Filing # 157421857 E-Filed 09/14/2022 04:00:18 PM

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

CITIBANK, N.A.	CASE NUMBER:
Plaintiff	50-2020-CC-005756-XXXX-MB
v.	
EVAN S. GUTMAN,	**DEFENDANT'S MOTION TO DISQUALIFY JUDGE EDWARD GARRISON and ALL OTHER PALM BEACH COUNTY JUDGES**
Defendant, Pro Se	

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, whatever other institutions might present themselves in the character of checks, would be found to **operate rather as cloaks than checks**, . . . as checks only in appearances."

In Re Oliver, (U.S. Supreme Court) 333 U.S. 257, 271 (1948)

"The youngest judge ever elected in Palm Beach County, Garrison served as a county court judge from 1980 - when he was 27 - to 1989 before moving to the circuit court, where he served until 2010 . . . . Because of Florida Retirement System rules, **Garrison chose to retire in 2010.** If elected to this new post, **he will continue to receive his pension while also earning a salary**. "Even though I only had 30 years in, **I had to make a financial decision**," he said. "**So, I took on the senior judge status and spent a lot of time working on foreclosures."**

Town-Crier Editor, August 10, 2012 (See Exhibit 4)

"A family court judge in Palm Beach County took a divorcing couple to task in a tersely-worded opinion, **ordering the couple to remain married and refusing to grant the requested divorce**. . . . The court assessed the joint demeanor of the couple as being indicative of an intact relationship. . . . **So Judge Garrison refused to divorce the couple, laying down a ruling believed to be the first of its kind in an American family court.**

Clarkston Legal, December 17, 2013 (See Exhibit 5)

"Our government here in the United States and in the state of Florida is supposed to be what's called a government of laws, not a government of men," he said, **calling out judges** who have "taken power away from people's elected representatives" by having "legislated from the bench." "And that's not their role. Their role is to apply the law and Constitution as it's written," he added. **"It's really important that courts are discharging their duties that they have under the Constitution within the confines of those limitations."**

Florida Governor Ronald DeSantis, August 12, 2022 (See Exhibit 6)

MOTION

Defendant Evan Gutman, JD, CPA humbly, graciously and respectfully, MOVES Judge Edward Garrison to Disqualify himself and all other Palm Beach County Judges from any further proceedings in this matter. This Motion is "Legally Sufficient" as required under any reasonable standard, and based on grounds, including but not limited to the following,

1, Judge Edward Garrison is unwilling to comply with Florida Court Rules and appellate opinions. Specifically, he did not merely "Err," in scheduling a trial date without legal authority; but violated FRCP 1.440 for the precise purpose of trying to unfairly and quickly "RAM" through a judgment against Defendant without regard to law.

2. Judge Garrison's handling of his Personal Financial Affairs raises legitimate issues as to whether he possesses sufficient "Good Moral Character" to be a licensed Attorney, much less a Judge. Specifically, Defendant understands he substantively "**FAKED**" his own Retirement from the bench so he could be paid "TWICE" as Judge. While the so-called "Retirement" may not technically violate the law, it is Morally troublesome. (**See Exhibit 4 herein**).

3. Judge Edward Garrison exemplified Actual Bias against Defendant by allowing Plaintiff an extension of over a year to respond to discovery requests, while giving Defendant only 15 days. Additionally, he violated Rule of Judicial Administration 2.215(f) by failing to rule upon Plaintiff's extension request (still now pending for over a year); but in contrast ruled upon Defendant's extension request within only 7 days.

4. The Florida State Bar's "Good Moral Character" requirement for admission violates the Equal Protection and Due Processes Clauses. This is because the State Bar does not periodically reassess the moral character of attorneys and Judges. Specifically, a Judge's "Current" moral character varies from their "Original" moral character when admitted to the Bar due to the lapse of time. This diminishes a litigant's ability to receive a fair and impartial adjudication from a Judge with "Good Moral Character."

This Motion is supported by the Affidavit of Defendant Evan Gutman JD, CPA herein (Exhibit 3 herein). It is also supported by excerpts of a book Defendant authored and published approximately 20 years ago, titled "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON**." Defendant believes his book in 2002, when published was the most comprehensive book at the time ever written about the "Good Moral Character" requirement for admission to the State Bar. It is supported by extensive footnotes.

Defendant's book was purchased by numerous law schools, remains in law school libraries and was cited in at least one significant law review article. It was also re-cited related to that law review article as recently as 2017. A complete copy of the book is available on Defendant's website at www.gutmanvaluations.com.

A complete copy of this motion is being provided to at least 5 reporters of the Sun-Sentinel; 5 reporters of the Palm Beach County Post; reporters on the Washington Post and many other reporters nationwide. In addition, Defendant's public letter attached as Exhibit 1 is being provided to all Circuit Court Judges in Palm Beach County and Broward County; all members of the Florida State Senate and House of Representatives, all U.S. Senators, ALL FEDERAL COURT OF APPEALS JUSTICES IN ALL FEDERAL CIRCUITS; Governor Ron DeSantis and President Joseph Biden. Additionally, the letter and Motion are being sent to about 50 friends and selected local attorneys. For ease of review, the PDF File submitting this Motion via the E-Portal is bookmarked.

FACTS

Judge Edward Garrison is the fourth Judge assigned to this case. The first was Judge Sandra Bosso-Pardo who rendered significant rulings, one in favor of Plaintiff and one in favor of Defendant. After she retired from the bench, the case was assigned to Judge April Bristow. Judge Bristow's key rulings were primarily in favor of Plaintiff. But that said, she made statements at her last hearing in the case indicating she was developing a genuine sensitivity of Defendant's "Scholarly" work as she referenced it. In this regard, Defendant had high hopes regarding her continued participation in the case. This is notwithstanding her multiple clearly erroneous rulings. Rather, it was because she seemed to be slowly, but progressively developing an understanding of the issues. For some unknown reason,

Defendant understands Judge Bristow was reassigned to the Criminal Division and taken off this case, quite rapidly after rendering her “supportive” oral statements.

Judge James Sherman was then assigned to the case. Judge Sherman was formerly with a prominent law firm priding itself on obtaining appellate reversals of large civil jury verdicts. Thus, the crux of Judge Sherman’s career prior to becoming a Judge, was working with a firm that concentrated on undermining Jury Verdicts by securing Judicial decisions benefitting Corporate monied interests. Accordingly, Defendant preemptively moved to Disqualify Judge Sherman before he rendered a single decision of any nature in the case. Judge Sherman granted Defendant's Motion to disqualify.

Subsequent to Judge Sherman recusing himself, Judge Edward Garrison was assigned to this case. Judge Garrison is now the subject of this Motion to Disqualify.

ABOUT DEFENDANT

Defendant is 62 years old and a member in good standing of the Pennsylvania Bar, District of Columbia Bar, U.S. Tax Court Bar, admitted to the Federal Sixth and Ninth Circuit Court of Appeals; a New Jersey Certified Public Accountant and Florida CPA. Defendant has never been convicted of any crime in his entire life, never been denied admission to a State Bar or any other professional license. Defendant has also never been subjected to ethical discipline in either his capacity as an attorney or CPA; as no ethical complaint of any nature has ever been filed against Defendant. Defendant has no wife, no girlfriend, no little children, minimal interest in material possessions, a Strong Belief in GOD, and to a certain extent considers himself expendable in order to achieve goals of justice and fairness.

Defendant's main goal and intent is to improve the fairness of Adjudications for the sole and exclusive benefit of the Litigants. Defendant intends to "Quell" the inappropriate

"Arrogant Judicial "Attitudes" " of wayward Judges that are inimical to the general public's interest in fair adjudications. This will be accomplished by properly and appropriately publicizing in accordance with First Amendment rights, the willful judicial breaches of Court Rules and violations of appellate opinion mandates by lower court Judges, as in the instant case. Particularly strong focus will be placed on an even application of procedural rules, as well as effectuating necessary changes to rules that are not fair. Put simply, there is no greater watchdog over the Judiciary, than the public itself. Thus, Defendant will simultaneously challenge unconstitutional holdings of higher courts, while also defending their Integrity and Authority, by exposing the failure of lower court Judges to comply with mandates of higher courts. Ultimately, Lower Court Judges will come to the realization furtherance of their own personal self-interest mandates strict compliance with Court Rules and Appellate opinions, rather than evading the rules to please Powerful Large Law Firms or State Bar Attorneys. And the higher Courts will start to legitimately question some of their own unconstitutional holdings and opinions. Stated simply, Defendant will provide an appropriate "Education" to the Judiciary that promotion of Judicial self-interest requires an overall devotion to fair adjudications and helping Litigant interests, rather than Attorney interests. Thus, there will be a proper "**Realignment of Judicial Incentives"** , so to speak, that will help Judges rule fairly and evenly on procedural issues for the benefit of Litigants. In all fairness, it's an absolutely Fantastic plan Defendant has worked on for years to develop.

Defendant has virtually unsurpassed legal knowledge in **certain very narrow isolated areas** of the Law including notably Due Process, Equal Protection, Judicial Disqualification, the Unauthorized Practice of Law, State Bar Admission Requirements, Debt Collection and of course, the intellectual favorite which is Contempt. Suffice it to say, the foregoing combined with the interesting paragraph below, and documented facts which are now all quite elegantly

on the record in this "interesting" litigation, can possibly make for a somewhat problematic Pro Se litigant. By the same token, one who is a nice, friendly and "appealing" kind of guy.

Defendant is the author of a book titled "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON**," which he published on CD-Rom in 2002. In addition to individuals purchasing the book, it was purchased by multiple law schools. Defendant's records indicate the following law schools or other institutions purchased Defendant's book when it was available years ago:

1. University of Alabama
2. Golden Gate University Law Library
3. Ave Maria School of Law Library
4. Albany Law School
5. University of South Dakota Law Library
6. University of Connecticut School of Law
7. University of Chicago
8. Texas Tech University
9. Michigan State University - Detroit College of Law
10. William S. Hein and Company.

In 2008. Defendant's book was cited in the following law review article:

> "Are You In or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission & A Proposed National Uniform Standard, By Anthony J. Graniere and Hilary McHugh, **Hofstra Labor and Employment Law Journal**, Volume 26, Issue 1, Article 3; Footnote 2 (2008)

Prior to 2010, Defendant contributed the book to the public domain and it was freely available to anyone for several years. Around 2012 or so, Defendant started to reconsider some of his viewpoints. Defendant decided to consider whether perhaps his book was a bit

too harsh and critical of the State Bars and legal profession. Defendant developed greater sensitivity and understanding for the State Bar's perspective, while still maintaining his overall viewpoints. Accordingly, Defendant decided to rethink the issues in greater detail and to at least temporarily remove his book from the Internet. That was about 10 years ago. Roughly speaking, there are probably around 200 copies or so of the original CD-Rom version of the book floating around, along with anyone who downloaded it from the Internet when it was available years ago.

Today, after 10 years of the book being unavailable for the most part, Defendant has decided to Republish it again. Put simply, Defendant believes he got it right the first time. A few minor stylistic changes have been made, but for the most part it's pretty much the same as originally published in 2002, with a few revisions around 2005, and in 2022. Defendant's current decision to republish the book (concededly not easily made), was based in large part upon the "*encouragement*" he has received from several Palm Beach County Judges over the last two years; along with the invidious policies and procedures of the Palm Beach County Court that need to be changed. The term "*encouragement*" of course being defined pursuant to a unique and liberal interpretation. The term includes particularly Judge Edward Garrison's recent rulings and questionable conduct in this case. The book is 716 pages with extensive footnotes. Defendant has attached approximately 100 pages of the book to this Motion as Exhibit 2, which he believes are some of the most important chapters. For those interested, a complete copy of the entire book with all 716 pages and applicable supporting Footnotes, is available on Defendant's website at www.gutmanvaluations.com.

ARGUMENT

Defendant is constitutionally entitled to a fair trial in a fair tribunal. See In Re Murchison, 349 U.S. 133, 136 (1955), Tumey v Ohio, 273 U.S. 510, 532 (1927). In Murchison, supra, the Court wrote (emphasis added):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always **endeavored to prevent even the probability of unfairness**. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "**every procedure which would offer a possible temptation** to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, **denies the latter due process of law**." Tumey v Ohio, 273 U.S. 510, 532."

Thus, under Murchison, as well as the time-honored Tumey v Ohio, 273 U.S. 510 (1927) cited in Murchison, a fair trial requires an endeavor to prevent **"even the probability of unfairness**." In addition, "**every procedure which would offer a possible temptation . . . not to hold the balance nice, clear and true**" denies due process. Defendant has identified multiple issues, resulting in the balance not being held "nice, clear and true." Specifically, a legitimate and justiciable issue exists as to whether Defendant can receive a fair adjudication from Judge Garrison for reasons including but not limited to the following, as set forth above and now described in detail:

1, Judge Edward Garrison is unwilling to comply with Florida Court Rules and appellate opinions. Specifically, he did not merely "Err," in scheduling a trial date without legal authority; but violated FRCP 1.440 for the precise purpose of trying to unfairly and quickly "RAM" through a judgment against Defendant without regard to law. He failed.

The evidence against Judge Garrison indicates he made a willful and conscious decision to intentionally violate FRCP 1.440 by setting a trial date when he knew he lacked legal authority to do so. More specifically, **this case is not even "AT ISSUE."** The reason

the case is not "At Issue" is because Plaintiff has pending a "Motion to Strike" Defendant's Affirmative Defenses, which the Court has not yet even ruled upon. Since that Motion is pending, it has **not yet been disposed of** as Rule 1.440 requires and Trial can not legally proceed. Specifically, Rule 1.440 states as follow (emphasis added) :

> "**Rule 1.440. Setting Action for Trial**
>
> **(a) When at Issue.** An action is at issue after any motions directed to the last `pleading served **have been disposed** of or, if no such motions are served, 20 days after service of the last pleading. . . .
>
> **(b) Notice for Trial.** Thereafter any party may file and serve a motion that the action is at issue and ready to be set for trial. . . . The clerk, shall then submit the notice and the case file to the court.
>
> **(c) Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. . . . . "

Accordingly, Judge Garrison lacked legal authority to even Set a Trial Date. Judge Garrison can not fairly contend he was unaware of FRCP 1.440 for the following reasons. First, Defendant understands he has been on the bench for almost four decades. So, it's inconceivable he would be unaware of all provisions of FRCP 1.440. Put simply, he can't claim "Rookie Status" so to speak. Similarly, since a Hearing was actually Set on the Motion to Strike for August, 2022 (notably by Consent of both Plaintiff's Counsel and Defendant); and since Judge Garrison himself "Sua Sponte" cancelled that Hearing apparently attempting to quickly "RAM THROUGH" a Biased Judgment for Plaintiff, he must have known about the Motion to Strike. The following Florida Court of Appeal opinions, are instructive as to the egregious nature of a Judge who Sets a Trial in Violation of FRCP 1.440 (emphasis added):

"**Strict compliance** with rule 1.440 is required and **failure to adhere to it is reversible error**. See Lauxmont Farms, Inc. v Flavin, 514 So.2d 1133, 1134 (Fla. 5th DCA 1987). "Indeed **a trial court's obligation to hew strictly to the rule's terms is so well established that it may be enforced by a writ of mandamus** compelling the court to strike a noncompliant notice for trial or to remove a case from the trial docket." Gawker Media, LLC, 170 So.3d at 130 (citing R.J. Reynolds Tobacco Co. v Anderson, 90 So.3d 289 (Fla.2nd DCA 2012)."

Melbourne HMA, LLC v Janet B. Schoof, 190 So.3d 169 (2016)

"Rule 1.440(a) states that "an action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading" . . . **Appellee concedes, and we agree, that the trial court improperly issued an order setting a non-jury trial. . . . Accordingly, we reverse and remand for a new trial in compliance with rule 1.440(a)**."

Lurtz v The Bank of New York Mellon, 162 So.3d 11 (2014)

"On appeal, U.S. Bank properly concedes that the final judgment must be reversed as the case not "at issue" pursuant to Rule 1.440. . . .

Because "failure to adhere strictly to the mandates of Rule 1.440 is reversible error," Precision Constructors, Inc. v Valtec Constr. Corp. 825 So.2d 1062, 1063 (Fla. 3d DCA 2002) we reverse the final judgment in favor of U.S. Bank and remand for a new trial.,"

Lopez v U.S. Bank, 116 So.3d 640 (2013)

Due to the blatant and serious nature of Judge Garrison's violation of Rule 1.440, one of the most important court rules on the books as evidenced by multiple Florida District Court of Appeals opinions, he should Disqualify himself from further proceedings in this matter.

2. Judge Garrison's handling of his Personal Financial Affairs raises legitimate issues as to whether he possesses sufficient "Good Moral Character" to be a licensed Attorney, much less a Judge. Specifically, Defendant understands he substantively "FAKED" his own Retirement from the bench so he could be paid "TWICE" as Judge. While the so-called "Retirement" may not technically violate the law, it is Morally troublesome.

