I would admit this Applicant also. He made a mistake, owned up to it, and made restitution. He was never arrested or convicted of any crime. My determination however, is in accord with the objective standard I apply consistently. The Court's conclusion while correct in the instant case, is inconsistent with other cases, where admission is denied based on attitude, beliefs etc.. The inconsistency demonstrates why an objective standard is needed.

135 A.D.2d 57 (1988)

This case is a disciplinary proceeding. The Applicant was admitted to the New York Bar in 1985. A disciplinary proceeded was instituted on grounds that he failed to disclose a material fact in his application for admission. The opinion is short and I address only one aspect. The second charge, alleges he failed to disclose employment at a law office during 1983 and 1984 while a law student. I do not believe where one is employed is "material" to consideration of character. Nor do I believe their conduct as an employee is relevant, unless of a sufficiently egregious nature that it results in a criminal conviction. Such convictions would obviously be covered by the question addressing convictions. Since the information requested is not "material," the failure to disclose does not warrant discipline. [305]

549 N.E.2d 472 (1989)

THE BANKRUPTCY OF JUDICIAL REASON and LOGIC

The Applicant had filed for bankruptcy. He was denied admission to the Bar on the ground that he lacked:

> "the character necessary to discipline himself to control his standard of living and the amount of his indebtedness, thus showing a lack of financial responsibility necessary for an attorney."

He appealed and the Court of Appeals affirms, stating:

> **"The primary purpose 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 pre-existing debt" (Perez v. Campbell, 402 U.S. 637, 648. . .). This purpose may be defeated if certain benefits are denied because the debtor has filed a bankruptcy or because the debtor refuses to reaffirm and reinstate obligations which have been discharged by bankruptcy. . . .**
>
> . . . The legislative history makes clear, however, that Congress' concern was discrimination against debtors based upon the fact of bankruptcy; **the statute was not intended to shield debtors from reasonable inquiries about their ability to manage financial matters when the ability to do so is related to their fitness for the license sought . . . .**
> . . .
> Although the Appellate Division **did not state the reasons for its action** or adopt those of the Committee, . . . its order should be affirmed." [306]

The Court's irrational bankruptcy argument is legal sophistry at its zenith. The following two phrases above labeled (A) and (B), are irreconcilable:

(A) "The **primary purpose** of the Bankruptcy Act is to give debtors " a new opportunity in life and a clear field for future effort, **unhampered by the pressure . . . pre-existing debt**"

(B) "the statute was not intended to shield debtors from **reasonable inquiries about their ability to manage financial matters. . . .**"

The "primary purpose" is logically unattainable if the individual who files for bankruptcy is still subject to "inquiries," pertaining to the debts discharged by the bankruptcy. The Court's opinion "lacks candor." If unpaid debts relate to character for the license to practice law, then why don't licensed attorneys have to inform the Bar on a periodic basis of their unpaid debts? The rule you are left with from the bankruptcy line of admission cases, is to make sure you delay filing for bankruptcy and keep payments on debts up to date, until you are admitted to the Bar. Then you can stop paying and file for bankruptcy. How can the Courts rationally justify denying admission to an individual with unpaid debts, when they do not discipline licensed attorneys with unpaid debts? The answer is simple. They can not. They can only irrationally profess a justification by using legal sophistry, hypocrisy and predicates of economic protectionism. The Applicant should have been admitted.

167 A.D.2d 658 (1990)

The opinion is less than two pages. The Applicant was a member of the Philippines Bar and formerly a Judge in that country. He was denied admission to the New York Bar on character grounds, predicated on his failure to disclose judicial conduct complaints that had been filed against him. In accordance with the objective standard I have consistently promoted, the Applicant should be required to disclose disciplinary or judicial complaints. However, the resolution of the complaint by the other state or country should not be binding on the Bar being applied to. Nondisclosure of such complaints is material if disclosure would affect the ultimate decision on the application.

Applying such a materiality standard is not difficult since the existence of criminal convictions or ethical complaints can easily be verified through the use of national databases. The materiality standard I support, regarding the duty to disclose is predicated on whether nondisclosure would have affected the ultimate decision of the Committee.

Such an objective standard does not create an incentive for nondisclosure. Rather instead the opposite is true. When inquiries are made only in regards to those matters such as convictions and ethical complaints which are easily verifiable, the Applicant would be a complete fool to attempt nondisclosure. It is when the Bar inquires into matters not easily verifiable, such as civil suits and debts, etc. that the subjective materiality standard currently utilized, results in the Bars looking hypocritically foolish. [307]

577 N.E.2d 51 (1991)

REMEMBER THAT BAR EXAM I TOOK 27 YEARS AGO?

The Applicant passed the New York Bar exam 27 years before applying for admission. He graduated from Harvard Law School in 1959 and was admitted to the Massachusetts Bar. He then graduated from the Harvard Graduate School of Business Administration in 1961. He was certified as having passed the New York exam in 1962, but made no effort to complete the admissions process. At no time did he practice law in any state.

In 1989, during an interview he was told that because of his delay in applying, the subcommittee could not recommend his admission. The Committee then adopted the subcommittee report. It concluded that a delay of 27 years was inordinate. The Applicant instituted a proceeding and his motion was denied without opinion. He then appealed. The Court of Appeals reversed, ruling in his favor.

The Court reversed on a very interesting ground. It determined that the Committee lacked the legal power to address the issue of delay. It correctly reasoned that the issue of delay could not be considered under the existing rules. The Court states:

> "Definition of "general fitness" is at the core of this appeal. . . .
> **. . .**
> . . . the Committee asserts, there is no Court of Appeals rule regarding delay, or "staleness" of legal knowledge, leaving that issue for "general fitness" review.
>
> The Committee's broad definition of general fitness must be rejected.
>
> . . . The qualities of personal moral character and fitness to practice law suggest the need for person-by-person investigation and determination at the local, departmental levels. On the other hand, any requirement that candidates have current legal knowledge would have to be the subject of uniform, State-wide standards. **Unevenness among candidates and departments would be "highly inappropriate, if not legally suspect." . . .**
>
> **In Law Students Research Council v Wadmond (401 U.S. 154, 159), the Committee itself espoused as the correct definition of fitness review: "no more than dishonorable conduct relevant to the legal profession." . . .**
>
> The Committee's concern about the implications of long delay between the Bar examination and admission is surely understandable, as is its concern that reversal here exposes a gap in the rules that may, if left untended, disserve the public interest. **Such concerns, however, point up the need for uniform rules requiring admission within a stated period after certification . . . they do not empower the Committee to overstep its jurisdiction and itself establish those requirements.**
>
> Petitioner's delay in seeking admission should therefore not have been the basis for a finding of unfitness. . . ."

I admire this opinion immensely. The Court owns up to what is an obvious loophole in the rules. Rather than simply allowing the Committee to correct the loophole in a post-hoc manner, it renders the correct decision in the instant case, notwithstanding the obvious embarrassing ramifications

to the Bar. The key operative paragraph which fortifies the respect and integrity of the Court by prohibiting the post-hoc redrafting of court rules is as follows:

> "The Committee's concern about the implications of long delay between the Bar examination and admission is surely understandable, as is its concern that reversal here exposes a gap in the rules that may, if left untended, disserve the public interest. **Such concerns, however, point up the need for uniform rules requiring admission within a stated period after certification . . . they do not empower the Committee to overstep its jurisdiction and itself establish those requirements."** [308]

On a scale of 1 to 10, with ten being the best, I give this opinion a 10. I would further note that I agree with the Court, that a rule should be drafted requiring admission within a stated period of certification, since 27 years does constitute an inordinate delay. But you need a rule in place to require it, just like the Court says.

SUPREME COURT, Appellate Division, First Department, New York, No.M-2027; 2000 NYSlipOp 08850; Versuslaw 2000.NY.0050413 (2000)

CRAZY LADY

The Respondent was admitted to the practice of law in New York in 1997. In 1999, the Disciplinary Committee charged her with failing to disclose a prior employer on her Bar application.

The facts were as follows. In 1994, after passing the Bar exam, (but before being admitted which did not occur until 1997) she became romantically involved with the President of a Company she worked for. Stated plainly, she was getting it on by screwing around with the boss, behind his wife's back. In 1995, they had a bitter break-up and she was unsurprisingly discharged from her job.

In 1997, after being admitted to the Bar, she stupidly left a series of telephone messages on his telephone answering machine. She threatened to inform his wife of their sexual relationship, threatened to tell his wife's employer which was a school district, and threatened that he would end up "dead" like her last boyfriend. She was obviously an irrational, crazy woman. She was subsequently arrested and charged with aggravated harassment, extortion and disorderly conduct. She pled guilty to one count of disorderly conduct.

Unsurprisingly, on her application for admission to the Bar, she did not disclose her employment with the company. In her response to the disciplinary action, she presented mitigating evidence consisting of testimony from her current employer. It appears she was not sleeping with her current boss, based upon my reading of the opinion. Her present employer was a non-profit agency which provides and arranges for amongst other things, assistance to victims of domestic violence. The Referee in the disciplinary action recommended a mere two-month suspension from the practice of law, and the Court simply added one month on, for a total three month suspension. Essentially, it was a very minor form of discipline. A slap on the wrist, so to speak.

I happen to agree with both the Court and the Disciplinary Committee's decision in this case. The whole thing was related to her adulterous relationship with a former boss. It caused her to fly off the handle. As a result of that relationship, she simply conducted herself like an irrational, bitter Nut.

My concern with the Court's opinion in this case is that its' proper and correct decision, is wholly inconsistent with the disparate treatment afforded to other individuals who omit minor, immaterial information from their Bar application. It is clear that in this instance, she reaped an immense benefit by failing to disclose the requested information. She got admitted, and then paid a virtually negligible penalty of a three-month suspension after her deception was discovered. The Court's opinion makes it quite clear that there is an incentive to fail to disclose certain requested information, if one can get away with it all the way up to the point of being admitted. Then later if it's discovered, this opinion confirms that it's really no big deal. A minor suspension is better than a total denial of admission.

I also find it interesting that notwithstanding the apparent "death" threat she made against her former "boyfriend," she was considered a valued worker for an agency that offers assistance to victims of domestic violence. I can only wonder what type of "assistance" she provides.[309]

SUPREME COURT OF NEW YORK, Appellate Division, No. 2000-01391; 2001 NY SlipOp 04279; Versuslaw 2001.NY.0003549 (May 14, 2001)

THE VICIOUS and RUTHLESS COURT

The New York Appellate Court in this case was incredibly mean and vicious. The Respondent was admitted to the New York Bar in 1999. Shortly later, disciplinary proceedings were instituted against him on the alleged ground that he made materially false statements in his application for admission. Specifically, the Bar alleged that he falsely answered "no" to an application question which asked if he had ever given legal advice or held himself out as an attorney. In 1997 he had assisted a person to secure an uncontested divorce and accepted a $ 500 fee for doing so, even though he was not licensed to practice law at the time. The Court revokes his law license based on this one isolated and essentially trivial matter. The opinion states:

> "In determining the appropriate measure of discipline to impose, the respondent asks the court to consider that his actions, while improper, were committed out of ignorance as to what he was permitted to do prior to his admission to the Bar and without venal intent. The respondent also states that he did not intend to deceive the court. . . . The respondent also points out his efforts to improve his life through education and hard work while raising three children, the eldest being enrolled in a seven-year medical school program. . . .
> The respondent's admission to the Bar in this State, which was based upon misrepresentation of information on his application for admission is hereby revoked . . . and his name is stricken from the roll of attorneys and counselors at law, effective immediately." [310]

My opinion is that he should have been reprimanded, perhaps even suspended for a short time, but absolutely not Disbarred. The matter was simply too trivial in nature. UPL prohibitions generally speaking, are on a highly dubious ground of legitimacy to warrant such a harsh sanction. It is also clear that his arguable violation of questionable UPL prohibitions was not engaged in with malicious intent, and no one appears to have been harmed by his act. He simply did not know what he was allowed to do and what he was not allowed to do as a Nonattorney.

Based on facts presented in the Court's opinion, he seems to be a fairly nice guy who was trying to help someone for a small fee. If he was wrong, then so be it, he should be fairly sanctioned. But not ruthless and viciously sanctioned by completely depriving him of earning a living. There are simply too many New York lawyers and Judges who have done things a lot worse than this guy to justify punishing him so severely. The Court's decision was a blatant example of fostering irrational economic protectionism at the expense of this man, and nothing more. The Court intentionally hurt him, for the purpose of enhancing the financial interests of other New York attorneys. They took a person who for the most part probably had faith and confidence in the justice system, and turned him into a permanent political adversary. Additionally, all of his friends, family members and anyone who reads the Court's opinion will have a justifiably diminished assessment of the Court's moral character and its' ability to fairly adjudicate other cases.

To put the matter simply, a mean and vicious opinion like this one, can only result in diminished public faith and confidence in the justice system. The reason is as follows. If the Court and Bar were amenable to unjustifiably hurting this man and his family to further their own economic interests, then their is no reason to believe they do not do similarly to other citizens in cases before them.

NORTH CAROLINA

215 S.E.2d 771 (1975)

WE FIND THIS CONTENTION TO BE UNSOUND, EVEN THOUGH IT'S WHAT THE U.S. SUPREME COURT SAID.

The opinion begins by noting that the Board was established in 1933. The correlation between the expansion of State Bar power in the early 1930s, and the promotion of racial prejudice by the legal profession has previously been addressed. The Applicant in this case alleged as follows:

> **". . . Rules Governing Admission to the Practice of Law in the State of North Carolina do not contain adequate standards for the Board to follow** in determining whether an applicant possesses the qualifications of character and general fitness requisite for an attorney and, therefore**, the provisions are unconstitutional on their face in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. . ."**

He contended that **"good moral character" as a standard does not satisfy constitutional requirements.** The Court concludes as follows:

> "We find this contention unsound."

He correctly relied on *Konigsberg I*. The Court first quotes the following passage from *Konigsberg* which in my view confirms that his "contention" was quite sound, rather than unsound:

> "The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal view and predilections, **can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law. "**

Notwithstanding the Court's quotation of the foregoing historic passage, it adopts the following interpretation of *Konigsberg*:

> "Even so, those decisions of the United States Supreme Court do not support the suggestion that "good moral character" is an unconstitutional standard. To the contrary, the quoted language from those cases seems to say that the term "good moral character," although broad, has been so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined contours which make it a constitutionally appropriate standard." [311]

253 S.E.2d 912 (1979)

SUSPICIOUS MINDS

The Applicant was born in 1935. He was an honor graduate of the U.S. Military Academy in 1959. From 1968 to 1973, he worked as a commodity futures broker, an insurance agent and a real estate broker. He had no criminal record, but did have some minor traffic violations. No fact on his application was controverted by the Board. The Board denied admission based on two incidents. The first incident involved an individual entering a bank and attempting to withdraw $ 50.00 representing himself as the account signator. The individual was not the signator. The Applicant had a post office box, next to a post office box maintained by the signator. The bank's manager identified the impostor as the Applicant, but later admitted she could be mistaken. She also could not say whether his voice was the same as the individual attempting to withdraw the funds.

The second incident involved possible fraud in the use of a mail order form. A postal inspector testified that he received a complaint from a person whose name was forged on a mail order form for a radio. The radio was sent to the Applicant's post office box. The Applicant denied involvement in both incidents.

It appears no arrests were ever made and no charges filed. The Board did not find that he was involved in either incident. In fact, it made no findings at all. It just stated a conclusion that the Applicant had not satisfied them that he was of good moral character. The Board then had the audacity to argue before the Court that it was not required to make findings of fact, but needed to only make the ultimate determination. The Court rules in favor of the Applicant stating:

> ""Facts relevant to the proof of . . . good moral character are largely within the knowledge of the applicant and are more accessible to him than to an investigative board. Accordingly, the burden of proving his good moral character traditionally has been placed upon the applicant . . . .
>
> This rationale does not apply, however, when an investigation is narrowed to one or two incidents of alleged misconduct of the applicant. . . . Indeed, taking into account the superior investigatory resources of the Board, it is reasonable to assume the contrary. **An application for admission to the bar may not be denied on the basis of suspicions or accusations alone.** . . . Yet, if there is not some reallocation of the burden of proof in these circumstances precisely this may happen. . . . **If the Board is not required to prove that which applicant denies the result might be that the application is refused on the basis of a mere accusation.**
>
> It could be argued that such an extreme situation might be avoided by simply requiring the Board to come forward with some substantial evidence to support its charges. We think such an approach should be rejected for two reasons. First, it is not in accord with sound administrative procedure to allow something to be found as a fact when it is not supported at least by the greater weight of the evidence. . . .
>
> Second, such a procedure would be in conflict with our usual civil practice on assignment of burden of proof. As a general rule in this jurisdiction, the party who substantively asserts the affirmative of an issue bears the burden of proof on it. . . . When the Board attempts to rebut his proof by showing some particular adverse fact, it should bear the burden of proving that fact. . . .
>
> . . . If there are material factual disputes, the Board must resolve them by making findings of fact.
>
> **. . .**

> While the matters presented before the Board aroused suspicions that <Applicant>. . . had been engaged in wrongdoing, we have, in the end, nothing more than that. Arrayed against these suspicions is <Applicant's> . . . impressive record. . . .
> In these circumstances, we are reminded of the words of Mr. Justice Black in Konigsberg . . . "A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action." So it is here." [312]

My comments on this case are brief. The opinion is good. The Board rendered its' irrational decision relying on mere suspicion and unsupported allegations. In doing so, they demonstrated that the admissions process as stated in Konigsberg is a:

"dangerous instrument for arbitrary and discriminatory denial of the right to practice law. "

260 S.E.2d 445 (1979)

STATE BAR COUNCIL ABOVE GOD IN NORTH CAROLINA

The Petitioner was seeking restoration of his law license. The applicable statute provided:

> "whenever any attorney has been deprived of his license, the council, in its **discretion,** may restore said license upon . . . satisfactory evidence of proper reformation. . . ."

He contended the statute was an unconstitutional delegation of legislative power because it gave the Bar Council unbridled discretion. The Court disagreed stating:

> "The Legislature, in its **infinite wisdom**, has endowed the North Carolina State Bar Council with the duty of ascertaining when a wayward attorney has presented such satisfactory evidence of reformation . . . .
>
> The standard set forth in the statute is the production of satisfactory evidence proper reformation. **. . .**
> An attorney at law is a sworn officer of the court, whose chief concern, as such, is to aid in the administration of justice. In addition, he has an unparalleled opportunity **to fix the code of ethics** and to determine the moral tone of the business life of his community. Other agencies, of course, contribute their part, but in its final analysis, trade is conducted on sound legal advice. . . .
>
> **"No profession," . . . "not even that of the doctor or preacher, is as intimate in its relationship with people as that of the law.** To the doctor the patient discloses his physical ailments and symptoms, **to the preacher the communicant broaches as a general rule only those things that commend him in the eye of heaven, or those sins of his own for which he is in fear of eternal punishment, but to his lawyer he unburdens his whole life, his business secrets and difficulties,** his family relationships and quarrels and the skeletons in his closet. . ."

One can not help but to grasp the pompous nature of the Court's irrational attitude and its inappropriate, even ludicrous demeanor. The Court's ridiculous position is that an attorney is more important to the business community than any other person. The Court obviously wants attorneys to have unchallenged power in business to foster the profession's economic interests. It is under the misguided impression that attorneys are more "intimate" with people than doctors and preachers. Its' reasoning is that doctors merely deal with physical ailments. **The comments are sheer lunacy. The Court appears to elevate the legal profession above God.** Setting aside constitutional problems associated with the improper interjection of religion into the opinion, the Court exhibits its' pompous judicial nature at the apex, by stating:

> ". . . only those things that commend him in the eye of heaven, or those sins of his own . . . but to his lawyer he unburdens his whole life . . ." [313]

I am curious as to how the Court knows what people communicate to their preachers and God. Is the Court eavesdropping on the prayers of citizens? On a more practical note, the irrefutable fact is that both preachers and doctors are <u>more</u> "intimate" with their clients, and from a business perspective Certified Public Accountants are immensely closer with their clients than lawyers. Typically, when an

Accountant has a business client, they perform work on a regular monthly or quarterly basis. The client consults with the CPA about all financial aspects of their life and the continuing relationship that is formed often results in the client consulting the CPA about personal matters as well. In sharp contrast, a lawyer is typically involved with a client to satisfy one immediate particular need. The lawyer is merely engaged to represent the client in one particular matter, be it criminal or civil in nature. Once that matter is concluded, the relationship between the lawyer and client typically terminates. It is for this reason, that lawyers are more interested in establishing ongoing relationships with CPAs, as opposed to the reverse. People on an ongoing, continuous basis are much closer with their CPAs, Preachers and Doctors. Lawyers are a distant fourth at best. It is also noteworthy to point out that out of all the professions, lawyers are the worst regarded amongst members of the general public.

Turning to the legal issues, rather than the Court's false, self-serving adulation of the legal profession, their position is that the determinative standard in the statute is "satisfactory evidence of such reformation." It then falsely concludes that the council does not have unbridled discretion. Since however, the statute itself includes the word "discretion," the Court's weak logic is strained. Regarding what constitutes "satisfactory evidence," no guidance is provided. It is a vague standard, that does not limit the degree of discretion to be applied. The litigant was right. The statute provided "unbridled discretion."

The Court was wrong. It lacked candor and was misleading. It attempted to justify its' own lack of good moral character with the manipulative use of logic, accompanied by false and unwarranted self-praise, attempting to deceive anyone reading its' irrational opinion.

302 S.E.2d 215 (1981)

THE PEEPING TOM

The Board denied the Applicant permission to take the February, 1981 bar exam, after he took it. Yes, you read that right. He took the exam, and then they denied him permission to take it on character grounds. While their stance in form suffers from an obvious logical infirmity, in substance they accomplished their goal by refusing to inform him of the exam results.

The character issue focused on one incident. In 1975, while a student at the University of North Carolina at Chapel Hill, he shared an apartment. One evening when his roommates were gone, he entered the attic's apartment with a camera. Using an electric drill and a keyhole saw, he drilled holes through the ceiling of another apartment occupied by female students. He was able to see into the bathrooms and bedroom of three women. The women called the police and he was arrested. He was charged with illegal entry and secretly peeping into a room. He was tried, convicted and fined $ 50.00.

In a subsequent lawsuit brought against him by two of the women, he prevailed. The Applicant's version of the story during the Bar Hearing was that he used the attic for studying and took the camera into the attic to clean it. He said there was no intent to peep on the women. The Board found his testimony was untrue, and that his statements were made with an intent to deceive. It similarly found his answers to interrogatories in the lawsuit in which he prevailed were untrue.

The Court denied admission. I would admit him. The case raises interesting issues. First, based on the facts set forth in the opinion, I do not believe the Applicant's explanation. I am convinced he was peeping on the women. In any event, his conviction is dispositive of the issue.

Although he was convicted and I believe he did commit the offense, his continued assertions of innocence do not constitute lying. As I stated previously, an Applicant should be able to assert innocence even in the face of a conviction. Such an assertion however, should be given minimal weight in the absence of substantial and extraordinary corroborating evidence. The nature of the offense requires consideration of the circumstances to determine if it was heinous, serious, between serious and trivial, or just trivial. I would determine the offense to be between serious and trivial. This determination is based in large part on the Applicant's age at the time of the offense.

While the Court's opinion does not state his date of birth, since he was an undergraduate, I am assuming he was between 18 and 23. The nature of the offense considering his age and the college setting, leads me to believe it was an unwise college prank more than anything else. This conclusion is bolstered by the fact that he was only fined $ 50.00, rather than given any type of probation or prison term. It is important to note that if my assumption about his age is incorrect and he was for instance in his late 30s or 40s, I would reconsider my decision.

Applying the above premises, the Court's opinion was rendered in 1983. he was convicted of the incident approximately eight years earlier. Assuming, he engaged in no other criminal activity, there has been a sufficient time lapse, and considering the nature of the offense, I would admit him. [314]

386 S.E. 2d 174 (1989)

DON'T ASK THE APPLICANT, IF YOU'RE NOT ASKING THE LICENSED ATTORNEY and JUDGE

A MATERIALITY STANDARD PREDICATED ON WHAT BEST FOSTERS THE ECONOMIC INTERESTS OF THE STATE BAR

The next two cases involve the same Applicant. Based on facts set forth in the Court's opinions, he was never arrested or convicted of any crime. He was denied admission on character grounds. Question 17(c) required an Applicant to:

> "list all debts over $ 200, including student loans, and indicate status"

Question 17(d) inquired whether anyone had ever asserted a claim or demand against the Applicant which was not made the subject of any action or legal proceeding. Question 18 asked about involvement in civil suits. The Applicant filed an amended application listing several debts and civil suits not included on his original application. Question 37(b) required an Applicant to give:

> "the name and address of each organization whose membership consists primarily of attorneys and of which you are or have ever been a member"

His original application indicated no such membership. His amended application listed two organizations. Question 6 required an Applicant to list:

> "every permanent and temporary residence you have ever had . . . **since your 16th birthday"**

The question also required an Applicant to give the exact address of each residence. The Applicant failed to include a Louisiana residence during a semester when he lived with his fiancee. He also failed to list a one month employment as a laborer following graduation from college. He admitted that he was careless in filling out the application and explained the omissions as inadvertence. The Board rejected his contentions. The Court denied admission. It concludes that the effect of the omissions was to mislead and deceive. The opinion states:

> "The basis of the Board's finding was the failure to list all addresses, places of employment, debts and actions in which applicant had been a party. The Board placed the greatest weight on the applicant's failure to list his debts and the action to which he had been a party.
>
> A material omission from a Bar application is "one that has the effect of **inhibiting the efforts** of the bar to determine an applicant's fitness to practice law. . . . Like misrepresentation, evasive responses and misleading statements, a purposeful pattern of failing to disclose material matters required to be disclosed can "obstruct full investigation into the moral character of a Bar applicant, inconsistent with the truthfulness and candor of a practicing attorney. . . .
>
> Personal indebtedness required to be disclosed on a Bar application is a material matter requiring full disclosure. . . .
>
> . . .

> . . . If evidence of an applicant's omissions becomes apparent, the Board **should first determine if the applicant made the omissions purposefully.** If the Board determines that the omissions were purposeful, the Board must then decide whether the omissions "so reflect on the applicant's character that they are sufficient to rebut his prima facie showing of good character. . . .
>
> "<A state> has wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law. In re Griffiths, 413 U.S. 717 . . . (1973). . . .
> . . .
> **The findings taken singly may not be sufficient to disqualify the applicant from the practice of law in North Carolina. . . . However, when the findings are viewed in the aggregate**, they reveal a systematic pattern of carelessness, neglect, inattention to detail and lack of candor that permeates the applicant's character. . . ."

Zero plus zero is still zero. The concept of accumulating immaterial omissions for the purpose of falsely asserting that together they constitute a material intent to deceive is crap. The nature of the items do not lose their character through an artificial process of accumulation in which the Board taints each piece going through the process. This Applicant carelessly omitted trivial information that the Bar had no constitutional right to obtain in the first place.

The questionnaire imposed an unreasonable burden by requiring disclosure of information dating back to age 16. Applying such a burden to virtually anyone who is at least 40 years old, would result in the omission of information. The application was designed to foster the omission of information. The fault therefore, rests with the Bar.

Can you list the exact dates and addresses of where you have lived since age 16? Can you list all your employments and civil suits? Can you list all of your debts over $ 200? What constitutes asserting a "demand" for payment of such debts? Does simply sending someone an invoice suffice? If you have a business, do you need to send copies of every invoice over $ 200 related to a past due debt?

Many businesses and entities as a standard policy don't even attempt to pay debts until they are 90 days past due. The U.S. Government is a prime example. Ask the Health Care Financing Administration (HCFA) when they pay medicare bills. Typically, it takes about five months on the average. Most governmental agencies would obviously have difficulty satisfying State Bar character standards. The irrefutable fact is that **government agencies and many large corporations rarely pay debts in a timely manner.**

What about licensed North Carolina attorneys? If a person was admitted to the North Carolina Bar at age 25 and is now a 65 year old pompous member of the Court, when's the last time they provided a list of civil suits, debts and employment? Would they even be able to? I'm betting that most North Carolina attorneys would not even be able to provide the information that is required of an Applicant. Ah, but they don't have to, do they? It is a clear violation of the Equal Protection Clause. A convincing Dissent writes:

> "I believe the Board erred in its findings of fact and conclusions. **It appears to me that if the appellant had included all the matters on his application which he omitted it would not have prevented him from taking the bar examination.** The appellant must have known this and the only plausible reason for his failing to do so was inadvertence. He may not have understood the importance of furnishing . . . but this does not mean he consciously attempted to mislead the Board. I believe the testimony of the appellant was credible and there was no contrary evidence. The Board should have accepted it." [315]

That is the test to be used. Whether the omitted information would have affected the application's outcome. It's a legal concept known as "reversible error." The Judiciary is quite amenable to applying it when litigants receive "ineffective assistance of counsel" from attorneys who purportedly possess good moral character.

In reviewing an ineffective assistance of counsel claim, the element of materiality is assessed in the following manner. If the error committed by counsel is not so serious that the case would have come out differently, it is ignored. Only when the error caused the wrong result, does the ineffective assistance of counsel claim result in "reversible error." Numerous other examples exist where the Judiciary applies materiality in a manner that it refuses to do with respect to Bar applications. Some other good examples are the subjects of Judicial Disqualification and attorney malpractice. They just don't seem to want to use the "accumulation of errors," or "inhibiting the efforts," standard of materiality in those areas. Only for Bar admission cases.

447 S.E.2d 353 (1994)

MACHIAVELLI's EX PARTE COMMUNICATION IS ALIVE AND WELL

This case involves the same Applicant as the preceding case. The Court's second opinion is rendered approximately five years after the first. In the first opinion, the Applicant was denied admission due to the omission of immaterial items such as residence addresses, debts and employment history. The Court again denies admission.

