HOW COULD THE ARIZONA STATE SUPREME COURT ALLOW ITSELF TO LOOK SO STUPID IN THE HAMM AND KING CASES?

By Evan Gutman CPA, JD (2013)

It is my position that if you have a criminal conviction for first-degree murder, you should be denied admission to the State Bar. Simple as that. No character hearing, no Bar application required, don't even bother going to law school, because you're not getting in.

Keep in mind the goal of this book is to liberalize the admissions process to the Bar. State Bars are using a lot of nonsensical Bullshit reasons to keep people out of the Bar. Their purpose is to advance the economic interests of attorneys and racist inclinations of the Judiciary. To accomplish this, admission committees concoct wild and irrational reasons to justify admission denials. Their baseless justifications include ridiculous assertions that an Applicant lacks good moral character because they are obnoxious, sarcastic, arrogant, filed for bankruptcy, engaged in civil litigation and abjectly dishonest State Bar assertions that they engaged in nondisclosure or a lack of candor regarding their application. As demonstrated expansively herein, there are many ludicrous reasons used to deny admission. They are then supported by Stupid-Ass State Supreme Court Justices who review the cases.

But, if you are proven, to have committed a serious violent crime and are convicted, I am not nearly so lenient and understanding. While committing a trivial Contempt of Court often exemplifies the finest moral character and an admirable spirit of personality, in stark contrast the commission of a violent physical act against another human is never justifiable. A person who commits such is a piece of trash. With this foundation, I now address how the Arizona State Supreme Court in the Hamm and King bar admission cases portrayed itself to the general public as what is known in technical legal terms as "Moronic Stupid-Asses." Notably, this characterization is appropriate whether one applies strict construction or implied construction to the phrase "Moronic Stupid-Asses."

The one exception on the Arizona State Supreme Court to the foregoing depiction is Justice Andrew D. Hurwitz. Justice Hurwitz wrote an absolutely phenomenal Dissent in the King case, which brilliantly exposed the cognitive deficiency and psychological infirmity of the other Justices. His Dissent falls squarely into the category of a brave Dissenting Justice who deserves the public's support. In the Hamm case, Justice Hurwitz declined to join the

majority opinion, but instead only concurred. In light of his spectacular Dissent in King, I interpret his concurrence in Hamm as only indicating agreement with the Court's ultimate admission decision, rather than its troubled reasoning. To this extent, my own objection to the Hamm opinion is not the ultimate decision, which I agree with, but rather instead the Court's lame and irrational reasoning. The cases are as follows.

THE HAMM CASE - 123 P.3d 652, 211 Ariz. 458 (2005)

James Hamm pled guilty to first-degree murder for killing a man execution style in 1974 by shooting him in the back of the head during the course of a drug deal gone bad. He was sentenced to life in prison with no possibility of parole for 25 years.

The above two sentences decide the entire case for me. Although I'm not a big fan of overly short judicial opinions, the opinion in this case should have been very short. It is undisputed he committed a heinous and violent act, and pled guilty to it. Therefore, he should not have a chance of getting into the State Bar.

But, what the Arizona State Supreme Court does instead is incredible. They don't just deny admission based on the murder conviction as rationality mandates. Instead, they stupidly support denial of admission because in his Petition to the Court, Hamm did not properly cite information from a U.S. Supreme Court opinion. The State Supreme Court lamebrains assert that by citing public domain information without proper attribution, Hamm committed plagiarism. Accordingly, in their view, this warrants denial of admission. The Judicial Nitwits wrote as follows:

> "The introduction to Hamm's petition before this Court begins:
>
> The consequences of this case for Petitioner take it out of the ordinary realm of civil cases. If the Committee's recommendation is followed, it will prevent him from earning a living through practicing law. This deprivation has consequences of the greatest import for Petitioner, who has invested years of study and a great deal of financial resources in preparing to be a lawyer. . . .
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> This language repeats nearly verbatim the language of the United States Supreme Court in Konigsberg v State Bar, 353 U.S. 252 (1957) . . . .
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> . . . If an attorney submits work to a court that is not his own, his actions may violate the rules of professional conduct. . . .("Plagiarism constitutes among other things, a

> misrepresentation to the court. An attorney may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.") . . . We are concerned about Hamm's decision to quote from the Supreme Court's opinion without attribution and are equally troubled by his failure to acknowledge his error. When the Committee's response pointed to Hamm's failure to attribute this language to Konigsberg, he avoided the serious questions raised and refused to confront or apologize for his improper actions, asserting instead, "From Petitioner's perspective, any eloquence that might be found in the Petition does not derive from any prior case decided in any jurisdiction, but rather from the gradual development of his own potential through study, reflection, and devotion to the duty created by his commission of murder." Hamm apparently does not regard his actions as improper or simply refuses to take responsibility." [185]