Defendant understands that Judge Garrison served as a Judge in both Palm Beach County's Circuit Court and County Court from 1980 until 2010, a period of 30 years. Apparently, he then announced his retirement from the bench. Shortly thereafter, he ran for

election as a Palm Beach County Judge to regain a seat on the bench. These matters were summarized in an article published by the "Town-Crier Editor" in 2012 as follows:

> "The youngest judge ever elected in Palm Beach County, Garrison served as a county court judge from 1980 - when he was 27 - to 1989 before moving to the circuit court, where he served until 2010 . . . . Because of Florida Retirement System rules, **Garrison chose to retire in 2010.** If elected to this new post, **he will continue to receive his pension while also earning a salary**. "Even though I only had 30 years in, **I had to make a financial decision**," he said. "**So, I took on the senior judge status and spent a lot of time working on foreclosures."**
>
> Town-Crier Editor, August 10, 2012 (See Exhibit 4 herein)

Apparently, it appears Judge Garrison's "scheme," (notably confessed to by his own words), was to be paid as a retired Judge, and then regain a seat on the bench so he could also be paid as an Active Judge. It does seem his decision to adopt such a course was not technically illegal. However, legality and morality often depart ways. It is well-accepted State Bar Admission standards predicate admission to the State Bar on perceived notions of "Morality" rather than solely upon "Legality." More specifically, the fact someone has never been convicted of a crime does not necessarily mean they pass the State Bar's so-called "Good Moral Character" standard. These matters are addressed in intricate detail in Defendant's book, "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON**" (See Exhibit 2 herein). Thus, in assessing whether Judge Garrison's quite successful scheme to be paid "TWICE" as a Judge was indicative of a lack of "Good Moral Character," the fact his scheme may have been "Legal" is not dispositive under current State Bar admission standards. The question is whether it was "Moral."

Defendant submits the average citizen would view Judge Garrison's decision to circumvent the generally accepted standard a Judge should only be paid "Once" for being a Judge, by submitting a substantively "FAKE" retirement and then regaining a seat on the bench to do the same type of job, would be considered "Immoral."

Notably, Judge Garrison seems to pride himself on being a "No Nonsense" Law and Order trial court Judge. However, it appears our so-called "No Nonsense" Judge, is quite amenable to a bit of Shenanigans and Nonsense, when it comes to furthering his own personal financial self-interest. Assuming without deciding Judge Garrison's quote in the Town-Crier article published in 2012 is accurate, by his own words Judge Garrison stated :

"Even though I only had 30 years in, **I had to make a financial decision**."

The interpretation of the above statement is that Judge Garrison is representing:

he did it for the money.

His retirement and subsequent reassumption of a judicial position probably was not Illegal. But, it did prove that he is no better, nor worse than the rest of us. Like the average citizen, when his financial interests are on the line he'll engage in a bit of "Nonsense," and will without hesitation, "**PLAY THE SYSTEM**" like most people do. He's no better than any number of people who he has hypocritically chastised for moral reasons in his courtroom throughout his career, such as the couple who he refused to Divorce in an unprecedented judicial decision. (See Exhibit 5 herein).

Judge Garrison's retirement debacle renders him unqualified to decide moral issues related to alleged credit card debts. Accordingly, he can not render a fair and impartial judicial decision as to whether Defendant legally or morally owes any amounts on the alleged credit card debt asserted by Citibank's legally defective complaint. Such constitutes grounds for Judge Garrison to Disqualify himself from further proceedings in this matter.

3. Judge Edward Garrison exemplified Actual Bias against Defendant by allowing Plaintiff an extension of over a year to respond to discovery requests, while giving Defendant only 12 days. Additionally, he violated Rule of Judicial Administration 2.215(f) by failing to rule upon Plaintiff's extension request (still now pending for over a year); but in contrast ruled upon Defendant's extension request within only 6 days.

As shown by Exhibit 7, on 7/1/21 Defendant served discovery upon Plaintiff including a Request to Produce documents. As shown by Exhibit 8, on 7/23/21 Plaintiff requested an Extension to respond to the discovery. As shown by Exhibit 9, on 7/14/22 more than One Year after Defendant's discovery request, Plaintiff submitted certain document responsive to the discovery. As of 9/7/22, **more than 13 months since Plaintiff filed their request for an extension to respond to discovery, Judge Garrison still has not even ruled upon their extension request.** Thus, Plaintiff has effectively been provided with a totally open-ended time period to respond to the discovery requests.

Now, let's look at the other side of the coin. As shown by Exhibit 10, on 7/1/22, more than two years after filing their Complaint, Plaintiff for the very first time served upon Defendant a Request to Produce documents. As shown by Exhibit 11, on 7/28/22 Defendant requested an Extension to respond to the discovery. Yet, having provided Plaintiffs with an Extension of over a Year; on 8/3/22 only 7 days after Defendant's Extension request, Judge Garrison issued an Order "purporting" to grant the Extension Request, but only provides Defendant 15 days to provide the discovery (3 already lapsed when the Order was issued).

So, essentially what we have here, is that as of the date of the filing of this Motion to Disqualify, Plaintiff's request for an extension filed over a year ago still has not even been ruled upon, but in stark contrast, Defendant's request for an extension is ruled upon within only 7 days, and then only grants 15 days to respond (3 of which already lapsed when the Order was issued). That doesn't seem to make Judge Garrison look too good. That is not the action of a "No Nonsense" Judge, but rather the decision of a "**NONSENSICAL" Judge**.

While Defendant is amply able to exercise his legitimate due process rights as evidenced herein, it is easy to conceive how an uneducated litigant without legal knowledge would justifiably "fly off the handle" if they didn't know what to do. Judge Garrison's brash ill-advised decisions (like certain other Judges) that violate court rules and elemental notions of due process promote justifiable public disrespect for Judges. His handling of the extension issue is so egregious it could "arguably" justify commission of a Summary Contempt. While Defendant declines to commit such a Summary Contempt, it is simultaneously emphasized members of the Judiciary like Judge Garrison engaging in such uneven procedural atrocities are the precise individuals promoting justifiable anger and disrespect by litigants towards Judges and Courts. They are the problem. Thus, they can not legitimately characterize themselves as "Law and Order" Judges; because they promote Disorder. When a litigant lacking skill in the law commits a Summary Contempt, it is important for reviewing Courts to carefully examine whether the Judge's conduct was so egregious as to have been the Proximate Causation for the Summary Contempt, rather than simply presuming the litigant is at fault. If Judges and Courts want to be treated with respect, they should not engage in conduct reasonably construed by the average citizen as encouraging Contempt. Florida Rule of Judicial Administration 2.215(f) states expressly as follows, in part:

> **"(f) Duty to Rule within a Reasonable Time.** Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time."

In WG Evergreen Woods SH, LLC v Fares, 207 So.3d 993 (Fl. App. 5th DCA 2016), the Court wrote as follows:

> "The Courts of this state are not empowered to develop local rules which contravene those promulgated by the Supreme Court." Berkheimer v Berkheimer, 466 So.2d 1219, 1221 (Fla. App. 4th DCA 1985). "**Nor may courts devise practices which skirt the requirements of duly promulgated rules**."
>
> WG Evergreen Woods SH, LLC v Fares, 207 So.3d 993 (Fl. App. 5th DCA 2016)

By failing to timely rule upon Plaintiff's Motion for an Extension of Time as he was required to do the conjunction of Judicial Rule of Administration 2.215(f) and the applicable appellate opinion excerpts shown, inescapably leads to a conclusion Judge Garrison treated Florida Supreme Court Rules "Contemptuously" by refusing to comply with mandates of higher Tribunals. Nonetheless, it is conceded his Contemptuous "attitude" towards higher tribunals has no remedy for a litigant beyond disqualification. That is because he is protected from related legal action by Absolute Judicial Immunity. Nevertheless, in the public's eye it will be considered as indicative of a "Contemptuous" nature towards higher tribunals and established legal authority. And that is an important point. Because, right now this case is being adjudicated in both the Palm Beach County Trial Court and the Court of Public Opinion. For the foregoing additional reasons, Defendant requests that Judge Edward Garrison Disqualify himself from further proceedings in this case.

4. The Florida State Bar's "Good Moral Character" requirement for admission violates the Equal Protection and Due Processes Clauses. This is because the State Bar does not periodically reassess the moral character of attorneys and Judges. Specifically, a Judge's "Current" moral character varies from their "Original" moral character when admitted to the Bar due to the lapse of time. This diminishes a litigant's ability to receive a fair and impartial adjudication from a Judge with "Good Moral Character."

In 1957, the U.S. Supreme Court wrote the following historic passage regarding the ambiguous nature of the so-called "Good Moral Character" requirement for admission to the State Bar, in the case of Konigsberg v State Bar of California, 353 U.S. 252, 263 (1957) (emphasis added) :

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

Defendant's research indicates Judge Garrison was admitted to the Florida Bar on June 1, 1976. Like other Bar Applicants he was presumably subjected to an examination of his "Moral Character." He has now had a law license for 45 years, and been on the bench about 40 years. Yet, since his original admission his Moral Character for purposes of maintaining his law license, has not been reexamined because that is not a recurring Bar requirement. Defendant's position is that regardless of the quality of his Moral Character in 1976, such is not representative of his "Current Moral Character" due to the lapse of time.

The foregoing point diminishes Defendant's probability of receiving a fair and impartial adjudication from a Judge who can fairly be classified as possessing "Good Moral Character," and thereby infringes on Defendant's Due Process Right to a Fair Adjudication. In support of this position, Defendant attaches hereto as Exhibit 2, approximately 100 pages of his book titled, "**STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON**" originally published on CD-Rom in 2002. The book focuses in large part upon this premise as well as judicial

hypocrisy in general. A complete copy of the book, which is approximately 716 pages will be available on Defendant's Website at www.gutmanvaluations.com as soon as possible.

For the foregoing additional reasons, Defendant requests that Judge Edward Garrison Disqualify himself from further proceedings in this case.

ADDITIONAL ISSUES WARRANTING DISQUALIFICATION OF ALL PALM BEACH COUNTY JUDGES

In addition to matters described above, Defendant incorporates by reference herein, as grounds for disqualification, all matters set forth in his prior Motion to Disqualify Judge James Sherman. That Motion was granted by Judge Sherman. The Motion to Disqualify Judge Sherman included as an Exhibit therein, Defendant's appellate brief currently pending before the Fourth District Court of Appeals in the case of Discover Bank, N.A. v Evan Gutman (4DCA#22-1089). Accordingly, all matters contained in the Motion to Disqualify Judge Sherman, and the appellate brief are also hereby incorporated in full by reference herein. Specifically, the key issues include, but are not limited to the following:

1. The extension of Absolute Judicial Immunity for the intentional commission of Illegal Malicious Acts to Members of the Judicial Qualifications Commission (JQC) acting in a Non-Judicial capacity in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (11th Cir. Fed. Ct. of Appeals, August 15, 2018); and to Debt Collector Attorneys in Echevarria v Cole, 950 So.2d 380 (2007) under the variant of Absolute Immunity known as "Litigation Privilege" unconstitutionally infringe upon the Due Process rights of a Pro Se litigant to receive a fair and impartial adjudication.

2. Palm Beach County Court Rule 4 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the ground it deprives Pro Se Litigants of a fair and impartial adjudication by excluding them from its provisions; and also infringes upon the due process rights of litigants represented by Counsel by requiring their Attorney to communicate and cooperate with opposing Counsel even if not in the best interests of their clients.

3. The Palm Beach County Judiciary's requirement that Pro Se litigants obtain Consent of opposing Counsel when scheduling Hearings on their Motions; while simultaneously allowing opposing Counsel to Unilaterally schedule Hearings without Consent of the Pro Se litigant, infringe upon the Due Process and Equal Protection Clause rights of a Pro Se to a fair and impartial adjudication.

4. Florida State Bar Unauthorized Practice of Law (UPL) prohibitions, **forming the basis of the entire legal monopoly** unconstitutionally infringe upon the due process and equal protection clause rights of all litigants to receive a fair and impartial adjudication. UPL prohibitions diminish the competency of legal services provided to litigants by attorneys by creating economic incentives for attorneys to waive procedural errors of each other at the expense of their client's interests. UPL prohibitions also result in uneven application of court rules, which are applied hyper-strictly to Pro Se litigants, while liberally construed for licensed attorneys.

CONCLUSION

This Motion to Disqualify Judge Edward Garrison is Submitted this day by a "NO NONSENSE" Pro Se Litigant to a "NO NONSENSE" Judge. Thereby demonstrating there is in fact a degree of "Commonality" between the two. This Commonality is further evidenced by the mutual disdain Judge Garrison and Defendant both jointly have for Procedural rules of the Florida Judiciary. But, each express their disdain for those rules quite differently. More specifically, Judge Garrison expresses his disdain for the procedural rules by violating the rules as he deems fit to meet his immediate goals, while at the same time disingenuously professing support for Law and Order. In stark contrast, Defendant openly expresses his disdain for the rules; but at the same time does his best to comply with them on the ground they were properly enacted and should be complied with until changed. Thus, we have here the point of departure between the "No Nonsense" Judge and the "No Nonsense" Pro Se. The Pro Se does his best to comply with the rules, while openly stating they are unfair. The Judge falsely asserts he is a man of Law and Order, but then flagrantly violates properly enacted Rules to effectuate that which he subjectively believes constitutes Law and Order.

The distinctions between the "No Nonsense" Judge and the "No Nonsense" Pro Se; are exemplified by propositions elegantly presented hundreds of years ago by the Philosopher Johann Fichte. The matter may be summarized as follows. Fichte asserts the Absolute Ego posits within itself a Finite Ego and a Finite Non-Ego; and **each reciprocally limits the other**. It is the Ego through its process of Judging that establishes the Doctrine of Opposites. The very nature of the Absolute Ego necessitates the Positing of the Non-Ego in order to discover itself; and the Positing of the Sensible World is necessary in order so the determinate fundamental drive can manifest itself in the form of a Free Moral choice. **FN 1**

Defendant requests Judge Edward Garrison Disqualify himself. Defendant also requests all other Palm Beach County Judges be Disqualified until this Court's Rule 4 is repealed (Defendant anticipates such will occur in no more than 8 months from now). Defendant also requests Judge Garrison Resign from the Bench. His "Attitude" of refusing to comply with court rules, appellate opinions, norms of due process and adhere to the proper limitations of his authority is not well-suited to today's World. The days of Judges depriving litigants of their legitimate rights to Due Process and Fairness are coming to a conclusion. Ultimately, we will have a Better World; Better Judiciary; and Better Legal Profession.

Footnote 1 - A History of Philosophy, Volume VII, By Frederick Copleston, S.J., Post Kantian Idealist Systems, **Johann Fichte**, Published by Doubleday, Pages 45-58 (Original Publication of Vol. 7 in 1963 by Frederick Copleston an English Roman Catholic Jesuit Priest part of his Nine Volume "A History of Philosophy." Nine Volumes published 1946 - 1975.

DATED this 14th day of September, 2022.

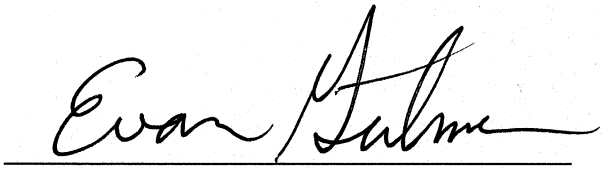
Evan Gutman JD, CPA
Member State Bar of Pennsylvania
Member District of Columbia Bar
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

CERTIFICATE OF SERVICE

I Evan Gutman, hereby Certify a true copy of the foregoing was sent via E-Mail on this 14th day of September, 2022 and a follow up copy will be sent via U.S. Mail addressed as follows:

Adams and Reese LLP
Attn: Kenneth M. Curtin, Esq.
100 N. Tampa Street, Suite 4000
Tampa, Florida 33602

DATED this 14th day of September, 2022.



Evan Gutman CPA, JD
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Member State Bar of Pennsylvania
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EXHIBIT 1(a)

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, whatever other institutions might present themselves in the character of checks, would be found to **operate rather as cloaks than checks**, . . . as checks only in appearances."

In Re Oliver, (U.S. Supreme Court) 333 U.S. 257, 271 (1948)

"The **litigation privilege** applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin. **"Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding. . . . so long as the act has some relation to the proceeding."**

Echevarria v Cole, (Florida Supreme Court) 950 So.2d 380 (2007)

Dear Recipient,

Pursuant to my own personal First Amendment rights, you are one of about 500 people this letter is initially being sent to including about 50 or more Reporters of the media nationwide, all Circuit Court Judges in Palm Beach and Broward County; all members of the Florida State Senate and State House, all U.S. Senators, Governor Ron DeSantis; President Joseph Biden and many selected friends and attorneys. It is also anticipated the number of recipients will increase substantially beyond this initial list in the near future.

The issue is as follows. I am a Defendant in the case of Citibank, N.A. v Evan S. Gutman, Case #50-2020-CC-005756-XXXX-MB involving an alleged credit card debt in the Palm Beach County trial court. I filed a Counterclaim against Citibank alleging multiple illegal acts. Specifically, my main allegation is Citibank has been instituting massive numbers of meritless lawsuits against impoverished litigants predicated upon an invalid legal claim of "Unjust Enrichment." Under Florida law it is well-established if a written contract exists, there can be no legal claim for unjust enrichment. See Agritrade v Quercia, 253 So.3d 28, 34-35 (2017)(" the law will not imply a contract where an express contract exists "). Thus, the Citibank legal claims are all meritless and they know it.

My Counterclaim was Dismissed. The reason for dismissal was NOT PREDICATED upon any assertion Citibank's acts were legal. Quite to the contrary. Dismissal was predicated upon the incredible premise that **Citibank had a "PRIVILEGE" to commit illegal acts.** And no, I am not kidding !! That is what the Court actually held relying upon Echevarria, (see above quote). I gotta tell you, it's pretty difficult to win a litigation, when a Court expressly holds your opponent has a "Privilege" to engage in any illegal activity during the litigation. That's about as tough as it can get, to state the matter mildly. Ultimately, when publicized, I believe this will prove to be a massive embarrassment to the Florida Judiciary. So far as I know, no other State in the U.S. has adopted such an outrageous doctrine. In my view, it is a complete abandonment of their constitutional duty to uphold the law. Based on the foregoing, I am now in the process of challenging multiple invidious judicial policies that cut right to the heart and soul of judicial power. Put simply, my focus has shifted from the banks and debt collector attorneys; to the judiciary itself, which is condoning illegal conduct by creating a "Privilege" to engage in illegality. I have already produced on the Court record approximately 68 complaints filed by Citibank that assert the illegal Unjust Enrichment claim, when they know and have actual knowledge written contracts exist, thereby precluding such.