The Applicant argues that the Board intentionally misled him to believe that it would only focus on the current status of his moral character (rather than reasons for the prior denial). He relied on their misrepresentation. In support, he presented a letter, dated April 24, 1991 in which **the Board stated expressly that its inquiry would:**

"necessarily focus on the current status of <his> character and fitness"

The operative term is "current." It would seem that he pretty much had the Board on a slam dunk. They weren't candid, frank or truthful with him. They sent a letter expressly stating they would focus on the current status of his character. They then did otherwise. The Court now is amenable to running interference on behalf of the Board by pointing out that the same letter also stated:

> ". . .Rules requires that an applicant be of good moral character both at the time of . . . the written bar examination and at the time a license to practice law is issued"

The Court's position is that since the Applicant was allowed to take the February, 1987 exam, he was given sufficient notice that anything related to his character would be considered. At best, the Board was misleading. They didn't provide a fully open and frank disclosure of what they were seeking to do. They "omitted" to resolve the apparent "contradiction" in the two cited phrases above. It appears to "deceive" the Applicant.

Two different standards of "materiality" exist here. One for the Applicant and one for the Board. The Bar's letter undeniably "inhibited the efforts" of the Applicant to prepare for the inquiry. Approximately five months after the letter, the Board sent a notice indicating it would look into matters beyond his current moral character status. This was an apparent attempt to cure the due process deficiencies of their prior misleading letter. The Court sees it differently and concludes:

> "Based on the foregoing, we conclude that the Board properly considered the 1986 application in making its findings and conclusions **and did not mislead applicant to believe that the 1986 application would not be considered.**

Ah, if only this Applicant had been the beneficiary of such a lenient standard when the term "misleading" was applied to his errors. Then he would have been admitted the first time. The Board and Court then wouldn't look so hypocritical. Here's a beauty of a quote from the Court's opinion:

> "In his final assignment of error, applicant argues that the Board erred by violating . . . the Rules which requires that applicants be notified of protests to their application. Applicant contends that <name>. . . **protested his 1987 application through ex parte communications with the Board**, and his 1991 application through testimony at the 16 October 1991 hearing. **These communications and testimony do not constitute a protest as defined by the rules.**

> We note that the Board is free "to make or cause to be made such examinations and investigations as may be deemed necessary," and therefore, **it was not improper for the Board to question . . . without first notifying applicant."**

Here you have a situation where the application was being secretly sabotaged by someone through the use of ex parte communications with the Board. That however, doesn't constitute a "protest" according to the Court. Applying the Bar's own materiality standard, the ex parte communication "inhibited the efforts" of the Applicant to respond to the derogatory information. How could he? The information was communicated secretly right from the beginning. The Court's opinion concludes:

> "Citing Willner v. Committee on Character and Fitness, 373 U.S. 96 . . . (1963), applicant contends that he must be afforded an opportunity to be confronted with, and cross-examine, witnesses who are adverse to him. However, Willner dealt with the denial of an applicant's admission to the Bar without the applicant having an opportunity to be heard prior to the adverse decision. . . . Justice Goldberg, in his concurrence, with Justices Brennan and Stewart join, stated: "As I understand the opinion of the Court, this does not mean that in every case confrontation and cross-examination are automatically required . . ." [316]

As I understand the concurrence, it nowhere provides a green light to write a letter to an Applicant saying one thing, and then doing something else!! It's also not a green light for inappropriate ex parte communications.

472 S.E. 878 (1996)

SINCE THE BOARD WAS INCORRECT WHEN IT SAID THE APPLICANT LIED, THE BOARD MUST BE LYING

The Applicant was admitted to the New York Bar in 1978. On his North Carolina Bar application he did not disclose that he sat for the New Mexico Bar exam in 1973. The Board also concluded that he did not properly disclose his registrations to take the California Bar exam. Specifically, he stated that he registered:

> "at least fifteen or sixteen times" and took the examination "ten or twelve times more or less"

In fact, he had registered twenty-four times and failed the exam eighteen times. Registering 24 times, is incorporated in the phrase "at least fifteen or sixteen times" by use of the operative terms **"at least."** Taking the exam 18 times is incorporated in the phrase "ten or twelve times more or less" by use of the terms, **"more or less."** This Applicant simply didn't know the precise numbers since they spanned over many years. He provided sufficient disclosure on the California exam issue. He probably didn't even remember sitting for the New Mexico exam, since he sat for it two decades earlier. I therefore conclude that the Board's contention is meritless.

The Applicant also disclosed that he maintained a residence from June, 1978 to the present at a New York address. The Board determined he was the defendant in an action where using his office cellar as a residence was alleged to be in violation of a zoning code. In that action, he filed an Answer denying that he used it as a residence. The Board concluded that his Answer in the lawsuit, was inconsistent with his Bar application. He amended his application on this minor issue.

Finally, the Board determined he did not provide copies of all relevant documents pertaining to a lawsuit. There is no indication that he failed to disclose the existence of the lawsuit. The Board denies admission on character grounds. The Applicant argued that he was given inadequate notice about the nature of the questions to be asked. Essentially, he was arguing that the Board was not candid. He asserted the notice of hearing failed to inform him of the possibility that he would be accused of being misleading. The notice also apparently did not advise him of the statements that the Board was alleging were untruthful. The Board did not provide him with complete information. Rather instead, it stated in a misleading manner that the Applicant should:

> "be advised that inquiry can also be made about the answers to any questions set out in the application"

How very "evasive" of the Board. It "omits" the most "material" information in an attempt to "mislead" the Applicant. It doesn't fully inform him of the questions to be asked. The Board "inhibits the efforts" of the Applicant to prepare. The Board characterized his disclosure of the number of times he sat for the California Bar exam as an "untruthful statement." In his answer to question 30 concerning Bar examination history, he stated:

> "So how many times have I signed for the New York exam? Three to the best of my memory. As to dates I have no idea. The same is true for the California exam . . .
>
> If information relating to this is critical to the North Carolina examiners, I invite you to make inquiry."

He was honest. He said that he didn't know the exact number, but indicated it was a lot. Since he was truthful, the Board was therefore lying, by saying that he was "untruthful." The Court states as follows in reference to how omissions should be considered:

> "If the Board determines that the omissions were purposeful, it must then decide whether the omissions "so reflect on the applicant's character that they are sufficient to rebut his prima facie showing of good character."

So, why was the Board so irrational in this case? The answer is disclosed in the portion of the Court's opinion which reads as follows:

> "**Applicant's cavalier attitude** toward gathering the information it was his duty to supply to the Board constitutes additional evidence from which the Board could conclude that his misstatements and omissions were purposeful. . . .
>
> Applicant next assigns as error the Board's determination that he willfully failed to provide to the Board material documents concerning **a class action lawsuit applicant brought against the New York State Grievance Committee** and its members. . . . applicant submitted to the Board only the complaint in that action; he did not provide copies of the defendants' motion to dismiss for improper venue, or the stipulation between applicant and the New York Office of the Attorney General that certain parties be dropped from the lawsuit . . . ." [317]

The Applicant had sued the New York Grievance Committee. The North Carolina Board and Court didn't like his attitude. They had nothing material on him, so they falsely inflated the importance of immaterial errors. Who could remember the exact dates of taking a Bar exam 24 times?

This case sets forth a good understanding of the Bar admissions process which essentially works as follows based on my research. Draft an application that is so cumbersome, comprehensive and detailed that it is virtually impossible for the Applicant to complete each item absolutely correctly. Then, if there is any aspect of the Applicant's attitude the Board doesn't like (such as filing lawsuits against the Bar), just pick out a few of the innocent, immaterial errors or omissions and falsely label them as "lies." The Bar applies their scheme as follows. Don't deny admission based on a lawsuit filed, because that would make the Bar appear protectionist. Instead, deny admission based on the purported "lies" no matter how immaterial. To the extent the Bar engages in the same types of omissions and errors itself, they don't have to worry. In such instances, the State Supreme Court will run interference for the Bar.

The concept is that the ends justify the means. The Bar's protectionist interest is fostered without the Bar appearing to be protectionist, and the Applicant with an "attitude" is denied admission. The fact is that State Bar Boards are on extremely tenuous ground on the omissions issue. It's one thing if someone affirmatively states a fact, that is not true. It's quite another if someone doesn't present information in the manner, form or with the completeness the Bar subjectively desires. The Boards are more evasive, misleading, and less candid than virtually all Applicants.

NORTH DAKOTA

257 N.W.2d 420 (1977)

"MATERIALITY" DECEPTION by the COURT

I present this case for its discussion of the materiality issue on nondisclosures. The Court states:

> "Where a false statement or failed disclosure in an application for admission to the bar has the **effect of inhibiting the efforts of the bar** to determine an applicant's fitness to practice law, it is material. We do not second-guess the effect of the true and complete application on the decision of the State Bar Board."

This is in many respects the heart of the dispute on materiality. **The question boils down to whether it should be judged in the context of "inhibiting the efforts" or based upon the "effect of the true and complete application."** I adopt the premise that the latter is the correct standard, while North Dakota irrationally concludes the former is the proper standard. The North Dakota Supreme Court and other Courts that follow such a standard are wrong. I am right.

Let us explore the impact of adopting the incorrect standard used by the North Dakota Supreme Court. The primary rationale of the "inhibiting the efforts" standard is that when an Applicant fails to disclose a requested fact, the Bar's ability to assess character is inhibited. **I assert the result of such a rationale is that the concept of materiality is negated in its entirety. The reason is that "failing to disclose any requested fact" in and of itself then constitutes "inhibiting the efforts."** The State Bars have essentially played a deceptive trick of legal logic. They have manipulatively formed the perfect circular argument. Their TRICK functions in substance as follows:

> "A nondisclosure is "material," if it inhibits the effort of the bar to assess an applicant's character. Inhibiting the efforts to determine an applicant's character includes failing to disclose a requested fact. Consequently, the failure to disclose any requested fact is a material nondisclosure. All nondisclosures are thus material."

By defining materiality as "inhibiting the efforts," the State Bars have completely eliminated the element of materiality. Of equal importance, they have done so while still continuing to falsely profess it is an essential element. They are misleading. They are lacking candor. The North Dakota Supreme Court is a prime example. If materiality is an element of nondisclosure, then the nature of the omitted information must have some relevance. That relevance is properly balanced when viewed in the context of the "material effect" of the nondisclosure. The "material effect" is predicated on how an affirmative disclosure would have affected the ultimate decision on admission. An example is warranted to demonstrate the impropriety of the irrational North Dakota standard compared to the correct standard.

Let us assume hypothetically that some Bar somewhere begins to include the following question on its application:

> "Have you ever been accused of dishonesty by a romantic companion?"

In view of the fact that applications in the past have included questions pertaining to allegations of dishonesty in a divorce proceeding, the above possibility, particularly in today's McCarthylike State Bar environment is not all that far fetched. Let us assume in our hypothetical that one evening, you and your romantic companion are having some major league, passionate sex that goes something like this:

Oh BABY!! Oh BABY!!! YEAH!!! YEAH!!! OH YES!!! OH YES!!! OOOOOOOOOH!!

We will presume that both parties cum. You and your companion now begin to engage in some post-sex intimate conversation, during which you are asked the following question:

"Am I the best you've ever had?"

Now, sadly while your current romantic companion is your true love interest, the simple fact is that when it comes to sex, he or she is actually not the best you've ever had. Nevertheless, to avoid hurting the feelings of your romantic companion, you answer quite hesitantly:

"Uh, Yes, you are the best I've ever had."

Your companion sensing the hesitation in your voice responds:

"I don't think you're telling me the truth."

Well, the next morning you're completing the State Bar application and there's the question.

"Have you ever been accused of dishonesty by a romantic companion?"

You don't want to lie, so you leave it blank. Bam! Applying the North Dakota standard of materiality, you have failed to disclose a material item. Your admission is subject to denial. Perhaps, however some feel the hypothetical is unrealistic. For those who believe so, consider the impact of the North Dakota materiality standard on the following question which has been included on many Bar applications in one form or another:

> "Describe any other derogatory incidents in your life not otherwise disclosed within this application."

Applying the irrational North Dakota standard, the Applicant's failure to disclose an incident which is subjectively construed by the Admissions Committee to be derogatory, constitutes a material nondisclosure. The North Dakota materiality standard of "inhibiting the efforts" is logically unworkable, hypocritical, vague, ambiguous, overbroad, negates materiality, legal sophistry, and just plain dumb. The opinion in this case also includes the following statement:

> "Conduct which might be considered acceptable for other persons may not be so for a lawyer." [318]

What about the reverse though? By failing to make inquiries of the licensed attorney similar to those of the Bar Applicant, doesn't the following become the case:

> "Conduct which is acceptable for lawyers, may not be so for Nonattorneys seeking to become lawyers."

Such as paying debts, declaring bankruptcy, filing civil suits, and of course, being a comedian.

342 N.W.2d 393 (1983)

OH, SO NOW THE BAR WANTS TO BE CUT A LITTLE BIT OF SLACK!
WHY DON'T WE APPLY THAT LIL 'OL "INHIBITING THE EFFORTS"
STANDARD TO THE BAR ?

During the administration of the MBE exam irregularities occurred that were not the fault of any Applicants. They were due to the Bar Board not adequately ensuring Applicants had appropriate testing facilities. Specifically, while the test was being administered, noise disturbances were prevalent in the room caused by a sales meeting conducted in an adjacent room. The noises included voices, music, and clapping. The lighting in the testing room was also poor. For these reasons, the Board provided an additional 27 minutes of time for examinees. Subsequently, the Board also readjusted its grading procedure on the essay exam.

The Applicant in this case petitioned for a re-grading of the MBE exam based on the noise disturbances. He wins and is ordered to be admitted. I would not re-grade the exam and therefore would not admit the Applicant. I present this case to address some points in the Dissenting opinion which reads in part as follows:

> **"**This brings us to the focal point: **either we abide by the minimum standards we have set up or we disregard them for everyone and suffer the consequences. Credibility is a partner of justice. Disregarding the minimum standards previously approved will not enhance the credibility of the bar, the bar board, or the judiciary.**
> **. . .**
> In every contest or qualifying procedure the rules are announced ahead of time and they are strictly followed, and if some interfering event occurs which may have a direct bearing on the outcome or result, a replay is permitted or conducted or the project is declared no contest. In the instant situation, <Applicant's> contention can be likened to changing the rules after the contest . . . which is frowned upon in every section of our society.
> **. . .**
> **In addition, to make the System work the principal (the Court) may not pull the rug from under the agent (the Board) in a situation as we have here."**

I passionately agree with the two paragraphs cited above. The rules were set. They can't be changed. The Bar Board screwed up when they scheduled the exam. They didn't do their job diligently or competently. They lacked the requisite professionalism by failing to check what was scheduled next door to the exam room. They wanted to escape looking like imbeciles, and so they changed the rules "post hoc" to make it easier for the Applicants, in order to protect State Bar egos. That illegitimated the process.

The Bar's foul-up, fails scrutiny under the North Dakota "materiality" standard. Their incompetence resulted in "inhibiting the efforts" of the Applicants to take the exam and receive a grade representative of their preparation. Their "failure to disclose" the rule changes before the exam, was a material nondisclosure reflecting adversely on the Bar Board's character. The Dissent also makes a statement that I passionately disagree with, which is:

> **"I do not believe we should determine qualifications on the basis of the brief submitted by the applicant because the applicant may have received considerable help in writing the brief.** Neither do I believe that we should take into account the oral argument made by the applicant. A person may be very glib in making speeches or, for that matter, may be a great

orator, but that does not make that person a lawyer. **Facetiously,** maybe the court should interview each applicant and also admit senior law students who submit briefs and make oral arguments on cases before the exam is given."

The Court has a responsibility to consider the Applicant's brief, unless it was submitted in violation of a court rule. Since the Court gave the Applicant opportunity to present oral argument, it is bound to consider the contents. Based on the portion of the above paragraph that makes reference to "a great orator," it seems the Applicant did an exceptional job. The part about the above paragraph, that is particularly interesting reads:

> **"Facetiously,** maybe the court should interview each applicant and also admit senior law students who submit briefs and make oral arguments on cases before the exam is given." [319]

I don't fault the Dissent for using the word "Facetiously," but it is irrefutable that the Dissent's use of the term cuts directly into the heart of those State Bar admission opinions which chastise Applicants for being facetious, flippant, snide, sarcastic, having a bad attitude or demeanor.

399 N.W.2d 864 (1987)

IT'S NOT ENOUGH TO BE ADMITTED

This is a particularly unusual case. The Applicant failed the July, 1985 Bar exam and the February, 1986 exam. She then petitioned for re-grading of the February, 1986 exam. While the matter was pending, she passed the July, 1986 exam. She was admitted to the Bar in September, 1986.

Notwithstanding her admission, she pursued the petition for re-grading of the February, 1986 exam. The Bar Board argued that her petition was moot because she had been admitted. She responded that the appeal was not moot because she had been offered employment with the Judge Advocate General Corps of the United States Army, but only if she had not twice failed the Bar exam. She maintained that only an admission predicated on the February, 1986 exam, rather than the July, 1986 exam would permit her to obtain the employment. The Court considers the merits of her arguments with respect to the February, 1986 exam and ultimately rules against her.

I present the case simply because of it's unusual fact set. It's the only case I've come across where the Bar Applicant loses, even though they were admitted to the Bar. I admire the Applicant for pursuing the claim. [320]

458 N.W.2d 501 (1990)

GIVE US THE FACTS, NOT JUST THE CONCLUSION

The Applicant graduated from law school in 1988 and applied to the North Dakota Bar. He had been charged with Theft of Property and acquitted at trial. He disclosed it on his application. The Board's investigation also disclosed civil judgments, as well as an outstanding arrest warrant in California. He did not disclose the following charges:

1969	Illegal possession and open container
1976	Aggravated promotion of prostitution
1976	Gambling
1982	Forgery
1982	NSF check
1982	NSF check
1982	Forgery
1983	Theft of Property
1988	No account check
25 Separate motor vehicle violations	

The Applicant asserted that the lack of rules, guidelines and statutes involved in this type of proceeding rendered him helpless in the preparation of his case. In addition, he contended that the Board failed to give proper notice of the specific grounds upon which its negative recommendation was made. The notice given was as follows:

"inappropriate behavior in the following respects:

1. Unlawful conduct;
2. It appears you may have made false statements and did not fully disclose information requested in the admission application;
3. Fraud and misrepresentation
4. Neglect of financial responsibilities
5. Compulsive gambling (emotional instability)

The Applicant contended that the above allegations were too vague to enable him to prepare an adequate defense. He claimed the problem was compounded since no discovery was provided under the Board's rules. The Court denies admission. I cannot make a determination whether he should have been admitted, since the opinion does not contain the most relevant information. There appear to be nine charges that were not disclosed.

I find it quite disturbing and significantly "misleading and lacking in candor" that the Court's opinion "fails to disclose" the most "material" information pertaining to seven of the charges. The most "material" information is the ultimate disposition of the charges. Were they dismissed? Did the Applicant plead guilty? Was he convicted? The opinion does not say. It leaves the reader with the impression the Court is covering up information that may be exculpatory to the Applicant.

I have to assume that if the Applicant had been convicted, the Court would have said so. If he was not convicted, then why does the Court "fail to disclose" such a material fact? The only conviction disclosed was over 14 years old. That's a long lapse of time and in the absence of other disqualifying conduct is not sufficient to deny admission. Regarding the notice given, concerns once again confront

me. Notwithstanding, what appears upon first glance to be an Applicant who should be denied admission, he was absolutely entitled to better notice. The five "grounds" stated were:

1. Unlawful conduct;
2. It appears you may have made false statements and did not fully disclose information requested in the admission application;
3. Fraud and misrepresentation
4. Neglect of financial responsibilities
5. Compulsive gambling (emotional instability)

With the possible exception of #5 above, the purported "grounds" are nothing more than vague restatements of the ultimate conclusion reached. No factual information supporting them is provided. What conduct did he engage in that the Bar contends was unlawful? What false statements did he make? What acts did he commit that constituted fraud? What did he do that constituted a neglect of financial responsibilities?

The Applicant was constitutionally entitled to be informed with greater specificity of what he would be questioned on. The notice gives the appearance of being "evasive." It looks like the Bar wants to say as little as possible, rather than being completely frank and candid. In this manner, they can surprise him with the specific facts when he's at the Hearing. Admittedly, the application looks bad at first glance. It is by no means a slam dunk denial however. The ultimate resolution of the charges needs to be disclosed. The Bar and Court are far from innocent in this case. Quite to the contrary, they appear to be guilty of precisely what they accuse the Applicant. Engaging in conduct that personifies negative character qualities of failing to disclose, being misleading, evasive, lacking in candor, lacking respect for fairness and justice. [321]

OHIO

1992.OH.18 (1992) VERSUSLAW

DO LICENSED OHIO ATTORNEYS PAY THEIR DEBTS?

This opinion is approximately one page in length. It is a good example of the imbalance that allows licensed attorneys to benefit from application of a lower standard of conduct than Applicants, with respect to debts. The Applicant was a licensed Michigan attorney. She filed annual income tax returns, but did not pay all of the tax. She owed the IRS approximately $ 98,000 and Michigan approximately $ 14,000. In addition, she had not satisfied a civil consent monetary judgment related to a hospital bill for services rendered in 1983. The Ohio Supreme Court denies admission on the ground that she neglected her financial responsibilities.

The impact of the case is as follows. If she had already been a licensed Ohio attorney, she would not be subject to disciplinary action in Ohio for failing to pay her debts. As an Applicant to the Ohio Bar however, she can be denied admission for failing to pay debts. The double standard is obvious. [322]

1994.OH.358 (1994) (versuslaw)

JUST GIVE ME ONE MORE MINUTE!

The Applicant sat for the February, 1993 exam. On the second day, he was purportedly observed marking answers after the time expired. Allegedly, he continued to mark answers even after being told by Supreme Court personnel to stop. When questioned by the Board, he denied completing any answers after the allotted time. He then also denied the accusations in a written statement. On April 16, 1993 the Board issued its report, finding that he had engaged in the conduct alleged. The matter was then heard by a panel on May 5, 1994.

At the Hearing, the Applicant admitted he continued to answer bar examination questions after being told to stop. He testified that his actions were precipitated by extreme stress and a recent family crisis. The Board denies admission and the Court does likewise.

I would not admit the Applicant under the facts presented. I would not admit him however, solely on the ground that his exam results were invalidated. Furthermore, although I would not admit him, I have a general sense upon reading the opinion that the Court is not presenting all material facts. The part of the opinion that generates my concern reads:

> "He continued to mark answers even after being told personally by Supreme Court personnel to stop." [323]

I have a difficult time believing the above quote. Basic logic dictates that if you're going to cheat on an exam, you have to make sure that you don't get caught. If he continued to mark answers even after being told to stop, he has to know that he's going to get caught. Some fact has to be missing. It just doesn't make logical sense. He could not have been that stupid.

I also have a general sense that he was "suckered" a bit by the Board. He denied cheating both verbally and in writing initially. Then after his application was denied, he admitted that he continued to answer questions after being told to stop. I believe there is a possibility (not a certainty) that he may have been "suckered" into this confession after some Ohio attorney made a statement suggesting (this is a hypothetical only, the opinion certainly does not include it):

> Hypothetical Quote : "Look, you want to get in the Bar. What the Board wants to hear is that you did cheat. They then want you to apologize for it. After you do that, they'll be more likely to forgive you for it and you'll probably be admitted. If you stick to your original story however, then you're certain to be denied admission."

There is a possibility that the Applicant's confession may have been the equivalent of a coerced guilty plea that takes place so often in Courts around the nation. This feeling is bolstered by the fact that the opinion's sentence regarding marking answers after being personally told to stop by Supreme Court personnel, just doesn't seem to fit in with other facts in the opinion.

I am forced to concede however, that I am hypothesizing here and could be wrong. In any event, I do agree that once having made the admission, whether "suckered" into doing so or not, admission had to be denied solely because his exam results were invalid.

1994.OH.170 (1994)

AN APPLICANT WHO PLAYED AN IMPRUDENT GAME

This is an attorney disciplinary proceeding. The Applicant was admitted to the Ohio Bar in 1989. On her application she represented that she had not been a party to legal proceedings and had not been treated for mental illness.

In a letter dated June 29, 1991, she informed the Board that in 1987 she was charged with shoplifting a package of cheese. The charge was dismissed and expunged from her record. She explained that she failed to disclose the matter on her application and recently realized her obligation to do so. She also admitted that she did shoplift the cheese.

The board referred her letter to a review subcommittee which notified her in 1991 that it would take no further action. In 1992, she wrote the board again and disclosed two other shoplifting incidents prior to 1987. In one she was charged with summary theft and paid a fine. The other resulted in no charges, when she stole candy bars. The new disclosures prompted the board to investigate. At the Hearing, she emphasized that she had come forward voluntarily to confess her nondisclosures, but admitted that her conscientiousness was motivated in part by her fear that the past incidents might otherwise be discovered. The panel recommended that her license be suspended and the Court agreed.

I agree with both the panel and the Court's decision to the extent predicated on the incident prior to 1987, in which she was charged with summary theft and paid a fine. That's a conviction and should have been disclosed. Nondisclosure of a conviction warrants suspension. I do not believe however, that she had any constitutional obligation to disclose the charge dismissed since it was expunged, or any duty to disclose the incident where no charges were filed.

The Board's handling was totally hypocritical. If nondisclosure is required of offenses not resulting in a conviction, why did they inform her they would not take action regarding the first instance of nondisclosure? Applying their own standard of nondisclosure (which as indicated, I believe to be an incorrect standard), they had an ethical obligation to discipline her. They were willing to let her off the hook for the first instance. That smacks of inconsistency. Conversely, if the Board adopts my standard, their was no need for her to disclose the dismissed and expunged shoplifting incidents.

The Board, Court and myself realize this Applicant played a game with them. She did not disclose matters on her application. She got admitted. Then after being admitted, and recognizing attorneys are held to a lower standard than Bar Applicants, she disclosed the incident that was dismissed and expunged. She got the rubber stamp of approval on that particular incident, in the hope that it would set a precedent for her. Then she disclosed the two other offenses, under the mistaken belief such would receive the same treatment. Her game was transparent, but in disciplining her for playing it, the Board had to do exactly what she knew they would have to do.

They had to be inconsistent, contradict their prior action, and appear hypocritical for treating two similar shoplifting incidents in a dissimilar matter. To discipline her, they had to sacrifice their own credibility. [324]

1994.OH.173 (1994)

The Applicant passed the 1993 Bar exam. He had worked in his father's business between 1983 and 1991. The Ohio Attorney General instituted a civil action against the business for alleged violations of the Ohio Consumer Sales Practices Act. The Applicant was named as a defendant in the civil action, but entered into a consent dismissal with the Attorney General and agreed to testify against his father. The consent dismissal imposed several conditions. In the consent dismissal, the Applicant neither admitted or denied the allegations. Based on this civil suit, the Applicant was denied admission.

I would admit him for several reasons. First, he was never convicted of a crime. If he engaged in criminal activity with respect to the business and the State can prove it, then they should have prosecuted him. In the absence of such, there merely exists a civil suit with nasty, unproven allegations. Further, a consent dismissal in that suit was entered. Although the consent dismissal imposed conditions upon the Applicant, it also imposed a critical condition upon the State. That critical condition was that the suit against the Applicant would be dismissed. It's the primary reason he entered into the agreement. [325]

For the Bar to impute presumed guilt due to the existence of conditions in a consent dismissal, results in circumvention of the legal impact of dismissal. The Applicant gave the State certain things in exchange for a dismissal. Both parties gave each other a "carrot" so to speak, to use sales terms. They are both equally bound. The mere existence of unproven allegations in a civil suit, even when the opposing party is the State is meaningless. He should have been admitted.

Supreme Court of Ohio, Case #97-411; Versuslaw 1997.OH.184 (1997)

OH, DOES THE OHIO BAR LOOK STUPID IN THIS CASE!

This is an attorney discipline action in which an attorney's license to practice was revoked by the Supreme Court of Ohio. I agree with the Court's conclusion, but the matters involved also demonstrate colossal incompetence on the part of the Ohio judiciary. The attorney was admitted to the practice of law in 1986. In 1994, (eight years later) the Admissions Office received correspondence alleging that he had never received a law degree. The allegations proved to be accurate. He had only completed 77 of 86 semester credit hours required at law school and had not fulfilled his writing requirement. In his 1986 application to take the Bar exam, he represented that he would be receiving his degree in May, 1986. He never informed the admissions committee that he had not graduated from law school and the admissions committee screwed up by not verifying that he graduated.[326]

The Court renders its decision in 1995. It revokes his law license on the ground that he had never graduated from law school. Nine years after his admission!! The admissions committee obviously looked like fools and imbeciles. They didn't do their job. They're so worried about pursuing trivial nondisclosures related to residence addresses, unpaid debts, civil suits, employment records and the like, which are in fact immaterial and unconstitutional inquiries, that they didn't verify what is most important. They didn't verify whether this Applicant had graduated from law school. Perhaps the absolute most material matter regarding admission to the Bar.

Clearly, they need to put their time to more diligent use by verifying information that is important, instead of wasting time and resources on petty, immaterial matters. One other interesting question for reflection in this case. To the extent this attorney represented clients during the period 1986 - 1995, were they represented by an attorney?

1995.OH.39 (1995)

PETTY LITTLE JUDICIAL MINDS

The Applicant in the prior case was admitted to the Bar, even though he had never graduated from law school. His law license was not revoked until nine years later.

In this case, an Applicant who did graduate from law school and has no criminal convictions, is denied admission. The reasons are allegedly his "poor employment history," financial irresponsibility, and failure to pay parking tickets and other traffic violation fines. He had $65,000 of debt, of which $51,000 consisted of student loans.