After reviewing the above passage in the Court's opinion my conclusions are as follows. First, Hamm is completely correct that his use of an isolated portion of a PUBLIC DOMAIN U.S. Supreme Court opinion was not in the slightest, even most minute manner improper. Consequently, he had no legal or moral obligation of any nature to assume any responsibility regarding the Court's false immoral allegation that his actions constituted immoral conduct. The bottom line is U.S. Supreme Court opinions belong to the PUBLIC DOMAIN. That means they belong to everyone. They are freely available for use by each and every citizen. No one has a greater right to them than anyone else and as a result the language in those opinions may be freely used by anyone in any manner, without restriction.

Secondly, Hamm did not copy the passage of the U.S. Supreme Court opinion. Instead, he only used a small portion of the ideas expressed by the U.S. Supreme Court in Konigsberg. That is a significant difference. The actual passage in Konigsberg, which he was falsely accused of plagiarizing, read as follows:

> "While this is not a criminal case, its consequences for Konigsberg take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer." [186]

A careful analysis of the above passage, with the opening passage of Hamm's Petition, reveals the following. Hamm's passage as cited by the Arizona Court consists of 62 words. The Konigsberg passage only consists of 59 words. Konigsberg states above:

> "The Committee's action prevents him from earning a living by practicing law." [187]

In stark contrast, Hamm's related passage states (emphasis added):

> "**If** the Committee's recommendation is followed, it will prevent him from earning a living through practicing law." [188]

These are two very different passages. Both regarding the language used and the idea conveyed. The Konigsberg passage does not contain the conditional "IF" proviso included in Hamm's passage. A second example is that the Konigsberg passage states (emphasis added):

> "**While this is not a criminal case**, its consequences for Konigsberg take it out of the ordinary run of civil cases" [189]

In contrast, Hamm's related passage states:

> "The consequences of this case for Petitioner take it out of the ordinary realm of civil cases." [190]

Notably, the Konigsberg passage includes an express identification that it is not a criminal case, whereas Hamm's passage does not. Clearly, the Arizona Court engaged in the precise conduct they falsely accused Hamm of engaging in. They were dishonest, deceitful and misrepresented the moral nature of Hamm's conduct. Regrettably, the Justices failed to "regard their actions as improper or simply refuse to take responsibility."

As stated, I would have denied Hamm admission. But, I would have done so solely and exclusively on the fact that he was convicted of first-degree murder. Not because of disingenuous Total Bullshit Self-Serving Judicial Crap predicated upon a false allegation by the Judiciacy that using small portions of PUBLIC DOMAIN U.S. Supreme Court opinions constitutes plagiarsim.

THE KING CASE - 136 P.3d 878, 212 Ariz. 559 (2006)

Lee King pled guilty to one count of attempted murder. The circumstances are immensely different than the Hamm case. In 1977, King was a certified peace officer. While off-duty and out of uniform at a bar, he got drunk. He argued with two males that he knew were convicted felons. When he left the bar they followed him. Ultimately, he used his service weapon to shoot each of them at close range. Both victims survived. King was sentenced to seven years in prison. In 1985, his conviction was set aside.

After his release from prison, the Texas Board of Law Examiners concluded he possessed good moral character. He was admitted to the Texas Bar in 1994. In 2003, he moved to Arizona to work in his law firm's Phoenix office, and passed the Arizona Bar exam. In 2005, the Arizona State Bar's Character Committee recommended he be admitted to the Bar.

The Arizona State Supreme Court then, on its own motion, considered King's application and denied admission. The Court's opinion embarks upon a seriously flawed inquiry. It determines King did not satisfy the burden of proving he was rehabilitated. It arrives at this conclusion by falsely asserting he did not accept responsibility for his past criminal conduct. Additionally, the Court immorally concludes King did not identify the moral weakness leading to his unlawful conduct. The majority opinion states:

> "Evidence in the record both supports and negates King's contention that he has accepted responsibility for the 1977 shootings. King demonstrated his acceptance by informing Judges, lawyers, law professors, former employers, and a host of friends, acquaintances, and colleagues of his crime over an extended period of time, impressing upon many of them heartfelt feelings of remorse. And in both hearings before the Committee, King admitted shooting the victims and expressed remorse, calling the shootings "a mistake I made that I will carry with me for the rest of my life."
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> Conversely, in his written application for admission to law school and to the Arizona bar, . . . King minimized his personal responsibility. . . . King described the circumstances of the shooting and explained that in light of these facts . . . his strained emotional state . . . and anti-police sentiment of the day, it was in his best interests to plead guilty to one charge and "throw himself on the mercy of the Court rather than to attempt to clear himself in a jury trial." . . . .
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> In his application to this court, King provided a shorter account of the shootings, noting his intoxication and fear of the victims, whom he knew to be convicted felons aware of his peace-officer status. . . .
>
> . . .