I am also the author of a book titled "**State Bar Admissions and the Bootlegger's Son**," published on CD-Rom in 2002. At the time, I believe it was the most comprehensive work written about the "Good Moral Character" requirement to obtain a law license. It asserts the intent of the "Good Moral Character" admission requirement was NOT to promote good moral character. Rather it's purpose was to secure an arbitrary power of discretion for

EXHIBIT 1(b)

State Bars to exclude individuals they did not like and who would not support them. My records indicate in addition to individual purchasers, my book was purchased by the following law schools and entities:

1. University of Chicago
2. Golden Gate University Law Library
3. Ave Maria School of Law Library
4. University of Alabama
5. Texas Tech University
6. University of South Dakota Law Library
7. Michigan State University - Detroit College of Law
8. Albany Law School
9. University of Connecticut School of Law Library
10. William S. Hein and Company

Ultimately, I contributed the book to the public domain and it was available on a website I maintained for years. Around 2012, I started thinking maybe some language I used in the book was possibly too harsh and I also developed a greater degree of sensitivity for the State Bar's perspective on the issue. Accordingly, while I still adhered to my original position on the issues, I decided to remove my book from the Internet until I considered the issues further. That was 10 years ago. My best guess is there are about 200 CD-Rom copies of the original floating around. After careful consideration, I have decided to put the entire book back on the Internet with just a few minor changes. Put simply, I believe I got it right the first time around. Accordingly, it will be available again for free, contributed to the public domain, at **www.gutmanvaluations.com** as soon as possible.

My book was cited in 2008 in a Law Review article titled "Are You In or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission & A Proposed National Uniform Standard" (Hofstra Law and Employment Law Journal), by Anthony J. Graniere and Hilary McHugh, (Volume 26, Issue 1, Page 223, Footnote 2, 2008.)

I am hopeful you may take an opportunity to read my book, which should be available shortly at www.gutmanvaluations.com, and may even be available on my website by the time you receive this letter. I think you will find it to be interesting and also somewhat amusing reading.

Lastly, I write to inform you that I have filed an interesting Motion to Disqualify **Judge Edward Garrison** of the Palm Beach County Court, in the Citibank case. A complete copy of my Motion will also be available on my website at www.gutmanvaluations.com as soon as possible.

Very truly yours,

Evan Gutman CPA, JD

EXHIBIT 2

This Exhibit consists of Selected Excerpts from a Book Authored by Defendant and Originally Published in 2002 titled

"STATE BAR ADMISSIONS AND THE BOOTLEGGER'S SON"

The Excerpts from the book included in this Exhibit are 101 Pages. The full length of the book is 716 Pages.

Exhibits 3 - 11 of this Motion follow the last Page of the Book Excerpts constituting Exhibit 2

STATE BAR ADMISSIONS

And The

BOOTLEGGER'S SON

A Book Devoted to Opening the Legal Profession, Courts and State Bar Doors to Conservatives, Liberals, Pro Se Litigants and Minorities

With Special Section on the Oregon State Bar Professional Liability Fund (PLF)

By Evan Gutman CPA, JD

Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to Federal Ninth Circuit Court of Appeals
Admitted to Federal Sixth Circuit Court of Appeals
New Jersey Certified Public Accountant
Florida Certified Public Accountant

DEDICATION

This book is dedicated to my son, who I love more than anybody else in the whole world and did not get to see grow up due to the existence of irrational preconceived notions of actual Judicial bias against loving, caring noncustodial parents (both male and female) inherent within the diminished mental capacities of the trial court Judges of Marion County, Oregon. The cognitive affliction from which they suffer has understandably neutralized their capacity to utilize intellectual faculties in adjudicating legal issues. Lamentably and consequently, their perplexing judgments are predicated on senseless irrationality, and illogical reasoning with a predominant basis rooted in their prejudices and lack of comprehension. Such has unsurprisingly caused a marked inability for them to develop public confidence or respect. While their deficiency in developing respect has caused them to become embittered, this author's research indicates it is predominantly a product of their realization that furtherance of the anticompetitive interests of the State Bar and legal profession mandates a sacrifice of the general public interest, to which they are amenable.

It is hoped this book will not only improve the quality and delivery of justice for minorities and all Nonattorneys throughout the nation, but also that the manner in which its writing was inspired will prove to be a persuasive argument for beginning to treat children and their loving, caring parents fairly in courts of law by recognizing the inherent, natural right to joint custody, which will no longer be denied.

To: Mildred Douglas Wells

December 16, 1961

Dear Millie :

I am glad that Ty is turning out to be a rebel. Any boy who is any good has that spark in him when he is about Ty's age. The problem is to see that it does not die out, and that he retains the capacity to tell his old lady or his old man where to get off.

The only dangerous people in the world are those who are rebels without a cause, and the problem is as the years go by to find a good cause to which Ty can tie his rebellion. On that you and he can get together and come up with something pretty special and I am sure it will all work out to the best of the order.

Merry Christmas to you all.

Letter of U.S. Supreme Court Justice William O. Douglas to his daughter, regarding his grandson Tyrone Wells, Millie's son. The Douglas Letters, Edited with an Introduction by Melvin Urofsky, Adler and Adler Publishers, (1987)

PREFACE

It was the middle of the decade in the 1960s. I was five or six years old. He was about seventy. I was on vacation. He was on vacation. I didn't take crap from anybody. He didn't take crap from anybody. No one was going to tell me what to do. No one was going to tell him what to do. I was staying at the Condado Beach Hotel in Puerto Rico on winter vacation with my parents and brother. He was staying at the hotel next door, which I believe was called La Concha, with a young woman in her twenties. On occasion, I had a nasty way about me. On occasion, he had a nasty way about him. We were both very independent. I was a kid. He was U.S. Supreme Court Justice William O. Douglas.

Each day around 9:00 in the morning, I left my parents behind at the Condado Beach Hotel and went to spend the day at the La Concha Hotel. I generally came back only once or twice during the day. When I was hungry. The beach at La Concha was nicer, and more importantly the swimming pool at La Concha had a shallow end where I could stand. At the Condado Beach, the shallowest part of the swimming pool was over my head and since I wasn't a particularly good swimmer, I couldn't use the pool. I saw absolutely no reason why I should spend the day at the Hotel my family was staying at, if there was another Hotel nearby that I liked better. So my parents and brother spent their vacation at one Hotel, and I spent most of mine at another.

Whether Justice Douglas and I ever actually met, I am admittedly not sure. I vaguely recall that everyone was talking about a U.S. Supreme Court Justice staying at the Hotel with a very young woman. I also recall an interaction I had with an older man at the La Concha swimming pool one morning. I was swimming by myself and he was sitting by the pool. He asked where my parents were, and I responded in a smart-ass tone, that it was none of his business. He asked if I was staying at the Hotel and I responded that I was staying at the Condado Beach, next door. He said I couldn't swim in the pool if I wasn't staying at the Hotel. I essentially told him to get lost, although I don't recall the exact words I used. He then spoke to the lifeguard, who told me to leave, and so I left. While I knew the older man lacked any type of authority regarding the swimming pool, I also knew the lifeguard had complete authority in that jurisdiction and so I complied when the lifeguard told me. It was the only day I left La Concha early. The next morning, I went right back and the same lifeguard was there. I asked if I could swim, and he said as long as no one complained, it was alright. I never saw the older man again.

I really don't know whether the Prick who busted my chops was Justice Douglas or not. As much as I truly admire and respect all of the Justices of the U.S. Supreme Court, I love the idea that when I was about six years old, I may have told a U.S. Supreme Court Justice to take a hike. It would be just so perfect. But, I really can't say for certain that it was Douglas. Somehow, I earnestly believe that if it was Justice Douglas, and even though he scolded me, he admired my style and passion. He had the exact same style throughout his entire life. Frankly speaking, if it was him, I have no doubt that he thought I was a young, "up and coming" Prick. It was not until roughly thirty years later in the mid-1990s that I read his autobiography and many of the opinions he wrote as a Supreme Court Justice, which are absolutely phenomenal. While I have read biographies of many of the Justices, and as stated admire them all immensely, there is no doubt William O. Douglas is my favorite. He was the only Justice considered by both his friends and political adversaries to be a Son of a Bitch.[1] That's a man I can relate to.

If Douglas were alive today, I would tell him how much I admire his opinions, style, intellect and passion for the law. But, I still wouldn't get out of a swimming pool for the magnificent bastard.

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MEMORABLE QUOTES FROM BAR ADMISSION CASES

"The attorney and counselor . . . clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him . . . is something more than a mere indulgence. . . ."

Ex Parte Garland, 4 U.S. (Wall) 333 (1866)

"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."

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

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

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

"If Ex Parte Garland stood for, or stands for, anything, it must be that the admission to practice is a federally-protected constitutional right."

Character and Fitness Investigations and Constitutional Rights of Individuals, The Bar Examiner, Vol. 43, 1974; Pg. 5, By Honorable Roy Wilkinson, Jr. Chairman NCBE

"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."

Konigsberg v. State Bar of California, 353 U.S. 252 (1957)

"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. . . ."

Schware v. Board of Bar Examiner, 353 U.S. 232 (1957)

"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"

U.S. Supreme Court Order, May 13, 1957

"We . . . adhere to our former opinion."

318 P.2d 907 (1957) (Oregon Supreme Court Decision After Remand)

"Thus, we are neither bound nor relieved of our own duty in the matter by the United States Supreme Court's prior estimations of the proper ethical course of action. . . ."

State v. Balfour, 311 Or. 434 (1991) (NOT A BAR ADMISSION CASE)

"The right to practice law is a "fundamental right". . . ."

620 P.2d 640 (1980)

"The foregoing matters raise significant doubts about the fairness of the Committee's proceedings."
741 P.2d 1138 (1987)

"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. . . ."
579 A.2d 668 (1990) (Dissent)

"Petitioner's jury acquittal . . . has special significance with regard to the Board's conclusion that petitioner lied three times in asserting her innocence.
397 So.2d 673 (1981)

"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."
650 So.2d 35 (1995)

"A hearing to determine character and fitness should be . . . for the purpose of acquainting the court with the applicant's innermost feelings and personal views on those aspects of morality . . . ."
282 S.E. 2d 298 (1981)

"The current administration of moral character criteria is, in effect a form of Kadi justice with a procedural overlay. . . . Politically nonaccountable decisionmakers render intuitive judgments, largely unconstrained by formal standards. . . . This process is a costly as well as empirically dubious means of securing public protection. . . . . 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 these exclusions is highly questionable. . . ."
780 P.2d 112 (1989)

"By its opinion the majority has significantly changed the admissions process without first notifying applicant. . . law students, the bar, and the public.
518 N.E. 2d 981 (1987) (Dissent)

"It would be unconstitutional according to the court, "to read literally the language of the rule". . . ."
518 N.E. 2d 981 (1987) (Dissent)

"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. . . ."
518 N.E. 2d 981 (1987) (Dissent)

". . . <Applicant> will not be permitted to practice law in this State, not because he has failed to follow the rules, but because we have."
518 N.E. 2d 981 (1987) (Dissent)

"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. . . ."
561 N.E. 2d 614 (1990)

". . .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."

316 A.2d 246 (1974)

". . . I had no reason to believe that the U.S. Federal Penitentiary was a residence of mine. I never considered it a residence. . . ."

Applicant's Statement, 439 A.2d 1107 (1982)

"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. . . ."

439 A2d 1107 (1982) (Dissent)

"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. . . ."

502 N.W. 2d 53 (1993) (Dissent)

"I believe . . . 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."

502 N.W. 2d 53 (1993) (Dissent)

"Until today, . . . being obnoxious . . . 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. . . ."

LLR 1996.NE.137 (1996) (Versuslaw) (Dissent)

"While I do not approve of such characteristics, there are no bar admission rules for excluding an applicant on such grounds."

LLR 1996.NE.137 (1996) (Versuslaw) (Dissent)

"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."

342 N.W. 2d 393 (1983)

"Applicant is never to be admitted to the practice of law in Ohio."

No. 97-407 2/18/98 1998.OH.36 (1998) (Versuslaw)

"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. . . ."

541 P.2d 1400 (1975)

"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 . . . then I would take him."

Applicant's Statement to Oregon Bar, 610 P.2d 270 (1980)

"It is patently clear that the applicant still has no understanding of the legal or moral implications of his extra-legal conduct."

610 P.2d 270 (1980) (Oregon Supreme Court commenting on Applicant's Statement Above)

"An orderly examination is made difficult by the fact that the Board's record appears higgledy-piggledy. . . ."

No. 3-90-097-CV 7/24/90 1990.TX.1127 (Versuslaw)
Court of Appeals of Texas, Third District, Austin

". . . 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. . . .""

No. 3-90-097-CV 7/24/90 1990.TX.1127 (Versuslaw)
Court of Appeals of Texas, Third District, Austin

"Our efforts at review are hindered because the record appears haphazardly. . . ."

No. 3-92-005-CV 1992.TX.2207 December 23, 1992
Court of Appeals of Texas, Third District, Austin

"We find it hard to imagine how anyone could overcome the stigma of chemical dependency under the Board's concept. . . . 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. . . ."

No. 03-97-00720-CV 1998.TX.42344 November 13, 1998
Court of Appeals of Texas, Third District, Austin

"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."

690 P.2d 1134 (1984) (Dissent)

"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."

266 S.E. 2d 444 (1980)

"Justice Black, in Baird, and Stolar, recognized questions similar to those posed here as "relics of a turbulent period known as the "McCarthy era". . . ."

266 S.E. 2d 444 (1980) Footnote 12

2

INTRODUCTION

If there's one thing the Judiciary detests more than anything else it's a smart aleck. If there is one thing I am more than anything else, it's a smart aleck. Such being the case, it is easy to see there was going to be some friction between us right from the beginning. There is no doubt that trial judges irritate and annoy me. Similarly, I tend to irritate and annoy them. In such situations, someone has to change. Either I have to change or the entire Judiciary branch of government has to change. I have no intention of changing, so the Judiciary will have to. The simple fact of the matter is that I am entirely dissatisfied with this nation's legal profession, and not at all pleased that it has caused me to develop a deep, burning social conscience that compels me to effectuate improvement in the administration of justice. Frankly speaking, at this stage of my life I was really planning on spending most of my time on a beach in Aruba with a swimsuit model. Instead, this disease that I've developed called a social conscience, inspires me to straighten out the entire legal profession. I can honestly say that I wish I never discovered most trial court judges and attorneys don't know their ass from first base. In 1994, during my third year of law school at the University of Oregon I wrote my senior thesis on the "Unauthorized Practice of Law (UPL)." I got a "B+". The Professor recognized I spent a tremendous amount of time on the paper, but felt it wasn't quite up to an "A" paper. She was right. I didn't concentrate sufficiently on the economic aspects that drive the Judiciary. Frankly speaking, in hindsight, I'd probably give the paper a "C" at best, today. The economic aspects are quite simply put, the entire ball game.

Since 1995, I have spent an immense portion of my time studying UPL and the Bar admissions process. I have read hundreds of cases in all states, thanks to the Company known as Versuslaw which provides an Internet subscription for at a very low cost that provides access to published court opinions in every state. I have no affiliation with the company, other than being a subscriber to their service, but highly recommend it for those interested in reading court opinions. State cases, U.S. Supreme Court cases, several books, and articles in the Bar Examiner magazine are the primary sources I have used. The facts and irrational judicial reasoning applied in numerous Bar admission cases from most states are analyzed herein. The other main source of information I've used, is the magazine published by the NCBE known as the "Bar Examiner." I am extremely critical of articles in that magazine. I quote key, selected portions and analyze them extensively. It is my belief that the "Bar Examiner" articles from the 1930s set the foundation for the irrationality of the Bar admissions process today.

A word now about **"BOLDING."** I quote numerous passages from court opinions and the Bar Examiner articles. I have taken the liberty of **"BOLDING"** portions for the purpose of emphasis. It is important for the reader to understand that although they are **"BOLDED,"** herein, they generally were not **"BOLDED"** in either the opinions or the articles. Other than that, I have tried my best to ensure the quotes are wholly accurate. In the event errors are brought to my attention, they will be corrected in future editions. I do <u>not</u> include the names of the litigants involved with respect to the cases cited. This is somewhat unusual, since case citation normally does include litigant's names. I nevertheless felt it was appropriate to delete them. I make an exception for those few state cases where the litigant's name is already well known to the public, such as the Massachusetts case of Alger Hiss. I also make an exception for all U.S. Supreme Court cases, where the names are included.

Now, a little about myself. I received my undergraduate degree in accounting from Georgetown University and my law degree from the University of Oregon Law School. I am a licensed

CPA in New Jersey, and the District of Columbia. I am also a licensed attorney in the State of Pennsylvania and the District of Columbia. I first became a CPA in 1985, and then became licensed to practice law in Pennsylvania in 1995, then the District of Columbia in 1997. I've been an attorney for less than six years (as of 2002), and I'm making waves. Big waves !! As I see it, the manner in which the legal profession has been conducting itself is totally unacceptable, and needs to change immediately. I have never been disciplined by any professional board, and in fact, have never even had one single ethical complaint of any nature ever filed against me for any reason. I've never been convicted of any crime in my entire life. I am 41 years old as of 2002. I do admittedly have a tendency to "annoy" (excuse me, make that really "piss off") trial court judges within the context of civil litigation. For this reason, it seemed to be a prudent idea that I not practice law. In fact, I have never represented even one single client in any matter of any nature. It would only lead to problems. The state trial court judges lack a sufficient knowledge of the law, and continually conduct themselves in an irrational manner extending beyond their authority. They are over-emotional, hypersensitive, and quick to punish litigants (particularly, Pro Ses) simply for exercising constitutional rights. Such being the case, I realized that if I practiced law, I'd set a national record for the quickest summary contempt.