In 1984 (more than ten years before the Court's opinion) he was discharged from employment at a pizza restaurant. Yes, you read that right! This becomes an issue during consideration of his application. Discharge from a PIZZA RESTAURANT!! In 1990, he was discharged by Ohio State University where he worked, on grounds later determined to be meritless in arbitration. He was discharged as a security guard in 1987 for sleeping on the job and discharged from a job in 1993 for failing to provide verification of a missed work day. From 1987 - 1993 he accumulated approximately 24 parking tickets. In 1994, he continued to drive his auto after the insurance lapsed and was in a minor collision in which he agreed to pay $ 3,100 in damages.

That's what they got on this guy. Parking tickets, some jobs that didn't work out, and driving without auto insurance. The Committee denies his application and the Court agrees. The opinion characterizes these matters as follows:

> "The board noted in its report that the combination of <Applicant's> financial difficulties, **cavalier disregard of parking laws and rules**, **continuing and ongoing employment difficulties,** and, most importantly, exhibition of gross irresponsibility in operating an automobile without insurance, created "significant questions in the board's mind as to whether or not he has demonstrated the requisite character and fitness for present admission." [327]

The Applicant should irrefutably be admitted and the Board should show remorse. My commentary can best be summarized by referencing the prior case discussed. I submit as follows:

> "The Board and Court's thorough disregard for protecting the interests of the public by allowing an individual to be admitted to the Bar who had never graduated from law school in **1995.OH.184 (1995) (versuslaw)**, exhibits a gross irresponsibility in administering the bar admissions process and creates "significant questions in the public's eye" as to whether or not the Board and Court possess the requisite character to properly administer the admissions process.
>
> The further attempt by the Board and Court to protect the economic interests of Ohio attorneys by assessing the Applicant in this case through utilization of misleading and untruthful characterizations, characterized by their general lack of candor, and coupled with a gross irresponsibility in administering rules pertaining to the admissions process, further raises a "significant question" in the public's eye as to whether the Ohio Supreme Court should be divested of its power to assess Bar admissions and regulate the legal profession.

Supreme Court of Ohio, Case No. 97-412 ; Versuslaw 1997.OH.170 (1997)

DON'T TRUST THE OHIO LAWYER's ASSISTANCE PROGRAM

The Applicant appears to have had one criminal conviction based on facts set forth in the Court's opinion, which are presented in a rather hazy and unclear manner. The opinion makes reference to a "traffic offense conviction," but in a possible attempt to "mislead" the reader, "omits" to disclose the nature of it. As a result of that "conviction," the Applicant was required to attend a driver intervention program at which he was assessed as "alcohol-dependent."

The opinion also states he was involved in "various" alcohol-related traffic incidents from 1983 through 1995. The Court's opinion "omits to disclose" the precise number of incidents. The Applicant made an appointment with the Ohio Lawyers Assistance Program for an assessment regarding his treatment. During the interview, he admitted he was using cocaine. **The Ohio Lawyers Assistance Program then apparently informed the admissions committee of this fact.** The Board denies admission and the Court agrees. The opinion states:

> "The panel found that following his interview applicant began the treatment program, during which he admitted that he was using cocaine, a fact not revealed to the committee. . . ." [328]

This case enacts an important rule not only for Ohio Bar Applicants, but also licensed Ohio attorneys. It is a simple, straightforward and clear cut rule. DON'T TRUST THE OHIO LAWYERS ASSISTANCE PROGRAM. The whole concept of these types of programs is that they are supposed to help people in need of assistance for alcohol, mental or drug abuse. Once the Program violates the participant's confidence that they can disclose matters confidentially for the purpose of receiving help, the program's entire credibility is destroyed. So remember. This case stands for the premise. DON'T CONFIDE IN OR TRUST THE OHIO LAWYERS ASSISTANCE PROGRAM!! They're simply seeking to gather information that can be used against you.

The Applicant should have been admitted. The Court's opinion, in the manner it characterizes "various" traffic offenses is misleading, evasive, and lacking in candor.

Perhaps the Judges should participate in the Ohio Lawyers Assistance Program.

Supreme Court of Ohio, Case No. 97-413; Versuslaw 1997.OH.188 (1997)

Here's another case demonstrating the stupidity of the Ohio judiciary. The Applicant was denied admission on character grounds. The Court's analysis of his character begins as follows:

> "The panel received evidence with respect to applicant's employment as a legal assistant with a Columbus, Ohio law firm, events leading to his termination from that firm, **and the manner in which he described these events** on his application for bar admission. Specifically, the panel received evidence about the applicant's keeping of time sheets, **his attitude toward the tasks assigned him,** his tardy filing of documents with the court, and the quality of his work. **There was further evidence that applicant had falsely answered a question on his admissions application."** [329]

In reference to the last sentence above, the Court "omits" to disclose the nature of the alleged falsely answered question, which appears to be an attempt on their part to "mislead" the reader, coupled with an "intent to deceive." At best, this portion of the opinion is "evasive." In reference to the job termination, the matters are petty and irrelevant. Employers and employees often don't get along. It was a bad match. The phrase "his attitude toward the tasks assigned him" is ridiculous. Maybe he was working for a bunch of jerks. In view of the fact, that they were members of the Ohio Bar it is certainly a possibility. In reference to the phrase, "his tardy filing of documents with the court," my understanding of the legal profession is that the licensed Ohio attorney has ultimate responsibility to ensure documents are timely filed, not the nonattorney legal assistant.

And finally, in reference to the phrase "the applicant's keeping of time sheets," please Ohio judges, let's be real on this one. In view of the gross over-billing with respect to time sheets that law firms in this nation regularly perpetuate on clients; a denial of admission loosely predicated on an alleged "time sheet" issue, is at the very best an example of "judges in glass bars throwing frivolous moral character stones."

Supreme Court of Ohio, Case No. 97-409; Versuslaw 1997.OH.235 (1997)

NEVER SAY NEVER; OR FOREVER

This case provides another embarrassing example of the Ohio Bar's incompetence and bolsters my claim that by concentrating their limited resources on petty matters in admission proceedings, they ultimately screw up on serious issues. It is a disciplinary case.

The Applicant represented to the Wayne County Bar of Ohio that she was admitted to the practice of law in Tennessee. She did not mention that she was under suspension in Tennessee and that the reasons for her suspension were quite serious. Subsequent to acceptance into the Wayne County Bar Association, matters giving rise to her Tennessee suspension came to the attention of the Ohio Bar. She was then asked to resign from the Wayne County Bar and the Court held that she was "forever" precluded from reapplying for the "privilege" of practicing law in the state.

The fact is that she never should have been admitted in the first place. The Wayne County Bar carelessly failed to verify the status of her Tennessee license. As a result, they looked like fools for admitting an individual whose disciplinary record manifested serious breaches of the ethical rules of conduct. An Applicant's disciplinary record in another state should not only be disclosed, but more importantly it needs to be verified by the admissions committee.

Although, I would not have admitted her, the Court's opinion that she is "forever" precluded from reapplying for the "privilege" to practice law is totally ridiculous. First of all, practicing law is a constitutional Right for those who are qualified and not a Privilege. Leaving that age-old dispute behind however, the notion of "forever" is ludicrous. If 10 years go by, or perhaps substantially less, during which the Applicant has a clean record and engages in significant community activities or something demonstrating rehabilitation, the Court is going to look awfully foolish reflecting back upon its' notion of "forever."

Pragmatically speaking, the Judges that wrote the opinion barring her "forever" may not even be on the Court, if she reapplies in the future. Their replacements would likely and hopefully recognize the stupidity of their predecessor's "forever" notion and under the proper circumstances might admit her. In summary, after addressing the Wayne County Bar's embarrassing screw up of admitting her initially, the Court corrects their foul-up, and then messes the situation up again. [330]

Versuslaw 1998.OH.42181 (1998)

THE BUFFALO BILLS AND STATE BAR ADMISSIONS

The Applicant applied for admission in 1997. In 1985 and 1986 he was convicted of driving under the influence. In 1993, he was arrested for criminal trespass and attempted burglary. The charges were dismissed and expunged. The facts of the incident were as follows.

While celebrating a Buffalo Bills football victory he consumed alcoholic beverages. While walking from one bar to another, he went behind a house and urinated in the backyard. He then saw a Christmas wreath on the front door with the Buffalo Bills logo on it, broke the window of the door and stole the wreath. He then walked down the street with the wreath on his head. At the Bar Hearing, he described his conduct during the incident as "rambunctious." The Bar panel rejects him and the Court agrees. They conclude that he had an existing and untreated alcohol abuse condition and therefore lacked the requisite character to practice law. It's a crappy opinion supported by crappy reasoning.

I definitely would admit the Applicant. The 1993 incident must be disregarded because the charges were dismissed and the record expunged. Based on the facts presented, I do believe his conduct was somewhat more serious than merely "rambunctious," but not serious enough to warrant denial of admission. The fact that the matter was dismissed is dispositive in any event. If he had been convicted, a more comprehensive analysis would be necessary. It appears that I have a substantially greater degree of faith and confidence in the disposition of criminal matters by Courts than the Ohio Bar admissions committee.

The 1985 and 1986 incidents did however, result in convictions. They are serious, but by no means heinous. They did not involve any intent to physically harm anyone or personally profit at the expense of another. Although the incidents could have resulted in serious, unintentional harm if he had been in a car accident, the fact is that such did not occur. The convictions are a product of his own frailties and weaknesses, which most of us have in some way or another. There does not appear to be any evil intent involved. Over ten years had lapsed since those two convictions. The time lapse is sufficient considering the nature of the offenses and I would admit the Applicant. [331]

I wonder if he started rooting for a different football team.

Supreme Court of Ohio, Case No. 97-1927; Versuslaw 1998.OH.52 (1998)

TAKE A HIKE OHIO STATE BAR

The Applicant, essentially told the Ohio Bar and Judiciary to take a hike. While I am curious to know his reasons, I like his style in any event. He applied to take the February, 1996 exam. Two members of the Admissions Committee interviewed him and recommended that his application be disapproved. He then appealed. The Court states in an opinion that is approximately one page in length:

> " When a panel of the Board . . . attempted to notify appellant at his last known telephone number . . . of the hearing scheduled on his appeal, it was unable to contact applicant. At the bar association's request, the panel . . . **secured an order requiring applicant to submit to a psychological examination.** Applicant failed to appear for the examination.
>
> The chairperson of the panel then contacted applicant by telephone in New Jersey, ... Applicant informed the chairperson that he did not intend to continue his efforts to be admitted to the Ohio bar. Subsequent attempts to contact applicant by certified mail have been returned "unclaimed," and subsequent notices sent to applicant by regular mail have not been returned.
>
> . . . . he is not permitted to reapply for admission to the bar of Ohio." [332]

While one can not be certain, based on the "omission" of "material" facts from the opinion by the Court,, it appears this Applicant just got fed up with the Ohio Judiciary's nonsense. The so-called "Order" requiring him to appear for a psychological examination was in all likelihood nothing more than a McCarthylike tactic intended to be used for the purpose of breaking his will. He probably recognized this and properly declined to continue participation as a party to their petty little Judicial and State Bar mind games.

Supreme Court of Ohio, Case No. 98-51 ; Versuslaw 1998.OH.88 (1998)

IF YOU'RE OVER 40 YEARS OLD, YOU'RE IN TROUBLE

The Applicant failed the 1965 and 1966 Bar exam. He then applied to take the 1993 and 1994 Bar exams (almost 30 years later) and was denied the Right to do so on character grounds. Specifically, the opinion states:

> "The panel found that the information provided by applicant in his application was incomplete with respect to his employment history, his financial history, and the status of his back child support. The panel found that applicant **disclosed neither a business consulting position nor a real estate sales position that he had held.** In addition, applicant had at least one judgment taken against him, which he did not list and about which his testimony was unclear. Applicant also did not list a business that he had owned . . . . "

The opinion does not list his age, but if we assume that he was at least 24 in 1965, he must have been at least 52 at the time of the 1993 application. The question I ask for reflection is simple. Who can document their entire life at age 52 or older? At age 40 or older? It's a ridiculous requirement. People change jobs. If you change jobs a lot, you lose track of the dates. Small civil suits, even when they result in a judgment, are forgotten after a certain number of years. Who can document all aspects of their financial history? Hell, the IRS doesn't even require an individual to go back as far as the Bar demands.

The Court's opinion is meritless. The problem in this case is a reflection of the Bar application questions, not upon the Applicant's character. They are asking questions that are vague, ambiguous and most particularly in this case, OVERBROAD. It is an unreasonable requirement to demand someone go back 30 years or more in their life for anything other than conviction of a crime. People never forget when they've been convicted of a crime. The Court denies admission, but permits the Applicant to reapply. A stupid-ass Dissenting opinion would not even allow him to reapply. The Dissent states:

> "I agree with the majority in disapproving the application for admission, but I would not allow the applicant to reapply. . . . He has demonstrated that he is not qualified **to reach the high ethical standards demanded of our bar."** [333]

The Ohio Bar's ethical standards based on its' admissions process are not so much "high ethical" standards as a sad and pathetic joke. This I find to be supported by the repeated lack of rationality in their opinions. They're really nothing more than a frivolous concoction of judicial hogwash. Such being the case, the Dissent's assertion that the Ohio Bar has "high ethical standards" must itself be construed as "lacking in candor," "misleading" and "untruthful." To the extent the Dissent fails to state any facts of any nature supporting its irrational conclusion that the Ohio Bar has "high ethical standards," its opinion is also "evasive."

Supreme Court of Ohio, Case No. 97-407; Versuslaw 1998.OH.36 (1998)

LITTLE STATE SUPREME COURT JUSTICES LOSING THEIR TEMPERS

This opinion contains three substantive paragraphs. The first delineates basic information such as when the Applicant applied for admission and when his appeal was filed. The third paragraph is four sentences long and states the Court's conclusion, with the last sentence reading as follows:

"Applicant is **never to be admitted** to the practice of law in Ohio."

A rather emotional judicial sentence. These are a group of Judges who are definitely hot under the collar. Why? Well, the second paragraph which is comprised only of conclusions, and notably lacking in factual information to support those conclusions, reads as follows:

> ". . . the panel found that applicant was not truthful, that he repeatedly lied under oath, that he lied to each group interviewing him, including the board's panel, as well as in depositions and transcripts introduced into evidence, and that he purposefully omitted relevant information from his Bar Application. **Further the panel found that applicant saw himself as the focus of a conspiracy by the . . . attorneys, and court reporters and took retaliatory action against those he perceived as his enemies, that he has no sense of obligation to the judicial system or those connected with it, that he does not handle his finances in conformity with standards required of attorneys, that he has demonstrated a willingness to subvert the judicial process in ways that cannot be tolerated, and that his attitudes, which are pervasive and ingrained, are wholly inimical to the practice of law. . . ."** [334]

It would appear that this Applicant ruffled more than a few pompous Ohio judicial feathers. Naturally, I am hopeful the Ohio Judges have calmed down a bit when they read my commentaries on their cases, or they may not want to admit me into their Bar for publicizing their little judicial temper tantrum. In so far as the substance of their "opinion," it lacks factual information to support the hyper-emotional conclusions reached by the Court. The Judges just seem to have lost their little tempers a bit. In so far as their assertion that the Applicant is "never to be admitted," well, you never know. The admissions process can always be changed and State Supreme Court Justices can be removed from the bench.

The above paragraph was the last thing I wrote about this case in 1999. I had intended to write no more. The title I gave this case, "*LITTLE STATE SUPREME COURT JUDGES LOSING THEIR TEMPERS"* was included in what I had intended in 1999 to be the final version of this case's presentation. At that time, I also noted above that "These are a group of Judges who are definitely hot under the collar." The Court's opinion was extremely short and presented virtually no facts of any nature. Yet, I had a general sense and feel of what was going on in this case. It was simply an issue of clashing personalities.

In September, 2000 I obtained some new and additional information about this case, that inspired me to write more about it. It confirmed how correct my initial reading was, and also confirmed to me that the Applicant in this case, was in fact the focus of a conspiracy against him as he correctly asserted to the Supreme Court. Frankly speaking, I was amazed myself to find out just how "hot under the collar" the Little Ohio Supreme Court Justices really were. I can't believe they went as far as they did. I've certainly not read any other case, in any other state where such vindictive action occurred. The new information I obtained was as follows.

Subsequent to the Ohio Supreme Court's "so-called" opinion, the Ohio State Medical Board instituted proceedings against the Applicant to revoke his podiatry license. The revocation proceedings were based solely on the Bar admission proceedings. No medical standard of care issues were raised.

His podiatry license was ultimately revoked. This unfortunate individual who does not appear to have ever been convicted of any crime of any nature, not only failed to gain admission to the Bar, but due to the irrationality and obvious emotional imbalance of the Ohio Supreme Court Justices, ultimately lost his professional license to practice podiatry. He appealed revocation of his podiatry license on very solid legal grounds. Naturally however, since the Bar, Court and Medical Board were now all aligned against him, he didn't have a chance.

He correctly contended that the evidence relied upon by the Medical Board was not reliable evidence. That evidence consisted of the Ohio Supreme Court's order denying him admission to the practice of law, and the State Bar's self-serving report. The Court unsurprisingly irrationally concludes that it was reliable evidence.

He contended that the evidence consisted mainly of summaries and conclusions that were unsupported by the facts and based in large part on hearsay. The Court holds that the hearsay rule is relaxed in administrative proceedings.

He contended that his actions did not constitute the crime of perjury, and further noted in support that he was never charged with perjury or falsification. The Court holds that an actual criminal charge was not required to support the board's conclusion that he committed perjury and falsification. Obviously, the Bar, Board and Court prefer to make their own unsupported, self-serving determination, rather than submitting the matter to a jury.

He correctly contended that the Medical Board should not be entitled to rely on any findings in the Bar application proceeding. He asserts such based on the fact that in the Bar proceeding he carried the burden of proof, but such is not the case in the medical proceeding. The Court holds that the Medical Board is entitled to rely on such.

He contended that the Medical Board violated his due process rights by improperly focusing on his civil litigation history. The Court asserts that his due process rights were not violated.

The Court's Medical license revocation opinion, notably includes a blatantly false statement. It is an absolute lie reflecting adversely on the moral character of the Ohio State Supreme Court Justices. The opinion states:

> "As noted by the hearing examiner, **the Ohio Supreme Court is the ultimate authority of law in the state of Ohio."**

This is clearly a State Supreme Court in need of an appropriate attitude adjustment. They are NOT the ultimate authority of law in Ohio. Rather instead, they are a branch of government that is co-equal to the Executive and Legislative branches of government in Ohio, each of which has substantial duties and power pertaining to the law. Additionally, the authority of the Ohio Supreme Court is BELOW that of the U.S. Supreme Court which is the ultimate authority of law in the state of Ohio and every other state. Additionally, the Ohio Supreme Court has only limited rather than ultimate authority regarding issues of federal law in Ohio; the predominant authority with respect to such being vested in the Federal District Courts and Federal Court of Appeals in Ohio. The Ohio Supreme Court Justices LIED by falsely stating they were the "ultimate authority of law."

This unfortunate Applicant was undoubtedly the focus of a conspiracy, as he correctly asserted. I originally suspected such before even reading the medical license revocation case. You can sense the emotional hyper-sensitivity of the Justices in the Bar admissions opinion. The medical license revocation case was just nothing more than Bullshit. No medical care issues were raised and he was never convicted of a crime. They were all just pissed off at him. The State Supreme Court Justices looked like a bunch of Jackasses, and succeeded only in documenting reasons why the public should not have faith or confidence in Ohio Courts. I have never participated in a litigation in Ohio, as either a party or attorney. My conclusions are based solely and exclusively on reading the "so-called" opinions of the State Supreme Court. And now, I bet they're hot under the collar about me.

Supreme Court of Ohio, Case No. 98-44 ; Versuslaw 1998.OH.101 (1998)

DON'T RELY ON LETTERS FROM THE OHIO JUDICIARY REPRESENTING THAT YOUR APPLICATION IS APPROVED

I am unable to ascertain how the Ohio judiciary can adopt such incredibly stringent standards, while it simultaneously and repeatedly continues to make so many embarrassing screw-ups of its own. This is another great case from a transparently, incompetent State Judiciary. The opinion's second paragraph reads:

> "In a letter . . . the **clerk's office notified applicant that he had been approved for admission** without examination and that he would be contacted by the assignment clerk regarding his presentation to the court in accordance with Gov. Bar R.I(9)(G)."

They approved his application for admission. Or did they? The next paragraph reads as follows:

> ". . . **prior to** applicant's presentation to the court and **administration of the oath of office as an attorney, the . . . Commissioners on Character and Fitness . . . decided to investigate** a report that applicant had permanently left the state of Ohio. . . ." [335]

So the guy moved his residence? What's the big deal? The Court concludes that he failed to notify the Supreme Court of his residence change and on that basis revokes approval of his admission. In so far as their letter indicating he had been approved, it would have to be construed at a minimum as "misleading."

87 Ohio St. 3d 122 (1999)

1999 was definitely a year in which the State Bars and Supreme Courts went irrationally berserk in cases involving the admissions process. This case is a good example.

The Applicant was denied admission by both the Bar and Supreme Court because his former girlfriend charged him with menacing, and theft of her cat. The charges were dropped. He also received two traffic citations in 1996 and one in 1997. He was also charged with trespassing by attempting to recover his automobile from a transmission shop, but no conviction resulted. Lastly, during a deposition he engaged in what the Court calls an "acrimonious colloquy with Judge . . . because she declined to allow his sixteen year old daughter to act as his assistant during the deposition." The Ohio Supreme Court writes one of its standard irrational opinions on Bar admission concluding as follows:

> "applicant is never to be admitted to the practice of law in Ohio." [336]

As the Courts tend to make more and more irrational statements, it is difficult to maintain any semblance of respect for them. My response to the Ohio Supreme Court's ridiculous assertion that the applicant is "never" to be admitted to the practice of law in Ohio is as follows:

> "The Ohio Supreme Court is never to have its opinions given any respect by the general public, until it stops conducting itself like chop-busting pricks."

87 OHIO ST. 3d 53 (1999); No. 99-506

IT'S THE OHIO SUPREME COURT THAT'S NOT "WORTHY"

I present this case for the State Supreme Court's use of one single term. The Bar and the Court deny admission, but give the Applicant permission to sit for the Bar exam in the year 2000. The Dissent would not even allow such permission in the future. The Dissent writes as follows:

> "The applicant cannot demonstrate he has the requisite fitness or moral character to uphold the high ethical standards required of this **worthy** profession." [337]

The term used was "worthy." As already discussed herein, it was the term used repeatedly in the 1930 issues of the Bar Examiner to promote racist notions of the Judiciary and State Bars. If the Dissent in this case, had simply used the phrase "honorable profession," or "learned profession," I would have just given my standard laugh of disbelief since no one in society believes the legal profession is anything other than scummy. However, by using the term "worthy," the Dissent has in many respects explained virtually every one of the contemptible Bar admission opinions of the Ohio Supreme Court. It all goes back to the early issues of The Bar Examiner magazine from the 1930s presented herein.

Supreme Court of Ohio, Case No. 98-1772 ; Versuslaw 1999.OH.42041 (1999)

THEY JUST BUSTED THIS GUY'S CHOPS AND TO DO SO, THEY HAD TO FALSELY CHARACTERIZE THE RECORD

In 1996, the Applicant who was approximately age 30 applied for admission to the Bar. After a personal interview, his admission was recommended for approval. Subsequently, the admissions committee received a letter from a backwoods, hick municipal Court Judge in West Virginia that asserted the Applicant had attempted to circumvent a driver's license suspension order when he was age 16 and age 19. The committee investigated further and determined that the Applicant had also failed to disclose he had been suspended from high school for fighting and was placed on probation by the juvenile court for such. His admission to the Bar was denied and he appealed.

On appeal, the Applicant contended that the past matters were "very remote" in time and that his omissions were inadvertent. He was absolutely correct. The piddly matters in question all occurred over ten years prior to his application, when he was just a rambunctious teenager. The Applicant also asserted that the West Virginia judge was conducting a vendetta against him, which appears to be quite correct. The Ohio Supreme Court denies admission by falsely characterizing the foregoing little piddly crap matters, as "serious omissions," and "false statements," indicating he lacks integrity.

The Ohio Supreme Court's false characterization of these matters reflects adversely on their moral character. The Bar admissions committee and State Supreme Court Justices were really nothing more than chop-busting, irrational jackasses. They should be “forever” banned from assessing the moral character of other individuals. [338]

Supreme Court of California, #S068704 (8/14/2000)

This case is a California case, not an Ohio case. It therefore probably belongs in the California section of this book, but I decided to make one exception and put it in the Ohio section. It demonstrates how arbitrary the admission decisions are and how the states are so different from each other. It is an unbelievable case. Try comparing it to the Ohio cases you've just read. It's like going from one end of the arbitrary spectrum to the other end of the arbitrary spectrum.

In this case, the State Bar hearing department of California recommended that the Applicant be admitted to the practice of law. The State Bar review department adopted the decision. Now the facts, which are nothing short of incredible, particularly considering that admission was recommended by the State Bar.

In 1975, the Applicant killed his sister and was convicted of voluntary manslaughter. In 1973, he pled guilty to forgery. He subsequently was convicted of forgery on two other occasions. In 1978, he pled guilty to reckless driving. Several months later in 1978, he pled no contest to another DUI. In 1981, he pled guilty to possession of heroin. In 1981, he also was convicted of another DUI. In 1990, he pled guilty to five misdemeanors including driving with a suspended license, and three counts of willfully violating a written promise to appear. In 1992, he pled guilty to three counts of willfully failing to pay traffic fines.

He had a total of 17 criminal convictions. On his Bar application, he disclosed only four of the 17 convictions. He failed to disclose 13 criminal convictions. Yet, the State Bar recommended that he be admitted. Try reconciling such a recommendation with the Applicants in the Ohio cases who were denied admission on piddly little matters. I conclude by noting that the California Supreme Court ultimately and admirably did <u>not</u> adopt the recommendation of the State Bar. The Applicant was not admitted. But how could the California State Bar possibly have recommended admission? There has to be a rational median between the irrational Ohio State Bar and the irrational California State Bar. [339]

OREGON

318 P.2d 907 (1957)

USURPATION OF THE U.S. SUPREME COURT

I have previously discussed the Konigsberg I and II cases at length in the section on U.S. Supreme Court cases herein. This remarkable Oregon case took place after the decision in Konigsberg I, but before the decision in Konigsberg II. The Oregon Supreme Court's decision is arguably in compliance with Konigsberg II, but irrefutably not in compliance with Konigsberg I. Since the Konigsberg II decision had not been rendered at this juncture, the Oregon Court's decision is particularly startling. While virtually all people familiar with State Bar admissions topics are familiar with the Konigsberg cases, few I believe are aware of this case. It is certainly an embarrassing opinion for the Oregon Supreme Court. The opinion states:

> ". . . On October 10, 1956, we rendered a decision in this case denying the petitioner's application for admission to the bar. . . . **On May 13, 1957, the Supreme Court of the United States, 353 U.S. 952 . . . granted certiorari and ordered :**
>
> > **"The judgment of the Supreme Court of Oregon is vacated and the case is remanded for reconsideration in light of Konigsberg v. State Bar of California . . .** and Schware v. Board of Bar Examiners of New Mexico. . . . **See also Brinkerhoff-Faris Trust & Sav. Co. v. Hill** . . . ."

The Oregon Court apparently was under the belief that it didn't need to obey the U.S. Supreme Court and discounts their Order by stating:

> "The case of Brinkerhoff-Faris Trust & Sav. Co. v. Hill, referred to in the Supreme Court's order, is not pertinent here."

Presumably, the U.S. Supreme Court included ***Brinkerhoff*** in their Order specifically because they were of the opinion it was pertinent. Otherwise, they wouldn't have included it in the Order. The Oregon Court's opinion closes as follows:

> "In the present instance the Supreme Court has not held that the decision heretofore rendered by us did in fact violate the petitioner's constitutional rights, but only that this was a question for our re-examination in the light of the Schware and Konigsberg cases. **The additional study we have given the case has been devoted solely to that issue, and has brought us to the conclusion that those decisions are not controlling here. We therefore adhere to our former opinion."** [340]

Stated simply, the Oregon Supreme Court pretty much told the U.S. Supreme Court to jack-off. If the ***Schware*** and ***Konigsberg*** opinions were not controlling, the U.S. Supreme Court would not have vacated the Oregon Court's decision and issued a direct Order for "reconsideration in light of ."

I do not dispute that the Oregon Court had a right to reach the same ultimate decision, IF it could substantiate such after considering the controlling cases. It is true that the U.S. Supreme Court remanded only for reconsideration in light of the those cases. I passionately contest the assertion however, that **"those decisions are not controlling here."** The facts of the ***Konigsberg*** case and this

Oregon case were remarkably similar. BOTH cases involved Bar Applicants who were purportedly members of the Communist Party. BOTH cases involved determining whether being a member of the Communist Party constituted advocating the forcible overthrow of the government. They were the most controlling cases in existence at the time.

The Oregon Court's statement that **"those decisions are not controlling here"** borders on irrational lunacy, particularly considering that their judgment was vacated and the U.S. Supreme Court's Order specifically cited the controlling cases. The bottom line is that the Oregon Court didn't like the result in the *Schware* and *Konigsberg* decisions and through the use of legal sophistry "evaded" them, and in their opinion "misled" the reader. It is a blatant example of a State Supreme Court "lacking candor" in addressing the direct Order of the U.S. Supreme Court. What would happen if citizens adopted the modus operandi exhibited by the Oregon Supreme Court in this case? The following hypothetical demonstrates:

> "Uh, excuse me, your honor, the Court's order is not controlling here and I therefore decided to ignore it."

