

## 5 By Evan Gutman CPA, JD (2002)

### THE BOOTLEGGER'S SON

In a separate section, I review numerous articles from issues of the Bar Examiner during the 1930s. State Bar notions pertaining to “The Bootlegger’s Son” however, are of such importance that I have titled this book based on them. The Bootlegger’s Son describes how the State Bars envisioned their admissions process in the 1930s, and while there is little doubt they would deny it is their goal today, I submit that it is precisely what they are still looking for. So what is “The Bootlegger’s Son” all about?

The January, 1932 issue of The Bar Examiner poses what is presented as a “Hard Nut for Character Committees to Crack.” It is a hypothetical fact set dealing with a fictitious Bar Applicant with the question posed as, should this individual be admitted to the Bar? I am hopeful readers will agree that what the NCBE (National Conference of Bar Examiners) irrationally suggests is a difficult case is in reality a simple one. The facts as presented, demonstrate no reason for denying admission, but rather instead are a reflection of the NCBE’s prejudicial attitudes. A product of the NCBE and State Bar’s lack of good moral character, to use their own phraseology against them. They do not want admission decisions to be based on a person’s conduct, but rather on who they know or in this instance, who they would have been better off not knowing. This section from “The Bar Examiner” is small in size, but monumental in societal impact.

#### A HARD NUT FOR CHARACTER COMMITTEES TO CRACK

Bar Examiner, January, 1932 (p.83)

#### THE BOOTLEGGER'S SON

The facts about the Applicant are as follows :

“A law student who is qualified as far as preliminary and legal education is concerned has taken and passed his bar examination in a manner satisfactory to the Board. . . .

He has lived for a long time **in a neighborhood** where there are many reputed to be engaged in the illicit conveyance, trading in and sale of liquor in violation of both the State and Federal laws. **His father** has been arrested and pleaded guilty to the sale of intoxicating liquors and paid his fine. . . .**A relative of the family** living in the same house has been arrested, indicted and tried for the illegal sale of liquor . . . .**Another immediate relative of the family has been arrested for the sale of liquor, and he and his wife are reputed to be running a speakeasy at the present time.** . . . Under these facts, and having no further information, should his character qualifications be deemed sufficient to admit him to practice law ?”<sup>2</sup>

The determinative issue is whether the fact that an Applicant lives in a bad neighborhood, has relatives who have been arrested, indicted and tried for the illegal sale of liquor constitutes sufficient

grounds to deny the Applicant admission. A proposed answer is presented in the February, 1932 issue and concludes that admission should be denied on moral character grounds. Interestingly, it correlates moral character to the need for diminishing the Supply of attorneys. The proposed answer states:

**“He seeks a privilege, not a right. Not all candidates who are qualified need be admitted if the court feels that there are too many attorneys to supply the needs of the public.**

There are two primary and essential qualifications which each applicant should have : First, moral character, second, (a) a general education, and (b) knowledge of law. I feel that the first of these, moral character, is by far the more important as between that and education. . . .

**Inheritance and environment** are generally conceded to count much in the formation of character. They are among the best tests we have in regard to the young man.

These facts being so, I feel that **in the case set forth by your correspondent the inheritance and environments are bad.** The contact of the youth with continued violation of the law, especially in his own home, and among his own relatives, is such a detrimental force and so inclined to shape his view of right and wrong as regards the administration of the law, that he is unworthy of trust or of the certificate of reliability to be issued by the Supreme Court assuring the public that he is fit to practice law and to be trusted by them. . . . **I am of this opinion even though the individual has not thus far in his short period of maturity shown a tendency to moral delinquency.”<sup>3</sup>**

There are two notable aspects to the foregoing answer. First, it is predicated on the assertion that moral character is the most important characteristic for an attorney. Second, it asserts that inheritance and environment are determinative of the moral character issue. This is notwithstanding that a person typically has absolutely no control over their inheritance or environment. The conclusion that must inescapably be reached upon review of this proposed answer, is that the “moral character” requirement is used by Bar Examiners as a “dangerous instrument” to foster prejudicial, anticompetitive notions of the legal profession. Good moral character becomes anything the Bar Examiner wants it to be. To make this point perfectly clear and in a very blunt fashion, one need only consider the diabolical nature of Adolf Hitler. Hitler believed “good moral character” consisted of exterminating Jews. Interestingly, he had substantial support in the early issues of the Bar Examiner and the incredible comments made in support of him by the NCBE will be discussed in subsequent sections herein.

The Bootlegger’s Son exemplifies detestable system wide judgment by the NCBE and ABA. It demonstrates the organization’s propensity toward using character review as an arbitrary, subjective mechanism to accomplish group organizational goals at the expense of justice. When reading contemporary Bar admission cases, the reader is encouraged to reflect back on how the Bar is attempting to build an admissions process based on the predicate of “The Bootlegger’s Son.”