I use profanity on occasion, but not too often and typically only in jest. I love the underdog in almost any context. I believe in the opinions expressed herein fervently. They were not quickly formed, but developed in a gradual manner over the last eight years, beginning with my first year in law school. I have enormous faith and confidence in the U.S. Supreme Court, and have read biographies of Justices Marshall, Black, Douglas, Holmes, Warren, Powell, Harlan, Field and a few others. I am relatively well versed in American history, having read biographies of every President through the early 1900s. I am knowledgeable to a limited and lesser extent in western philosophy including Locke, Hume, Rousseau, More, Mill, Kant, Hobbes, and Machiavelli. Machiavelli's "Prince" incidentally is probably the best 90 pages that I've ever read about government. I also have enormous faith and confidence in the opinions of the general public, but for the most part believe that most attorneys, State Bars and trial court judges are incompetent nitwits. Few have read any American history or western philosophy. They have little appreciation for court rules and are under the mistaken impression that court rules apply only to Nonattorneys. I wouldn't mind their pompous arrogance so much if they were at least knowledgeable and competent in the law. In fact however, most are bumbling, stumbling buffoons.

A good analogy involves the game of golf, which I have at times played competitively in my life, including four years in high school and one year in college. Trial court judges and local attorneys in small towns remind me of a guy who gets up on the first tee of the golf course dressed in the best clothes and playing with the best golf clubs you can possibly buy. They then proceed to play the first hole like a typical duffer and score an 11. When asked by the other players what their score was, they reply, "Par." You can't help but look at them and think, "Who does he think he's fooling ?" That's what the local attorneys and small town judges are like. They want the litigants and the public to believe they really know what they're doing and be under the impression they have experience and knowledge in the law. In truth however, the record typically demonstrates they're not much more than judicial duffers. I detest attorneys for the most part, but do believe there are a few good ones. Too few. Many of these beliefs will become more apparent, as you read the book. Keep in mind, that I am not writing to impress the intellects, or the university professors. If they don't like my writing style, too damn bad. I'm writing to convey a strong message about the legal profession. If I get my point across, that's all that counts. I am a "bottom line" person. And the bottom line of this book is that the logic flows. The point is made and the message gets across. Whether you like the book or not, one thing is certain. When you're done reading it, you'll know where I stand. It contains some emotion, humor, criticism and extensive analysis. The conclusion I want you to reach after reading it can be summarized as follows :

"He's right. The State Bar Boards of Examiners are wrong."

3

THE GOAL and THE STRATEGY

I have not written this book for mere posterity. I am seeking to achieve a clear and distinct goal. My goal is to constitutionalize the State Bar admissions process for the entire nation. The essence of my position is that pursuant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the State Bar admissions process is unconstitutional. The reason is that licensed attorneys and Judges are held to a lower standard of conduct than a Nonattorney Bar Applicant. And yes, you read that right. Attorneys and Judges enjoy a lower standard of conduct than Nonattorney Bar Applicants.

This is because State Bar members are not required on a regular and periodic basis to provide the same type of character information required of Bar Applicants. In fact, there is no character assessment that is even faintly comparable to the initial admission process, for State Bar members when renewing their law license. It is my position the character questionnaire submitted by an individual when applying to the Bar becomes irrelevant to their "current" character, once they have been licensed for at least five years. People change over time. The Nonattorney Applicant by being required to complete the character questionnaire is held to a higher character standard than the licensed attorney, since the majority of Bar members have been licensed more than five years. The public is harmed by this irrational disparity.

Most State Supreme Courts have held that the burden of proving good character is on the Applicant when seeking admission, but on the Bar with respect to proving bad character for Disbarment. Once again, this irrationality results in the Bar member being held to a lower standard of conduct than the Applicant. The licensed attorney is subject to the ethical rules of conduct, but the Nonattorney Applicant is not. Such being the case, if indeed there is to be a disparity, then the Nonattorney should be held to a lower, rather than a higher standard of conduct compared to the licensed attorney. To hold otherwise, results in attainment of the license to practice law being an entitlement to engage in immoral conduct. The fact that State Bar members are subject to ethical rules of conduct can not rationally be construed as justification to exempt them from the character review required of a Nonattorney. If anything, such responsibility is cause for a more extensive, rather than diminished character review.

The ethical rules of conduct for attorneys do not penalize immoral conduct that can result in denial of admission for an Applicant. The ethical rules contain no requirement that licensed attorneys pay their debts, but candidates can be denied admission for failing to pay debts. The ethical rules contain no limit on the number of traffic tickets a licensed attorney may receive, but candidates can be denied admission for such trivial matters. Bar Applicants can be denied admission for being glib, facetious, obnoxious, the manner in which they left previous jobs, their attitude, what other attorneys say about them, high school suspensions, unsatisfied judgments, drinking alcohol, and even most incredibly for filing civil suits.

If indeed the Bar makes such inquiries of Applicants to protect the public, rather than to protect its' own anticompetitive economic interests as I assert, then how can the Bar rationally justify its failure to make similar inquiries of licensed attorneys and Judges on a periodic basis? Is the public's need for protection from incompetent lawyers diminished once admission to the Bar is attained? Do attorneys as a whole have a reputation amongst the general public as possessing better character than the average Nonattorney? The answers are, "It can't," "No," and "Not a chance."

The specific goal I seek to achieve is that Bar Applicants should only be required to respond to character inquiries to the extent similar inquiries are made regularly of licensed attorneys. It is further my position that both should have to answer whether they have ever been

convicted of a crime triable by jury. Naturally, a criminal conviction may be grounds for denial of admission to the Bar. The operative term is "may." The determination would depend on the type of crime, the period of time lapsed since the criminal conduct was committed and the extent of the Applicant's rehabilitation.

For purposes of addressing these points, I would typically exclude the "offense" of contempt. The reason for this is that contempt is typically not triable by a jury. It often is the result of an irrational Judge who simply does not like a litigant and imposes a contempt "conviction" in a certain instance even though such is legally beyond that Judge's authority. Personality clashes between irrational Judges and highly skilled Pro Se litigants, are often the cause of contempt "convictions." Such matters should not constitute grounds for denial of admission to the Bar. In fact, several U.S. Supreme Court Justices were at one time or another in their careers held in contempt of court, as will be demonstrated herein.

A few matters should be addressed about how I will be proceeding. Chapters 1-14, provide an overview of the attorney licensing process, including its' history, how it works and other related topics. In Chapter 15, I present and analyze the irrational and disturbing opinions of numerous writers who authored articles in the magazine known as the "Bar Examiner," from its first issue in the early 1930s to the mid-1940s. That magazine is the official publication of the NCBE (National Conference of Bar Examiners). I have carefully selected what I believe to be key quotes from the publication. It is my intent to demonstrate through citation to these articles, that the admissions process was not intended to protect the public, but rather instead to foster anticompetitive and wrongful, prejudicial notions of the State Bars. Some of the things published in the Bar Examiner are nothing short of detestably incredible.

Chapter 16 addresses the close nexus between McCarthyism and the State Bar admissions process. Chapter 17 describes six warning signs that suggest a State Bar is trying to control litigation outcomes, by leveraging the personal and professional lives of the attorneys they license. Chapter 18 presents key U.S. Supreme Court Bar admission cases. Chapter 19 explores whether the Judiciary can withstand scrutiny under its' own moral character standard. Chapter 20 provides what I believe is the most comprehensive analysis of Bar admission cases ever published in this nation. I have carefully scrutinized hundreds of opinions from all states, and selected key citations from them. I then render my own analysis. I have done so for the purpose of demonstrating that the Bars still persist in promoting the detestable values promoted by the NCBE and its' magazine, the "Bar Examiner," in the 1930s. In addition, I seek to demonstrate there is a propensity of the State Bars to usurp well-accepted case precedent of the United States Supreme Court and also their own State Supreme Courts. Chapter 21 contains biographical information of selected U.S. Supreme Court Justices. I concentrate on any aspect of their background that might cause a State Bar to deny them admission on moral character grounds. Chapter 22 presents U.S. Supreme Court opinion excerpts in which the Justices criticize each other. Chapter 23 presents a series of excerpts from the U.S. Senate Confirmation Hearings pertaining to the appointment of Clarence Thomas to the U.S. Supreme Court. During the course of those Hearings, he properly and severely chastised the unfairness of the investigative process with respect to U.S. Supreme Court appointees. His criticism is even more valid with respect to Bar admissions. Chapter 24 discusses what is known as the "Judicial Function Exception." The Appendix includes Bar admission forms.

Take a look at the Bar admission forms and questions asked. See if you can fill the application out with an absolute certainty that your answers are complete and accurate. Try to probe your memory for those questions that require you to think back more than 10 years in your life, and consider what you should do if you can't remember the requested facts. If you're over 35 years of age, you probably don't have even a miniscule chance of completing every single application question completely and accurately. Look at Question #19 on the Alabama application that inquires about your Father's occupation and your Mother's occupation, and consider whether facts about your mother and father are really any of the State Bar's business. Most of the other questions are similarly irrational. If after looking at most of the application, you still think the questions are reasonable, then take a look at Question #53, which is

characteristic of a question included on many State Bar applications. I submit there is not one single reader of this book or individual ever admitted to any State Bar who has ever answered this type of question completely and accurately. The reason is that the question is logistically impossible to answer. It reads as follows:

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

My general strategy can be summed up as follows. Demonstrate by analyzing articles in the "Bar Examiner" that the admissions process was designed to foster the enhancement of State Bar power and monetary interests of attorneys at the expense of the public, and also to foster wrongful, prejudicial notions. In conjunction with this is the corollary that the admissions process is <u>not</u> intended to protect the general public. Then demonstrate by analyzing contemporary Bar admission cases that the admissions process has not changed all that significantly, from the original intent as it existed in the 1930s. I also will demonstrate how the moral character standard currently utilized, is so irrational, that even the Judiciary itself, and U.S. Supreme Court Justices can not satisfy it. This will prove that there is a dire need for change and reform. The process needs to become constitutional in nature. The change and reform I propose is simply that licensed attorneys and Judges cannot be held to a lower standard of moral character than the Nonattorney Bar Applicant. So simple of a premise that any State Supreme Court moron should be able to understand it.

4

THE IMPORTANCE OF THE STATE BAR ADMISSIONS PROCESS

You've just been arrested and charged with some type of crime. You have just been a victim of a crime. One of your friends or family members has just been a victim of a crime, or accused of a crime. You're going through a divorce. You're being sued by a creditor. You're late on child support payments, or you're not receiving child support payments that you're entitled to. Your house is being repossessed. You've been subpoenaed to testify as a witness. You've just been in a car accident. (Man, you are definitely having one lousy day.)

Anytime you are involved in anything that potentially involves litigation or a court proceeding of some type, in all likelihood you will either need a lawyer or be opposed by a lawyer. The type of people who become lawyers ultimately determines the type of justice system we have, and therefore affects every single citizen that is a Nonattorney. What type of person do you want to hire as your lawyer? Do you want their primary interest to be fighting on your behalf, or are you more concerned that they conduct themselves in a manner that pleases the agency that licenses them? Do you want them to be more concerned about the financial interests of the agency that licenses them, or more concerned about helping you? Do you want them to have a fear inside them, that if they zealously represent you and offend the opposing party's attorney during the process, that they may lose their license? It's my guess the average Nonattorney's concern with lawyers is singular. They want someone who will fight as hard as possible to win their case, without regard to the impact such has on the financial interests of other attorneys.

So, I present the question again. What kind of lawyer do you want to represent you? The determination is made through the State Bar admissions process. The State Bar admissions process ultimately affects all Nonattorneys one way or the other. If it is designed to foster a fear and subservience within the attorney, then their clients will not have zealous representation. If it is designed to admit convicted felons on a regular and pervasive basis, then clients will also suffer. If it is designed to place new attorneys at a disadvantage compared to older attorneys, by requiring new attorneys to disclose an unreasonable amount of information about their personal life, then the clients of new attorneys are at a comparable disadvantage. If it is designed to instill in the new attorney an understanding that rules apply one way to strong regulatory agencies, but in a different way to weak individuals, the attorney can be expected to conduct himself in accordance with such knowledge.

If it is designed to exclude minorities, then Nonattorney minorities will not be able to obtain competent representation. If it is designed to glean out individuals with bad "attitudes," then clients must expect courts will ultimately adjudicate cases based upon litigant "attitudes," or the "attitude" of attorneys representing the litigants. The facts, law and evidence will have a diminished importance in comparison with the "attitudes" of those involved. The State Bar admissions process affects every person, and every single facet of society. That's why it is critical for the process to be objective, fair, and clearly defined. Currently, it is arbitrary, discretionary, capricious and as correctly stated by the U.S. Supreme Court, a "dangerous instrument."

5

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 ?"[2]

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."**[3]

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."

6

HISTORY OF BAR ADMISSION AND THE ATTORNEY LICENSING PROCESS

What makes a person an attorney? What allows them to carry a law license, represent individuals in Court and hold themselves out to the public as a lawyer? What requirements do they have to meet ? First, there are a few rudimentary basics that need to be addressed. We have two sets of governments in our nation; federal and state. Each has their own set of laws, with citizens in a state being bound both by the federal law and the law of their particular state. The United States is comprised of three branches of government which are the executive, legislative and judiciary. Each state is comprised of three similar branches.

The first and most important branch is the Legislative branch which consists of Congress in the federal government and state legislatures for the state governments. Congress is charged with enacting federal laws, and state legislatures enact state laws. State legislatures also typically have a variety of other duties and powers. Included in these other duties and powers is generally the ability to set the rules and standards for the issuance of professional licenses in the various occupations (excluding law). The second branch is the Executive which is headed by the President in the federal government, and the Governors for the state governments. The Executive supervises and directs various administrative agencies and is charged with the responsibility of seeing that the laws are administered properly. Third on the totem pole, is the Judiciary consisting of federal courts and state courts charged with resolving disputes pertaining to the law and also interpreting the law.

Members of most professions are licensed by agencies (typically, referred to as "Boards") that are under the supervision and direction of the Legislative branch of government in most states. The professions typically licensed by Legislative agencies include accounting, medicine, dentistry, architecture, and a wide host of other professions. There is one major exception. That is the practice of law. Lawyers today are rarely licensed by agencies under the direction and supervision of the State legislature. They are typically licensed by the Judiciary branch of government. The Judiciary's power to license attorneys has only been firmly established in this nation as a phenomenon of the 20th century. Prior to the 1930s, it was a hotly contested issue, with many state legislatures successfully claiming the power. Most citizens are not aware of this and Courts typically mislead the public into believing that their power to license attorneys has been undisputed since the formation of this nation. Their misleading assertion lacks candor and is not supported by historical facts. The result of the Judiciary successfully grabbing control of the licensing power in the early 20th century is that rules, procedures and protections that apply to the licensing of every other profession are for the most part inapplicable to the licensing of lawyers. The Judicial administrative agency vested with the power to license attorneys is typically known as the Board of Bar Examiners. This book will demonstrate how within the context of the State Bar admissions process, it is an unconstitutional licensing agency unlike that of any other profession.

When I first entered law school at the age of 32, I was already a Certified Public Accountant. I was therefore somewhat familiar with the licensing process for a professional. The requirements to become a CPA were as follows. First, I needed a minimum number of accounting credit hours from college. Second, I needed two years of public accounting experience. Third, I had to pass a comprehensive examination known as the CPA exam. The CPA exam in the early 1980s when I took it, was comprised of four parts. Few individuals passed all four parts in one sitting. As I recall, the

percentage that did so was about 5%. I accomplished the feat, passed all four parts in one sitting and was certified at age 24.

The CPA exam is a uniform exam, which means that whether you sit for the exam in Arizona or New Jersey, you answer the exact same questions. Although each state sets its own grading standards for passing the exam, the questions are the exact same in every state. Consequently, if you pass the exam in New Jersey, you can transfer the grades to another state, such as Arizona and obtain certification. As part of the CPA application form, you typically provide basic information detailing recent addresses you have lived at, places of employment, education and must disclose whether you have ever been convicted of a crime. For the most part, that's about all there is to it. Once you're certified in one state, you can use that license to easily gain reciprocity in another state. For instance in my own case, although I originally passed the exam in New Jersey, I was certified in Arizona, and then obtained reciprocity in other states just by filing the paper work and paying the necessary fees.

I was shocked to learn in law school that the process to obtain a law license was immensely more complex, and not nearly as objective. Instead of being admitted when you satisfied a clear set of definable criteria, the attorney licensing process was designed to foster denial of admission based on subjective personal feelings, beliefs and attitudes of the Bar Examiners. Applicants could be denied admission for being cavalier, glib, facetious, smart-alecky, being unable to pay debts, participating in civil suits, writing letters to express their opinions about the legal profession or a wide host of other blatantly unconstitutional grounds. Purportedly, such admission denials are designed to ensure that attorneys possess the "requisite character" needed to "protect the public" from dishonest lawyers and incompetent legal services. Essentially however, the criteria are so subjective and vague that they allow the Bar to deny admission simply based on whether they "like" the Applicant or not. This obviously creates an environment whereby qualified Applicants are regularly denied admission due to their race, appearance, attitude, or economic standing in society. Facially, the Bar does not deny admission on the basis of race, but as a matter of substance due to the subjective nature of the application process, such denials are common and the admission standards foster the opportunity. Its' disturbing history certainly confirms the intent.