What if prosecutors and trial court Judges adopted the modus operandi exhibited by the Oregon Supreme Court in this case? The following hypothetical:

> Prosecutor : Uh, excuse me, your honor, the Oregon Supreme Court's opinion addressing the same type of fact set as in this case, and addressing a virtually identical issue of law, and notwithstanding the fact they have directly issued an Order to you to consider, we can determine to be not controlling in this case through the use of legal sophistry and warped logic.
>
> Judge : Sounds good to me, Mr. Prosecutor. We'll ignore it and do what we want.
>
> Prosecutor : Thank you, your honor. Now, about these legislative statutes that are cramping my style. . . .

383 P.2d 388 (1963)

RIGHT DECISION. WRONG REASON

The Applicant was 34 years old and born in 1946. His parents had immigrated from the Poland-Austria area of Eastern Europe. He was honorably discharged from the U.S. Navy in 1947. He joined the Communist Party in 1949 and worked in the garment industry until 1953. He then became a longshoremen to further assist the Party. In 1957, he resigned from the Party and came to Oregon. His activities in the Communist Party included the following:

1. Attending Party meetings
2. Participating in support of candidates for public office endorsed by the Party
3. Picketing in front of the White House with respect to the Rosenberg convictions
4. Dissemination of Party sponsored literature and leaflets.

The Applicant testified that he understood the Party's position with respect to force and violence. He understood and subscribed to the position that force would be justified if a capitalistic minority resisted the efforts and frustrated the will of the majority to establish socialism. During the admissions process, he was requested by the Bar to disclose the names of any person familiar with his activities while in the Party. He refused.

He admitted that when answering a direct question under oath by the Waterfront Commission of New York, he knowingly gave false information regarding his membership in the Communist Party in order to obtain access to the New York waterfront area. In his application to the Northwestern College of Law he failed to disclose his Communist Party affiliation. He admitted during the Bar Hearings that a candid response on his law school application, would have required disclosure of his Communist Party affiliation and activities. He gave as his reason for nondisclosure, the desire to establish himself and make a new life without disclosing his past. He had also filed an application with Brooklyn Law School which included the following question:

> **"Has there been any incident in your life** which might jeopardize the recommendation by the Committee on Character and Fitness for your admission to the Bar ? . . . If so, briefly state the facts."

During the Oregon Bar Hearings, he admitted that he probably answered the above question "No" and further that he thought he falsified his application to New York University by failing to disclose his Communist Party affiliation. Here is an interesting quote from the opinion:

> "The first disclosure made by <Applicant> to anyone in Oregon of his past Party membership was to <Lawyer>, one of the partners in the firm by whom he was employed. It was made in the spring of 1959. . . .<Lawyer> . . . testified that as he became better acquainted with <Applicant>, he became somewhat suspicious of his background and thought there was a good chance it included affiliation with Communism. . . ."

Six members of the Board were of the opinion that he should not be admitted and three members were of the opinion that he should. The Court ADMITS the Applicant. The Court's reasoning is as follows:

> "The record clearly discloses misconduct which would be sufficient to disqualify a person for membership in the Oregon State Bar. The falsification of the application for a dock pass would, in itself, be sufficient to justify disqualification for such membership. <Applicant> concedes as much. But he takes the position that his moral delinquency in this respect grew out of his acceptance of communist doctrine . . . and that he is no longer subject to this deluding influence of communism.
>
> . . .
>
> **Although his initial failure to disclose the information was improper, we feel that in light of his subsequent forthrightness in voluntarily disclosing the information there was no intent to practice deception in gaining admission to the bar.**
>
> . . .
>
> We are convinced that <Applicant> is free from the Communist influences which distorted his moral judgment and that he is now a person of good moral character. Having passed the bar examination he is eligible for admission to the Oregon State Bar upon filing the prescribed oath."

The Dissent makes an important comment on the issue of disclosure as follows:

> "In fact, petitioner did not at any time voluntarily make a clean breast of his hidden activities. It was not until a member of the law firm by which petitioner was employed confronted him with a direct question which could not be evaded that petitioner finally disclosed that he had been a communist." [341]

This is an important case on the issue of disclosure. The majority rules in favor of the Applicant on the ground that there was no intent to deceive. The Dissent's point however, cuts into the heart of that argument and counteracts. I do not agree with the majority that there was no intent to deceive. I would nevertheless rule in favor of admission, on the ground that the questions at issue were unconstitutional, and as a result the Applicant's answers were immaterial. Substantial case law supports the premise that inquiries pertaining to membership in a political party, or statements of political belief are not constitutional.

The Court's ultimate decision is correct. It's reasoning supporting that decision however, is incorrect. If one accepts the majority's reasoning, and further accepts that the question was constitutional (which as indicated I do not) it gives rise to a precedent concerning the answering of Bar admission questions that can be summarized as follows:

> "Falsely answering under oath, a constitutionally valid question, is not in and of itself a conclusive ground under which to deny admission to the Oregon State Bar."

Yet, militating against such a conclusion from the majority's holding is their express statement that:

> "The record clearly discloses misconduct which would be sufficient to disqualify a person for membership in the Oregon State Bar."

I submit the latter of the two statements above, is therefore inconsistent with the reasoning used by the majority. Such being the case, I further surmise that the majority was aware the questions were constitutionally invalid, but simply wanted to avoid that issue. The end result being, they reach the correct conclusion in an illogical manner.

425 P.2d 763 (1967)

THE LAW LIBRARY BOOK HEIST??

The Applicant was denied admission to the Oregon Bar based on petty matters. He was admitted to the New Mexico Bar in 1957. The Oregon Board recommended that his application be denied pending a full-scale "adversary hearing" if requested by him. The matters at issue involved 12 charges of alleged misconduct while he was practicing law in New Mexico. The opinion by virtue of its "nondisclosure" on the topic appears to indicate that he was not suspended or disbarred by the New Mexico with respect to these matters. I surmise this based on the fact that if he was suspended or disbarred in New Mexico, the disclosure of such in the opinion, would lend substantial support to the Oregon Court's determination to deny admission, which is a questionable determination at best.

The misconduct issues concerned writing a few NSF checks, failing to return some library books, and not paying some of his debts. In addition, the opinion mentions that when he left New Mexico, he took some files with him and didn't return them until threatened with legal action by a Judge. Ultimately, he did return them and nothing more came of the matter. There is no mention in the opinion that he was ever arrested or prosecuted with respect to the foregoing matters. [342]

The Court denied admission. I would admit him. The matters apparently didn't result in any criminal charges, or any suspension or disbarment by the New Mexico Bar. They sound fairly petty in nature, particularly the library book issue which is a bit ridiculous to even include in the opinion. Most importantly however, unless the Oregon Bar has ethical rules in place requiring its licensed attorneys to pay their debts, return library books, etc., they are simply in no position to require such of the Applicant. To do so, makes them appear hypocritical by requiring the Non-Oregon Attorney Applicant to be held to a higher standard of conduct than the licensed Oregon attorney.

An obvious Equal Protection Clause violation.

541 P.2d 1400 (1975)

THE EMOTIONALLY IMMATURE JUDICIAL PSYCHOLOGISTS

The Applicant passed the Bar exam in 1973. The Oregon State Bar filed objections to his admission and a Hearing was held. The Committee then unanimously recommended admission. Neither the Applicant or the Bar argued or submitted briefs to the Supreme Court. Question 16(b) of the application inquired:

> "Have you ever been accused of, charged with, or arrested or detained for, the violation of any state, federal, municipal or other law, statute or ordinance, including juvenile or expunged offenses?"

The Applicant failed to disclose three citations for driving with a suspended license. After appearing in court where the driving while suspended citations were pending, there was apparently a covert communication from someone to the Bar. The opinion states:

> ". . . the Board of Bar Examiners, which had received letters from two sources suggesting a check of applicant's moral qualifications."

The Applicant's explanation was that he did not realize the question solicited this kind of information. I do not agree with the Applicant. The question definitely incorporated traffic offenses by virtue of the phrase:

> "accused of, charged with . . . the violation of any state . . . statute or ordinance"

Rather instead, his argument should have been that the question was constitutionally infirm in violation of the First Amendment, due to the fact that it suffered from overbreadth by encompassing matters not related to one's fitness to practice law, such as traffic offenses. In addition, the question violated the Equal Protection Clause by making inquiry of Applicants which is not required of licensed attorneys. The Committee determined that his omission was not sufficient to represent a lack of good character. A good decision on their part. The Supreme Court did not agree. A stupid decision on their part. The Applicant also had financial difficulties and was divorced. The Court apparently was displeased with the circumstances of his first marriage and divorce, even though consideration of such was inappropriate. The opinion states:

> "Subsequent to his divorce he married the woman who was the cause of his **defection** from his first marriage . . . ."

He did disclose that he was arrested at age 19 on a charge of "minor in possession of beer." Apparently, he was not convicted. Both the Committee and Court are of the opinion that matter was not significant. The Court's conclusion states:

> "We receive from the evidence an impression that the applicant is an **emotionally immature** individual and that he has developed a pattern of avoiding as long as possible any problem or stressful situation rather than trying to cope with or solve it. **He does not outright lie** about such matters when questioned, **but he is inclined to attempt to pass them off with glib, equivocal answers which put him in the best light. . . .**" [343]

The Court remands the matter back to the Board, with instructions that if after further investigation no other matters are found, he should be admitted. I would have admitted him immediately. The Court's comments are inappropriate. They smack of governmental paternalism. The admissions process should assess character on the basis of one's acts and conduct, not their attitude. The Court thinks the Applicant is "emotionally immature?" Do the Judge's have degrees in law or psychology?

The Court thinks the Applicant has a "pattern of avoiding as long as possible any problem?" Well, then the Applicant should probably be a Judge. The Court says the Applicant does not "outright lie." Good. I agree. So, admit him immediately. The Court states with disapproval that the Applicant gives "glib" answers. Too bad, if they don't like the fact that he's "glib," they'll just have to adjust. The Court says the Applicant gives "equivocal answers which put him in the best light." He'll make a great attorney!

533 P.2d 810 (1975)

STATE BARS SHOULDN'T MESS WITH CPAs

The Oregon State Bar denied admission to the Applicant who was a Certified Public Accountant, on character grounds. On his application, he did not disclose an arrest for an NSF check in 1964. No criminal charges were filed. He did disclose numerous arrests related to intoxication from 1964 to 1968. He testified that he just forgot about the NSF check arrest. It had occurred over 10 years prior to the Court's opinion. As a CPA, he wrote promotional letters to attorneys offering his services as a tax consultant. He received a warning letter from the State Board of Accountancy that such promotion was an improper solicitation of business. No formal hearing was held and no formal charges were ever filed.

The Oregon State Bar denied admission. The Court rules against the Bar and in favor of the Applicant. In my view, there is not even a scintilla of doubt that he should be admitted. It's not even a faintly close call.

What if the Applicant hadn't appealed though? He would not have been admitted, obviously. The Oregon State Bar succeeded in unjustly delaying his admission and causing him to incur significant expense. This guy had one undisclosed arrest on a fairly, minor matter. Not only wasn't he convicted, but charges were never even filed. It's a nullity. The improper business solicitation issue also resulted in no charges and no hearings. As a side-note on that issue, it is noteworthy that what the Board of Accountancy "warned" him about was later determined universally by Courts nationwide, including the U.S. Supreme Court, to be an unconstitutional prohibition of commercial speech. The bottom line is that he was fully within his legal rights on that point. [344] The Bar cost this man time and trouble for no valid reason, by abrogating their duty to fairly assess his conduct.

610 P.2d 270 (1980)

IT IS PATENTLY CLEAR

The Applicant was denied admission on character grounds related to his divorce and child custody dispute. This case is a great example of the State Bar sticking its nose where it doesn't belong. The Applicant's marriage broke up in 1978, while he was a 43 year old third-year law student. During the course of the proceedings, he made several accusations against lawyers and judges. The Court characterized them as "false" accusations, but provided no factual support for its' conclusion which must therefore be discounted as meritless.

It is noteworthy, that while the Bar and Court were quite eager to use his divorce proceedings as grounds for denying admission, they were not so eager to disclose the content of the allegations he made. It appears to be an attempt by the Court to "mislead" the reader of the opinion by "failing to disclose," "material" matters that evidences a "lack of candor" on their part. The first allegation against the Applicant was that he took his 3 ½ year old son to California, in violation of an Order awarding temporary custody to the mother. Three weeks later he was apprehended and convicted in Oregon of custodial interference. He was also held in contempt. The second allegation was that he committed perjury, related to property dispositions during the course of the dissolution proceedings. The Court's opinion characterizes it as follows:

> "Upon being ordered to answer, **he stated that he did not remember** the identity of the friends to whom he had given possession of the property. **In fact he did remember**."

The opinion further states:

> "The applicant attempts to morally justify his conduct: **his custodial interference, he asserts, was out of love for his son**: his perjury was to protect his friends from harassment. His justification, however, is simply an admission that the applicant believes it morally correct to obey a higher personal ethic than to conform his behavior to the law and to order of court. Applicant's belief directly undermines his ability to represent and advise clients, particularly in situations of stress and emotional conflict.
> **. . .**
> Regarding custodial coercion, applicant testified that he is familiar with Oregon cases in which custody has been changed, but indicates that he would nevertheless again, in a similar situation, resort to self-help rather than adjudication. For example, he testified:
>
> > **"And our Oregon courts are full of cases . . . where they have changed custody on what would appear to be less than really sound reasons. And the change of custody is harmful. . . . It's not fear of the law, or desire to be admitted to the Bar, that keeps me from taking him again. Because I don't fear that. I don't want to be admitted to the Bar so badly that if I felt my son was being mistreated and abused by my wife, ex-wife, I would not take him again. If I were informed and had reason to believe that she was doing something to him that was so harmful to him that a change of custody would be better for him than the evil she was doing, then I would take him."**

The Court's response to the above is:

> "It is patently clear that the applicant still has no understanding of the legal or moral implications of his extra-legal conduct." [345]

This author's response to the Court's statement is straightforward:

> "It is patently clear that the Oregon Judiciary and State Supreme Court have no understanding of the legal, moral or practical implications of their insistence on including matters pertaining to highly emotional child custody proceedings in a Bar admission proceeding; nor a proper understanding of the legal, moral and practical implications of their child custody laws and related court opinions. This must obviously be viewed as a deficiency in their character and indicative of their diminished mental capacities."

647 P.2d 462 (1982)

JUST ANOTHER TRANSPARENT JUDICIAL SHELL GAME

The Applicant passed the Bar exam in 1980, but was denied admission on character grounds. In 1977, while a first semester law student, he was arrested at a Salem department store and charged with theft. The charge was dismissed. The Board decided that the arrest was not a valid objection to his admission, relying primarily and correctly on the fact that the case was dismissed. The Court, apparently lacking confidence in the trial court that dismissed the case disagreed, stating:

> **"Applicant contends that the dismissal of the charge forecloses any further consideration of the incident against him. Of course, an arrest or a charge ending in dismissal does not establish that the accused committed the prohibited act. . . . As the United States Supreme Court has said :**
>
> > **"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 an offense." Schware v. Board of Bar Examiners, 353 U.S. 232, 241 . . . (1957)**

The Oregon Court addresses the <u>*Schware*</u> quote as follows:

> "On the other hand, **dismissal does not preclude inquiry to ascertain whether an offense was committed.** We recently considered a similar question in a proceeding concerning the conduct of a judge. . . . The judge argued that the dismissal precluded our consideration of the charges. We rejected this contention, concluding that it was **our duty to determine whether or not the accused had violated the law, regardless of whether criminal charges had been filed.**
> . . .
> Similarly, in this case, the trial court's dismissal of the charges in no way bars our examination of the underlying events.

The Court then goes on to determine that the Applicant did commit the theft. It also holds that acquittal in a criminal action is not "res judicata" in a Bar admissions case because the scope and purpose of the inquiry is different. The problem with the Court's reasoning is that it perverts the U.S. Supreme Court's holding in <u>*Schware*</u>. The U.S. Supreme Court did not simply say in <u>*Schware*</u> that an arrest does not prove misconduct. They said much more. They said an arrest is of:

"very little, if any, probative value"

Why impose a requirement of disclosing something that is of "very little, if any, probative value?" It is not **rational** to make an inquiry that is of very little or no probative value. There must be an ulterior motive. The professed reason given by the Court for requiring such disclosure is:

"to ascertain whether an offense was committed."

The Oregon Court has used word manipulation to circumvent the <u>*Schware*</u> opinion. They've created a circular camouflage of logic. <u>*Schware*</u> does not say <u>simply</u> that the arrest is of little probative

value. The opinion says it is of "**very little**," **"if any,"** probative value. The U.S. Supreme Court was strongly suggesting that the arrest may be of no probative value whatsoever. The fact is that State Bars include the "arrest" question on their application specifically because they believe disclosure of the arrest to be of "highly probative value."

They facially agree as a matter of form, that the arrest is of "very little probative value," but then contend that it can lead them to information that is of "highly probative value." That's nothing more than a game. **They are using a question expressly determined by the U.S. Supreme Court to be of "very little, if any probative value" specifically because they consider it to be of highly probative value.** They consider the existence of an arrest to be an essential factor in determining whether an offense was committed. Why not include a question on the application simply inquiring whether an Applicant has violated any laws, instead of asking about arrests? Let us hypothetically presume an application makes such a rudimentary inquiry as follows:

"Have you ever violated any law that has not resulted in a criminal charge, arrest or conviction?"

Would the question be constitutional? Not a chance. It would be impossible to answer. The honest and truthful answer would have to be, "I don't know." On the other hand, if the State Bar asks about violations of the law, at least they'd be getting to the heart of determining whether an offense was committed. When they inquire about arrests however, *Schware* mandates that the Bar treat the answer as having "very little, if any probative value" as to whether an offense was committed. The difference between the two questions is that an Applicant lacks sufficient knowledge to answer the former question, but the answer to the latter question, is as a matter of case precedent, of minimal probative value at best.

Two closing points on the arrest question. When the Bar or State Supreme Court finds someone committed a criminal offense even though the prosecution was dismissed, they are demonstrating an immense lack of faith and confidence in their own State trial courts. It is an inescapable conclusion that each time a State Bar independently reviews the facts and concludes an offense was committed in a case that was dismissed, they are simultaneously concluding that the justice system failed because a guilty person was not held accountable. Such being the case, the obvious conclusion comes back to the fact that the Courts are not doing their job properly. Why should the public have more faith in a State Judiciary with respect to Bar admissions, than with respect to criminal prosecutions? Determine it in Court once, and then the matter is done. Otherwise, the State Bars are exhibiting:

"very little, if any, faith and confidence in trial court judges"

Then of course there is the fantasy that one is "innocent until proven guilty," which doesn't exactly seem to fit in with State Bar consideration of mere arrests. Perhaps, it should read with respect to Bar applications:

"innocent or guilty depending on whether the State Bar likes your attitude and demeanor"

The opinion states in reference to testimony given by the Applicant:

> ". . . The applicant is intelligent, articulate, has graduated from law school, passed the Bar exam his first try . . . . The applicant wanted to muddle and confuse the record with a long-winded statement saying nothing and succeeded in doing so."

Assuming arguendo, that the above passage is accurate, my response is that the Applicant obviously possesses the qualifications to be not only a licensed attorney, but also an Oregon Judge. In 1975, seven years prior to the Court's opinion, the Applicant discharged $ 2400 in student loans. The Court states:

> "BANKRUPTCY
>
> The fact that petitioner filed for bankruptcy, standing alone, is not a factor which we consider in determining his moral fitness. **The bankruptcy statutes prevent a rule which would preclude applicant's admission to the Bar solely because he declared bankruptcy.** However, an applicant's handling of financial affairs is regularly considered in determining moral fitness. . . . **The bankruptcy statutes do not prohibit examination of the circumstances surrounding bankruptcy**, as these circumstances illustrate an applicant's judgment in handling serious obligations.
>
> The Supreme Court of Minnesota recently considered the application for admission of a person who had discharged student loans in bankruptcy. . . .
> . . .
> **Applicant had a legal right to discharge his student loans in bankruptcy as he did, and our decision herein is not based on his exercise of that right. The circumstances of his bankruptcy, however, show a selfish exercise of legal rights and a disregard of moral responsibilities.** The bankruptcy statutes prescribe only the criteria needed to discharge debts; they do not say what is required to demonstrate good moral character. . . ."

I have previously addressed in the Minnesota case, the manner in which the Courts attempt to mislead the public regarding their inquiries into bankruptcy, and see no need to repeat that analysis at length here. Succinctly stated, they do precisely what the bankruptcy statutes and U.S. Supreme Court has determined to be illegal and unconstitutional. They deny a law license on the basis of the bankruptcy. The Oregon Supreme Court opinion cited above, states in part:

> "Applicant had a legal right to discharge his student loans in bankruptcy as he did, and **our decision herein is not based on his exercise of that right. . . ."** [346]

The Oregon Court however, made an unusually careless error in this case that exposed their hand. It was like a burglar leaving his tools at the scene of a crime. It was a slip-up that I believe proves they are in fact basing their decision precisely on the "exercise of that right." It's also so incredibly simple, that it's unbelievable. Take a look at the very beginning (the first word in fact) of the lengthy citation of the Court's opinion that I have included above. **The very first word above, in capital letters, is the word, "BANKRUPTCY." It is the heading used by the Court itself, to lead off the discussion of this part of the opinion. They say it expressly. The issue is specifically the "BANKRUPTCY."**

How they could have been so stupid to do that when writing the opinion is admittedly beyond me. Once they head the section up, in capital letters with the word BANKRUPTCY, how can they possibly expect anyone to believe they are basing their opinion on anything else?

The facts demonstrate that the Court said one thing, but meant another. They were "misleading," "evasive," "omitted to disclose," "material" information with an "intent to deceive." And then they screwed up doing it. The Applicant was denied admission. He was never convicted of any crime. He had an arrest on a charge that was dismissed and a bankruptcy.

670 P.2d 1012 (1983)

HE CAN KEEP THE BOOKS WHERE HE WANTS.
THE "APPEARANCE" OF PRACTICING LAW??

This case involves a disciplinary action in which the lawyer was suspended for one year. He was a sole practitioner. He applied for reinstatement which was denied because he allegedly engaged in the unauthorized practice of law during the period of suspension. The following was included in the findings of fact adopted by the Disciplinary Board as evidence of professional misconduct:

"(3) Retaining his desk and books at his former office location;"

That seems kind of ridiculous. How can the Bar be so stupid as to fault the guy for keeping his desk and books at his former office location? He can keep his books and desk where he wants. They look like idiots. The opinion states:

> "The Trial Board also heard testimony regarding other activities giving the appearance of the practice of law."

Determining whether someone has engaged in the practice of law has been an area of heated dispute for decades, ever since the 1930s when UPL rules designed to foster the anticompetitive interests of the Bar were enacted. Now, the Oregon Court has this concept called, the "appearance" of the practice of law. What if a person wears a suit? Does that constitute the "appearance" of practicing law? Frankly speaking, it would probably be a slam dunk if the person wears a suit and tells a lie. If he acts like a Jackass, would that constitute the "appearance of being an Oregon Trial Court Judge?" The opinion further states:

> "Petitioner contends throughout these proceedings that neither the Bar nor this court has given guidelines to suspended attorneys on what action they should take regarding their clients upon suspension. . . ."

The Court then cites an ABA policy statement to support its' determination. Ultimately, the Court demonstrates the weakness and illogic of its' position by stating:

> "We are in agreement with this policy statement and **in the future** we will apply the American Bar Association's suggestion that our decisions direct suspended lawyers to take appropriate action to notify clients and counsel of a suspension."

By holding that they will comply with the ABA policy statement, "in the future" they have essentially conceded their own failure to render guidance with respect to the "present." Notwithstanding their tacit confession of failing to provide guidance, the Oregon Supreme Court denies reinstatement. It's totally irrational. They first admit that they don't have the necessary rules in place, and then they fault the guy for being a victim of their incompetence. The following sentence further demonstrates the irrationality of the Court when the economic protectionist interests of the profession are at stake. It is in reference to a suspended practitioner's telephone line:

> "We recognize it is often impossible to have a telephone directory listing changed, particularly where the suspension is for a shorter period. However, in the case of a sole practitioner it is **possible to have the service temporarily disconnected,** reserving the same number for later use, . . ."

The Court is way out of line to suggest that a suspended attorney has a legal duty to disconnect their telephone line. It then states:

> **"The degree of truthfulness expected from a lawyer is higher than that expected from others."** [347]

WHOAAA!!! Did I read that right? If that's the case, then why is it that Applicants have to disclose information pertaining to debts, civil suits, child custody proceedings, and the like, even though licensed attorneys do not have to do so? A person could be a licensed attorney for 20 years and the Bar wouldn't know squat about their debts, civil suits, etc.. If the degree of truthfulness from a lawyer is higher than that expected from others, then why is the burden of proof in a disciplinary proceeding on the Bar, while the burden of proof in an admission proceeding is on the Non-attorney Applicant??? The Court's statement was "misleading," and "lacking in candor."

754 P.2d 905 (1988)

NO OUTSTANDING CHECKS, BUT THE CASE DOESN'T RECONCILE

In the mid 1970s while a teenager, the Applicant started to smoke marijuana and then began selling it. He was arrested and charged with possession of marijuana with intent to sell. He pled guilty and was sentenced to six months in jail in 1976.

In 1977, he was arrested for breaking a glass door in the Student Union in his college and pled no contest. He sold marijuana and amphetamines on a regular basis in 1977. He pled no contest to related charges in 1977. He graduated from the University of Oregon in 1981. That same year, he pled guilty to possession of cocaine. He entered law school in 1983 and continued to smoke marijuana until 1984, at which time he stopped.

The opinion indicates that he had at least four serious criminal convictions, aggravated by numerous violations of probation. After denying admission to the Applicants described in the preceding cases for reasons such as filing bankruptcy, traffic violations, not paying debts, being arrested once even though the case was dismissed, and trying to be a good father, now the Oregon Supreme Court admits a guy with four serious felony convictions.

Frankly speaking, I would be inclined to admit this Applicant also. But that is consistent with my view in the prior cases. The Oregon Supreme Court's admission of the Applicant in this case, is wholly inconsistent with their opinions in the prior cases. Something smelled bad to me when I read the basic facts of this case. And then, I read the portion of the opinion that really explained why he got in. The portion of the opinion that demonstrates how the Bar admission process is predicated not on what a person has done, but rather on who they know. The opinion states:

> "Applicant offered several letters of reference to the Bar from people who have known him in various capacities. . . . **One was written by Robert J. Huckleberry, who is currently a district court judge and who represented applicant in his 1981 criminal case**. . . . This statement from someone who knew applicant when he was still getting in trouble is important."

The Court "misleads" the reader. The fact that the statement came from someone who knew the Applicant when he was getting in trouble was not the focal point. It was the fact that the statement came from a district court judge that was determinative. So there's the key to be admitting into the Bar. If you commit crimes, make sure you hire an attorney who will one day be a Judge. You are then home free!! The Court also states:

> **"Another letter was written by a law professor, who is applicant's father-in-law."** [348]

I submit there is no possible way to reconcile granting admission to this Applicant, while denying admission to Applicants in the prior cases with significantly cleaner records. I would have admitted them all. Oregon Judges, ya gotta admit, you're looking pretty bad here, Baby!!

782 P.2d 421 (1989)

MY LOVELY MARION COUNTY

This is a reinstatement case. The Applicant was admitted to the practice of law in 1957. He served as the Marion County District Attorney from 1965 to 1980. In 1980, he was charged with three counts of first degree theft, two counts of tampering with public records, two counts of unsworn falsification, and one count of first degree official misconduct while a District Attorney. A jury found him guilty on all eight counts. His convictions were affirmed on appeal and he was suspended from the practice of law. In 1987, he petitioned for reinstatement. The Bar filed a Statement of Objections and the trial panel ruled against him. In May, 1989 he filed a Petition for Modification of the Panel Decision requesting reinstatement. The Oregon Supreme Court's opinion states:

> "The trial panel concluded and we agree with its conclusion that:
>
> **"<Applicant> believes he was wrongly charged and convicted of the felony."**
>
> Applicant states that he does not believe he is guilty of the crimes for which he is convicted. He argues that **it would not make him a better lawyer or demonstrate better character to acknowledge "a degree of guilt he did not truly feel or believe."** He states that the record is not clear how much money he used illegally. He offers letters from "experts in fiscal accounting and audits," apparently to persuade us that his 1980 jury convictions were wrongful or to minimize the extent of his crimes or both. . . .**He also argues that he has grounds for post-conviction relief "because his trial attorney was unprepared and did not even appear on every day of the trial.**
> **. . .**
> We find instructive the comments of the trial judge who sentenced applicant in 1980. . . . :
>
> > "the trial judge stated that this was not simply a case of theft and it was not simply a case of theft by a person who happened to be in a public office . . . it's a case of theft of government funds . . . . And his office was the chief law enforcement office of Marion County."