In light of the above-described evidence, King has failed to make an extraordinary showing that he has accepted responsibility for the shootings. . . .

. . .

In weighing all the factors concerning King's rehabilitation, we conclude that King's demonstration falls short of the "virtually impossible" showing needed . . . .

By our decision today, we do not effectively exclude all applicants guilty of serious past misconduct from practicing law in Arizona, as the dissent suggests. . . . Nor do we lightly view the choice of applicants such as King to live as good citizens after paying for past misdeeds, as the dissent implies. . . ." [191]

Justice Andrew D. Hurwitz, bravely stands alone against his psychologically disturbed and irrational brethren in an exceptionally fine Dissenting opinion that states (emphasis added):

"The State Bar of Arizona has repeatedly urged us to disqualify from the practice of law all applicants with records of serious past misconduct. Such a bright-line rule would hardly be irrational. . . .

. . .

The majority purports again to reject a per se rule today. . . . In practice, however, the Court has adopted the very bright-line rule **it purports** to abjure. If Mr. King has not demonstrated rehabilitation and current good moral character, it is difficult for me to conclude that any applicant previously convicted of a serious felony ever can.

. . .

. . . several unconstested facts not emphasized in the majority opinion deserve particular focus.

Mr. King comes to us with an extraordinary item on his resume -- he is a long-standing member of the Texas Bar. . . . Under Texas law, his admission necessarily involved a finding that he was then of good moral character. . . .

While we are of course not bound by another state's determination that an applicant possesses good moral character, neither should we simply disregard such a finding. More importantly, the years since 1994 strongly bear out the wisdom of Texas's conclusion. . . . He is in good standing with the Texas Bar and has never been in the subject of a disciplinary grievance or sanction. . . .

. . . Indeed, he appears to have been a model citizen in the almost thirty years following his crime. He is a devoted family man, happily married and successfully raising three children. He is active in his children's Boy Scout groups and the Chandler Christian Church, where he is involved with a number of leadership groups and charitable programs. . . .

King's application is supported by some fifty letters of recommendation, each of which praises King's good moral character and good works. These letters come from peers, colleagues, supervisors, friends, clients, professors, clergymen, Judges, and lawyers. . . .

. . .

Perhaps most telling is that, . . . our Committee on Character and Fitness . . . recommended King in April 2005 for admission to the State Bar. . . .

. . .

. . . By making the required showing of rehabilitation "virtually impossible," the majority pre-ordains the result. I do not believe, however, that our rules and case law support the application of the "virtually impossible" standard in this case.

. . .

The "virtually impossible" language appears for the first time in our case law in Hamm. . . .

It is important, however, to note that the applicant in Hamm had been convicted of the most serious crime recognized under Arizona law -- first degree murder. . . .

The majority ignores these substantial distinctions between Mr. Hamm's and Mr. King's past misconduct, simply equating first degree murder with attempted murder. . . I believe . . . the quality of proof of rehabilitation should increase as the seriousness of prior misconduct increases. . . .

. . .

. . . the majority suggests . . . Mr. King somehow attempted to minimize his culpability for the crimes. Read in context, however, the statement in the application was simply a factual explication of the factors that went into a guilty plea -- . . . The application did not call for expressions of remorse, and I would not penalize Mr. King for not gratuitously offering them. . . .

. . .

The Court also concludes that Mr. King has failed to identify the weaknesses thah caused his misconduct or address those weaknessses. Again, I am unable to agree.

Mr. King has consistently recognized that his misconduct was caused by a combination of alcohol abuse and job related stress. The majority acknowledges this, but speculates that there was also a deeper "character flaw that led King to fail to appropriately cope with stress and/or to abuse alcohol" to which King has failed to admit. The majority condemn King for not submitting evidence from a mental health expert diagnosing this supposed character flaw and attesting to King's triumph over it.

. . .

. . . I would accept the Committee's recommendation and admit King to the practice of law." [192]

Thank you Justice Hurwitz for a great opinion. How you can tolerate working with imbecilic buffoons on a daily basis is beyond my comprehension.