The criterion to become an attorney in most states is as follows. First, you need to graduate from an ABA accredited law school. This usually takes three years, although it can be accomplished in two and a half, as I did. There are a few states that allow an Applicant to sit for the Bar exam if they've graduated from a non-accredited law school, and the ABA accreditation process is certainly less than commendable. It has been subjected to justified legal attack in recent years by the U.S. Justice Department. Nevertheless, currently the normal route to licensure is to graduate from an ABA accredited law school.

Second, the Applicant needs to pass the Bar exam. Unlike the uniform CPA exam which is exactly the same from state to state, the Bar exam varies widely between the states. Only a portion of it is uniform which is known as the MBE (Multistate Bar Exam). The MBE is an objective, multiple choice examination. Most states however, also require the Applicant to take a state specific exam which is comprised of essay questions. Since the state portion consists of an essay exam which is subjectively graded, the admissions committee is able to exclude applicants based on their subjective appraisal of an Applicant's ideas and attitudes as expressed in answers to the essay questions. Many states require lawyers who have passed the MBE in one state, to sit for the MBE exam again when applying to their state. That obviously makes no sense. Unlike the CPA Boards, the Bar Boards do not typically respect passing of the uniform MBE portion in another state, unless the Applicant has also actively engaged in the practice of law for 5 out of 7 years. Many attorneys such as myself, have never practiced law.

The third requirement is the real kicker. The Applicant must pass a so-called "moral character" review to determine if they possess the "moral character and fitness" necessary to become a lawyer (I know it seems like a contradiction in terms, based on the disrespect most Nonattorney citizens have for the "character" of lawyers). The CPA licensing process equivalent of character review generally

consists of answering the question, "Have you ever been convicted of a crime?" If the Applicant truthfully answers "No," the criterion is met. If the answer is "Yes," the Applicant normally must provide all relevant details and circumstances. The Applicant may also be required to come in for an interview with the CPA Board to personally answer questions about their criminal conviction. The Applicant may then be admitted or rejected based on the nature of the crime and the explanation rendered. In any event, it is a nice, clear, bright line, articulate standard. If you've never been convicted of a crime, then you pass. If you have been convicted of a crime, then you may or may not be admitted depending on the case.

The State Bar's moral character review process is immensely more complex. There is no clear bright line, objective standard. It is wholly subjective in nature and encompasses a wide range of vague questions. The answers can be interpreted by the Admissions committee in any manner they please. Essentially, as a matter of substance and pragmatism, they can use the answers to exclude Applicants based on race, appearance, attitude, economic standing or any other criteria they choose. The questions are intentionally designed to be so comprehensive and detailed, that it is virtually impossible to provide complete and accurate answers. Essentially, the questions are designed to promote immaterial errors, at which point the Admissions committee gains the power to falsely assert the Applicant lied on the application. Such a finding in and of itself constitutes grounds for denial of admission.

The most vulnerable point of logic facing the State Bar Boards of Examiners is that if indeed the character questions are designed to ensure moral character and protect the public as the Bars ostensibly assert, rather than foster the legal profession's anticompetitive, economic interests and prejudicial attitudes, then why don't licensed attorneys have to answer the same questions on a periodic basis? Currently, once you pass the admissions hurdle for a state, you never have to provide that state with comprehensive character information again.

Obviously, a person's current character can not be assessed as "moral" based solely on answers to character questions which are based on events that are five, ten or twenty years remote in time. If the character questions are essential to protecting the public, then all licensed attorneys and judges should be required to answer the questions on a regular and periodic basis. To do otherwise, results in the Nonattorney Bar Applicant being held to a higher standard of moral character compared to licensed attorneys and Judges.

This violation of the Equal Protection Clause to the U.S. Constitution makes the State Bar Boards of Examiners particularly vulnerable to attack and exposes the frailty of their position. **Put simply, the average Nonattorney citizen recognizes that is unjust to hold licensed attorneys purportedly subject to the ethical rules of conduct, to a lower standard of moral character assessment than a Nonattorney Bar Applicant.** The primary focus of this book is on the character review portion of the attorney licensing process, since that is the area where the Applicant is exposed to the most subjective, prejudicial, and arbitrary nature of the process. Essentially, at the whim and mercy of his future competitors.

So how did this irrational nightmare begin? During the Revolutionary War? The early 1800s? The Civil War? The late 1800s? Certainly, one would not think it was a product of the 20th century, but that is precisely the case. The modern State Bar Admissions' process is a product of the Depression era and the ABA's (American Bar Association) political rise in the early 20th century to establishing control over the Judiciary branch of government. What the ABA and its' child organization the NCBE (National Conference of Bar Examiners) did, was capitalize on the economic weakness of the Nonattorney general public at their most vulnerable period of time (the Depression) to establish the power of the legal monopoly. When the Depression came, the general public was economically helpless. People just wanted to get food on their table and housing for their family. Their vulnerability could be capitalized on by the ABA. Bar organizations guided by the NCBE in the 1930s, began severely restricting the admissions process, continuously making it more and more difficult. The admissions process as we know it today, is a product of the Depression. A time when lawyers like all

others were experiencing financial difficulties and were willing to implement desperate measures to better their economic position at the expense of Nonattorneys. At the same time they restricted Bar admission standards, they widened the scope of what constitutes "legal services" by enacting irrational prohibitions against what is called the "unauthorized practice of law (UPL)." Their concept was simple. Expand their allocated segment of the marketplace by enacting irrational UPL prohibitions and then reduce the supply of lawyers available to service that market by enacting irrational moral character standards that allowed Bar admission to be restricted on a subjective basis. **The end result after applying economic principles of supply and demand, would then obviously be a lower number of lawyers to service an expanded market with higher legal fees enjoyed by attorneys.**

In early colonial times, the process of becoming a lawyer was haphazard at best and varied widely from one colony to another. The road to becoming a lawyer during those times for some great Americans was as follows. Patrick Henry's primary source of "law school" training consisted of listening attentively to conversations of members of the Bar at Shelton's Tavern, which he frequented regularly to drink. Purportedly, he set off to take the bar examination which was an oral exam, having studied for less than two months. Henry took his "oral exam" from George Wythe (later to become Thomas Jefferson's tutor). Wythe had begun his legal practice under the auspices of Zachary Lewis, who was the father of Henry's close friend John Lewis. Henry passed and Wythe became the first signator on Henry's license. Henry then took the next portion of his "oral exam" from the esteemed John Randolph, who upon learning that Wythe had signed the license also agreed to become a signator.[4] Thomas Jefferson became a law student at the age of nineteen studying under the private tutelage of Wythe. Perhaps the most famous U.S. Supreme Court Justice ever, John Marshall enrolled in William and Mary law school on May 1, 1780 and had his law license just a few months later. [5] It does not take a genius to recognize that licensure during those times was predicated most simply on who you knew, and not what you knew. That is what the legal profession has always wanted to preserve. It was inarguably a morally reprehensible start to the nation's legal profession, but admittedly somewhat characteristic of the English tradition from which it was derived.

The rise of Jacksonian Democracy in the first part of the nineteenth century eliminated the few educational requirements that were necessary to become a lawyer and the 19th century is characterized primarily by lawyers that educated themselves or read under the tutelage of another lawyer. As late as 1900, few states even required a law degree for admission to the Bar. For those students that did attend law school, the standard course in 1850 was one year. Very few law schools required more. The famous Justice Oliver Wendel Holmes entered Harvard Law School in the fall of 1864 and received his degree in June, 1866 even though he had stopped attending the lectures. The concept of the three year law degree typically required today, was unheard of throughout the entire nineteenth century.[6]

Admission requirements to the Bar began tightening up during the last part of the nineteenth century. Between 1880 and 1920, most states adopted admission procedures including the publication of Applicant's names, probationary admissions, recommendations by the local bar, and investigation by character committees. By 1917, three quarters of the states had centralized certification authority in Boards of Bar Examiners. It was also during the close of the nineteenth century that the American Bar Association, organized in 1878 to protect the anticompetitive interests of the legal profession, at the expense of the general public began spearheading a campaign for higher professional standards. Ostensibly, for public relations purposes this was to protect the public from the delivery of incompetent legal services. Over 100 years later, most members of society would probably agree that the purported goal, even if it were not disingenuous has certainly not been achieved.

Typically, candidates denied admission on the disingenuous ground that they were "unworthy," and "morally weak," were Immigrants, Black, Women or Jewish. In 1874, George Strong advocated more stringent admission requirements to Columbia Law School on the ground that this would:

"keep out the little scrubs whom the school now promotes from the grocery-counters . . . to be gentlemen of the Bar."[7]

Historical evidence irrefutably confirms that the rise of the monstrosity known as the ABA is attributable to the role of subservience the legal profession occupied throughout most of the nineteenth century. The Civil War resulted in lawyers being relegated to a negligible political force. After the Civil War, a number of cases established that the right for a person to practice a profession was precisely that ; a "Right" rather than a "Privilege." In fact, the United States Supreme Court conclusively decided the issue shortly after the war in *Ex Parte Garland*, 71 U.S. (Wall) 333 (1866). Cases also established that the power to license lawyers vested in the Legislature, rather than the Judiciary. New York in 1860, *In re Cooper,* 22 N.Y. 67 ; California in 1864, *Ex parte Yale,* 24 California 241; and North Carolina in 1906, *re Applicants for License to Practice Law,* 143 N.C. 1. *Cooper* was considered the leading case in the nation on the issue. Lawyers quite simply put were "on the run." Left to stand, those cases would have resulted in a legal profession with a properly diminished capacity to exploit the public in order to foster their self-serving economic interests and societal notions of "group thought." The ABA mobilized in 1878 as a political force to ensure the attorney's stature, power and privilege within society. Their initial concern was neither the Bar admissions process or the "unauthorized practice of law." Rather instead, they had no alternative but to first wrest control of the licensing process. If they could obtain the power to license attorneys, then they could set the standards and control the market for legal services.

The ABA initiated a strategic attack plan to seize the licensing power and succeeded through a series of litigations. Their success was distinctly attributable to the fact that the individuals who decided the cases, (i.e. Judges) were attorneys themselves and willing to capitalize on the opportunity presented. Pennsylvania played a dominant role, ruling in the case, *In re Splane,* 123 Pa. 527 (1888) :

> "No judge is bound to admit, nor can be compelled to admit, a person to practice law who is not properly qualified, or whose moral character is bad . . . . Whether he shall be admitted or whether he shall be disbarred is a judicial and not a legislative question."

By 1932, Arizona (*in re Bailey,* 30 Ar. 407(1929)), Wisconsin (*State v. Cannon*, 240 N.W. 441 (1932)), South Dakota (*Danforth v. Egan*, 23 S.D. 43 (1909)), Illinois (*People ex rel Illinois State Bar Association* 342 Ill. 462 (1931)), and numerous other states had followed. The power to license attorneys was seized by the Judiciary, in cases the Judiciary itself ruled on, similar to how they seized the power to interpret law in the seminal case of *Marbury v. Madison* in 1803. In the process of seizing the power to license attorneys, the legal profession also attempted to neutralize the U.S. Supreme Court's opinion in *Ex Parte Garland,* which had conclusively established that the ability to engage in the practice of law was a "Right," rather than a "Privilege." State Supreme Courts having secured the licensing power began falsely asserting that exercise of the power was a *"Privilege,"* rather than a *"Right."* The exact same notion of *"Privilege"* that England had adopted and which inspired our drive for independence. The legal profession was then poised to enact prohibitions against the "unauthorized practice of law" and to irrationally restrict admission to the Bar. They did so with vigorous fever. They seized the licensing power with their own Judges. They would now use it to expand their market and reduce the number of available attorneys to service that market. The result would be higher legal fees at the general public's expense. They would accomplish their goal by having the audacity to falsely assert they were trying to protect the public.

UPL and Bar admission restrictions were the two final objectives to raise the Judiciary above the Executive and Legislative branches of government. The Judiciary already had grabbed the power to interpret law in *Marbury v. Madison*. By seizing the licensing power, they would control the individuals who presented the legal arguments. They would control them by controlling their livelihood.

Essentially, the notion can be easily summarized as, "control the man's livelihood and ability to feed his family, and you control the man." Newly enacted minimum requirements for admission to the Bar were also designed to stem the flood of those whose inadequate command of the "King's English" had allegedly debased the profession. At the first NCBE Conference in 1933, the former Chairman of the ABA's section on Legal Education and Admission stated:

> "sometimes you have wonderful character evidence displayed even though the applicant is not well educated or his parents were born in Russia."[8]

In the 1920s the ABA's Section of Legal Education and Admissions, began its' quest to control admission standards. The rise of the ABA's Bar Admission Section unsurprisingly paralleled the rise of their UPL Section (Unauthorized Practice of Law). In 1928, Pennsylvania led the way by implementing a registration system under which prospective Bar candidates would face a character investigation at the beginning of law school and when applying for admission. This illegitimate process was subsequently adopted by other states, but admirably abandoned by Pennsylvania. The character interview under the law student registration program was used to dissuade the purportedly "unworthy" from pursuing a legal career. Pennsylvania's definition of "unworthy" was quite elastic. Those rejected in 1929 included individuals deemed "dull," "colorless," "subnormal," "shifty," "smooth," "arrogant," "conceited," and "slovenly." A substantial number of candidates reportedly lacked a "proper sense of right and wrong," others had not "moral or intellectual stamina," appreciation of "social duty," or "well-defined ideas on religion."[9]

I detract now a bit. I am currently a member of the Pennsylvania Bar. The foregoing information found in Professor Deborah Rhode's historic article, *Moral Character as a Professional Credential* was published in 1985. Professor Rhode is a law professor at Stanford Law School. Her ideas in this area, as well as her concepts related to UPL (Unauthorized Practice of Law) guide my own to a large degree.[10, 11] She has essentially been the foremost authority, (until me) regarding these subjects. I applied for admission to the Pennsylvania Bar in 1995. At that time, Pennsylvania's character questionnaire was the least cumbersome of all the State Bars, although it still included several unconstitutional inquiries. I know this because I requested applications from every single State Bar in the nation. The early issues of the Bar Examiner magazine from the 1930s, refer often to the "admirable" character review process of the Pennsylvania Bar. Pennsylvania was the nation's leader in restricting Bar admissions, and then took the commendable step of diametrically reversing course. For the most part, they abandoned their irrational admission program. They went from being the most unconstitutional State Bar in the early 1930s, to perhaps the fairest in the nation currently.

I graduated from law school in 1994. During my last semester, a flyer was handed out to students indicating that law student character registration would probably be implemented for all new students. Since then, the concept has gained steam in many states. Many law schools and some State Bars began requiring law student registration again in the 1990s. This demonstrates how the legal profession's unjust, self-interested concepts which drove the admissions process to become more stringent in the 1930s are still flourishing today at the expense of the general public.

In 1993, the ABA published a pamphlet titled, "The ABAs First Section - Assuring a Qualified Bar", by Susan K. Boyd. It discussed the early years of the Bar Admission Section. It recognized that the legal profession throughout the early 1900s was particularly concerned about the economic effect the influx of immigrants was having on the profession and seeking ways to exclude them. The ABA's 1993 pamphlet discusses how in 1915, future ABA president Walter George Smith of Pennsylvania stated at the meeting of the Legal Education section :

"We have in the Eastern cities representatives of the most ancient race of which we have knowledge coming up to be admitted to the practice of law. . . . those men who have come to the Bar without the incalculable advantage of having been brought up in the American family life, can hardly be taught the ethics of the profession as adequately as we would desire."[12]

The 1993 ABA pamphlet also recognized that bigotry and prejudice permeated the Bar and law school world. It acknowledged that there was egregious discrimination against African-Americans, Jews, Catholics, Immigrants and Women. The importance of the information source for these concessions is as follows. During the expansion period of the Bar Admission Section in the 1920s, 1930s, and 1940s, the ABA utilized false propaganda stressing that the reason for curtailing State Bar admissions was to protect the public. Essentially, the ABA wanted to fool the public into believing the purpose of these Sections was not to enhance the economic interests of the legal profession, but instead to protect citizens from dishonest and incompetent Nonattorneys. The publication of the 1993 pamphlet by the ABA demonstrates the ABA appears ready to concede such. Their recent "confession," supports the premise that admission restrictions were originally designed for anticompetitive purposes. They were not designed or ever used to protect the public from incompetent attorneys, as the ABA falsely led the public to believe for so many years. In order to demonstrate in today's world that the restrictions serve the primary purpose of protecting the public, the legal profession would logically need to show some intervening factor which negates the original intent. To my knowledge, no intervening factor exists.

The National Conference of Bar Examiners held its first meeting on September 16, 1931. It began publishing a magazine titled "The Bar Examiner" which is still published today. Most members of the public don't even know these committees exist or what they have done to monopolize the delivery of legal services. The monopoly allows incompetent attorneys who support the profession's economic interests to profit when litigants go to prison, parents lose custody of their children, families lose their property, litigants lose civil cases, etc.. The concept from the State Bar's perspective is, "lawyers first, the public second, if at all." Here are some interesting quotes from an article titled "Attorney Fees and Costs" written by Oregon attorney, Paul Saucy, circa 1992-1994. The article was published by the Oregon State Bar in Chapter 6 of a Continuing Legal Education Manual designed to be read by Oregon attorneys. How the Oregon State Bar could be so stupid as to publish these concepts and promote such within the context of continuing education is beyond me. The Oregon State Bar manual written for Oregon attorneys reads :

"Remember how much more important it is to feed and clothe your family than it is to help a client with her particular problem."

"If you feel awkward about withdrawing, dictate the withdrawal papers while looking at that photograph of your family on your desk."

"One suggestion is to place a photograph of your family on your desk in plain sight so that each time you think about how large the client's retainer should be your gaze will fall upon your family."