The opinion later states:

> **"A circuit judge states that, . . . the judge does not feel that applicant was guilty of the crimes of which he was convicted. Another circuit judge states that applicant's conviction was an "aberration." He feels that people were surprised when applicant was convicted and that, "perhaps all the evidence did not come out."** . . . A third circuit judge, without commenting on applicant's 1980 convictions, also supports reinstatement. An attorney who has known applicant for many years states that he does not believe that applicant was guilty and that applicant has expressed remorse. . . . A third attorney opines that there is a basis for applicant's post-conviction claim of **ineffective assistance of trial counsel in 1980."**

Footnote 7 of the opinion states:

> "Applicant contended that 1980 summary suspension violated due process, equal protection and separation of powers under the state and federal constitutions; that the **trial panel was biased** and employed the wrong standard in evaluating his evidence of rehabilitation; . . . .
>
> In July, 1988, applicant filed a petition for post conviction relief alleging that he was denied effective assistance of counsel in the 1980 criminal proceedings because: **his trial attorney failed or neglected to adequately prepare for trial, investigate the charges, interview and use available witnesses, use available records and documents in applicant's defense, challenge the prosecution's records "now known to be erroneous and false," complete discovery, and obtain required and needed documents prior to trial. . . ."**

Footnote 8 states:

> **". . . a key witness against applicant at his 1980 criminal trial, was herself convicted in 1982 of embezzlement . . . from the Marion County Juvenile Department**. **She was also convicted in 1988 in Douglas County of Theft in the First Degree** and was sentenced to five-years bench probation. . . ." [349]

I am undecided whether I would grant reinstatement. The existence of a criminal conviction is generally the benchmark I use, and that militates strongly against reinstatement. It is not however, totally conclusive on the issue. Two points merit consideration.

First, if one is convicted by a jury, should they even be allowed to assert innocence in a Bar admission proceeding? Second, does an assertion of innocence in light of a conviction constitute bad character in and of itself? My position is as follows. The assertion of innocence, even in light of a conviction, cannot fairly be deemed to constitute bad character. To do so, is inimical to American values and traditions. The Applicant should be allowed to assert innocence without fear of reprisal. The assertion however, should be given minimal weight, in the absence of substantial corroborating evidence. This stance is in accordance with the Massachusetts case of Alger Hiss previously discussed.

Note my use of the phrase, "minimal weight in the absence of substantial corroborating evidence." The facts in this case are disturbing and the whole thing does sound a bit fishy. It doesn't sit well with me that the key witness who testified against him, was herself later convicted of embezzlement. On the issue of ineffective assistance of counsel, I concede that most people convicted of crimes assert ineffective assistance of counsel. It is particularly interesting that the same Judges and Attorneys who regularly discount such claims as meritless while in office, tend to treat such claims a bit more seriously when they are the Defendant.

As to whether I would grant reinstatement, I am unable to decide without having the entire record before me. The conviction does sound fishy though.

319 Or. 172 (1994)

I present this case for one purpose only. Footnote 13 of the Court's opinion states:

"However, my research indicates that this court has never reinstated a lawyer after disbarment." [350]

If the foregoing statement was true, well then, that's just crap. I simply don't believe that in the entire history of the State of Oregon there was never a disbarred attorney who demonstrated sufficient reformation to warrant reinstatement.

838 P.2d 54 (1992)

THIS IS, THAT WOULD BE

Try reconciling this case with **754 P.2d 905 (1988)** where the Applicant with at least four serious criminal convictions, who knew a Judge and whose relative was a law professor, was admitted. The Applicant in this case, allegedly impersonated a State Senator during the course of a telephone call. The operative term is "allegedly."

The Applicant had applied for a credit card. The credit card company called where he was working to verify employment. Someone verified his employment representing themselves as the Senator. A co-employee of the Applicant testified that she saw him with a phone in his hand and he said:

"Yes, **this is** Senator . . . ."

The Applicant testified that the co-worker misunderstood what had occurred. His version was that someone else impersonated the Senator and the co-worker only witnessed a phone conversation where he said the Senator's name, but did not represent himself to be the Senator. Instead of the words "this is," the Applicant said the words he used were, "that would be" as in:

"Yes, **that would be** Senator . . ." [351]

The Applicant's position was that the evidence associating him with an impersonation gave rise to no more than a mere suspicion. He was never arrested, or charged with any crime related to this matter. The foregoing incident was the only matter causing him to be denied admission. The opinion makes no reference to any other type of negative information, such as arrests, convictions, debts, bankruptcies, civil suits. He was denied admission, in the face of what appears to be an otherwise absolutely immaculate record. The incident occurred in 1990 and the Court's opinion was issued in 1992. If he committed a crime, he should have been prosecuted. The situation is nothing more than a "he said," "she said" scenario. He definitely should have been admitted.

More importantly, how can the Court rationally justify denying admission to this Applicant, when it admitted the Applicant in **754 P.2d 905 (1988)** with at least four criminal convictions and probation violations. Oh wait, that guy knew a Judge.

856 P.2d 311 (1993)

ARE CRIMINAL PROSECUTIONS HANDLED THE SAME WAY?

Remember again the Applicant with at least four convictions in **754 P.2d 905 (1988)** who knew a Judge, and had a father in law that was a law professor. That Applicant was admitted. Compare that case with this one. The Applicant in this case, based on facts in the opinion appears to have had no criminal convictions, arrests, past due debts, or civil suits. He did however, while a Nonattorney purportedly encroach on the economic interests of the State Bar. And more importantly they didn't like his attitude. No bad acts, just what they perceived to be a bad attitude. It's worse than a criminal conviction in their irrational, petty, judicial minds. The problems apparently started when the Applicant was questioned by the Board about an insurance claim that he submitted for equipment stolen from his apartment. The Board believed the insurance claim might have been improper, but they had no concrete evidence. The opinion states:

> "In conclusion, the Board was very troubled by <Applicant's> conduct in connection with the . . . insurance claim and his explanations and answers to questions regarding that conduct. The Board felt that simply was not candid and forthcoming in his testimony and that there was far more to these transactions and events than he was admitting. We found that some of his explanations for events, **rather than revealing an eccentric personality, were both irrational and in conflict with other traits or behavior <that Applicant> exhibited, and thus incredible.** We also felt that his consistent reliance on excuses such as "sloppiness", "carelessness, . . . and **"personality conflicts"** was designed to prevent the complete and accurate explanation for his conduct. . . .
>
> . . . While the **Board is not necessarily convinced that <Applicant> attempted to defraud** the insurance company, we are left with substantial doubts about his . . . respect for the rights of others. . . ."

Cutting through the Court's basic baloney, it is clear the only problem in this case was that they didn't like the Applicant's attitude. The Court's dilemma was that they didn't have a single shred of factual evidence to hang their hat on. So they made something out of nothing as the next passage indicates:

> "In the interim . . . , Applicant assisted members of the . . . family, who were in the midst of a legal dispute dealing with a conservatorship . . . . Bar . . . claimed that Applicant had been engaged in the unauthorized practice of law by helping . . . .
>
> Applicant attempted to refute the Bar's claims. . . .He also testified that neither he nor the members of the . . . family understood that he was engaging in the practice of law. Applicant offered the testimony of several persons who testified that he was trustworthy and of good moral character."

The Court addresses the matters as follows:

> ". . . **The actions were taken in an honest desire to help a friend**. . . .But the actions raise a concern that Applicant does not feel bound by the code of conduct he would be expected to uphold as an attorney.
>
> Whether Applicant intended to commit insurance fraud is **not certain.**
> . . .
> Applicant also argues that it is **unconstitutional to place the burden on him to prove** that he is of good moral character. . . . we are not persuaded by Applicant's argument. . . .
>
> Applicant is denied admission. . . ." [352]

This is their idea of a fair admissions process. Admit the Applicant with four serious criminal convictions who knows a Judge and deny admission to an Applicant who helped a friend, even though he has no convictions, arrests etc.. To justify such hypocrisy, they irrationally defame the Applicant's integrity even though they voluntarily confess that they are "not certain." This Applicant was denied admission for one reason. The issue was "personality conflicts." The Court didn't even have the balls to admit it. In my view, the ramifications of this case go far beyond the admissions process. The question for reflection is this:

> "If Bar Applicants in Oregon are denied admission because they have had "personality conflicts" with others (particularly the Bar), or an "eccentric personality," how can the public be certain that Defendants in criminal cases are not being deprived of fair trials, due process, and being sent to prison for the simple and despicable reason that an Oregon Judges don't like their personality?"

In my view, the Oregon Judiciary played an imprudent and transparent shell game in this case.

Oregon Supreme Court, Case No. SC S43659 5/22/97 Versuslaw 1997.OR.269

DOES THE COURT REALLY WANT TO BE CORRECT?

The opinion is two paragraph long. The Applicant was a member of the California Bar and denied admission to the Oregon Bar on character grounds. The Court's reasoning is as follows:

> "A discussion of the reasons for that conclusion would not benefit bench or bar." [353]

It's my guess the Court is quite correct. That's because a discussion of the reasons for denying admission might very well reflect poorly on the Oregon Judiciary. And obviously benefiting the bench and bar was the focal point of inquiry. The public apparently was of little importance.

SC S44863 1998.OR.392

THE JUDICIARY'S INVENTIVE CONCEPT OF LYING
IT WILL BE "QUID PRO QUO" FROM NOW ON

The Applicant was admitted to the California Bar in 1984 and practiced law until 1994 when he moved to Oregon. I address two aspects of the opinion. The first concerns the following statement:

> "(N) He **lied by omission** to the Board when in his application for admission he **stated that the judgment for malicious prosecution was reversed, but did not state that it was reversed by stipulation of the parties rather than on the merits."** [354]

That's crap. The man disclosed it. It's simple as that. The fact that the Board didn't like the manner in which he disclosed it or believed the disclosure was not as full as it should have been, is garbage. If you ask someone a question and they answer the question's express inquiry, they have fulfilled their duty. If you don't ask a question, then you can't expect an answer. The Court adopts an irrational standard of disclosure. No one expects anyone to disclose something that is not specifically asked. The judgment was reversed. He said it was reversed. End of story. The concept that an individual "lied by omission" is irrational. Lies are misstatement of material facts that are spoken or written, with an intent to deceive. Silence cannot reasonably be construed to constitute a lie. The Fifth Amendment ramifications are obvious to any first semester, first year law student.

The second issue to be addressed is not quite so obvious. This Applicant was suspended by the California Bar for failure to pay child support. Most State Bars, similar to Oregon have determined that failure to pay child support is grounds for denial of admission. While I do concede there is some limited merit in such a policy, it is a rather self-defeating premise. Most non-custodial parents who fail to pay child support, simply don't have the money. The concept of promoting the payment of child support by depriving that parent of their means to earn a living seems to be rather self-defeating. It frustrates the exact foundation upon which the rule is based. In addition, while promoting the timely payment of reasonable child support amounts is a valid societal goal, it is of equal importance to ensure that non-custodial parents receive their court ordered visitation. In the absence of a Bar rule mandating admission denial of custodial parents, that fail to provide visitation to a non-custodial parent, it is inequitable to deny admission to non-custodial parents for non-payment of child support. There needs to be a "quid pro quo," recognizing the importance of both parents. Frankly speaking, my position is that messing with the Bar admissions process for the purpose of achieving unrelated societal goals is overall wrong. But if you're going to do it, you need to at least make an attempt to be fair.

Visitation is the "quid pro quo" for timely payment of child support. Favoring one over the other results in every non-custodial parent lacking complete faith and confidence in the justice system and weakens the very foundation of governmental power. There is an ironic twist, that I admittedly love, with respect to the concept of injecting the domestic relations proceeding into the Bar admissions process. **It can work both ways. Non-custodial parents who have been deprived of custody and visitation can spend the time that would otherwise have been spent with their child, by studying and learning about the inherent hypocrisies in the legal profession, including particularly the State Bar admissions process. It's my guess that when the Bars and Courts injected child custody and support proceedings into the Bar admissions process, they never fully considered how their diabolical plan could result in the divestment of their own power.**

Oregon Supreme Court, Case # SC S43201; Versuslaw 1998.OR.192 (1998)

CONDITIONAL ADMITTANCE TO CONTROL THE LAWYER'S LIFE

The Applicant, a member of the Wisconsin Bar was "conditionally admitted" to the practice of law in Oregon. I have previously expressed my reasons for believing the concept of "conditional admittance" is inappropriate. You're either in or you're out. Conditional admittance jeopardizes the ability of the lawyer's client to receive zealous representation and is merely a State Bar Machiavellian tool to control the attorney's actions. It is unacceptable. The Court conditionally admits in this case for reasons related to payment of debts including a section that is once again titled "Applicant's bankruptcy." By titling the section in such a manner, the Court once again slips up and exposes its' hand. It penalizes the Applicant for a bankruptcy, which it is prohibited from doing, by the U.S. Supreme Court. It is a usurpation of federal authority. The Oregon State Supreme Court attempts to justify their usurpation of federal authority through the use of manipulative legal sophistry and parsing the meaning of words. Their irrational attempts are lamely transparent. The Court "conditionally admits" the Applicant notwithstanding its' uncoerced confession in the opinion that:

> "There is **no evidence that Applicant has committed fraud, deceit, or any crimes of moral turpitude.** There is no evidence that Applicant has ever cheated a client nor that Applicant's handling of his financial affairs has ever left a client shortchanged."

They "conditionally admitted" this Applicant for the purpose of controlling his conduct. This is borne out by the Court's statement that:

> **"applicant agrees to use the loss-prevention services of the Professional Liability Fund"** [355]

While complete discussion of Oregon's PLF is beyond the topics herein, it is in simple terms a means used by the Oregon Bar to control their lawyers and results in litigants being deprived of zealous counsel. Specifically, the PLF imposes a mandatory requirement on practicing Oregon lawyers to purchase malpractice coverage directly from the Oregon State Bar. If they fail to purchase it, then their law license is suspended. The conflict of interest is obvious. The Oregon attorney is required to purchase malpractice coverage from the exact same Bar, that has the ethical responsibility of disciplining them for breaches of the ethical rules of conduct. How can you insure someone for malpractice, when you're also supposed to discipline them for breaches of ethical rules of conduct ?

It is my understanding, the Oregon State Bar has been the only State Bar in the nation, stupid enough to adopt such a policy. Legal considerations aside, it makes them look ridiculous.

Oregon Supreme Court, Case No. SC S45936 ; Versuslaw 1999.OR.42178 (1999)

YOU RECOGNIZED AT LEAST ONE OF YOUR SCREW UPS, DIDN'T YOU GUYS?

In the case, **1997.OR.269 (SC S43659) ,** the Oregon Supreme Court denied admission on character grounds and simply stated:

> "A discussion of the reasons for that conclusion **would not benefit bench or bar.**"

In this case, they obviously recognized the foolishness of not at least including the public in their consideration. Once again, they deny admission without supporting their decision. But they phrase their "opinion" differently this time as follows:

> "A discussion of the facts surrounding this application, and the circumstances that have led the Bar to oppose it, **would not benefit the Bar or the public."** [356]

The "public" has been substituted for the "bench." I like the concept.

OKLAHOMA

Supreme Court of Oklahoma, Case No. SCBD 3914 (1993)

OKLAHOMA, WHERE THE WIND KEEPS BLOWIN;
AND THE STATE BAR'S FULL OF HOT-AIR

This case is particularly sad and another instance of a State Bar and Supreme Court sinking so ethically low as to inject a child custody dispute into an admissions proceeding for the purpose of protecting their economic interests. Based on the Court's opinion, the Applicant appears to have had no convictions, arrests, civil suits or other issues that could preclude admission. The child custody dispute was the focus.

He graduated from law school in 1992. In 1991, he was represented by an Oklahoma City lawyer in a custody dispute involving his child. He was seeking custody because his young child complained that his mother's boyfriend hit him in the stomach with his fist. The Applicant filed a grievance complaint against the attorney who represented him. He alleged that he instructed the attorney to seek temporary custody. The attorney without consent, sought permanent custody. The Applicant asked him to withdraw the request, but the attorney refused.

The Applicant then settled the case himself. His ex-wife retained custody, visitation was curtailed, he assumed a disproportionate share of travel for visitation and agreed to pay more child support. Quite simply put, he was reamed up the butt. Apparently, sold out by his own counsel who failed to comply with his express goals and instructions, the Applicant had no choice but to then represent himself and got demolished. His problems were not over however.

The Oklahoma Bar in order to protect the attorney, informed the Applicant that his complaint did not warrant investigation. The Applicant then filed an amended grievance attaching what he represented to be copies of handwritten notes made contemporaneously. He stated that the notes had been mailed to the attorney and were returned to him after the case was concluded. The Bar forwarded a copy of the amended grievance to the attorney, who had retained copies of the notes before sending the originals back to the Applicant. The copies of the notes submitted to the Bar by the Applicant, were different than the copies retained by the attorney. The Bar and Supreme Court denied admission on the ground the Applicant was ethically unfit, based on this matter.

The Applicant attempted to explain the discrepancies by representing that he was the consummate note-taker who was continuously recopying notes to make them more accurate. He indicated that he was anxious to provide the Bar with the most complete version of the notes and that was why he redrafted portions of them. He apologized for some inconsistencies in both his submissions and testimony with respect to the notes.

I address several matters. First and most importantly, the whole case smells bad. You have here an individual who is represented by a licensed attorney in a matter that is perhaps the most important aspect of his life (his child). That attorney appears to have screwed him over royally. The attorney seems to have taken action in direct contradiction with his client's wishes and refused to correct such upon request. The Applicant filed an ethical complaint, which the Bar refused to even investigate initially. That alone, is garbage. Based on facts set forth in the opinion, the initial complaint contained matters at least warranting investigation. The attorney had allegedly failed to abide by reasonable goals of his client (i.e. temporary custody instead of permanent custody). If true, that is an ethical breach.

The Disciplinary Committee was faced with the following situation. After receiving the amended complaint, if they disciplined the attorney, they would look like idiots for not investigating the initial complaint. Consequently, in order to avoid having their own ethical shortcomings exposed, the

Bar had motive to make the Complainant (the Applicant) look bad. This would have the effect of absolving the grievance committee from their earlier abrogation of duties.

By shifting blame upon the Applicant, they succeed dually in protecting the licensed attorney who seems to have screwed over his client, and also provide their grievance committee with an effective whitewash. The Applicant in response makes an absolutely brilliant argument. He notes that Oklahoma Ethical Rule 5.4 states as follows:

> **"Matters contained in grievances** submitted to the Association, the Commission or the General Counsel, and statements, oral or written, with respect thereto, **shall be privileged**. Litigation or the threat of litigation by a respondent lawyer against a person filing a grievance by reason of such filing may be grounds in itself for discipline. . . ."

The Applicant contends that by virtue of the above phrase which reads:

"Matters contained in grievances . . . shall be privileged."

the Bar was not even allowed for purposes of assessing his character during the admissions process to consider matters related to the grievance complaint. He was absolutely correct, notwithstanding that the Court irrationally held otherwise.

The Supreme Court was in a position where they felt they had to protect the economic interests of both the admissions committee and disciplinary committee, by whitewashing the alleged transgressions of the attorney. To do so however, they had to use irrational legal sophistry to justify their own noncompliance with a validly enacted court rule. What they came up with is as follows:

> **"Our rules do not grant the broad protection applicant would invoke for himself.** At most the rule-based shield which the applicant urges today is coextensive with the common-law privilege extended to attorneys, parties and witnesses with respect to communications made preliminary to judicial or quasi-judicial proceedings."

The Oklahoma Supreme Court was simply blowing hot air. The were falsely contending that the matters were only privileged for the limited purpose of prohibiting an attorney from instituting a suit against a Complainant, but not for purpose of consideration by a Bar admission committee. The first sentence of the rule states that the matters "shall be privileged." It imposes an unequivocal, total mandatory obligation. It's simple as that. The second sentence prohibits retaliation by an attorney against a Complainant, but does not negate the impact of "privilege" delineated in the first sentence. Only an irrational reading of the Rule would suggest that the second sentence provided justification for negating the "privilege" mandated by the first sentence.

This is another blatant example of a Court that doesn't like the manner in which a validly enacted rule functions in a particular instance, and therefore rewrites the rule post-hoc to fit their immediate self-interested goals. The first sentence stated that the matters were privileged. If they're privileged, then the Bar cannot use them. Period. If Courts want the public to follow laws and rules even when people don't like the impact of such, then State Supreme Courts need to do the same.

If we assume arguendo, that the Court was correct (which as indicated, they are not), then we must similarly conclude that in enacting the rule the Court was "lacking in candor," "misleading," and "evasive." The reason is as follows. In attempting to support it's interpretation of the Rule, the Court states:

> "At most the rule-based shield which the applicant urges today is coextensive with the common-law privilege extended to attorneys, parties and witnesses. . ." [357]

If the above is assumed to be true, then the obvious question, is why didn't the drafters of the rule state that matters contained in grievances shall be accorded only a limited privilege. They didn't do that. They stated simply and expressly that the matters were privileged. Were the drafters lacking candor? Did they draft a misleading rule designed to convey an impression that grievance complaints were privileged, when in fact, they only afforded a limited privilege? What the Court did in this case was to take a rule expressly mandating that grievance matters are privileged, and rewrote it, post-hoc, to stand for the premise that:

> "Matters contained in grievances have a limited privilege that may not be construed in a manner functioning against the political and economic interests of the legal profession."

The Applicant definitely should have been admitted. The grievance committee abrogated its duty by failing to investigate the initial complaint. The Court then redrafted a Rule, post hoc, to protect the Bar's economic interests. It is noteworthy to point out, that even if the Applicant falsified the notes, his conduct in my opinion, was not quite as immoral, and certainly not as hypocritical as that of the Bar and Oklahoma Supreme Court.

PENNSYLVANIA

2001.PA.0000161; J-142b-2000 (February 20, 2001); Board File No. C1-99-785

WE'RE ADMITTING YOU, SO THAT WE CAN DISBAR YOU
(Psst: Don't worry, we're really going to let you stay in the Bar, but we have to make sure this doesn't happen again because it makes us look stupid)

This case involves a disciplinary proceeding that was instituted simply because the Respondent had been admitted to the Bar. Essentially, it involves an "Intra-Bar Power Conflict" where the Disciplinary Board didn't like the decision rendered by the Admissions Board and sought to trump that Board's decision by disbarring an attorney immediately subsequent to his admission.

The Respondent was admitted to the New Jersey Bar in 1972 and subsequently Disbarred in New Jersey in 1989 after an audit revealed a shortfall of monies in the trust account he maintained for clients. The Disbarment was based on his criminal conviction for the knowing misapplication of client funds. However, the trust fund incident does not appear to have been a product of monetary self-interest. Rather instead, what he did was to use the funds of one client to pay the expenses of another client. The New Jersey Supreme Court reported that he was proven to be an inept bookkeeper, rather than a self-interested thief. That determination appears to be quite well supported when considered in conjunction with the fact that during his years of practice in New Jersey he engaged in significant pro bono work, particularly on behalf of the homeless population in New Jersey. After moving to Pennsylvania, he continued working for community related programs through his church and provided assistance to senior citizens.

In 1992, he applied for permission to sit for the Pennsylvania Bar exam which was denied. He renewed his request in 1995. Hearings were then held to review the issue of his character, including most particularly the New Jersey Disbarment. Ultimately the Board gave him permission to sit for the exam which he passed in 1999. He was admitted to the Pennsylvania Bar in July, 1999. The Disciplinary Board apparently did not approve of the Admission Board decision, and immediately instituted reciprocal discipline proceedings based on the New Jersey Disbarment.

The Respondent predictably argued that upon having satisfied the character requirement of admission which involved full consideration of the New Jersey Disbarment, further action predicated on the Disbarment was precluded. The State Supreme Court was clearly in a difficult position in this case. Essentially, they were being asked to choose between the Admissions Board and the Disciplinary Board. The Respondent was clearly nothing more than a Pawn in major power game between the two Boards. What the Court did was interesting.

The Court rules against the Respondent on the issue of whether the New Jersey Disbarment can be considered for purposes of reciprocal discipline. It reasons that consideration of character for purposes of granting permission to sit for the Bar exam, is different than consideration of issues pertaining to imposition of reciprocal discipline. Consequently, the Court holds the Disciplinary Board was within its' power to institute proceedings against the Respondent.

Nevertheless, the Court then goes on to hold that reciprocal discipline should not be imposed upon the Respondent in this case because it would result in a grave injustice. Essentially, the Court's concept was that the proceedings for reciprocal discipline could be instituted, but the discipline itself should not be imposed based on the facts of the case. The Court then notes that in November, 1999 (immediately following the Respondent's admission to the Bar in this case), Pennsylvania Bar Admission Rule 203 was amended to read as follows:

> "An applicant who is disbarred or suspended for disciplinary reasons from the practice of law in another jurisdiction at the time of filing an application for permission to sit for the bar exam shall not be eligible to sit for the bar exam."

The Court basically plugged the hole that allowed for the Respondent in this case to apply for admission, while providing him with the benefit of retaining his admission. In the future, under the revised rule, individuals such as the Respondent in this case would not be able to gain admission to the Pennsylvania Bar. The Court also points out an interesting distinction between the practice of law in Pennsylvania and New Jersey stating as follows:

> "Disbarrment in New Jersey holds no practical opportunity for reinstatement. As the New Jersey Supreme Court noted, in the past one hundred years there have been only three orders of reinstatement following disbarrment. . . . Pennsylvania, on the other hand, contemplates reinstatement as a corollary to disbarrment. . . . New Jersey conducts disciplinary matters with more emphasis on the punitive aspects, while Pennsylvania concerns itself with punishment as a prerequisite to rehabilitation. . . . New Jersey law allows for no exception where an attorney suffers a criminal conviction, he must be permamently disbarred.
>
> In Pennsylvania, although a criminal conviction does establish an automatic basis for discipline, the extent of that disciplinary measure is dependent on the nature of the violation and the mitigating facets of each case.
> . . .
> Finally, we note that deterrence is a considerable factor in matters of reciprocal discipline. Pennsylvania will not tolerate a reputation for welcoming disbarred attorneys from other jurisdictions to practice law with impunity in our courtrooms."

Two Concurring opinions were written in this case. One states as follows:

> "Although I agree that there is no evidence that Respondent would pose a threat to the public by engaging in the practice of law at this time, the same may be said of future respondents who have been disbarred in foreign jurisdictions and will not be permitted to seek admittance in Pennsylvania under the newly adopted bar admission rule. Thus, this case should be seen for what it is -- a limited exception to what our Court has done in the past and practice that will not be repeated in the future."

The second Concurring opinion states as follows:

> ". . . I do not believe that Pa.R.B.A. 203 should have been amended to create a bright line rule that prohibits attorneys who have been disbarred or suspended for disciplinary reasons in other states from applying to sit for the Pennsylvania bar exam. Historically, this Court has taken the position that the events surrounding each particular case of attorney misconduct must be taken into account when determining the appropriate discipline. . . .The amendment . . . ignores this long-standing dictate in disciplinary proceedings. Furthermore, two of our neighboring states, New Jersey and Ohio, offer no opportunity for anyone who has ever been disbarred to petition for reinstatement. Consequently, decisions to disbar attorneys in those states will permanently preclude those attorneys from applying to sit for the Pennsylvania bar, or from petitioning for

reinstatement to the Pennsylvania bar, regardless of the circumstances surrounding their misconduct." [358]

My opinion in this case is as follows. First, I believe that the Disciplinary Board of Pennsylvania really made the Bar look foolish. It never should have instituted the proceeding for reciprocal discipline after the Admissions Board had certified the Respondent's character. Unlike the Court, I believe that consideration of the issue of character for purposes of admission precludes reconsideration of the exact same events by a different arm of the Bar. I agree with the Court that reciprocal discipline based on the facts surrounding the case, in any event would work a grave injustice, and that therefore reciprocal discipline should not be imposed. But as stated, I would not have even gotten to the issue of reconsidering those facts, since the Admission Board had certified him.

The most important aspect of this case was pointed out by the Concurring opinions and involves the amendment of the rule that was designed to make sure such embarrassing situations do not occur in the future. The rule change in my belief is total crap. It is also total Bullshit that neither New Jersey or Ohio offer substantial opportunity for reinstatement upon Disbarrment. People do change, and can be rehabilitated with the notable exception perhaps of those who have committed extremely violent or dishonest crimes. Minor criminal convictions should not preclude a person from practicing law for the rest of their life. The Judiciary, Courts and State Bars of this nation, generally speaking, have simply made too many mistakes of their own in too many cases, to adopt that hypocritical, "holier than thou," attitude. They are in no position to preclude forgiveness of others, since presumably they want the general public to be somewhat understanding about the countless screw-ups they have made as a branch of government. For the same reason that I believe New Jersey and Ohio should provide for reinstatement of rehabilitated Disbarred attorneys, I believe that Pennsylvania (and all Bars in fact) should allow for an admission process that does not automatically preclude admission of individuals Disbarred in other states. Upon proper showing of remorse and rehabilitation, such individuals should be allowed to re-enter the practice of law.

In summary, my holding would be that once character is certified by the Admission Board, the same events may not be re-examined for the purpose of immediately instituting Discipline after admission. I would further hold that Disbarrment in one jurisdiction does not preclude admission in another, although the Disbarrment itself and the facts surrounding it should most certainly be disclosed, examined by and considered by the new State in which admission is being sought. The result of my holding would be to avoid any repeat of the embarrassing situation this case caused, and also to avoid grave injustice for those individuals who have been Disbarred for minor or Unjust reasons, or were justifiably Disbarred but who are not rehabilitated.

Naturally, as always, I'm right and those who disagree with me are wrong. It must be my judicial nature.

RHODE ISLAND

1972.RI.4804 JUNE 21, 1972

THE SECOND LSAT

The Applicant was 26 years old. He was a graduate of Brown University and Boston College Law School. At the time he filed his application, he was employed by Rhode Island Legal Services, Inc.. The Board discovered that in 1967 he took the Law School Aptitude Test (LSAT) twice. Once in February and again in April. In September, 1970, he appeared before the Board and was asked if he personally took the test each time. He answered in the affirmative. The Board then revealed that it had information purportedly showing that a Brown classmate of his had taken the second LSAT using his name. On October 30, 1970, the Applicant authorized the testing service to release the test papers to the board and he again declared that he personally took the second LSAT. Now, the case gets really muddy. In March, 1972 a Hearing is held.

Try to follow this story closely, because it's a bit complicated. The Board presented as a witness, the person who allegedly sat for the LSAT in place of the Applicant. That person testified that around the time of the second LSAT, a third classmate was charged with marijuana possession.

