

# NO "ICKY" CASES

By Evan Gutman CPA, JD (2013)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rather, the focus is on basic Judicial stupidity.