"Note that I also provide for an increase in my hourly rate without prior notice to the client."[13]

In 1996, I realized that the NCBE's magazine, "The Bar Examiner" was the cornerstone in conjunction with the ABA's Legal Education and Bar Admissions Section, and its' UPL committee, to the State Bar's economic protectionism. I wanted to read prior issues of the magazine. Past issues were

in law school libraries. The magazine was not however, carried by any public libraries that I looked into. I was living in New Jersey and quickly learned that to be allowed admittance into most of the law school libraries in the area, all I needed to do was present my Bar card showing that I was a licensed attorney. I did so numerous times at the Seton Hall Law Library. Each time I did it, a certain thought process went through my mind. It was simple in nature and as follows. If I were not a licensed attorney, then I would not be able to gain access to this magazine. I am constantly saddened by the thought that law schools which are in large part funded by students paying tuition with student loans guaranteed by the federal government, exclude the general public from using their facilities. So there I was, reading issues of the "Bar Examiner" dating back to the early 1930's, spending 10 cents per sheet to photocopy virtually every single applicable article on the issue of character from 1931-1946. Crinkled old books with yellowed pages that revealed the diabolical foundation of our nation's legal profession in the 20th century. No one in the law school library even gave me a second thought, or could have cared less about what I was researching. But I felt that I was on to the hottest find of the century.

The foregoing paragraph was intended to be the end of this short chapter, but something interesting occurred subsequently. In January, 2001 I went back to the Seton Hall Law Library to do some research. Although I was virtually certain that I had photocopied the most pertinent articles of the Bar Examiner magazine, I decided to take another look to see if I missed anything. But, they were gone. The library maintained virtually all other dated information including appellate opinions from certain states dating back to the early 1800s. The Bar Examiner magazine however, had been taken off the shelf. I went to the computer index catalog and discovered that the "Bar Examiner" had been transferred to microfiche, with one significant exception. The microfiche only included issues of the magazine going back to 1980. Everything else from the early 1930s through 1979 was apparently now unavailable. The most pertinent and incriminating articles ever written about the legal profession, by those who control the profession itself, seemed to be no longer available for research at all. Previously, to gain access to the old Bar Examiner articles, I had to be an attorney and show my Bar card. Now, it seemed that no one could gain access to them. As will be demonstrated herein, the profession's concern about those articles is well-warranted. The State Bars don't want the public to know what is in those old articles that form the foundation of the Bar admission process. But I got them. When you read Chapter 15 of this book, you will truly be shocked at what the irrational supporters of the State Bar monopoly wrote in the 1930s and 1940s.

7

STATE BAR "PLEASANTVILLE"

Just a few years ago, there was a movie released called "Pleasantville." The movie is about two teenage kids living in the 1990s who are transported into a television show from the 1950s called "Pleasantville." The TV show into which they are transported depicts what is supposed to be the perfect American family in the perfect American town. Husband, wife, son, and daughter living in a town where everybody is happy all the time and everyone always gets along. When they are first transported, everyone and everything in the town is in black and white, without any colors, as one would expect in a television show from the 1950s.

The teenagers, being from the 1990s ultimately change things immensely in the town. As they teach the people of the town to develop and discover their passions, the people develop skin tones, and things around them such as flowers and automobiles develop colors. Certain people of the town however, don't like the changes that are occurring and view the teenagers as a social threat to the "pleasant," "civil" and respectful atmosphere that previously existed, where everyone is always nice and happy. Significant friction between those citizens of passion and the ones that wish to retain the status quo, ultimately erupts into violence. It quickly becomes apparent that beneath the "civility," and "pleasantness" of those opposing any type of change, are deeply rooted feelings of hatred and ruthlessness.

The movie reminds me of how State Bars regulate the nation's legal profession. As you read through this book, it will become readily apparent that the State Bars are continually stressing the need for civility, respect, good moral character, professionalism and honesty. They want all the lawyers to get along with each other, so that everything is "nice" and "civil." Anyone however, who questions the manner in which they proceed, is quickly, severely and ruthlessly punished. Any lawyer who zealously and bravely litigates like a true fighter is falsely deemed to be uncivil or unprofessional. Their favorite phrase for such lawyers is that they engaged in "conduct prejudicial to the administration of justice." The point is that the State Bars are wholly unconcerned about whether a lawyer fails to zealously represent a client, so long as that lawyer fosters the economic interests of the profession.

The same Judges and lawyers who insist on "civility" and "professionalism," will not hesitate to deprive a litigant of their constitutional rights thereby causing an innocent person to be put in prison. They will not hesitate to allow a guilty person go free notwithstanding the pain and anguish caused to a victim, if it furthers the economic interests of the legal profession. Their focus in every case is not on victim's rights, defendant's rights, women's rights, men's rights or children's rights. Rather, their focus in each case is how any particular issue affects the State Bar's power and economic interests.

Beneath the Puritan-like, inflexible State Bar disingenuous labels of "good moral character," "honesty," "civility," "professionalism," and "truthfulness," is a deep hatred, coldness, and dispassionate lack of a true concern for the quality of representation given to litigants. Essentially, the concept is to let the litigants lose their homes, children, freedom, and possessions, so long as the cohesive unity of the legal profession is maintained, by fostering an irrational definition of what constitutes professionalism," "civility" and "good moral character." It's a State Bar Pleasantville.

8

THE IMPORTANCE OF THE RULE OF LAW

There is nothing more essential to society than the rule of law. If there is no rule of law, then people do what they please. This inevitably results in rule of the strong over the weak, without regard to fairness or justice. I am an ardent and firm believer in the necessity for the rule of law. The State Bars similarly stress continuously, (for purposes of "wise publicity") the importance of the rule of law.

The place where the State Bars and myself depart, is that I believe the rule of law applies equally to those in charge of regulating the legal profession. The State Bars prefer to irrationally claim exemptions from constitutional principles of law, through a manipulative use of logic and interpretation. This I have determined to be wholly unacceptable and in fact, a violation of the rule of law itself, which reflects adversely upon the moral character of the Bar.

It will be demonstrated herein, that the Bars interpret rules hyper-strictly against Applicants, since to do so fosters State Bar economic interests. This would not be entirely objectionable if the State Bars were also subjected to hyper-strict application of the rules. What they do however, is when the issue of applying rules to their organization is presented, they assert the need for a liberality in construction of rules, since such is also to their economic advantage. Ultimately, what society is left with, are rules applied strictly to everyone except the State Bar.

It has been an unfortunate predicate throughout history that when rules are broken, they tend to be broken in favor of the strong, rather than the weak The entire concept of enacting rules in any society, in any sports game, or market, is to equalize the playing field. By having rules, everyone is supposed to know the manner in which a given event or controversy will be played or handled. By having rules within the context of litigation, the goal is to equalize the rich with the poor, the strong with the weak, those who know powerful people with those who don't know powerful people. The intended concept is that by having rules no one should be able to gain an unfair advantage by doing things in an informal manner.

The dichotomy between liberal and strict interpretation of rules to fit self-interested goals has its basis in the related dichotomies of procedure versus substance, and rules versus standards. I present a hypothetical example for analysis. Let us presume a requirement exists to "file" a certain document within five days. That would be a rule. The rule is designed to foster the provision of "Notice" to another party in a timely manner. "Notice" therefore, would be a standard. Rules are designed to promote standards. The difficulties arise when a particular rule, due to the circumstances of a case, functions in an unjust manner. In the hope of solving such dilemmas, rules are therefore subject to interpretation.

In our foregoing example, a common interpretation might be as follows. A document must be "filed" within five days, unless a party demonstrates "reasonable cause" for missing the deadline. One problem is solved and another is created. The dilemma created is determining what constitutes "reasonable cause." Whether "reasonable cause" exists has now become the determinative factor as to whether the five day deadline should be applied. This now brings our hypothetical to the dichotomy of procedure versus substance. Procedure takes precedence over substance when a particular rule is applied in a given case, even though application of the rule may cause an unjust result. Substance takes precedence over procedure when a rule is not applied, because the result of applying the rule would be unjust. So perhaps the answer is easy, you think ? Simply apply the rule when to do so is "just." That

however, creates a brand new problem. The "rule" has ceased to be a rule and has instead become a "conditional rule."

What if the rule is always applied to the weak, but the decision-makers consistently determine that "reasonable cause" exists when those who are strong do not comply with the rule? Essentially, the weak are then always subjected to the rule, but the strong are always exempted from it. In such an instance, there is no doubt that procedure takes precedence over substance with respect to the weak. Procedure does not take precedence over substance with respect to the strong. Nor for that matter, does substance take precedence over procedure with respect to the strong since the rule is being applied inequitably. The most basic standard of all, "Justice" has been violated. The strong are simply benefiting from a blanket exemption to the rule.

When this occurs, the rule that was originally designed to implement "justice," has instead become the exact tool used to cause "injustice." Originally intended to equalize the playing field, the rule has become the implement used to rig the playing field. By allowing State Bars to apply rules hyper-strictly to people other than themselves, but leniently when their own interests are at stake, the rule of law is broken. It is irrefutably a significant step towards condoning the detestable principle that the strong should rule the weak.

9

THE U.S. SUPREME COURT HAS BEEN WAITING FOR THIS CASE

Judges loves cases dealing with legislative or executive power. They love to sit in judgment of another branch of government and render the final determination of the proper scope of another branch of government's power. Judges will not hesitate to hear cases dealing with murder, robbery, extortion, rape, personal injuries, defective products, environmental claims, police conduct, abortion, religion, political funding, children, education and virtually every other single category that a person can imagine. There is one glaring exception. Judges detest cases addressing the proper scope of judicial power and State Bar authority. That needs to change.

If the Judiciary is going to continue to regulate the practice of law in form, then it must begin to do so aggressively as a matter of substance, and with a keen concern for constitutional freedoms which are in fact applicable to the Judiciary just like everyone else. The power to interpret law does not carry with it a general exemption from the law. Contrary to what the hypocritical State Bars believe, when I became a member of the Pennsylvania and District of Columbia Bars, I did not check my First Amendment rights at the door.

It has now been approximately thirty years since the U.S. Supreme Court rendered its' 5-4 decisions *in Baird, Stolar* and *Wadmond* on the exact same day (those cases are discussed later herein). Those opinions read in conjunction with each other established nothing. They simply demonstrated that the Court did not know how to deal with the issue. The Court ruled in favor of the Applicants in *Baird* and *Stolar*, and in favor of the Bar in *Wadmond*, with Justice Potter Stewart being the swing vote in all three cases. All of the Bar admission cases that have addressed the moral character issue, including *Willner, Anastaplo, Konigsberg I, Konigsberg II,* and *Schware* focused on the First Amendment and freedom of expression. The heart and soul of the issue however, is really the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court has never directly addressed that issue. And it is the weak spot. The pronest point of vulnerability. It is the Achilles Heel, so to speak, because to rule in favor of the Bar, requires the Court in a high profile case to somehow convince the general public that allowing licensed attorneys and Judges to be held a lower standard of moral conduct than Nonattorney Bar applicants is a good idea. No matter how such an opinion were written, the public will never buy into it. It is time for the U.S. Supreme Court to take a decisive stand. They must stand with the general public, or it will be clearly known that they stand with the State Bars.

I have an absolutely perfect fact set for this case, which I have spent almost a decade building. I have already passed the character review process of two Bars. I gained admission even after presenting the most derogatory information about myself and without being required to attend a personal interview. Stated simply, I outplayed the Bar admissions process. I have never been professionally disciplined and never had even one single ethical complaint of any nature ever filed against him. I am currently the most knowledgeable person in the entire nation regarding the State Bar admissions process. I have no current intention of degrading myself by actually engaging in the practice of law, and now simply seek to reform the admissions process for the purpose of improving the nation's legal profession. It's a perfect fact set by the Ultimate Backdoor Applicant. I snuck in the backdoor, and now I'm going to open the front door.

I believe the U.S. Supreme Court wants to remedy this situation, and further believe their opinions over the last two decades have been slowly setting the groundwork in place. They have been waiting however, for the right litigant with the right fact set to come along. I am that individual. I have complete faith and confidence that the U.S. Supreme Court will ultimately rule in favor of the general public on this critically important issue which affects every single other litigation in this country.

The U.S. Supreme Court has been waiting for this case, or they are simply afraid of it.

10

THE STATE BAR'S SO-CALLED "GOOD MORAL CHARACTER" STANDARD HAS BEEN A COMPLETE, TOTAL, ABJECT FAILURE

It has been approximately 70 years since the National Conference of Bar Examiners had its first meeting. The purpose for adopting irrational character standards was delineated in their magazine "The Bar Examiner." It was to enhance the economic interests of the profession, while simultaneously promoting racism. In 1957, the U.S. Supreme Court responding to the pervasive McCarthyism which still thrives in the State Bars today, recognized the danger to American values presented by the so-called "good moral character" standard and dealt a major blow to its legitimacy stating :

> *"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."*
>
> Konigsberg v. State Bar of California, 353 U.S. 252 (1957)

The operative phrase is "dangerous instrument." The U.S. Supreme Court was issuing a stern warning to the State Bars. The Court was making it clear that if the power given to the Bars was abused, it would be taken away. The State Bars foolishly failed to heed the warning. They did precisely and exactly what the Court warned them not to do. They used the "good moral character" standard as their fulcrum for arbitrary denial of a law license when faced with an Applicant who does not support their financial interests, or irrational political and societal beliefs. Applicants are regularly denied admission by ludicrous Bar Committees for being glib, facetious, arrogant, flippant, and a wide host of other mere personality traits on the false ground that such demonstrated they lacked "good moral character." The best evidence of the complete, total, abject failure of the "good moral character" standard however, rests in the opinions of the general public. Since the NCBE's inception the public's view of attorneys has not improved in the slightest degree. The typical Nonattorney American justifiably regards lawyers as deceptive, slimy, cheats, crooks, and scoundrels. It is by far the worst regarded profession in the nation, even though no other profession has adopted such irrational character standards. Doctors, engineers, accountants, architects, and in fact even used car salesmen are all better regarded by the general public than attorneys. No profession is viewed more contemptibly than the legal profession. That alone demonstrates the complete, total, abject failure of the so-called "good moral character" standard.

Appellate opinions consistently falsely characterize the legal profession as a “learned profession,” a “time-honored profession,” and a “respectable profession.” They fail the State Bar's "good moral character" standard in doing so, since such false assertions fail to disclose the true nature of the profession. The legal profession has historically never been respected. At best, it is a necessary evil that society requires to function. It is often compared to prostitution and not even viewed as favorably as that also "time-honored" profession. Even those individuals such as myself, who pass the character review without the need for a personal interview are embittered by the process and resent having been required to divulge highly personal information to the State Bar. The State Bars have in fact alienated their only possible supporters. The attorneys. It's been a failure.

11

HOW THE STATE BAR ADMISSIONS PROCESS REALLY WORKS

The reader will no doubt find this section, nothing less than shocking. The State Bar admissions process functions in reliance on a rudimentary premise which is as follows. The State Bars WANT every single Applicant to file an application that contains some false, misleading or incomplete information. You may ask, why would they desire such? What possible incentive could the State Bars have for WANTING all Applicants to submit an application containing false, misleading or incomplete information. The reason is as follows. Once the Applicant submits any false, misleading or incomplete information in response to an inquiry, the State Bar acquires the power to deny admission. The accumulation of power is what the State Bars are all about. Hypothetically, if it were even possible for an individual to submit an absolutely truthful application, and that application contained no adverse character information, the State Bar would LACK the power to deny admission. A fair, just and rational application form is therefore inimical to the State Bar goal of accumulating power. There is a strong correlation between increasing the power of State Bars to select their own members, and maximizing the probability that every single Applicant files an application containing some false, misleading or incomplete information. Once the State Bar acquires the power to deny admission, they can exercise that power by admitting Applicants who they subjectively like, and deny admission to Applicants they subjectively dislike. The power they have acquired, is a Power to Exercise Arbitrary Discretion in rendering the admissions decision.

Now the second question. How does the State Bar accomplish its goal of maximizing the probability that all Applicants submit an application containing false, misleading or incomplete information? The answer is actually simple. All the State Bar has to do is to formulate an application form that is logistically impossible for any human being to complete in an absolutely truthful manner. This is accomplished by utilization of varying State Bar techniques in drafting the application questions. The basic categories of questions used to accomplish the State Bar's goals are as follows:

1. QUESTIONS REQUIRING THE APPLICANT TO RECALL EVENTS REMOTE IN TIME, STRETCHING BACK MANY YEARS; SINCE THE PROBABILITY OF ONE RECOLLECTING INCORRECTLY INCREASES AS THE PERIOD OF TIME BETWEEN RECOLLECTING AN EVENT AND THE EVENT'S OCCURRENCE LENGTHENS

2. QUESTIONS REQUIRING THE APPLICANT TO PROVIDE TOO MUCH DETAIL, SINCE THE MORE DETAIL THAT IS REQUIRED, THE GREATER IS THE PROBABILITY SOME DETAIL WILL BE OMITTED

3. QUESTIONS THAT ARE VAGUE OR AMBIGUOUS DESIGNED TO CREATE UNCERTAINTY AS TO WHAT INFORMATION IS REQUIRED; SINCE THIS ALLOWS THE BAR TO INTERPRET THE QUESTION'S SCOPE SUBSEQUENT TO SUBMISSION OF THE ANSWER

4. QUESTIONS THAT ARE HIGHLY PERSONAL IN NATURE; SINCE THE APPLICANT HAS AN INCENTIVE TO NOT DISCLOSE EMBARRASSING PERSONAL INFORMATION

5. A CATCH-ALL QUESTION FOR THOSE APPLICANTS NOT CAUGHT BY (1) - (4) above.

The first four question types above, which are utilized by the State Bars to accomplish their goal can be summarized as follows. Questions focusing on Time, Detail, Vagueness and Personal information. By asking questions that require the Applicant to dig deep back into their memory over a long period of years, provide extensive detail with respect to matters that are far remote in time, respond to vague inquiries and provide extensive personal information, the State Bars generally succeed in achieving the goal that Applicants submit false, misleading or incomplete information. The remaining small percentage of Applicants who are not successfully subjugated by the foregoing tactics are ultimately entrapped by the final "catch-all" question. The catch-all question makes the following type of inquiry of the Bar Applicant :

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

It is a question that no human being on this earth, could possibly answer truthfully, accurately, and completely. The catch-all question ensures the State Bar that every single Applicant will submit an application form containing at least some false, misleading or incomplete disclosure. The Bar admissions process is irrefutably one of the last remaining vestiges of McCarthyism in this country. The manner in which the admissions process functions is almost identical to how the congressional committees investigating communism functioned during the McCarthy era. It has been summarized as follows :

> "The committee delighted in entrapment. Arnold explained : "The policy of the McCarran Committee is first to have the witness in secret session, get him to testify to the best of his recollection as to events from five to ten years ago, then bring him on at a public hearing, ask him if he did not so testify at the secret session and then give him some letter to which he has not previously been given access which shows that he is wrong. This then is branded as an untruth." According to Arnold, the committee "long ago gave up all idea of proving <name> was a Communist. Instead they spend weeks of time in trying to catch him up in contradictions and give the impression that he is an evasive and untruthful witness." Predictably . . . <name> was indicted for perjury."[14]

That is essentially the State Bar admissions process in a nutshell.