The Applicant was allegedly going to testify against that classmate as a prosecution witness. The classmate charged with marijuana possession was represented by an attorney.

Now get this! The person who purportedly sat for the second LSAT in place of the Applicant, met with the attorney representing the classmate charged with marijuana possession. He informed that attorney about sitting for the second LSAT, for the purpose of discrediting the Applicant's testimony in the criminal prosecution.

And now the CLINCHER! The attorney who represented the classmate charged with marijuana possession, later became a member of the Board of Bar Examiners. He was apparently the person who brought these matters to the attention of the Board, and then to make it look a little better, he disqualified himself from considering the character aspect of the application. After of course, he succeeded in discrediting the Applicant.

One last beauty! The Applicant consulted with an attorney to assist him regarding the second LSAT issue. After their consultation, that attorney also became a member of the Board of Bar Examiners. The Applicant contended that he had been "ambushed." He asserted that he was not accorded procedural due process because the Board had not notified him that this issue would be raised against him, even though they had knowledge of it. The Supreme Court rules against him. In reference to the contention that he was ambushed, the Court states:

> **"<Applicant's> claim that he was "ambushed" by the board** fades in the light of the record. At the mid-September, 1970 meeting, it informed <Applicant> as to the nature of its information . . . ."

The Supreme Court is at best "misleading" and "lacking candor" in the manner it dispels the ambush contention. While it is true the Applicant was given information in September, 1970, <u>that was only after the Board had succeeded with their ambush.</u> The opinion states in reference to the September, 1970 meeting:

> "The petitioner was asked if he personally had taken the test each time it had been given. <Applicant> gave an affirmative reply. **The board then revealed** that it had information which purported to show that a Brown classmate . . . had taken the second L.S.A.T. . . ." [359]

The Board didn't reveal the relevant information to the Applicant, until they got him to answer the question they wanted him to answer. Stated simply, he was questioned on the LSAT issue without having been given notice, that it would be raised. After he answered questions related to the taking of the LSAT, THEN they gave him the relevant information.

He was ambushed. No doubt about it. The Court's claim that the ambush allegation "fades in the light of the record" is at best "misleading" and at most, a blatant lie, since their opinion supports rather than dispels the contention. Rather, it is the Bar's credibility that "fades in light of the record."

This case is another example of where pretty much everybody carries fault. There does seem to be evidence that the Applicant had somebody else sit for the LSAT on his behalf. By the same token, the Bar engaged in highly unethical tactics to gather the evidence. They then used that evidence in a manner that clearly violated the Applicant's due process rights. The Court perpetuated the scam by whitewashing the Bar's unethical conduct, and mischaracterizing the sequence of events.

I would admit the Applicant. My reasoning is predicated solely on the Bar's wrongful conduct. The Bar's conduct should preclude consideration of the LSAT issue, similar in manner to how Miranda violations result in evidence unconstitutionally obtained being excluded in Court. The LSAT evidence was unethically obtained. The ethical standards should apply as vigorously to admissions committees as Applicants.

I would also note facetiously that even if the Applicant lied and had someone sit for the second LSAT on his behalf, as appears to be what occurred, that fact coupled with the Bar's ambush tactics, and the Court's whitewash of the Bar's conduct, would seem to indicate that he'd fit right in with the Rhode Island Bar.

The Applicant was a member of the California Bar and the Massachusetts Bar. He was not yet a member of the Rhode Island Bar, but was nevertheless engaged to work as chief prosecutor for the Rhode Island Ethics Commission. On October 20, 1993 he was informed by the Chief Disciplinary Counsel that his activities for the Commission probably involved the practice of law.

Whether he admitted that he was engaging in the practice of law, or whether he denied that his activities constituted the practice of law during that meeting became an issue of contention. In any event, two days later, he filed an application for admission to the Bar. The Executive Director of the Commission expressed her opinion that the Applicant's activities did not constitute the practice of law. She then applied to the Acting Chief Justice of the Court for an Order granting him admission to the Rhode Island Bar, pending formal admission, so that he could carry out duties pending before the Commission. Essentially, she was looking for a special favor. The Court rules on the request as follows:

> "Our rules . . . make no such provision for admission to the bar on a limited basis unless the applicant is an employee of a federally funded agency. Instead, an order was issued allowing petitioner, **pending his formal admission to the bar, to represent the commission in all matters before that body and allowing him to appear in Superior Court . . . pro hac vice** in respect to all matters arising out of the business of the commission."

The Order was entered on November 2, 1993. I believe the Court looks foolish by issuing such an Order. To the extent the Order provides for appearance on a "pro hac vice" basis, it is well known that rules providing for such practice by out of state attorneys are designed to allow for appearance on individual, particular cases, not "all matters before that body." The result of this Order was that in addition to allowing the Applicant to engage in UPL if indeed his activities were the practice of law, the Court circumvented the standard intent of pro hac vice appearances.

On May 3, 1994, the Committee recommended that his application for admission be delayed for four months and that his authorization to appear pro hac vice be revoked. The Applicant contended that his activities did not constitute the practice of law. He asserted they involved preliminary investigative activities. The issues in this case made everyone look pretty foolish. The "Egg" on the faces of both the Supreme Court of Rhode Island and the Chief Disciplinary Counsel was evident from the following passages in the Court's opinion:

> ". . . We agree with the committee's finding that **the testimony of Chief Disciplinary Counsel on the one hand and petitioner on the other hand is not easy to reconcile.** . . . The petitioner in his testimony stated that Chief Disciplinary Counsel was absolutely incorrect in that statement and that **her recollection was "incorrect or incorrectly mis-remembered<sic>."**

The Court then addresses the UPL aspect more directly:

> **"In view of the now substantially conceded fact that petitioner maintained a good-faith belief that he was not engaged in the practice of law, we are of the opinion that he was unlikely to have agreed in his interview with Chief Disciplinary Counsel that he had been doing so. Chief Disciplinary Counsel's testimony on this subject is largely conclusory in effect as opposed to quoting specific statements by petitioner. We believe that Chief Disciplinary Counsel's sincere opinion that petitioner had been wrongfully engaged in the practice of law in his capacity as chief prosecutor for the commission may well have caused her to conclude that petitioner did not dispute her opinion. . . ."**

And then my favorite part:

> "We commend the committee for its careful consideration of petitioner's application and for its close attention to the possibility of petitioner's engaging in activities that might well be considered by an impartial person such as Chief Disciplinary Counsel to constitute the practice of law. . . .
>
> The committee has taken the very understandable position that the commission and its chief prosecution attorney (now its executive director) must be subject to the statutes of this state concerning unauthorized practice of law and also subject to the rules of this court. . . .This was a close case and the committee has certainly exercised its best conscientious judgment in its findings and recommendations to this court." [360]

After reading the case, one has a grand feeling that UPL rules coupled with the admissions process are utilized for the purpose of accomplishing political goals. It is clear there was friction between the Applicant who was a Chief Prosecutor for the Commission (subsequently its executive director), and the Chief Disciplinary Counsel. The Supreme Court for the most part bumbled the ball trying not to offend anyone. It simply wanted one big, happy, State Bar family. Ultimately, the Court was left with having to gently and nimbly decide that the Chief Disciplinary Counsel was lacking candor when she falsely contended that the Applicant agreed his activities constituted the practice of law at the first meeting. The Court however rather than stating such outright, commended the committee for diligently addressing the issues, to soften the impact of their decision.

Should the Applicant have been admitted? That question unlike in other cases in this book, was not even the issue in this case. Rather instead, the issue was how the Bar admissions process could effectively be manipulated by the Bar and Court to accomplish political goals.

Supreme Court of Rhode Island, No. 93-246-M.P. ; Versuslaw 1996.RI.84

The ACLU contended that Questions 26, 29(a) and 29(b) of the Rhode Island Bar application violated the American With Disabilities Act (ADA). They asserted the questions violated an Applicant's right to privacy. Question 26 inquired into an Applicant's status as an alcohol or drug dependent person during the last five years. The ADA affords protection to dependent persons who are not **"currently"** using drugs or alcohol. The five year "look-back" period was the issue. Similarly, the ACLU asserted that Question 29 by making inquiry into whether an individual had ever been admitted to a medical or mental health facility for treatment of an "emotional disturbance, nervous or mental disorder" violated the ADA. The Court ultimately changes the phrasing of Question 26 to read "currently" rather than in the last five years. Additionally, it defined the word "currently" as follows:

> "Currently" means recently enough so that the condition could reasonably be expected to have an impact on your ability to function as a lawyer."

The Court's definition of "currently" is incorrect. It irrationally extends the applicable period beyond the common and ordinary usage of the term "current." "Currently" means "now," not "recently enough." It means at the exact precise moment when the application is filed. Where the Court's opinion leaves an Applicant is uncertain. Conceivably, the Court left the door open for the Bar to expand the definition of the phrase "recently enough" to mean extending back five years, which would place an Applicant in the exact same position before their opinion. It set the foundation for another instance of defining words in a circular fashion to negate the impact of their revision.

The Court also makes one particularly interesting comment that could set the foundation for significant litigation in other areas of the admissions process. The opinion states:

> "We are persuaded that the **procedures required for admittance to the bar are the functional equivalent of a hiring process** and that **the committee operates as the equivalent of an employer** when it screens applicants." [361]

Such being the case, the legitimacy of asking questions pertaining to payment of debts, civil suits, etc., may be significantly diminished. Other types of employers typically do not ask such questions. If the Bar is the equivalent of an employer, then why should they be entitled to make inquiries, when employers in other fields decline to do so? Also, if the Bar is the equivalent of an employer, then is their focal interest the success of their "business," or furthering the public interest? The answer is obvious.

SUPREME COURT OF RHODE ISLAND, No. 2000-276-M.P. (11/20/2000); Versuslaw 2000.RI.0042188 (2000)

The Applicant was convicted in 1985 of shoplifting and failed to abide by the terms of his probation. A year later, he was convicted of the felony of resisting arrest with violence. A Florida sentencing Judge sentenced him to 51 weeks in prison after he again violated his initial three-year probation sentence. He then attended Community College.

After exhibiting a homemade air-gun in a class, his dormitory room was searched and authorities found an automatic pistol, an automatic rifle with 500 rounds of ammunition, and an AK-47 assault rifle. He was charged with being a felon in possession of firearms, and possession of an unregistered firearm. He pled guilty to the registration count and was sentenced to twenty months in federal prison. The sentence terminated in 1993. He also had a conviction for providing a false statement to authorities in Florida.

The State Bar in a 4-2 decision, recommends that he be admitted. In my opinion, they look like buffoons for doing so. I would not have even faintly considered admitting this man to the Bar. He has extremely serious criminal convictions that deal with violence and at least four convictions in total. How they could recommend his admission, while declining to certify other applicants for the multitude of piddly reasons delineated herein, is completely beyond my comprehension.

The State Supreme Court admirably writes an extremely good opinion reversing the decision of the Bar and denies admission. The State Supreme Court is to be commended. Every now and then I say nice things about State Supreme Courts.[362]

SOUTH CAROLINA

Opinion No. 24660
1997.SC.185 (Versuslaw) (1997)

This is an attorney disciplinary proceeding involving the issue of nondisclosure of matters on the Bar application. The attorney conceded that he didn't disclose some matters. He did not contest that the nondisclosures were "knowing." Rather instead, he contended that the omitted information was not "material."

I have previously addressed the element of materiality in depth. I have further asserted that it is my opinion, lawful conduct related to participation in civil litigation is not a rational ground for denial of admission to the Bar. The ability to engage in litigation is a constitutional right. To the extent civil litigation encompasses criminal conduct, it presumably should result in prosecution, and if a conviction results, the Applicant would be required to disclose such. The South Carolina Supreme Court irrationally disagrees. They state:

> "Although the fact of a lawsuit or judgment does not indicate an applicant's lack of fitness, the Committee on Character and Fitness **should know of the judgment so that it may determine such issues as whether the underlying lawsuit involved any fraud or dishonesty** by the bar applicant. Unless it knows of lawsuits and judgments, it cannot makes these determinations. Consequently, misrepresentation regarding the existence or status of a lawsuit or a judgment is material." [363]

The problem with the Court's reasoning is that it is inconsistent with their failure to require disclosure of such information on a periodic basis by licensed attorneys. If we assume arguendo, that their reasoning is correct, then presumably the Bar should be informed about every lawsuit involving its' members. Why require only the Applicant, rather than the licensed attorney to disclose? The Court imprudently plays both sides of the field. The disparity in application of their purported principal of ethics, between attorneys and Applicants exposes their hand. From a perspective of materiality, the Court's language requiring disclosure of lawsuits so the Committee "may determine such issues as whether the underlying lawsuit involved any fraud or dishonesty" is an adaptation of the "inhibiting the efforts" definition of materiality. As previously discussed, that concept has the result of wholly negating the element of materiality. The point is summarized as follows:

> **"If material nondisclosures are defined as failing to disclose that which "inhibits the efforts" of the committee's review, and "inhibiting the efforts" is defined as occurring when information is not disclosed, then every single nondisclosure is material in nature. Nondisclosure then is material, without regard to the relevance or nature of the omitted information."**

To reach a conclusion that one lies or lacks candor when they fail to disclose, four elements must be established which are:

1. Knowledge
2. Materiality
3. Intent to deceive
4. Express inquiry into subject matter

Ultimately, what you are left with from the South Carolina Supreme Court's reasoning is that nondisclosure encompasses only two elements. A knowing nondisclosure with intent to deceive would constitute lying under their standard. Perhaps you, the reader are thinking that is a good definition. Perhaps you believe an Applicant lies when they fail to disclose any matter with an intent to deceive. My response then, is how do you apply that definition to admission questions such as:

"Describe any incident in your life that reflects negatively upon your character?"

If an Applicant can specifically remember throwing food in a restaurant when eight years old, being sent to the principal's office at age eleven, and "knowingly" fails to disclose those matters, with an intent to deceive, should they be denied admission? Most people, I believe would say such matters should not affect admission. The reason is that most people would agree they are immaterial. What about the small "lies" everyone tells each day in life? If a person asks you how they look, and you know they look like crap but you "knowingly" with an "intent to deceive," tell them, they look "fine," should you be denied admission to the Bar? Obviously, it's not a "material" matter impacting upon your ability to practice law. Materiality has to be a key element for the process to be fair.

The Court's incorrect definition of materiality, eliminates the concept of materiality in its entirety. Materiality is properly defined as that which affects the final decision if disclosed, rather than that which purportedly "inhibits the efforts" of the assessment. Utilization of the "inhibiting the efforts" notion places materiality squarely into the realm of being one of the arbitrary and dangerous tools to assess character, which the U.S. Supreme Court warned about in ***Konigsberg***.

SOUTH DAKOTA

254 N.W.2d 452 (1977)

THE HYPOCRITICAL JUDICIAL PSYCHIATRIST

A disciplinary action was instituted by the Bar against a licensed attorney that included matters related to the fact he pled no contest to a charge of willful failure to file income tax returns. The Supreme Court of South Dakota addressed this aspect as follows:

> "This court has previously held that the **violation of the federal statute for failure to file federal income tax returns is not a misdemeanor necessarily involving moral turpitude** within the purview of the disbarment statute **and does not necessitate disbarment**."

How does their irrational holding square with State Bar admission policies regarding disclosure? In my opinion, a conviction for failure to file income tax returns is more egregious and indicative of poor moral character than a failure to disclose civil suits, debts and the like on a Bar application. If the individual in this case applied to a Bar, in the absence of a sufficient lapse of time and evidence of rehabilitation, I would be inclined to deny admission. The South Dakota Supreme Court however, was not inclined to disbar the attorney for the conviction. The attorney in this case also pled guilty to a charge of driving a motor vehicle while under the influence of intoxicating liquor. The Court addressed this matter as follows:

> **"nor do we find that driving a motor vehicle while under the influence of intoxicating liquor involves moral turpitude within the purview of the statute. . . ."** [364]

I have difficulty accepting such a standard for attorneys, while at the same time denying admission to Applicants for DUI convictions. The licensed attorney is clearly being held to a lower, rather than a higher standard of conduct. While I do not believe a DUI conviction in the absence of aggravating factors is a heinous crime, it certainly resides somewhere between trivial and serious. Perhaps the reader differs with me, though. In any event, however you view a DUI conviction, it can not rationally be rebutted that the same standard should apply for the attorney and the Applicant. If anything, the attorney should be held to a higher standard, instead of the reverse as is obviously the case.

The attorney in this case cited the Oregon case of 244 Or. 282 (1966) to thwart disbarment. In that case, the Supreme Court of Oregon in a disciplinary proceeding imposed a most unusual sanction. It suspended the attorney from the practice of law, BUT then held the sanction and suspension would be imposed only if the attorney failed to refrain from using alcoholic beverages, and failed to discontinue the neglectful manner characterizing his professional conduct.

The South Dakota Supreme Court in this case, ultimately adopts a similar posture. I object to such an irrational determination by both Courts. On the one hand, the Supreme Courts impose an unreasonably stringent standard on the Bar Applicant with respect to moral character, but on the other, they grant immense leeway to the licensed attorney. The licensed attorney can have criminal convictions, fail to perform duties as an attorney, and even then they are not suspended. Instead, they are given a second chance. I do not suggest necessarily making the standard unreasonably stringent for the attorneys. Quite the contrary. I suggest subjecting the Applicant to the same lenient standard as the licensed attorney.

Of equal importance, I can't stand a wishy-washy State Supreme Court. Take a stand. Either discipline the attorney or don't discipline him. The concept of asserting that the attorney is disciplined,

but that the penalty will not be imposed so long as he stops drinking alcohol smacks of governmentally imposed behavior modification. The attorney's duty is limited to not breaking the law, and complying with the ethical rules of conduct. The disciplinary process is no place for the Court to gain control of one's lifestyle by suspending punishment, predicated on controlling a person's Out-of-Court lawful conduct.

If the attorney wants to drink booze, he should be able to. If he gets convicted of a DUI, then discipline him or don't discipline him. But don't play the role of a judicial social worker, because the Courts and Judges simply have too many of their own psychological deficiencies and emotional insecurities to rationally justify that role.

539 N.W.2d 671 (1995)

THE INSECURE LAW PROFESSOR

The Applicant was denied admission on character grounds. During his first year in law school he was President of his class. In his second year, 1992, he wrote and submitted a case-note for law review publication. He allegedly included material in the article without proper citation. When confronted by a faculty advisor he denied any dishonest intention. No formal disciplinary action was taken, but he was admonished in a strongly worded letter. He also received a failing grade in the course.

During his final semester, in another class, the final exam consisted of ten questions handed out during the first weeks of the semester. The students were given the entire semester to work on completing the exam. They were instructed not to consult with each another. The Professor discovered that two students had similar answers. Ultimately she assigned a failing grade to both, and they received no credit for the course. Based on these events, the Applicant did not have enough credits to graduate. He filed a grievance against the Professor. In the meantime, he attended summer school and received the necessary credits to graduate. He passed the Bar exam, but was not admitted based upon the foregoing incident.

The primary fault in this case, rests with the law Professor. The reason is as follows. The Professor was a complete NITWIT!! The concept of distributing an open book exam during the first few weeks of a class, coupled with a restriction that students cannot discuss the questions with each other, is fundamentally ludicrous. The Professor was intentionally setting the students up for a situation like this.

Presumably, the questions addressed material that would be covered during the class throughout the semester. Were the students supposed to not discuss subjects covered in class? If they did discuss a class lecture, wouldn't they be violating the prohibition? How do you draw the line between what constitutes openly discussing class lectures, and the subject matter of the exam questions?

Or did the exam not cover the class material? That would obviously be an unfair exam. If the exam presumably did cover the class material, then wouldn't one expect that answers by law students who knew their subject would be somewhat similar? Obviously, yes. It makes no logical sense to expect a large group of students to be completely silent with each other on class material for an entire semester.

Logic further dictates that the Professor knew this. The circumstances surrounding her preposterous policy, strongly suggest that she wanted a situation like this to occur. She knew students talk with each other. She set the situation up in the hope that she would be able to bust someone's chops. It's simple as that and the Court should have seen through her lunacy. Law school final exams should be given at the end of a class, not the beginning of a semester. They should be closed book, and wholly objective. In that manner, egotistical Professors don't have the opportunity to exercise political leverage on helpless law students seeking to enter into the profession.

Professors that adopt lame-brained policies as this one, are in all likelihood I believe, lawyers who were never able to successfully accomplish the art of leverage in the legal profession when up against skilled opponents. They seek to vindicate their fragile egos by taking it out on young students. That's crap. You want to take somebody on, then you take on those who are stronger, not weaker than you. Setting up law students for a situation like this is characteristic of nothing more than an insecure, incompetent law school, Professor Punk.

One other note on the facts of this case. The Applicant argued that the Dean of the Law School disclosed both orally and in writing, aspects of the admission Hearing, contrary to the Board's directive not to discuss the matter. He also claimed that the Law School was suppressing evidence and that there were irregularities in the Hearing, including that the Dean was allowed to remain in the Hearing room

following sequestration of other witnesses. That smells bad to me. He further contended that as a result of such irregularities he was entitled to a new Hearing.

The Court whitewashes these matters stating:

> "Before a motion for a new hearing based on new evidence may be granted, **it must be shown that . . . it would have changed the outcome."**

WHOAA!! My little Judicial Doggies!! Did I read that right? What happened to all that crap about "inhibiting the efforts" when it comes to assessing materiality. Read again how Courts define materiality with respect to Applicant nondisclosures in 386 SE2d 174 (1989) on pgs. 457-459. Applicant nondisclosures are assessed based on whether they "inhibited the efforts" of the Bar. But, the **exact same standard that I have been suggesting for materiality** is the standard that the Bars get the benefit of. That standard is:

> "Would the information if disclosed have **affected the outcome?"**

Perhaps, we have a bit of a double standard, guys? Looks pretty smelly. One standard of materiality when the Applicant's interests are at stake, and one when the Bar's economic interests are at stake. The Court also makes the following comment:

> "We recognize the present case involves a question of admission to the bar rather than attorney discipline, however, the same rationale applies here with equal justification." [365]

The Court lacks candor by making the foregoing statement. If the same rationale applies, then why doesn't the Bar make regular inquiries on character issues of licensed attorneys? The answer is obvious. Neither the Court or State Bar really want the same "rationale" to apply. When they write that "the same rationale applies" they are "misleading," and "evasive." After all, if the same rationale applied then every Justice on the State Supreme Court would have to disclose all of the embarrassing information that occurred in their own life for the last several decades. And I bet there's a lot of it.

Versuslaw 2001.SD 29, 2001.SD.0000030; No. 21757 (March 7, 2001)

STATE SUPREME COURTS THAT USE MICROSCOPES MAY FIND THE PUBLIC ALSO STARTS USING MICROSCOPES

The Applicant had two DUI arrests, was fired for failing a drug test indicating marijuana use, and it was alleged that he had physically abused his former girlfriend. The incident involving his former girlfriend does not appear to have resulted in any type of conviction, and based on the facts presented in the opinion, she does not appear to have been a "Princess," so to speak. Quite to the contrary. Apparently, what occurred was that the Applicant confided to his girlfriend that he had previously been romantically involved with another woman who was going through a divorce. The girlfriend then interjected herself into the divorce proceedings. The Applicant told his girlfriend that he wanted to end their relationship. She then followed him, called him, and ultimately pursued him at high speed on an interstate highway.

A divided Board recommended his conditional admission which the Court denied. In 1999, he reapplied for admission and a unanimous Board recommended his conditional admission. A divided State Supreme Court granted conditional admission. I would admit him outright. The concept of conditional admission is Crap. The Court states in reference to the period during which he will be conditionally admitted:

> "There is no doubt that <Applicant's> conduct **will be viewed as if he was under a microscope throughout this conditional period**. After such close diagnostic observation, this Court will again have the opportunity to again consider whether to lift the condition of this admission based on <Applicant's> showing that such lifting is appropriate."

A Concurring opinion then states:

> "A conditional admission shall be confidential . . . ."

A Dissenting opinion then states:

> "The conditional admission is not a public situation. The public does not know you have been conditionally admitted."

I will concentrate on the Dissenting opinion cited above because it particularly annoyed me. And I don't like to be annoyed. It must be my judicial nature. The Dissent in this case would have denied admission entirely to the Applicant on the ground that he lacked good moral character. Yet, the same Dissent cited above has substantively pointed out that the State Supreme Court is concealing from the general public the aspect of conditional admission. The Court is deceptively allowing the public to believe the Applicant in this case is a full-fledged attorney, when in fact his conduct (unlike other South Dakota attorneys) will be viewed as if he were "under a microscope." To put the matter simply, the Dissent presents all of these "holier than thou" character reasons for denying admission to this Applicant based upon essentially trivial matters, but doesn't seem to have a problem with the entire immoral concept of conditional admission. The Dissent should clearly be concerned more about the immoral nature of the Court, including himself, than the Applicant in this case. The same Dissent also states as follows:

> ""The right to practice law" is not in any proper sense of the word a "right" at all, but rather a matter of license and high privilege." [366]

By making the above statement, the Dissent is once again engaging in false and misleading disclosure, which obviously calls into question the moral character of the Dissenting Justice and his ability to engage in the practice of law without harming the public interest. The "right" to practice law is precisely that. A "RIGHT." That is what the U.S. Supreme Court said in Ex Parte Garland, and has repeated in numerous subsequent cases including New Hampshire v Piper, and Baird v Arizona State Bar. Ultiimately, the unavoidable conclusion that must be reached in this case is that the Dissent is failing to demonstrate the proper degree of respect for the rule of law by falsely characterizing the nature of the right to practice law and usurping the authority of the U.S. Supreme Court in doing so. This obviously reflects adversely upon the Dissent's moral character.

Finally, I note that as a litigant, I definitely would not want to be represented by the Applicant in this case. He's not a full attorney. He is only conditionally admitted, and unlike any South Dakota counsel representing an opposing litigant, his conduct is under a microscope. That harms any litigant represented by this "quasi-lawyer." I would prefer to be represented by an attorney whose conduct is not under a microscope, because such scrutiny gives opposing counsel too much leverage to use against the Quasi-Attorney in this case. The ultimate victim will be the litigants he represents. The State Supreme Court substantively forgets them, providing only lip-service their interest.

The concept of conditional admission is crap. Both the Majority and the Dissent lacked good moral character in this case, as well as the Bar Board. The Majority lacked good moral character for limiting admission to a conditional status and then deceptively concealing such a critical fact from the general public. The Dissent lacked good moral character for falsely characterizing the nature of the ability to practice law, and falsely alleging the Applicant in this case was not morally fit to practice law. He definitely should have been admitted outright. I would suspend the Justices of the State Supreme Court and members of the Board, but allow them to apply for reinstatement in no less than three years upon a showing of remorse and rehabilitation.

TENNESSEE

770 S.W.2d 755 (1988)

THE TENNESSEE TANEYs

The Plaintiffs in this case were Bar Applicants who sat for the 1985 and 1986 Bar exams. They failed the essay portion of the exam and instituted suit contending the Board did not maintain objective standards for determination of a failing or passing grade. They further contended that as a result, the exam amounted to a fulfillment of quotas. The Plaintiffs additionally contended that after they petitioned the Tennessee Supreme Court for review, the Board of Law Examiners failed to accord them anonymity as required by Supreme Court rules, when they took a subsequent Bar exam.

They also contended that the Board retaliated against them for filing a Supreme Court petition, intentionally discriminated against them and maliciously denied them passing grades. I like their case. But there's more. They further contended that Memphis State University and the individual defendants connected therewith, conspired with the Board of Law Examiners in determining who would be allowed to fill the quota of passing Applicants and that the law school recommended the Board should not pass particular Plaintiffs on the exam. They also alleged that a particular law professor, while acting ostensibly as their friend and confidant, was in fact betraying their confidence to the Board of Law Examiners and advising the Board against the best interest of plaintiffs.

The Court writes a lengthy opinion ruling against them, which in my belief is wholly illegitimated by the following statement in their opinion:

> "The power to determine who should practice before the courts has been aptly summarized by **Chief Justice Taney:**
>
> > "And it has been well settled . . . that it rests exclusively with the court. . . ." [367]

Why does such a simple statement illegitimate the opinion? Very simple. Anyone who knows anything about the law knows that it is generally inadvisable to quote Chief Justice Taney. No United States Supreme Court Justice has been more scorned. He wrote the opinion, which contributed significantly to, and in fact was arguably the primary cause of the outbreak of this nation's Civil War.

Taney wrote the opinion in the infamous Dred Scott case, which condoned slavery. Any State Supreme Court Justice that quotes Taney with approval in any case, of any nature, is essentially begging to be branded a racist. As to the merits of the Applicant's case, it is irrefutable that grading an essay exam is subjective in nature. The grader can assess the examinee's beliefs and opinions, which can not help but to inextricably be intertwined with their answer to a question. The Bar exam must be fully objective without exception. Otherwise, it invites discrimination and prejudice.

TEXAS

In considering the Texas cases, it is important to point out that Texas administers the admissions process in a unique manner. An Applicant appealing denial of admission to the Bar based on the moral character assessment, appeals to a trial court, rather than the State Supreme Court. The matter is then appealable to the State Court of Appeals, then the State Supreme Court, and then the U.S. Supreme Court. This system allows Texas to essentially keep the matter "in-house" for a more lengthy period of time in comparison with other states where denial is appealed directly to the State Supreme Court and then the U.S. Supreme Court. Texas has realistically imposed upon the Applicant for the benefit of the Bar, two additional procedural levels that are absent in other States.

On the brighter side, their unique system increases the likelihood that the various State levels of character assessment will contradict each other, thereby making the State's legal profession look foolish. The various intra-branch political grabs for power become rather amusing.

No. 3-90-097-CV 7/24/90 1990.TX.1127
COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

THE HIGGLEDY-PIGGLEDY BOARD OF LAW EXAMINERS

The Board of Law Examiners denied admission to the Applicant on character grounds. The Applicant appealed to the District Court of Travis County which ruled in his favor, concluding that the Board's determination was not supported by substantial evidence. The Board then appealed to the Court of Appeals. The Court of Appeals opinion states as follows:

> "An orderly examination is made difficult by the fact that the Board's record appears **higgledy-piggledy** in the transcript rather than as an exhibit in the statement of facts.
>
> There is no formal Board order in the administrative record; . . ."

The character issue focused on the Applicant's response to Question 6(b) of his filed "Declaration of Intention to Study Law" (not required by most States), which related to his employment during the last ten years. Also, Question 11(b) became an issue of dispute, related to an Applicant's examination or treatment for mental, emotional or nervous disorders. The Board concluded that the Applicant failed to cooperate, lacked candor, and exhibited a continuing attitude of immaturity and lack of respect for authority.

In response to the employment inquiry, the Applicant responded that he was employed by the national accounting firm of Peat, Marwick, Mitchel and Co. (now KPMG) as an Assistant Tax Specialist. In explaining the reason for his termination, he stated:

> **"Why don't you ask them & let me know because I have been wondering now for 3 ½ years."**

He responded as follows to the question about treatment for mental, emotional or nervous disorders:

> "Yes, I saw a counselor as a youth (17-18 yrs. old). **This stuff is really none of your business** as it does not affect my ability to practice law in Texas."

The Board claimed that he did not fully respond to the "reason for termination" portion of the employment inquiry. Testimony at the Bar Hearing pertaining to the employment termination issue included the following:

"Q. . . . what was the reason for your termination from Peat, Marwick?

A. I don't know. All they told me was that I was not cut out for public accounting. That is the only reason they gave me, and I have been wondering the same. . . . I was legitimately asking you that.

Q. Did you know that was the reason for your termination at the time you filed your Declaration?

A. That I had been told that?

Q. Yes, sir.

A. Yes.

The foregoing exchange portrays the Board's position as rather lame. Essentially, the interrogator was trying to assert that by being told he was simply "not cut out for public accounting," the Applicant should have disclosed such as the reason for his termination. Proper interpretation of the above exchange confirms fairly well that the Applicant did not know the reason for his termination. He stated in no uncertain terms:

"That is the only reason they gave me, and I have been wondering the same"

The Court of Appeals opinion states:

". . . In its brief, in fact, the Board claims that his failure to put down these words in the application is proof certain of a character fault.

At best, the meaning of the phrase "not cut out for public accounting" is obscure. What meaning the accounting firm assigned to the phrase is, of course, known only to the firm. Does the expression relate to work habits or proficiency, or to job performance or attitude?"

The Applicant disclosed two arrests in 1987 and 1988. One for disorderly conduct and evading arrest, and the other for "failure to identify." He did not however, provide the court records with his application. The disorderly conduct arrest stemmed from noise at a law school party he attended. The Dallas police forced their way into the apartment where the party was being held and seized the hostess. The Applicant and other law students proceeded to lecture the police about the law and were consequently arrested themselves. The Applicant was found "Not Guilty." The second arrest in 1988 involved a prank at a fast-food drive-in and was dismissed.

Now, get this part of the Court's opinion on the Board of Law Examiners obvious twisted lunacy:

". . . the Board claims that it was empowered to deny his application, **not for the content of his answers, but instead "for the way he answered questions** . . . ." The Board characterizes

<Applicant's> answers as "curt dismissals" and his failure to supply the court records as "flagrant non-compliance with the requirements to furnish records."

This is clearly a Board of Law Examiners begging for a bit of an attitude adjustment. The Court handles the matter quite well and I applaud their statement:

"This Court is troubled by the Board's basic premise that it has the power to deny an applicant the opportunity to sit for examination **based simply upon the manner in which he answers** the application and without reference to the content of the answers. We know of no such authority and the Board has directed our attention to none. . . .

. . . Aside from the problem of the Board's authority, **the Board's characterization** that <Applicant> was in "flagrant non-compliance with the requirement to furnish records" **is erroneous.** <Applicant> reasonably explained his inability to sent the court records at the same time that he filed his application. . . ."

The Board irrationally asserted that the Applicant's answer to the inquiry about counseling was perhaps the "best evidence," that he lacked the requisite character. The Court writes in reference to such:

"Finally, the Board contends that <Applicant's> answer to question 11 is "perhaps the best evidence that <Applicant> lacked the required character to practice law in Texas. In response to question 11, <Applicant> responded that he was counseled by a psychological examiner when he was seventeen. **His need for counseling stemmed from a tragic accident that claimed the life of his younger brother. Unfortunately, <Applicant> took it upon himself to comment upon the propriety of the Board's inquiry : ". . . . This stuff is really none of your business . . . .**

<Applicant's> answer did furnish the Board with the name and address of the psychological examiner. . . . Far from failing to disclose or cooperate, <Applicant" "over disclosed" **concerning a private matter not related to legitimate inquiry by the Board**. . . ."

Footnote 4 of the opinion contains an important fact. The Applicant provided the following information about his arrest:

"I was charged with disorderly conduct and evading arrest in Dallas County in the spring of 1987. The evading arrest complaint was quashed on its face with no further action. The disorderly conduct <sic> went to a full jury trial on the merits and resulted in a not guilty verdict. The Dallas police arrested me along with two other law students & a MBA student when we objected to the police officers' sexual and physical abuse of a young lady. . . . In August 1988, I was charged with failure to identify . . . .As a matter convenience <sic>, I agreed to a deferred adjudication . . . **on the recommendation and assurances from the judge and prosecutor that I would not have to report, disclose or otherwise discuss this on my bar application.** Obviously they were wrong, and this would be grounds for reversing my . . . agreement to take deferred adjudication. I represented myself, pro se. . . . **I should not have to waive my constitutional rights in order to practice law in Texas."** [368]

This case reflects atrociously on the Board of Law Examiners. The Applicant not only should have won the case as he did, but the Board should have been sanctioned, and perhaps suspended from the practice of law. They lacked candor in the manner they ruthlessly and unjustly attacked this

Applicant. Their "higgledy-piggledy" record that did not even contain a formal Order was "evasive" and "misleading."

Applying their own standards, the Board members would not have had a chance in the world to be admitted to their own Bar. The Board's contention that the application was faulty not because of its' content, but for the "manner" in which the Applicant answered questions was crap.

No. 3-92-005-CV 1992.TX.2207 December 23, 1992
COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN
No. D-3694 SUPREME COURT OF TEXAS 1/5/94

THE HAPHAZARD TEXAS BOARD OF LAW EXAMINERS

My analysis of this case encompasses two court opinions. The Court of Appeals and the Texas Supreme Court.

THE TEXAS COURT OF APPEALS OPINION

The Applicant was a member of the Mississippi State Bar for approximately 20 years. His application to the Texas Bar disclosed two civil judgments entered against him for debts. Supplemental investigations revealed a third unsatisfied judgment and a failure to pay income taxes. The Board of Law Examiners denied admission on character grounds. The Applicant appealed to the Travis County District Court which concluded that the Board's decision was not supported by substantial evidence and reversed. The Board appealed. The Court of Appeals rules in favor of the Applicant stating:

> "The legislative directive to the Board to certify the "good moral character" of each attorney admitted to practice law in this state is **troublingly indefinite.** The Rule adds little precision. . . .
>
> **The United States Supreme Court has warned that "good moral character" is 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." Konigsberg v. State Bar of Cal., 353 U.S. 252, 263 (1957).** In a recent decision, this Court determined that the **Board of Law Examiners had "mistaken a spirited bumptiousness for a lack of good moral character.**". . . 793 S.W.2d 753, 760. . . . Critics of using "good moral character" as a measure of the suitability of prospective attorneys note that such a **vague qualification opens the door to arbitrary and subjective judgments** with no demonstrable relationship to the protection of future clients or the administration of justice. See Stephen K. Huber, Admission to the Practice of Law in Texas: A Critique of Standards and Procedures, 17 Hous. L. Rev. 687, 727-28 (1980)."

The Court of Appeals is faced with another sloppy record of the proceedings. The opinion states:

> "Our efforts at review are hindered because **the record appears haphazardly** in the transcript rather than as a discrete exhibit in the statement of facts.
>
> We find **no formal Board order** in the administrative record.

> . . .
> Because "good moral character" is such an **ambiguous qualification** for a prospective attorney, the search for substantial evidence that <Applicant> lacks good moral character is tricky. . . .
>
> . . . To deny admission because of a deficiency in the applicant's character, the Board must find "a clear and rational connection between a character trait of the applicant and the likelihood that the applicant would injure a client or obstruct the administration of justice . . . ."

The Board had denied admission on grounds including:

> "<Applicant> has demonstrated a marked disrespect for the law as shown by . . . his failure to arrange for satisfaction of three (3) outstanding civil judgments based upon **non-payment of various debts;**
>
> . . . a long-standing lack of financial responsibility in his dealings with creditors . . . ."

The Court of Appeals addresses the Board's contention as follows:

> ". . . we do not find record evidence to support the conclusion that <Applicant's> omissions or his motives are likely to injure future clients. There is no evidence before the trial court indicating that in twenty years as an attorney <Applicant> has ever been the subject of any grievances, complaints or disciplinary hearings in Mississippi. Nor is there evidence that could rationally connect <Applicant's> failure to file tax returns with the obstruction of justice. . . .
> . . .
> **Not all illegal conduct reflects adversely on fitness to practice law; the Disciplinary Rules carry forward the former distinction between "serious crimes" and other offenses**. . . .
> "Serious crime" is defined as "any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent misappropriate of money. . . **.Standing alone, <Applicant's> failure to file federal income tax returns would not seem to constitute a serious crime."** [369]

THE TEXAS SUPREME COURT OPINION

The Board of Law Examiners having suffered one humiliating defeat after another at the Court of Appeals, now appeals to the Texas Supreme Court. And they win. The Supreme Court states:

> "It would be a small comfort to the public if the only ethical standard for admission to the Texas Bar were an absence of convictions involving serious crime and crimes of moral turpitude. Rather than mere absence of gross misbehavior, bar admission affirmatively requires "good moral character". . . .
> . . .
> Although it may initially seem appealing, as the court of appeals suggested, to generate detailed lists of actions that will result in discipline for an attorney or disqualification for a bar applicant, such a list is both impracticable and undesirable.
> . . .
> . . . Likewise, the **diversity of bar applicants renders** advance preparation of an exhaustive list of disqualifying factors problematic."

I believe the real reason that the Court did not want to adopt an objective standard was disclosed in the final sentence above. The reason was the "diversity of bar applicants." It is a prejudicial statement demonstrating exactly what the admissions process is all about. The Court wants to admit only those Applicants possessing the same attitudes, prejudices and beliefs as the State Supreme Court and Bar. The Court concludes as follows:

> "Although <Applicant> presented countervailing evidence of his good character, including evidence of prior public service and letters of recommendation, this evidence does not conclusively negate the evidence that <Applicant> fails to meet the minimum standards under our disciplinary rules."

The political nature of the admissions process is revealed in Footnote 8 of the opinion which states:

> **"<Applicant> served as a member of the Mississippi House of Representatives for four years in the early 1960s**, and also as a military officer in Vietnam. At his hearing, **<Applicant> presented letters of recommendation from a member of the Mississippi Board of Bar Commissioners, the president of the Mississippi State Bar Association, a district judge, former members of the Mississippi legislature, and a former member of the Federal Energy Regulatory Commission."** [369]

Now, my opinion in the case. First, I am wholly unimpressed with the extensive list of individuals disclosed in Footnote 8, from Mississippi that recommended in favor of admission. The admissions decision should be based on a person's qualifications and conduct, rather than who they know.

I am naturally disgusted with the State Supreme Court's attempt to use the "diversity of bar applicants" as justification for subjective assessment, rather than applying fair and objective standards to everyone. The Court of Appeals opinion was much better, with one notable exception. The failure to file federal income tax returns if it results in a conviction is definitely grounds for denying admission. The Court of Appeals apparently was suggesting that even if one is convicted of failure to file federal income tax returns, it is not a crime involving moral turpitude. I view (and believe most law-abiding Americans view) such a failure on the part of a person, as more egregious than puny omissions of civil suits, or answering questions in a "manner" that does not appease the pompous, prejudicial butts of the Texas Board of Law Examiners.

Both this case, and the prior case involved instances where the Board denied admission, the trial court held in favor of the Applicant and the Court of Appeals ruled in favor of the Applicant. The prior case did not go to the State Supreme Court and when this one did, that Court ruled in favor of the Board. It is clear there were many power games taking place, with each side simply using the helpless Applicant, more or less as a pawn. It is also noteworthy that both cases involved instances where the Texas Board, although falsely purporting to assess character in the public interest, maintained the official record in a "higgledy-piggledy" and "haphazard" manner. They didn't issue a formal Order in either case.

This is particularly disturbing regarding the second case, because they were on notice from the Court of Appeals in the first case that failure to issue a formal Order was improper. Even if the Board disagreed with the necessity for a formal Order; in the absence of a Supreme Court opinion indicating otherwise, their perpetuation of such conduct was inexcusable. Applying their own standards, their failure to comply with the Court of Appeals at least until the State Supreme Court indicated otherwise, showed a marked disrespect on their part for the rule of law.

No. 03-95-00061-CV 10/20/95 1995.TX.1428 (Versuslaw)
TEXAS COURT OF APPEALS, THIRD DISTRICT

NOW WE CONTROL YOUR PERSONAL LIFE ALSO

The Board recommended admission, but only wanted to give the Applicant a probationary license. He appealed and the district court ruled in his favor. The Court of Appeals reversed and ruled in favor of the Board. The probationary license required the Applicant to abstain from alcohol and obtain psychiatric care in compliance with the Lawyer's Assistance Program. This is a dream come true for the State Bars. The concept of a probationary license allows them to exercise not only full control over the attorneys' professional life, but also gives them control over the attorney's personal life. It is set up from inception to make the Applicant bitter and resentful. No one wants to be told what they can and can't drink as a condition for licensure as a professional. It is a concept doomed for failure. On the one hand, it makes the State Bars look like mad scientists trying to gain complete and absolute subjective control over an attorney's life. Simultaneously, it makes them appear wishy-washy and indecisive. Take a decisive stand, one way or the other. Admit or don't admit. I would admit the Applicant unconditionally. [370]

No. 03-95-00715-CV 7/31/96 1996.TX.2395 (versuslaw)
TEXAS COURT OF APPEALS, THIRD DISTRICT

VOID THE BOARD, NOT THE EXAM SCORES

In this case, an Applicant who was granted a probationary license appealed the Board's decision to revoke that license based on his purported failure to comply with terms of the license. The Applicant had DWI arrests and at least one DWI conviction. In 1992, he applied for a permanent law license. That application revealed he was arrested for DWI in 1991. He was recommended for a probationary license conditioned on his regular attendance at Alcoholics Anonymous and Lawyers Caring for Lawyers (LCL). LCL while ostensibly an organization to assist lawyers in need, apparently served the dual function of allowing the State Bar to spy on the personal lives of its licensed attorneys.

The "Anonymous" portion of AA is apparently not quite so when it comes to licensed attorneys, since as this case demonstrates, the Applicant's participation was included in the public court opinion. The State Bar obviously frustrates the purpose of fine organizations like AA, which I do believe is probably interested in genuinely assisting those in need. Unlike LCL, I do not believe AA intentionally performs a dual role as a State Bar spy.

The Applicant petitioned for review of the Board's 1992 Order and while the suit was pending he violated the Order. The Board and the Applicant ultimately agreed that he would dismiss his suit in exchange for another probationary license. The Board then moved to revoke that license on the ground the Applicant violated its terms. Their concept of violating terms of the license is delineated in the opinion as follows:

> "The notice also recounted a letter that <Applicant> wrote to the Board informing it that he **would not attend AA meetings during his vacation in St. Thomas."**

There you have it. Once you're forced to go to AA or LCL to maintain your law license, then you have to also cancel your vacation to St. Thomas. Let's have the State Bar explain to the lawyer's kids, why they can't go on vacation, so Mommy or Daddy can maintain their law license. The Board then took the particularly egregious and vindictive step of incorporating within it's Order of revocation, that the Applicant's 1990 Bar exam scores should be voided. They required him to pass another Bar exam before applying for a law license. Obviously, they just wanted to bust his chops. The Court of Appeals admirably demolishes the Texas Board of Law Examiners once again. Their opinion states:

> "In his first point of error, <Applicant> complains that the Board exceeded its statutory authority in making findings of his moral character and fitness at a proceeding limited to the issue of compliance only. We agree.
> . . .
> The Rules Governing Admission . . . detail the procedures for the Board's reconsideration of a candidate's moral character and fitness. . . .**These Rules have the same effect as statutes**. . . .
> . . .
> By its express terms, the authority granted in Rule 16(g) requires that the Board first conduct a hearing to redetermine a candidate's moral character and fitness. . . . Therefore, Rule 16(g) itself cannot be a grant of authority to redetermine a candidate's moral character and fitness. . . .
> . . .
> **. . . the Board exceeded its authority under both the governing statutes and the Rules."** [371]

No. 03-97-00720-CV 1998.TX.42344 November 13, 1998 TEXAS COURT OF APPEALS, THIRD DISTRICT

CATCHING THE BOARD'S CATCH-22

This case is an excellent example of how the Texas Board of Law Examiners perverts the use a probationary license. In the last case, the Board sought to revoke a probationary license because the Applicant did not attend all AA meeting. In this case, the Board not exactly appearing to be a model of consistency, makes the irrational assertion that continued attendance at AA meetings constitutes evidence of chemical dependency. The Board obviously perverts the true intent and most benign purpose of fine organizations such as AA, in order to fulfill their self-interested quest for power over the personal lives of attorneys.

If you ever had a doubt about how diabolical the State Bars are, this quote from the Court's opinion should resolve it. The Court states:

> "Appellant contends that substantial evidence does not exist in the record to support the Board's finding of present chemical dependency. We agree. The Board point to two areas in the administrative record to justify its finding that appellant was presently chemically dependent: (1) that he has been active in AA since 1986 . . . . **We find it hard to imagine how anyone could overcome the stigma of chemical dependency under the Board's concept**. . . . Many experts would view appellant's involvement in AA as evidence that appellant has worked to overcome chemical dependency rather than evidence of a continuing problem. **Furthermore, the Board places appellant in an impossible catch-22 situation: the Board lists involvement in AA as a condition of appellant's probationary license and yet attempts to use appellant's compliance with that condition as evidence of a present chemical dependency. . . ."**

In reference to procedural protections, the Court states :

> **"The Board, however, fails to provide the procedural protections and range of sanctions given regular licensees in the grievance process."**

Consider also this statement by the Court :

> "Appellant's situation under a probationary license **resembles criminal probation** in that the Board has discretion to refuse to recommend appellant for regular licensure and to revoke his probationary license upon a finding that any condition, **no matter how inconsequential**, has been violated."

The foregoing is an interesting concept. By attaining the probationary law license, a person becomes more like a criminal in Texas, compared to a Nonattorney. That license can be revoked if the conditions are violated in a manner "no matter how inconsequential." Is that really fair? Is that the type of protection from dishonest lawyers, the public really needs? Or does it simply give the Board the power to control the lawyer's conduct more closely? Remember, control the lawyer and you control the manner in which he litigates, which ultimately allows the Bar to influence litigation outcomes. Any litigants that lawyer represents then have a decreased likelihood of receiving zealous representation.

Footnote 1 of the opinion, outlines some of the additional terms of the "probationary license" which were numbered as follows:

> "2. that Applicant shall comply with **any requirements** of the Lawyers' Assistance Program and **shall be subject to the supervision of an attorney monitor acceptable to the Board**. . .
>
> 3. that Applicant shall . . . attend and actively participate in at least five AA meetings per week, and document such attendance with an attendance log . . . .
>
> 4. that Applicant shall attend attorney support group meetings one time per week . . .
>
> . . .
>
> 6. that Applicant **shall be subject to random alcohol/drug screens** at the frequency determined by his monitor. . .
>
> 7. that Applicant **shall not engage in any other conduct** that evidences a lack of good moral character or fitness.
>
> . . .
>
> 9. that Applicant **shall reside continuously in Texas** during the period of his probationery license . . . ." [372]

What do you think of these conditions? Isn't the probationary law license controlling the Applicant's very existence and personal life? He has to live in Texas. He must attend between AA and LCL, at least six meetings per week. What about his family? Why can't he miss a few AA or LCL meetings to take his son or daughter to a school activity? What is the definition of "any requirements" in (2) above? Is this really fair? What constitutes in reference to (7) above, "any other conduct that evidences a lack of good moral character?" Don't these provisions give the Board the power to determine where the attorney lives and almost everything he can do in life?

And perhaps the most important question of all. Would you want this attorney to represent you, going up against another attorney who was not subject to such ridiculous conditions or loss of his law

license so easily? Assuming you're not a Schmuck, you would answer, "No." The probationary license concept infringes upon the Applicant's sense of self-esteem, and consequently diminishes a litigant's probability of hiring an attorney who will zealously represent them. What it does accomplish is to provide the Bar with sufficient leverage to squeeze and mold an attorney to fit their diabolical self-interested, irrational quest for power.

Control the lawyer and you control litigation outcomes. Control litigation outcomes and you control the general public. Quite far from the State Bar's falsely asserted goal of protecting the public interest from dishonest lawyers.

VIRGINIA

254 S.E. 2d 71 (1979)

IT'S NOT SO UNORTHODOX

The Applicant was a member of the District of Columbia Bar. She was denied admission to the Virginia Bar on the purported moral character ground that "her unorthodox living arrangement would lower the public's opinion of the bar" as a whole. As a preliminary matter, I note that regardless of her conduct, it is virtually impossible to "lower the public's opinion of the bar" as a whole. Quite simply put, pragmatically speaking, there's a point where the public's opinion of an institution is already so low that it can not get any lower.

She had no criminal convictions or matters reflecting adversely on her character. She was denied admission because of her "unorthodox living arrangement." Specifically, she was living with a man she was not married to. The State Bar's perspective in this case was so irrational that it simply suffices to say the Court ruled in favor of the Applicant.

She never should have been required to incur the time and expense pursuing the appeal. She should have been immediately admitted. What if she had not appealed though? More to the point, were there other Applicants in similar circumstances who didn't appeal, that were denied admission simply because they lived with someone they were not married to? Isn't the Bar simply trying to control the lifestyle of its attorneys, and ostensibly trying to justify their control by giving mere lip-service to the "public opinion?" Incidentally, the answers to the foregoing questions are, "yes", "probably", and "yes."

I read a case like this and can't not help but feel a great sense of shame and disgrace for being a licensed attorney. On the other hand, it could be a lot worse. I could have been a member of the Virginia Bar when this case was decided.

In closing, I would note that a Character Committee, Board or Bar that denies admission to an individual simply because they are living with someone they are not married to, is in all likelihood probably comprised of Bar Committee members who are either unhappily married or simply not "getting any." The concept being that, if you want to be in our Bar, you should be as miserable as we are. [373]

WASHINGTON

690 P.2d 1134 (1984)

A GREAT DISSENT

The Court's opinion in this case is most unusual. The majority loses focus of the primary issue. They may (or may not) have reached the correct, ultimate conclusion, but their reasoning is irrefutably irrational. The Applicant in 1973 was convicted by a jury of second degree murder, and in 1974 with heroin possession. He served 3 years, 8 months and was then paroled. He claimed that he acted in self-defense. The victim was married to, but separated from the Applicant's girlfriend. The victim had threatened the Applicant on several occasions and beat him with a pistol at least once. The Applicant bought a pistol for protection and one night was approached by the victim who reached into a bag. The Applicant shot. A search of the victim's bag later revealed that a gun was inside it.

The Board recommended admission. The State Supreme Court did not agree. This case is therefore, unusual from inception in that both the Applicant and the Board were in agreement, which left the State Supreme Court struggling to find justification for denying admission. I will not dwell however, on whether the Supreme Court had authority to consider the case.

Assuming arguendo, that the Court had legal authority to decide the case, its' denial of admission should have focused on the issues of the crime committed, along with the matters of remorse and rehabilitation. Instead, what it did was focus equally on the crime committed and a trivial allegation that the Applicant engaged in the unauthorized practice of law (UPL) by preparing articles of incorporation for some private businesses.

They look ludicrous. How can you possibly give equal weight to a puny, and constitutionally questionable allegation of UPL which is designed to foster the economic, anticompetitive interests of the State Bar, with the crime of murder? It illegitimates the entire opinion. The opinion states:

> "Simply put, a person who for a fee advises whether to incorporate and then draws articles of incorporation, and who does not think he is practicing law is not qualified to practice that profession."

I disagree and would elucidate the point as follows :

> "Simply put, a Judge who gives equal weight in a Bar admissions opinion to an allegation of UPL which is designed to foster the economic interests of the profession, with a jury conviction for the serious crime of second degree murder is not qualified to be on the bench."

The Dissent is not much kinder than myself, when commenting on the majority's irrationality as follows :

> "I disagree with its focus on facts that **only arguably constitute unauthorized practice of law**. . . .
>
> **. . .**
>
> It may be simple for the majority, but it is not that simple for me. **<Applicant> never held himself out to be a lawyer. He never gave the articles of incorporation to the small business, and the papers were never used. Is merely giving an opinion on whether to incorporate the practice of law ? Possibly so, possibly not, but the question I must ask is, is the majority really denying <Applicant's> 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 practiced 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."** [374]

The Dissent has essentially called the majority liars, by using the phrase "is the majority really denying <Applicant's> admission to practice based on this fact? I cannot believe that it is." I like the style. A Great Dissent.

WEST VIRGINIA

266 S.E. 2d 444 (1980)

TRICKED AND SUCKERED BY THE DECEPTIVE BAR EXAMINERS

The Bar application included the following question, and also provided the following possible answers :

> "21. Do you advocate or knowingly belong to an organization or group which advocates the overthrow of the Government of the United States of America or of the State of West Virginia by force or violence?
>
> Yes No Decline to Answer"

The Applicant checked "Decline to Answer." He was then informed that no further consideration would be given to his application until he answered questions pertaining to his advocacy, membership in organizations, and beliefs with respect to overthrowing the government. He refused to answer the questions and was informed that his application would not be processed. He then filed an action in the West Virginia Supreme Court, which ruled in his favor. The Board maintained that irrespective of his associations or activities with respect to advocating the overthrow of the government, his refusal to answer questions obstructed their investigation and justified their failure to process the application. The Court's opinion states:

> "At the outset, **we do not think it can be maintained that petitioner failed to respond to Question 21** on the character questionnaire. **Petitioner chose one of the three possible answers** which respondents provided to the question. **The questionnaire did not require any further explanation** of the "Decline to Answer" choice **and did not indicate that it was an unacceptable answer."**

Addressing the legitimacy of the questions, the Court writes in reliance on the U.S. Supreme Court's opinion in *Baird v. State Bar of Arizona*, 401 U.S. 1, 91 S.Ct. 702 . . . (1971):

> "A plurality of the Court found that because the inquiries were **so broad and vague** as to include associations protected by the First Amendment, as well as unprotected ones, **the State could not compel an applicant to answer those questions** as a prerequisite to admission to the bar without violating his or her right to associate."

The Court later notes:

> "We do not think . . . that the questions posed by respondents serve to further that purpose in the least restrictive manner."

The Court then concludes:

> "Finally, respondents maintain that **they are allowed to question applicants about any matter which they deem relevant** to good moral character. **The implication is that respondents have absolute discretion in determining what is relevant to good moral character**. . . . We have determined that the questions asked of petitioner unconstitutionally infringe upon the rights guaranteed to him. . . ."

Footnote 12 of the opinion states as follows:

> "Justice Black, in Baird, and Stolar, recognized questions similar to those posed here as **"relics of a turbulent period known as the "McCarthy era". . . ."** [376]

The most interesting aspect of the case to me, is the fact that the Board would have the audacity to include a selection right on the questionnaire that expressly read "Decline to Answer" and then when it was checked, irrationally assert the ground of "refusal to answer" to justify their failure to process the application. They obviously intended to trick the Applicant and did so by engaging in "misleading" and "deceptive" conduct.

408 S.E. 2d 675 (1991)

EPC- IT'S THE HEART AND SOUL, BABY!

This is one of the most important cases I've come across, because it hits directly on the most unconstitutional aspect of the admissions process. The Applicant brilliantly challenges the premise that Nonattorney Bar Applicants are subjected to a higher standard of character than licensed attorneys. He challenged the admissions process under the Equal Protection Clause which is exactly what I would do.

He disclosed three DUI convictions from 1976, 1987 and 1988 on his application. The opinion presents the following additional facts in a somewhat misleading manner:

> "He also has twenty-five arrests for speeding, with twenty-four resulting in convictions, five other traffic arrests, including two careless driving charges resulting in one conviction; one reckless driving arrest which did not result in a conviction and two other unspecified moving violations arrests with two convictions. . . ."

The foregoing is misleading because, although technically correct that receiving a speeding ticket is an arrest, most citizens consider it to be merely a traffic ticket. The DUI convictions are serious matters warranting consideration, but the severity of the other matters is questionable. The Court appears to inflate their importance by using the term "arrest" beyond the commonly accepted societal view. Buried in Footnote 4 the Court writes:

> "In addition, the appellant updated his application as recently as July 2, 1991, with yet another speeding conviction which occurred in June 1991. The traffic arrest took place . . . when the appellant was stopped for traveling 67 miles per hour in a 55 miles per hour zone."