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THE INVERSE RELATIONSHIP BETWEEN UPL AND STATE BAR ADMISSION STANDARDS

Imagine your spouse, son, daughter, close relative or good friend has just been arrested for a crime they did not commit. You go to visit them in jail and they ask you what to do. You ask them whether they committed the crime for which they are accused. They say "No," and you believe them. You tell them when they appear in front of the Judge, to enter a plea of "Not Guilty." As you exit the County jail in which they are being held, a state official comes up to you, hands you court documents and says you will have to appear before a Judge to defend yourself against the charge of engaging in the unauthorized practice of law for providing legal advice without a license which carries a possible prison term of two years. Sound farfetched ? It's not as much as you think.

It's called the Unauthorized Practice of Law (UPL) and generally speaking, what it means is that if you perform legal services which includes the rendering of legal advice without having a law license you are subject to applicable penalties. Those penalties vary from one state to another, as will the manner in which the State proceeds against you in its' discretion. UPL is almost always enforced on a selective rather than uniform basis, and can be characterized by an improper use of discretion. It is normally enforced only against those who represent an economic threat to the monetary earnings of lawyers. This being the case, there is no competitive advantage to the State Bar to charge an individual in the foregoing hypothetical. Notwithstanding, if UPL rules were applied uniformly, the foregoing scenario would result in charges being imposed against literally millions of caring family members and friends. It is therefore obvious that if UPL rules and laws were applied uniformly, the general public would be absolutely outraged and the prohibitions would be unsustainable. For this reason, they are the profession's weakness. Its' Achilles Heel, since they are only sustainable when selectively enforced. This is notwithstanding the fact that States are purportedly duty bound to enforce laws on a uniform basis, regardless of who violates them.

Let's now change the hypothetical. The same basic fact set with the following change. In addition, to advising your loved one to plead Not Guilty, you tell them you will attend the arraignment (the court appearance where they enter their plea), for moral support. You sit in the back of the courtroom which is relatively empty. The Judge asks the Defendant what their plea is. The Defendant turns around to you and asks, "Is this when I say Not Guilty?" You nod your head, “Yes.” Your chances of being charged with UPL have now dramatically increased.

Let's change the hypothetical again. Your family member or friend has called you because they know you are an attorney. The problem is that you are a lawyer in a neighboring State (we'll call it State #2) and the person you care about has been arrested and charged in State #1. You provide the exact same legal advice at the county jail, and the same nod of the head in the courtroom. Your chances of being charged with UPL have now increased, to the point where if the Judge informs the State Bar of what occurred, you would probably be charged with UPL. This is notwithstanding the fact that as a licensed Attorney in State #2, you supposedly have more legal knowledge than in the hypothetical where you were a Nonattorney. This is because as a lawyer in State #2, you represent a substantial economic threat to lawyers in State #1. They have lost legal fees to the extent of the advice you rendered. Stated

simply, the higher the probability is that a person is competent to render legal services, the greater is their chance of being charged with UPL.

In all three hypotheticals, you engaged in conduct that probably constitutes a UPL violation. It is only in the third fact set however, where you represent a substantial economic threat to attorneys. As a result, that is probably the only situation where you would be charged. The incredible irony, is that the third fact set is where you can probably offer the most competent and valuable assistance to your loved one or friend. Here are some additional examples of conduct that probably meets the ambiguous definition of UPL, even though due to selective enforcement you might not be charged :

1. Your loved one is being arrested, and you yell out, "tell the police officer you're exercising your right to remain silent."

2. Your loved one has charges pending against them and has been released pending trial. You write them a letter describing a similar case where the Defendant was acquitted and enclose a copy of the published court opinion.

3. Your loved one is buying a house and you explain how the courts have interpreted certain mortgage and financing laws.

4. You inform a loved one how to fight a parking ticket in court. Who hasn't done that ? In fact, if you do such a good job that you decide to help out everyone in your neighborhood and then charge $ 1.00 for each person you assist, it's almost guaranteed the State Bar will come after you if they find out.

5. You explain to your 78 year old grandmother about the tax law ramifications of accepting a lump sum distribution from a pension plan, in exchange for her baking you a dozen cookies.

6. You write up a contract for your brother to buy your sister's house.

7. You draft a letter on behalf of your invalid mother to send to the credit card company that is harassing her for payment, and your letter states that the credit card company is in violation of the Fair Debt Collection Practices act.

8. You explain to a loved one or friend how any aspect of the law functions because you want to help them out in dealing with some type of legal situation.

The problem with selective enforcement of UPL prohibitions is that when any law is selectively enforced, it results in a general loss of public faith and confidence in the legal system. Once selective enforcement becomes the norm, the determinative issue shifts from whether one violated the law, to whether they should be prosecuted for violating it. The general argument made by the violator is that they should receive the benefit of an exception, since someone else got an exception. There are then no longer any rules we can rely on to govern our conduct. This problem is further exacerbated in the case of UPL, because most Courts and State Bars prefer to leave the definition of precisely what constitutes UPL as ambiguous, vague and uncertain. That way they can let anyone off the hook who does not pose an economic threat to the Bar and attack with vehemence anyone who does. Essentially the diabolical brilliance of the UPL schema creates a situation where discretion and selective enforcement is exercised based on unconstitutional motivations. It results in promoting the self-serving economic and political interests of attorneys, which effectively compromises the legitimacy of the justice system. It is a dual problem. The mere existence of too much discretion promotes a lack of fairness in applying the law,

and the problem is exacerbated by the improper manner in which discretion is exercised. Implementation of the UPL weapon has therefore contributed significantly to creating a general public perception of inequality and unfairness in the law.

Now let's look at the issue from the other side. Selective enforcement can accomplish a public good in isolated cases. I'll provide an example. Every now and then there is an individual charged with some type of crime who has a great deal of public support. The public believes the person did nothing wrong from a moral perspective, even though technically they violated the law. In such situations, the public believes that Prosecutors are committing an injustice by pursuing a conviction. Prosecutors often respond to public outcries of injustice in such situations, by issuing a statement to the effect of, "the law is the law and must be enforced against anyone who violates it." When they do so, they are making a false representation to the public. The reason is as follows. It is irrefutable that our law provides prosecutors with discretion in deciding who to charge with a particular crime. They are under no legal obligation to proceed with prosecution in any instance. Every time I hear about a prosecutor issuing the statement "the law is the law and is enforced against everyone equally no matter who they are," I can not help but wonder whether they really expect members of the public to believe them.

Although the law provides discretion for prosecutors, judges and State Bars, it is critical that discretion be exercised fairly and justly. In accordance with such, the scope of discretion should be narrowly confined. Due to the danger caused by the unfair exercise of discretion, it should be kept narrow in scope. When the limits of discretion become too ambiguous or the scope of discretion too wide, the law becomes predicated on pure favoritism. For the most part, subject to few isolated exceptions, selective enforcement which is typically characterized by the improper use of discretion will result in a diminution of faith and confidence in the legal system by the public.

Regardless of how wide a person asserts the proper scope of discretion should be, and regardless of whether a person is in favor of, or against selective enforcement, two points are irrefutable. First, discretion is provided for in the law. Second, selective enforcement typified by the improper use of discretion, characterizes the current UPL framework of State Bars. UPL prohibitions would collapse in their entirety if they were enforced on a uniform basis. The unprosecuted commission of UPL in this nation, is probably exceeded in scope only by parking violations. Everybody helps out family members and friends when they can. UPL prohibitions are sustainable only in reliance on selective enforcement.

The scope of what constitutes UPL varies from state to state, but generally speaking it is defined as the provision of "legal services." That's not much help though, since it then has to be determined what constitutes a "legal service?" "Legal services" are generally defined as the rendering of "legal advice" or the preparation of "legal documents." That's not much help either though, because the next obvious question is what constitutes a "legal document" or "legal advice?" No clear cut answers exist. Courts have wrestled with this dilemma since the 1930s. Their inability to arrive at a universally accepted definition has been one of the greatest problems in UPL prosecutions.

Can you imagine if everyone who rendered the ambiguous unknown of "legal advice" were charged with UPL? It happens so many times in common everyday situations that the number of prosecutions would be absolutely unmanageable. From a moral perspective, what category of individuals should be charged? The question itself is unsettling to those who believe the "law is the law and should be applied equally to everyone." Consider the following four categories of people performing legal services:

1. People **without a knowledge of the law** who perform legal services **for free.**
2. People **without a knowledge of the law** who perform legal services **as a business.**
3. People **possessing knowledge of the law** who perform legal services **for free.**
4. People **possessing knowledge of the law** who perform legal services **as a business.**

Initially, I work from the premise that the distinction between those possessing knowledge and those without knowledge is not predicated on whether they have a law license. Stated simply, there are many licensed attorneys who are Dumb, and many Nonattorneys who are extremely knowledgeable and proficient in the law. The determinant factor is actual legal knowledge, not state recognition of legal skills by virtue of licensure. Now, which of the above categories from a moral perspective should result in a UPL prosecution?

The answer seems obvious initially, but is not as easy as it seems. The initial inclination is to suggest that society is best off, if people in categories (1) & (2) are charged with UPL, and those in (3) & (4) are not. After all, the people in (1) and (2) lack knowledge in the law. I raise no issue with charging those in category (2), but a significant dilemma exists regarding category (1). The problem is that most family member and close friend hypotheticals fall squarely into category (1). Prosecuting those in category (1) cuts directly into the moral importance our society places on helping those we love and care about it to the best of our ability. Essentially, we tend to believe that we should do the best we can to help friends and family even if we lack knowledge in a subject area. On the other hand, condoning the provision of legal services by those who are incompetent would also seem to be wrong, thereby suggesting that people in category (1) should be charged. Which of the two has a more detrimental impact? Prosecuting family members with UPL for helping those they love, or condoning the provision of legal services by individuals who are not skilled? Either way, it's a no win situation.

Categories (3) and (4) pose an entirely different problem. Assuming the people in categories (3) and (4) are honest, logic would suggest that they should not be charged with a UPL violation because they possess legal knowledge and can help people. The problem however, is that not all people in categories (3) and (4) are licensed attorneys. There are many people in categories (3) and (4) who technically are in violation of UPL prohibitions. Although logic suggests that people in categories (3) and (4) should not be charged with UPL violations since they possess legal knowledge, they are at the greatest risk of being charged.

The legal actuality therefore, does not promote the societal interest. Competent individuals providing valuable legal services are the specific targets of UPL prosecutions. The result is that the goal of reconciling society's best interest with the legal actuality is not achieved. Remember, any Nonattorney in any one of the above four categories has engaged in UPL. They will not all be pursued however. The State Bar will not focus on category (1) individuals since it would be a public relations nightmare. They will focus on category (3) and (4) individuals who are unlicensed, and yet those people are the ones who actually possess legal knowledge. The end result is that currently, UPL enforcement has been an abject failure in attaining the societal good. Competent Nonattorneys in categories (3) and (4) are pursued, while incompetent Nonattorneys in category (1) are allowed to continue. I raise the category (1) dilemma primarily for the purpose of demonstrating its' inconsistency with category (3) and (4) prosecutions, not for the purpose of suggesting that the solution is to prosecute loved ones in a category (1) scenario.

The enforcement of UPL prohibitions can have two effects. To the extent incompetent individuals are excluded from providing legal services, society benefits and the legal profession benefits since its' competition has been eliminated. To the extent competent individuals are excluded from providing legal services, society is harmed, but the legal profession still benefits because its' competition has been reduced. Essentially, whether UPL is enforced against a competent or an incompetent individual, the legal profession always benefits. Such being the case, the State Bars have economic incentives to maximize UPL enforcement whether society benefits or is harmed.

The financial incentives for State Bars to maximize UPL enforcement, mandates that the Bar's UPL policy be critically examined. It is similar in nature to a government official who holds common stock in a corporation that submits a construction bid for a project. To the extent the official has decision-making authority regarding who is awarded the contract, their actions must be viewed suspiciously, since they will personally profit if their corporation obtains the award. This is not to

suggest that all UPL enforcement activities are engaged in solely for the purpose of increasing lawyer profits, nor is it to suggest that government officials who award construction contracts to companies they own do so solely to profit personally. Any specific, isolated UPL enforcement activity has the possibility of achieving a public good, just like the corporation that is owned by the government official may actually do a better job at a better price than the competition. It is simply to assert that the close nexus between UPL enforcement, and the economic incentives for lawyers to reduce their competition mandates a critical examination of State Bar policy. Certainly, any State Bar self-serving pronouncements regarding UPL can not be accepted at face value and should for the most part be disregarded.

The primary propaganda argument used by State Bars to support UPL enforcement is that the Nonattorney's legal services are incompetent. In assessing the legitimacy of this assertion, it is critical to examine whether Nonattorneys are being held to a higher standard of proficiency by Courts compared to licensed attorneys. It is well known that procedural errors made by attorneys are often forgiven by the same trial court judges who penalize Nonattorneys making an identical error. It's known in technical legal terms as an "invidious application of the procedure-substance dichotomy." This issue is one of the most critical because in a typical UPL enforcement action the State Bar adopts the posture that not only was the service performed prohibited, but the advice given was wrong or the legal document prepared contained errors. The flaw in this argument is that licensed attorneys regularly provide incorrect legal advice and regularly prepare legal documents containing errors. Essentially, the degree of incompetency that typically characterizes a licensed attorney diffuses the legitimacy of the standard "wrong advice" or "errors in the documents" declaration adopted by State Bar UPL committees.

The opportunity for a Court to construe issues of procedure stringently against Nonattorneys and leniently with respect to licensed attorneys, coupled with the economic incentive to exclude Nonattorneys, raises further concerns about the sincerity of State Bar propaganda that aggressive UPL enforcement protects the public. Even if we assume for argument sake that issues of procedure versus substance are not applied unfairly against the Nonattorney, the State Bar's position is infirm. The reason is remarkably simple. In virtually every instance where a licensed Attorney files a legal motion with a Court, which is opposed by another licensed Attorney, one Party wins and the other loses. Presumably, the losing party was legally wrong since two licensed Attorneys presenting diametrically opposed legal positions can not both be right. It's an absolute impossibility. Consequently, it must be concluded that the Attorney representing the losing party asserted an erroneous legal position and/or submitted an erroneous legal document and/or rendered incorrect legal advice. Thus, if the provision of incorrect legal advice or preparation of erroneous legal documents constitutes grounds for precluding someone from providing legal services, there are millions of licensed attorneys who should be excluded from the practice of law. In fact, since one would be hard pressed to find a trial lawyer who has not at one time lost a motion or case, a solid assertion could be made that they should all be excluded from practice.

Turning to another subject now, if you are charged with engaging in the Unauthorized Practice of Law, who do you hire to defend you? Defending an individual against a UPL action constitutes the practice of law. So you need to hire a licensed attorney. This creates monumental ethical dilemmas, since any attorney representing you, will be torn between his loyalty to you as a client and his conflicting loyalty to the economic interests of the State Bar, which notably has the power to revoke his law license.

Consider the following hypothetical. You have just helped your crippled sister prepare legal documents to institute suit against the Health Maintenance Organization (HMO) that refused to cover injuries she sustained when the HMO President pushed her down the stairs for complaining about the high insurance premiums. The State Bar gets wind of this and sends you a letter demanding that you immediately cease helping your crippled sister because you are engaging in UPL. You write them a letter back and send it certified mail. Your brief letter states simply:

"I intend to continue helping my crippled sister who I love. Therefore, in reference to your recent correspondence instructing me to cease, and asserting that my kind and loving free assistance constitutes the unauthorized practice of law, please get out of my face you heartless ratbastards."