The key issue in this case is the Applicant's Equal Protection Clause challenge. He asserts that the failure of the Bar to hold licensed attorneys to the same standard as Nonattorney Applicants violates the Equal Protection Clause. He was challenging the fact that licensed attorneys are subjected to a lower character standard than Applicants. The Court rules against him and concludes that attorneys may be held to a lower standard of conduct than Nonattorneys, since at one point in their career they went through the admissions process. The opinion states:

> ". . . The appellant asserts that the denial of his application to sit for the bar examination upon the grounds of character and fitness was premised upon **improper class distinctions made between the appellant . . . and those who were either already licensed to practice law or those seeking reinstatement to practice law.** . . . The appellant argues that "the distinction is improper in that the purpose and intent of legislation and rules promulgated respecting character and fitness is the protection of the public from unqualified and immoral practitioners. . . and that **since both classes of individuals presumably contain unqualified and immoral individuals, there is no rational basis for applying different standards to them.** The appellant finally asserts that it is **particularly invidious that one who has not committed ethical violations by past specific incidents of misconduct is subjected to more stringent regulation than those who have previously committed ethical violations or who are in a position to do so. . . .**
>
> . . . for the sake of the discussion on the equal protection argument, **we will assume the appellant's contention that a higher standard of conduct is required for new applicants.**

> In addressing whether the requirement of a higher standard of good moral character for bar applicants is violative of the equal protection clause, we turn to our decision . . . where we held that **"equal protection of the law is implicated when a classification treats similarly situated persons in a disadvantageous manner. . . . Consequently, if it is determined that bar applicants are not similarly situated with attorneys already admitted to practice, then a different standard, such as a higher standard of good moral character may be imposed by the state upon the applican**t. . . .
>
> **. . .**
>
> In the present case, legitimate differences exist between bar applicants and those already admitted to the bar, and accordingly, these two groups are not similarly situated. **Those already admitted to practice have met the character qualifications**, have proven their knowledge and fitness to practice law, and accordingly, are governed by a different set of rules than bar applicants. For instance, **attorneys already admitted to practice must practice law in conformity with the Rules of Professional Conduct**, while bar applicants must comply with the Rules for Admission. . . . Denial of admission to the bar exam is simply not equivalent to an attorney who either faces disciplinary action or reinstatement." [377]

The lame nature of the Court's logic rests in the manner they concluded that Bar Applicants and licensed attorneys are Dissimilar. The Court presented two distinctions. The first distinction was that licensed attorneys already met the character qualifications when they were initially admitted. That argument fails rational scrutiny because once five years or so has lapsed from the date of initial admission, the initial character assessment is too remote in time to have current relevancy. The remote nature of prior character dating back more than five years, is an irrational frame of reference to use for assessing current character.

The second irrational distinction the Court makes is that licensed attorneys are subject to the professional rules of conduct. The flaw in this argument is that the impact of such a distinction should be to hold the licensed attorney to a higher, rather than a lower standard of conduct. The attempt by the Court to use this fact as justification for holding Nonattorney Bar Applicants to a higher standard of conduct than licensed attorneys, turns logic on its head.

It was a bad opinion and this Applicant hit upon the most vulnerable point of the Bar admissions process.

1997.WV.276 (1997) VERSUSLAW
SUPREME COURT OF APPEALS OF WEST VIRGINIA; NO. 24040 (1997)

The Applicant graduated from Howard University in 1968. In 1974, he participated in a conspiracy to commit armed robbery during which a female police officer was shot and killed by the Applicant's accomplice. At trial, he entered a guilty plea to second degree murder, conspiracy and attempted armed robbery. He was sentenced to fifteen years to life in prison. While in prison, he was a model prisoner and released after fifteen years. He then went to law school and graduated in 1994. Since the events of 1974, it appears his record was wholly unblemished and in fact nothing short of remarkable. The Board determined that he had the requisite character to be admitted to practice. The State Supreme Court disagreed.

I present this case for only one reason. Whether the reader believes this Applicant who committed an extremely serious offense in 1974 should be admitted or not, it is absolutely irrefutable that the Board's decision to grant admission was wholly inconsistent with their refusal to certify the Applicant in the prior case, who had three DUI convictions and a lot of traffic tickets. [378]

1997.WV.423 (VERSUSLAW) (1997)
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA; No. 23935

This case involves reinstatement for a suspended attorney. The suspension followed his plea of guilty to six federal misdemeanor charges of cocaine possession in 1989. The Court reinstates him effective January 1, 1998 subject to the following conditions:

> "upon reinstatement . . . shall be supervised for a period of one year by an attorney in good standing with the State Bar. . . ."

I present this case for two reasons. First, reinstating an attorney convicted of cocaine possession is inconsistent with the denial of admission to the Applicant who had only three DUI convictions and traffic tickets. This disparity in treatment exemplifies the Equal Protection Clause infirmity of the admissions process. The suspended attorney is held to a lower standard of conduct with respect to reinstatement than the Nonattorney Applicant in an initial admission.

Second, the concept of reinstating an attorney, subject to a supervision requirement is crap. Either he has the character to be reinstated or he doesn't. The supervision requirement places the attorney at a great disadvantage, compared to other attorneys not under supervision. Consequently, the clients he represents, who probably are unaware of his restricted and limited status, are at a disadvantage.

What the Court was doing was trying to control this attorney by holding the carrot of licensure above him. That's immoral and detrimental to the public interest. [379]

WISCONSIN

Generally speaking, the Wisconsin line of Bar admission cases are characteristic of a Board of Bar Examiners that consistently makes numerous, material administrative errors, and then tries to conceal their own incompetency by denying admission to the Applicant through utilization of an unreasonably restrictive interpretation of the Applicant's minor errors. In doing so, the Board obviously evinces a pattern of misleading conduct that lacks candor. They are definitely one of the more tricky and deceptive little Board of Bar Examiners.

303 N.W.2d 663 (1981)

YOU HAVE TO DISCLOSE, BUT WE AT THE BOARD DO NOT

The Applicant initially did not answer a question pertaining to previous attempts to be admitted to the Bar of another jurisdiction. He then did supply information regarding several unsuccessful attempts to take the Indiana Bar exam. On September 30, 1980 the Board of Professional Responsibility recommended his admission to the Board of Professional Competence. In a letter dated October 1, 1980 to the Applicant he was informed of the recommendation, and notified that his application would be considered at the next meeting of the Board of Professional Competence.

The Board's letter however, "failed to disclose" a material fact. Specifically, it did not disclose the meeting date. In addition, the Applicant was not invited to attend the meeting and when it took place his application was rejected. In a letter dated November 17, 1980, the Board informed him that he was denied admission.

That letter also "failed to disclose" material facts. Specifically, no reasons were provided for the denial, as the Board apparently wanted to conceal the reasons. The Court decides in favor of admission writing:

> "The question before us is whether the due process clause of the federal constitution requires that a bar admission applicant who is refused certification . . . be notified of the grounds for the board's conclusion and be given an opportunity to respond to or rebut that determination.
> **. . .**
> Under the Supreme Court Rules there are no provisions requiring the board to notify the applicant of its determinations and conclusions regarding his or her moral character. **There are no rules requiring that the applicant be given an opportunity to rebut or respond to the board's determination.**
>
> **It is claimed that this procedure is constitutionally unsound.** The applicant argues that as a matter of due process of law he was entitled to be notified of the results of the board's investigation and that he had a right to challenge the basis of the board's conclusions. **We agree with the applicant.**
>
> . . . The board takes the position that <applicant> was not certified because he failed to fully disclose all relevant information on his initial application. . . . The board claims that when <applicant> released the Indiana bar exam materials to it . . . the applicant "admitted" that he had not made a full disclosure on his earlier applications. The board concludes that the partial

disclosure on the original application as evidenced by the release of additional materials supports the conclusion of the board without the need for an evidentiary hearing. . . .

The board's argument is not persuasive in several respects. At the outset we not that the board's determination as set forth in its November 17th memorandum is not clearly predicated upon the applicant's nondisclosure of material facts. Secondly, even if it were so predicated, the board still has failed to avoid the impact of the Willner rule. . . .

The applicant was entitled to be apprised of the reasons which justified the board's decision and he was entitled to an opportunity to respond to that determination. . . ."

Two points are particularly interesting. First, the Board is not alone in its culpability. Note the phrase above that reads:

"Under the Supreme Court Rules there are no provisions requiring the board to notify the applicant of its determinations and conclusions regarding his or her moral character."

The State Supreme Court had screwed up by failing to enact the necessary rules to satisfy constitutional requirements of the U.S. Supreme Court's opinion in *Willner v. Committee on Character,* 373 U.S. 96 (1963). It is noteworthy that Footnote 2 of the opinion reads:

"The Supreme Court Rules relating to admission of attorneys to the practice of law have been amended by an order dated December 29, 1980. . . ." [380]

Apparently, the State Supreme Court was fixing the problem so that it wouldn't occur again in the future. The second point, is that it is disturbing the Board would deny certification to the Applicant based on his purported failure to disclose information, when the Board itself had failed to disclose material information. They didn't disclose the reasons for denying admission as constitutionally required. This obviously reflects poorly on the character of the Board members and their ability to engage in the practice of law.

375 N.W.2d 660 (1985)

WE AT THE BOARD WRITE THE RULES, NOT THE STATE SUPREME COURT

The Applicant was admitted to practice law in Minnesota in October, 1977. He was employed as a staff attorney for the Native American Rights Fund in Colorado, where he practiced law after obtaining special permission from the Colorado Supreme Court, even though he was not a member of the Colorado Bar. He applied for admission to the Wisconsin Bar, pursuant to a provision that allowed for admission of attorneys licensed in other jurisdictions who had engaged in the active practice of law in another state for three of the last five years. The applicable provision SCR 40.05 stated as follows:

> "(1) An applicant shall satisfy the requirements . . . by presenting to the clerk :
> . . .
> (b) proof that he or she has been primarily engaged in the active practice of law in the courts of the United States or another state . . . for 3 years within the last 5 years . . . ."

The issue presented to the Court was whether practicing law in Colorado under special permission from the Colorado Supreme Court, but without actually being a Colorado licensed attorney, met the requirements of SCR 40.05. The Board determined that it did not, and the Wisconsin Supreme Court disagreed, ruling in favor of the Applicant. The opinion states:

> ". . . We conclude that SCR 40.05(1)(b) does not implicitly require applicants to have been admitted to the practice of law in other jurisdictions in order to have their active practice of law in those jurisdictions qualify under that rule, provided their practice of law did not constitute the unauthorized practice of law. . . ." [381]

The disturbing aspect of this case, is that the Board denied the application initially. The rule irrefutably contained no requirement regarding admission to the practice of law. It only required the Applicant to have been, "primarily engaged in the active practice." The Board was essentially dissatisfied with the rule enacted by the State Supreme Court, and just decided to rewrite it on their own. They didn't have a leg to stand on. In doing so, they abandoned the rule of law and took matters into their own hands.

456 N.W.2d 590 (1990)

NOW, WHO'S REALLY BEING MISLEADING AND LACKING CANDOR?

This case is an ethical atrocity demonstrating the lengths to which the Wisconsin Board of Bar Examiner will go to deceptively conceal their incompetency. The Applicant disclosed three offenses she was charged with in Minnesota. Two were dismissed and she pled guilty to marijuana possession. Sentencing was deferred and she was required to complete a counseling program. She disclosed such in response to the question that inquired :

> "ever been charged with, convicted of, or entered a plea of guilty or no contest to a civil law violation . . . ? (Omit parking tickets.)"

The Board's investigation then revealed 10 undisclosed traffic charges which included a 1985 conviction for speeding and a 1987 conviction for speeding. Typically, most citizens view such as "traffic tickets," although technically, depending on the State, they may be considered as "convictions." She was questioned regarding the three Minnesota charges (two were dismissed) which she had disclosed. The Board determined that her explanations were inconsistent with those she gave at the time the incidents occurred and denied admission. They informed her of their decision in a letter dated June 9, 1989 and provided her with a copy of their report. One major problem though.

The Board edited the report that they gave her. They intentionally failed to disclose material matters in the copy of the report they provided to her. They concealed information from her. This was an apparent attempt by the Board to frustrate her attempts to respond to the substance of their conclusions. The Court rules against the Applicant stating:

> "It must be emphasized that the basis of the decision to decline certification of <applicant's> character and fitness to practice law was not her conduct that led to the three criminal charges and the numerous traffic offenses. Rather, BAPC determined that <applicant> did not meet her burden to establish good moral character and fitness to practice law solely by virtue of the inaccuracies and omissions in her admission application.
>
> In her petition seeking review of that decision, <applicant> first contended that she was denied due process because BAPC's June 9, 1989 letter, including **the edited copy** of the BAPR investigative report, did not sufficiently apprise her of the basis on which BAPC initially determined she did not satisfy the character and fitness requirement. . . . <Applicant> also contended that BAPC's ultimate findings and conclusions did not give her adequate notice of the basis for its adverse decision but merely stated that she had not been "factually accurate as to the three charges she disclosed" and "failed to disclose 10 Minnesota traffic charges . . . three Wisconsin traffic convictions. . . .
>
> . . . While the BAPC letter notifying <Applicant> of its initial adverse determination itself did not specify the reasons for its decision, it stated that the decision was based on the BAPR adverse recommendation. . . .
>
> **. . .**
>
> <Applicant> next argued that BAPC's findings and conclusions were legally insufficient to support a denial of certification. . . . Her argument rests on the mandatory language of SCR 40.06(3) requiring BAPC to decline to certify character and fitness of an applicant who knowingly makes a materially false statement of material fact. **<Applicant> contended that the finding that she was not "factually accurate" in her description of the three criminal**

charges on the application was not equivalent to a finding that her response was either materially false or concerned material facts. She specifically asserted that the undisclosed traffic offenses did not rise to the level of material fact. Further, she argued, BAPC made no finding that she "knowingly" made materially false statements of material facts.

In response, **BAPC took the position** that SCR 40.06(3) **does not divest it of discretion to deny** character and fitness certification of an applicant who makes false statements or fails to disclose **facts that may not rise to the "material" level.** . . . BAPC asserted that it retains the discretion to deny certification to one who fails to provide information or makes misrepresentations in an application, **even if not done knowingly or not concerning material facts. . . .**

We agree. . . . False statements and failures to disclose facts that arguably are not material may, because of their nature and number, warrant the conclusion that the applicant lacks the integrity and candor required. . . .

We find no merit in the other arguments made by <Applicant> . . . that her failure to disclose . . . was not "knowing" because the application question does not specifically inquire about traffic offenses. . . .

Also lacking merit is <Applicant's> argument that she was denied due process by BAPC's failure to afford her an adjudicatory hearing following its initial adverse decision. . . ."

What the Court did here was negate the materiality element of nondisclosure in its' entirety. The operative phrase in the above passage is:

"BAPC asserted that it retains the discretion to deny certification to one who fails to provide information or makes misrepresentations in an application, **even if not done knowingly or not concerning material facts. . . ."**

The acceptance of such an irrational premise has obvious results. In this particular case, the Applicant was penalized for failing to disclose traffic tickets. This is notwithstanding that the application did not even inquire into the existence of traffic tickets and included the phrase:

"(Omit parking tickets.)"

Why should it reflect negatively upon an Applicant if they unintentionally fail to disclose immaterial facts. Taking the matter further, the Court's opinion could reasonably be construed as placing an affirmative obligation upon an Applicant to disclose all immaterial facts even though no inquiry is made. This would require the Applicant to inform the Board of every single event that occurred in their entire life from the day they were born. Perhaps, the manner in which the Court attempts to avoid the ridiculous result occurring from a reasonable construction of the Board's ill-chosen language is in the passage that reads above:

"False statements and failures to disclose facts that arguably **are not material may, because of their nature and number,** warrant the conclusion that the applicant lacks the integrity and candor required. . . ."

Doesn't considering the "nature" of the nondisclosure bring assessment right back to the determinative issue of whether it is "material?" Both the Court and Board are playing an extremely, misleading and covert game by utilizing manipulative logic and parsing of word meanings. It can be summed up as follows. The Board and Court first determine that immaterial nondisclosures can be a ground for denial. The Court then determines that immaterial nondisclosures should be considered by assessing their "nature." Yet, it is precisely their "nature" that determines whether they are "material." The end result is that notwithstanding the express language used, the Court has affirmed the importance of materiality, even though it deceptively denies admission by relying on immaterial matters. The Court's logic is lame.

Why did the Board and Court take such an irrational stance with respect to this Applicant? The answer I believe rests in three footnotes demonstrating the Board's incompetency. Footnote 3 states:

> **"The June 9, 1989 BAPC letter mistakenly referred to a March, not May, 1989 meeting. Also, the edited copy of the BAPR staff counsel report attached to that letter bore a "received" stamp dated June 9, 1989, although the original report was stamped "received" April 28, 1989."**

Footnote 4 then reads :

> "In its cover letter . . . **BAPC incorrectly termed her application as one on proof of practice elsewhere, rather than on bar examination. . . ."**

Footnote 5 reads :

> "<Applicant> asserted that she had been invited to Madison to meet with a BAPR investigator to discuss issues . . . **but that discussion turned out to be a formal deposition, which she attended without notice**. . . ." [382]

The Board played countless deceptive and misleading tricks on the Applicant. They misled her with respect to the nature of the inquiries to be made as indicated in Footnote 5. They gave her an edited report to conceal information. They failed to adequately inform her of the reasons for denying admission. At best they made an administrative error regarding the "received" stamp, and at worst that matter constituted falsification of an official document by the Board. They also misclassified her application, as indicated in Footnote 4 of the opinion. The Court then played irrational and manipulative, tricky games with logic to support the Board's decision. Why did all this occur? The answer I believe is that the Board looked so irrational that the Court felt a desperate need to protect it from an Applicant who was on to their little covert game of deception. The Court and Board were transparently pathetic.

492 N.W.2d 153 (1992)

The Applicant filed his application on December 19, 1990. At that time he apparently had never been convicted of a crime and correctly answered "No" to the inquiry addressing convictions. He answered "yes" however, to the question:

"(b) Are you presently subject to any such pending charges ?"

Apparently, he had been charged with driving under the influence of alcohol, reckless driving and resisting arrest, but the cases had not yet been adjudicated. On January 7, 1991 he pled "no contest" to the DUI charge, and on January 18, 1991 pled "no contest" to the other charges. On February 11, 1991 he amended his Bar application, changing his answer regarding convictions from "No" to "Yes" and his answer regarding pending charges from "Yes" to "No." The facts presented in the opinion appear to indicate he handled disclosure of these matters properly.

In addition, his amendment disclosed two California violations on his driving record. The Board wrote him a letter on April 24, 1991 which stated in part:

> "On February 25, 1991, you executed an amendment to your application in which you disclosed these matters following notification from this agency dated February 15, 1991 that it would be necessary for you to submit your driving record."

The Board's letter stated matters falsely. In fact, the Applicant's amendment was received by the Board not on February 25, 1991 as their letter indicated, but rather on February 11, 1991, four days before they had sent their letter asking for a copy of his California driving record. The Board was apparently attempting to falsify the record to make it look like his amendment was filed in response to their inquiry, when in fact such was not the case. The Court's opinion states:

> **"In fact, <Applicant's> amendment to his application was received by the Board on February 11, 1991, four days before the Board wrote to him asking for a copy of his California driving record.** The Board's letter perhaps referred to the fact that the amendment <Applicant> originally filed had not been notarized and that he submitted a notarized copy of the amendment to the Board on the date he wrote the bar examination."

The Board's little game had unraveled. On May 21, 1991 they wrote the Applicant that he would need to have an alcohol and drug assessment carried out by a professional. The Applicant informed the Board that he had attended a "statutory alcohol treatment program" in California but could not locate a copy of the certificate. The Board wrote him a letter recommending that he contact his local human services department or personal physician for a referral. The Applicant telephoned the Board and informed them that since he was not in Wisconsin he could not have the assessment done in Wisconsin. He reiterated that he had completed a program in California and asked them to inform him whether that was sufficient. The next information he received was a letter dated July 26, 1991 informing him that the Board intended to deny certification because he failed to furnish proof of a drug and alcohol assessment. The Court rules in favor of the Applicant stating:

> "In his brief on review, <Applicant> argued that the facts **do not support the Board's conclusion** that he "knowingly" made "materially" false statements of fact when he responded in the negative to the questions in the original application he filed concerning pending traffic violations. Moreover, he contended, his incorrect answers to those questions were not an attempt to conceal facts from the Board and, as they were not knowingly made and did not

concern material facts, they were not sufficient to support the Board's decision. . . . In addition, <Applicant> asserted that he did not refuse to comply with the Board's requirement that he complete an alcohol and drug assessment ; rather, while he was attempting to determine with specificity what that requirement entailed, the Board issued its decision. . . .

<Applicant's> arguments are persuasive. The record establishes that <Applicant> amended his application . . . several days prior to the Board's request. . . . That amendment, submitted without prompting by the Board, supports <Applicant's> explanation. . . .

Because we reverse the decision of the Board declining to certify <Applicant's> character and fitness for bar admission for the reasons stated, it is unnecessary to address the numerous constitutional arguments set out in his brief. **Furthermore, in the course of this proceeding <Applicant> filed a number of motions . . . including a motion objecting to the record filed by the Board on the grounds that it was not authenticated, not certified, not signed under seal and that the Board did not serve a copy of it on him**. . . . We deny those motions ex parte, as none of them has merit."

The Applicant wins. The Board's handling of the case was characterized by bumbling and stumbling. Essentially, the standard of conduct that is characteristic of many State Bars in the admissions process. Particular attention should be focused on the last two sentences above, which I cite again in part:

"Furthermore, in the course of this proceeding <Applicant> filed a number of motions . . .**including a motion objecting to the record filed by the Board on the grounds that it was not authenticated, not certified, not signed under seal and that the Board did not serve a copy of it on him. . . . We deny those motions ex parte, as none of them has merit."** [383]

The Court appeared anxious to dispose of the serious matters raised by the Applicant and provided no support or reasoning for their determination that the Applicant's motions lacked merit. The obvious question is whether the Applicant's allegations were true or not. If they were not true, then why didn't the Court say so? Rather instead, the Court simply stated that the motions were denied ex parte, as none had merit.

The disturbing questions one is left with after reading the opinion are as follows. Did the Board serve the Applicant with a copy of the record? If so, then they should have proof of service corroborating such. Why didn't the Court address proof of service? If there was no proof of service in existence, then the failure of the Board to provide notice to an opposing party raises serious issues pertaining to the Board's integrity. That integrity or alternatively the lack of it, appears doubtful even when the evidence is viewed in the light most favorable to the Board.

1999.WI.42694 (1999) (Versuslaw)
Case No. 98-2487-BA; June 15, 1999

ADMIT THIS GUY, JUST DON'T GO TO HIS PARTIES

The Applicant in this case liked to party and it got him in trouble. In 1995, he was involved in what the opinion appears to indicate was a relatively minor altercation outside of a bar which resulted in a plea of "no contest" to disorderly conduct, for which he was fined $ 147. In 1991, he hosted a beer party at which those attending purchased a cup to obtain alcoholic beverages. The police gave him 21 citations for providing alcoholic beverages to underage persons. He explained to the Bar those citations resulted from enforcement of the 21-year-old drinking age, which he opposed. Undoubtedly, not a particularly good explanation by him.

He pled "no contest" to three charges as a result of the incident and paid $ 2000 in forfeitures. He was also cited for marijuana possession, but that charge was dismissed. While a student, he received seven citations from university housing authorities including one for a minor fistfight. The Board denied admission and the Court agreed.

I would admit him. Nothing he did appears to have been particularly heinous. The fistfight and bar altercation bother me somewhat, and warrant consideration since a disorderly conduct conviction resulted. I do not believe they are sufficient egregious however, to deny the man his profession. I must assume that if the fights resulted in serious injuries, the charges would have been assault and battery, rather than just disorderly conduct. The Board found that he:

> "**explained those incidents** to the Board **in a manner which** denied or minimized his culpability or responsibility for them"

Apparently, the Applicant had characterized the "minor fistfight" as a "shoving match." The Board obviously lacked competent ability in cognitive reasoning, because explaining facts surrounding incidents in a manner to minimize culpability, is what is known as "defending yourself." The distinction between a "minor fistfight" and a "shoving match" is difficult to discern. What happened in this case was that the Board launched a frivolous personal attack against the Applicant, and then held the manner in which he explained incidents against him. He appears to have had a legitimate basis to present the facts in a manner placing himself in a favorable light. There is no reliable indication that he testified untruthfully, but rather instead the issue was that he presented facts in a manner reflecting well upon himself. That is exactly what lawyers are supposed to do. If the Board doesn't allow the Applicant to do it, then we are left wondering whether licensed Wisconsin attorneys fail to present facts to Courts in a manner placing their clients in a favorable light. The handling of this case by the Board, suggests that licensed Wisconsin attorneys are taught to sell out their clients. The Board made the following incredible statement:

> **"Although the Board does not believe** that your 1995 nor your 1991 convictions nor your selective disclosure to the Law School **individually or together disqualify you from admission** to the bar, **the Board finds that your explanations** of the events leading to those convictions, coupled with your accounts of them and of the conduct associated with them **raise substantial doubt. . . ."**

The Board in the foregoing passage expressly stated that the matters were not disqualifying either individually or collectively. It was the Applicant's explanations they didn't like. That's crap. Conduct is either disqualifying or it isn't. The Board was logically lame to determine that the incidents

were not disqualifying, but the attempt to explain them by minimizing culpability constituted grounds for denial of admission.

One disturbing procedural aspect exists in the case. The Board wrote the Applicant a letter noting that if he wanted a Hearing, he had to request one specifically, demonstrating facts that could not be presented in writing. The Applicant requested a Hearing to explain that he was not attempting to conceal anything or mislead the Board. The Board denied his request and then had the colossal gall to assert before the Court that they were prohibited from granting a Hearing. This is after they themselves sent him a letter explaining that if he wanted a hearing, he could request one. The Board's misleading account of the "Request for Hearing" incident reflects adversely on their moral character. The Court's opinion addresses the Board's lack of candor in handling the request for hearing as follows :

> "At oral argument in this review, counsel for the Board asserted that the Board was prohibited from granting <Applicant's> request for a hearing by the mandatory language of SCR 40.08(2) : "The board shall grant a hearing to an applicant only upon a showing that there are facts bearing on the applicant's case that cannot be presented in writing." **While that rule may be sound in respect to objective facts, if followed literally, it might prevent the Board from reaching an informed determination on facts not susceptible of objective determination,** such as the applicant's sincerity, remorse and other matters. . . . Accordingly, we direct the Board to consider the operation of that rule in this respect and, if it is deemed necessary or appropriate, that it propose its amendment." [384]

As a matter of law, it seems to me that in light of the foregoing, the Court should have at least remanded the matter back to the Board. The Court clearly knew that the Board's irrational position of denying a Hearing by relying on the court rule had the effect of an injustice. The Court also was conceding that the rule was unfair. Rules should be followed literally. Otherwise, everyone will interpret them to suit their own needs. The Court was ethically unjustified in flatly denying admission without having provided the Applicant with a Hearing to explain himself.

As stated previously, I do not feel the presented facts even mandated a Hearing to grant admission. I would admit the Applicant outright. But, I probably wouldn't attend any of his parties.

601 N.W. 2d 642 (1999)
Case No.: 99-0158-BA (1999)

This case presents an instance where I have to believe the members of the Wisconsin Board all got together and decided they wanted to try and look as stupid as possible, just to see what they were able to get away with. The Applicant was denied admission on the ground he allegedly plagiarized an academic article, by failing to include some footnotes. No charges were ever filed against him, nor was any academic disciplinary action ever taken. Apparently, he and the Department Chair did informally agree that he would discontinue his employment at the University. The key passage of the opinion reads as follows:

> "<Applicant> next argued that the **Board violated his right of due process of law by obtaining information** concerning his university employment and his plagiarism **after holding a hearing and then using that information to his detriment. It was his contention that if those materials had been available to him prior to that hearing, he could have examined them, refreshed his recollection, and given an appropriate explanation for them.** In support of that contention, <Applicant> relied on the court's decision in . . . 101 Wis.2d 159, 303 N.W.2d 663 (1981), in which the court addressed a bar admission applicant's due process right in the bar admission process.
>
> That reliance is misplaced. The court held in <303 N.W.2d 663> only that **the minimum required by the due process clause is that the bar admission applicant be apprised of the specific grounds for the Board's decision not to certify. . . . and have an opportunity to respond to that decision. . . .** Here, as the Board asserted, it was not until the hearing that the Board learned of <Applicant's> position that he had prepared two separate drafts of the article. . . .
>
> **Nonetheless, better practice would have been for the Board to have notified <Applicant> of the additional material, even though it had been adverted to in the course of the application and hearing process, and of its intent to rely on that material in reaching a determination on the question of his character. . . ."** [385]

I am continuously amazed at how Courts recognize that the Bar Boards engage in deceptive, misleading conduct demonstrating their lack of candor, yet simultaneously refuse to take action with respect to their transgressions, while unhesitatingly denying admission to Applicants. The last paragraph above confirms the Court knew that what the Board did was deceptive, misleading trickery and yet the only one penalized in this case was the Applicant. The Court penalizes the victim, rather than the transgressor.

The Board members are the least competent from a perspective of moral character to assess another individual's moral character. The reason is simple. They lack the requisite integrity and appreciation for the U.S. Constitution to do so fairly. Also, they have a self-interested monetary motive to exclude future competitors from their ranks. In furtherance of such, they consistently fail to disclose facts for the purpose of intentionally deceiving Applicants and the general public. They function from the perspective that it is alright for the Bar to account for its' conduct in a manner that places it in the most favorable light, yet seek to deprive Applicants of the ability to defend themselves against unwarranted and unsubstantiated personal allegations. The Boards are misleading, untruthful, deceptive, lack candor, don't fully explain their underlying conduct in an open and frank manner and overall lack good moral character.