Respectfully yours,

Your letter is received by the Bar on the 15th, and on the 16th the State Bar's UPL Police arrive at your house and serve you with court documents to appear before a Judge. The question now, is who do you hire to represent you in Court ? Well you toss around the idea of hiring one of your close friends, who is not an Attorney and calls herself a "Legal Technician." She regularly prepares court documents, but you've heard that she is currently involved defending herself against the State Bar in some type of UPL action, so you decide that's probably not a good idea. You tell Sis who's in the wheelchair that she won't be able to have physical therapy next week because you need to take the family's last $ 3000.00 to hire a licensed Attorney to defend yourself. Now, good luck in finding an Attorney who will zealously represent you. You can't have anyone other than a licensed Attorney represent you because of the UPL prohibitions. On the other hand, all licensed Attorneys in your state, are subject to the disciplinary process of the same State Bar that is charging you with UPL. If they do a good job, the whole UPL scheme is at risk. The State Bar is not going to like that obviously, and they have the perfect regulatory mechanism in place to get even with the Attorney. Discipline him by trumping up grounds to suspend his law license or perhaps even disbarring him. If he wants to be able to continue taking his third wife with the voluptuous breasts to Aruba each year, he's not going to want to tick off the State Bar that essentially provides his bread and butter. He'll either convince you to enter into a plea agreement, or will simply go through a half-hearted defense that results in your conviction. Otherwise, he'll probably have to plan on sharply reducing his Pina Colada intake.

Having now delineated the major problems, I propose the best solution, which concededly does not eliminate the disturbing issues entirely, but definitely minimizes them. The key is as follows. Do everything possible to ensure that the maximum number of individuals who fall into categories (3) and (4) are properly licensed attorneys, subject to the ethical rules of conduct. To this extent, it is my assertion that there is an **INVERSE RELATIONSHIP BETWEEN UPL PROHIBITIONS AND STATE BAR ADMISSION STANDARDS**.

The fact of the matter is that the legal profession cannot survive and society would overall be greatly harmed if there were absolutely no prohibitions against the Unauthorized Practice of Law. Such prohibitions although extremely problematic and often unfair as the foregoing illustrates, can potentially serve a vital and useful public purpose. The key to justifying UPL prohibitions and winning the general public's support for them is to ensure that the profession does not keep its' doors unconstitutionally closed by basing admission to the Bar on subjective assessment. **Essentially, the concept is that if the Authorized Practice of Law is regulated in a fair, open and objective manner, then the probability that UPL prohibitions are serving the public's interest, rather than the State Bar's anticompetitive interest is dramatically increased**. The current admission standards which foster subjective assessment based on an individual's attitude, demeanor, and beliefs etc., therefore pose a dire threat to the validity of UPL prohibitions. If the portals of the Bar Associations continue to remain closed to those whose ideas and attitudes the State Bar does not like, it is in fact my assertion that all UPL prohibitions will ultimately collapse in their entirety. The legal reasons are as follows.

The constitutional justification for UPL prohibitions adopted by Courts has chiefly relied on the speech-conduct dichotomy. The basic premise is that speech is subject to greater protection under the First Amendment than conduct which is subject to a greater degree of regulation by the State. The seminal case is *U.S. v. O'Brien*, 391 U.S. 367 (1968). The crux of the Court's opinion stated:

> "When "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms."

The threshold issue therefore, is whether a particular behavior constitutes speech or conduct. If it includes both speech and nonspeech elements, the respective elements must be weighed to determine which of the two comprises a greater proportion of the action. It also entails assessing the importance of the governmental interest involved to determine whether the action may be regulated. Courts have held rather uniformly for the last sixty years that the practice of law is "conduct" which may be regulated by the State and not protectable speech. The difficulty in rationally justifying such a stance is revealed by the simple fact that virtually everything a person does encompasses both speech and nonspeech components. Even when a person engages in pure political speech or religious prayer which is uniformly regarded as the zenith of activity protected by the First Amendment, they unavoidably make facial expressions, hand movements or shifts in body posture. Arguably therefore, pure political speech or religious prayer could be manipulatively classified as conduct under the same theory used to justify UPL prohibitions. The bottom line is that the mere speaking of words containing legal information or the writing down of information on legal documents contains vastly greater elements of speech, in comparison to its' nonspeech elements. This makes the legal validity of UPL prohibitions extremely vulnerable.

The problem is further exacerbated by the fact that although Courts have classified the mere speaking of words containing legal information as conduct, rather than speech, (which is the one subject area that enhances the economic interests of attorneys), they have adopted a diametrically opposed stance in virtually every other subject area. In all other subject areas, Courts typically hold that behavior containing a greater proportion of nonspeech elements is protectable speech. Some examples are as follows. In *Cohen v. California*, 403 U.S. 15 (1971) the Court held that wearing a jacket bearing the words "Fuck the Draft" in a corridor of the Los Angeles Courthouse was protected speech. In *Gooding v. Wilson*, 405 U.S. 518 (1972) the Court invalidated a Georgia statute that criminalized "abusive language tending to cause a breach of the peace." In *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92 (1972) the Court invalidated a city ordinance that prohibited picketing, except for peaceful picketing of a school involved in a labor dispute. It is logically inarguable that wearing a jacket while physically walking in a Courthouse, using language that tends to cause a breach of the peace, or physically carrying a picket sign are behaviors that contain a higher proportion of nonspeech elements when compared to the mere speaking of words containing legal information. Yet, in this one isolated area which fosters the economic interests of attorneys, Courts hold that such is conduct, rather than speech.

Equally disturbing and hypocritical is the fact that although UPL prohibitions are justified on the legal basis that the provision of legal services is conduct, rather than speech, the prohibitions are applied most aggressively to those activities containing the highest proportion of speech elements. For example, most Courts dealing with UPL litigations have determined that personal counseling poses a greater risk of public injury than the processing of legal forms. Yet, personal counseling consists of substantially greater elements of speech, compared to the processing of legal forms. Personal counseling is almost entirely pure speech. Conversely, the processing of legal forms has greater elements of conduct, and yet hypocritically is often allowed when counseling is not.

It is clear that when Judges apply UPL principles on behalf of the State Bars (the Judges are State Bar members) they play a bit of what is known as a "shell game." It works as follows. UPL prohibitions are justified on the basis that the provision of legal services is conduct rather than speech. But then, those prohibitions are applied most aggressively to situations where the speech element rather than the conduct element is of greater magnitude. The constitutional vulnerability of UPL prohibitions

was demonstrated in the Dissenting opinion of the Great Justice William O'Douglas in *Hackin v. Arizona*, 389 U.S. 143 (1967) where he criticized the Court's failure to squarely address the issue stating:

> "Whether a State, **under guise of protecting its citizens** from legal quacks and charlatans, **can make criminals of those who, in good faith and for no personal profit, assist the indigent** to assert their constitutional rights is a substantial question this Court should answer."

UPL prohibitions came very close to collapsing in their entirety in *NAACP v. Button*, 371 U.S. 415 (1963) where the Supreme Court held that within the context of the petitioner's case, litigation was a form of political expression and means for achieving equality of treatment. The Court rejected the State of Virginia's false assertion that the purpose of the UPL prohibitions was to insure high professional standards and further determined that a State may not, under the "guise" of prohibiting professional misconduct ignore constitutional rights. That case dealt with an attempt by the Virginia State Bar to unlawfully use UPL prohibitions to frustrate the U.S. Supreme Court's opinion in *Brown v. Board of Education*. Quite a far leap from the Virginia Bar's professed purpose of protecting the general public's interest, and raising substantial doubt as to the sincerity and credibility of State Bar representations.

It is also noteworthy that the U.S. Supreme Court determined in *Johnson v. Avery*, 393 U.S. 483 (1969) that a State may not validly enforce a regulation which absolutely bars inmates from furnishing legal assistance to other prisoners. The result of this is that imprisoned criminals are legally allowed to provide free legal assistance to other convicted criminals free from concern of UPL prohibitions, but law-abiding citizens may not help other law-abiding citizens. Once again, the hypocrisy makes the Judiciary look ridiculous. As stated previously, and notwithstanding my criticism of UPL enforcement currently, I do believe that reasonable UPL prohibitions can promote the general public's interest by protecting them from the delivery of legal services by incompetent and dishonest individuals. There is little doubt that in the absence of such prohibitions, many people will provide legal services without a sufficient knowledge of the law. Ultimately, their victims would be the helpless litigants. The solution to this dilemma rests upon focusing exclusively on the general public's interest. The economic interests of attorneys and State Bar should be totally ignored. Stated simply, if the State Bars ensure that their doors are wide open to qualified individuals who are then regulated, rather than making admission determinations based on who the admissions committee subjectively likes or dislikes, or who they believe will support State Bar financial interests, which is in substance precisely what is transpiring currently, then UPL prohibitions are justifiable. Otherwise, the UPL prohibitions are just being used to create a transparent anticompetitive monopoly that makes the Judiciary look hypocritically foolish.

There is an **Inverse Relationship Between UPL Prohibitions and State Bar Admission Standards.** The general public's interest is best furthered by liberal State Bar admission standards, which in turn mandates strict enforcement of reasonable UPL prohibitions which I would fervently support. Conversely, it is my position that continuance of a subjective and discriminatory admissions process that is predicated on factors including an Applicant's attitude would mandate complete elimination of UPL prohibitions in the public's interest. Stated simply, the legal profession will open its doors in a fair and objective manner like every other profession, or alternatively the legal profession's entire monopoly will be eliminated.

13

IN DEFENSE OF JUDGES

Throughout this book, it will become quite apparent (particularly in the Sections where I analyze State Supreme Court decisions regarding the Bar admissions process) that I'm rather critical of the irrational thought processes and opinions of Judges. In all fairness, I therefore felt that before intellectually tearing apart their opinions, and logically demolishing their hyper-sensitive, fragile egos, I should provide a few words in their defense and in their favor. I now do so.

It's a crappy deal to be a Judge. Considering the amount of training, intellect and hard work required, the pay is really lousy. Any good Judge could earn more money in the business world. A Judge is almost certain to have a large number of people disliking them, since any case that does not settle, results in one party being the loser. The loser will hold the Judge responsible. In a case involving a societal issue of significant consequence, a Judge could easily make thousands of political adversaries at one time, just by rendering a decision that they honestly believed was correct.

Judges have an immense degree of power in one respect, and yet in another respect are much more helpless than the average member of society since their job entails a lonely existence. They can't openly discuss what they do at work on any given day. They have to watch every single little thing they say or run the risk of being accused of bias or prejudice. Their supporters will never be as vocal as their adversaries. Since it is impossible for a person to be correct all the time, they have to be prepared to endure feelings of internal guilt in those instances when they try to make the right decision, but make the wrong one, resulting in pain and anguish to another person or group. They are destined for sleepless nights, second-guessing, internal guilt, the impossibility of doing the right thing in certain cases, mistrusting those around them, a lack of appreciation from the public even when they act courageously, an inability to enjoy life to its fullest, and ultimately total loneliness. At best, they'll receive some verbal adulations and expressions of appreciation on the day they retire after decades of public service. At worst, they'll retire with the internal feeling and belief that no one ever liked them or appreciated them.

For those that do choose to serve on the bench, they are not selecting merely a career, but rather instead an entire lifestyle. The bench follows a Judge every single hour and minute of their life. They're thinking about it when they're sitting at home with family members as the issues pertaining to some case are lurking in the back of their mind. They think about the bench when they wake up, go to sleep, and while they're sleeping. The bench quite simply put, never leaves the Judge. There are seven days in a week and 24 hours in a day, which equals 168 hours per week. That's what a person signs up for when they become a Judge. A 168 hour work week, which calculates to an absolutely horrible hourly rate.

It is undoubtedly a crappy deal. But that's life. No one is forced to become a Judge. And once they do, the general public demands a lot. Society is wholly unconcerned about what the Judge can do for other attorneys and the State Bar. Society wants and demands one thing only from the Judge. It wants the Judge to render rulings in the best interest of the litigants and general public, in accordance with the rule of law. The impact of any ruling or decision on the attorneys involved, is of negligible concern or importance to the public. If the Judge is faithful to the public they are simply viewed as having done their job, and there is no need for expressions of appreciation. Conversely, if the Judge fails to do so, society views the Judge as contemptible.

There are two alternative reasons an individual decides to be a Judge. First, a person may become a Judge because they want the power. Such individuals are what is known in technical legal terms as "morons." Their motivations will ultimately become uncovered by their peers, and the result of their career will be pure personal misery. The second and hopefully more common reason, is not quite as straightforward or easy to explain. It consists of the Judiciary, the bench, the rule of law, respect for reason and rationality coupled with an equal respect for passion, a sense of injustice, and a desire for justice, being embodied within the individual's blood, heart, and soul. These are the individuals that have a burning desire to improve society and help the litigants with whom they identify. They become the Great Judges. They deserve the unwavering support of the general public. They deserve to have society place total faith and confidence in them, and they deserve to have the general public protect their respect when such is under an unwarranted political attack that is devoid of reason or logic. They deserve appreciation and respect from the litigants and the general public. But sadly, wrongly and unfortunately, they probably won't get it because that's not how society works.

It's a crappy deal to be a Judge.

14

HUMPTY-DUMPTY AND THE SEMANTIC SCALPEL

The Oregon Judiciary Branch of Government including its' State Supreme Court, Court of Appeals and Marion County Circuit Court; and I have definitely had our differences of opinion. We have developed what I consider to be a very healthy intellectual friction with each other that promotes a diminishment of their judicial ability to circumvent the law and U.S. Constitution. It has undoubtedly been a learning process for both of us. For instance, they taught me that if I desire to challenge their power it would be best if I do not enter into the geographic boundaries of their State. I have taught them that the best way to adjudicate cases requires a strict adherence to the rule of law and the strength in judicial moral character to not simply render decisions merely for the sake of "going to get along" with popular local attorneys. The reason is that ultimately a Nonattorney comes along who understands the driving economic forces behind amateurish, transparent judicial deceptions, and outplays them.

More importantly, the Oregon Judiciary has educated me as to how Courts utilize what is known as a "semantic scalpel" to ensure that immoral judicial goals are attained. The semantic scalpel is an implement used by Judges to render judicial rulings by causing words to be defined in a manner extending beyond their common and ordinary usage. The technique has been summed up by its' main proponent Chief Justice Wallace Carson of the Oregon Supreme Court as follows:

> "When I use a word, "Humpty Dumpty said in rather a scornful time, "it means just what I choose it to mean -- neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
> "The question is," said Humpty Dumpty, "which is to be master -- that's all."
>
> State ex rel Frohnmayer v Oregon State Bar, 307 Or. 304 (1989), Justice Carson, Fn2; [15]

A prime example of use of the semantic scalpel was when former President Bill Clinton on national television stated authoritatively, "I Did Not Have Sex With Monica Lewinsky." Ultimately, it was discovered that he got a "Blowjob" from her. I am not a particularly big fan of Bill Clinton. Nevertheless, he was arguably subjected to an immense degree of unjust criticism for making the foregoing statement. The reason is as follows. He relied on a definition of the term "Sex" that was formally adopted by the Court in his litigation.. That definition did not in fact, include "Blowjobs." The problem was that pretty much every American considers a "Blowjob" to be included in the term "Sex." The common and ordinary usage of the term adopted by virtually everyone includes "Blowjobs."

The general public always relies on the common usage of a term. Judges can't change that. That is why the general public condemned Clinton. As indicated previously, I don't like Bill Clinton. I thought he was a lousy President, and really nothing more than an exceptionally good actor. Nevertheless, I do believe the public's condemnation of Clinton's attempt to rely on a carefully worded definition of the term "Sex," that was in fact formally adopted by a Court of law was unjust. To put the matter simply, Clinton only did what Justices of State Supreme Courts do every single day.

Clinton was a lawyer. Throughout law school and his entire career, he had been educated to the fact that words can be defined in a limitless manner to suit one's immediate needs. Like all of the Judges and attorneys he had worked with during his career, he played a game of semantics with the term.

Games with semantics are the very heart and soul of the legal profession. However, when such games are exposed to the general public, people who play them appear as deceptive liars. The Judiciary of this nation is now faced with a major problem. Similar to how Clinton's attempted use of a semantic scalpel got him into trouble, Judges and State Bars are finding that their use of the tool is becoming less successful. Appellate opinions are now easily obtainable by members of the general public. That is a fairly recent phenomena. One can obtain appellate opinions at a very low cost on the Internet. As a result, the manner in which Judges and Appellate Courts play deceptive, clever little games with word meanings and definitions in accordance with Bill Clinton and Chief Justice Wallace Carson's "Humpty-Dumpty" technique can now easily be exposed to the general public.

In many respects, it is like the tricks used by a magician. Once a person discovers how the magician accomplishes his tricks, they are never fooled by such deceptions again. That is precisely what is occurring in this nation currently. The public is rapidly becoming educated to how Courts, State Bars and lawyers manipulate word meanings and the rules of procedure to frustrate fair and impartial adjudications. As a result, more litigants are opposing the Courts, rather than trusting them. Judges and State Bars are becoming less successful at accomplishing their self-interested goals, because the tricks they have relied on in the past are no longer working.

Litigants are starting to view Judges as one of their "opponents," rather than impartial decision-makers. As such, Judges are no longer considered to be honest people in whose hands you may trust your children, property or freedom. They are viewed as people you have to outmaneuver, outplay and outstrategize. Like everyone else in society, Judges are now simply viewed as people looking to do what's best for themselves. You have to play their game, better than they play it. Similarly, representations made by Courts to litigants during the pendency of a case are no longer viewed as necessary steps intended to resolve matters fairly. Rather, litigants are assessing judicial representations in light of the procedural "Trick," the Court is probably trying to play to frustrate fair resolution of the issue. Litigants are beginning to understand that they often have four opponents in a litigation. The opposing party, the opposing party's attorney, their own attorney, and the Judge.

The most immoral application of the semantic scalpel occurs when Judges use it in a manner to allow a term's definition to not simply be modified, but instead to have the exact opposite meaning of its' common and ordinary usage. For instance, in Crocker v Crocker, in April, 2001 the Oregon Supreme Court determined that the term "child" includes "adults" within its' definition. The Oregon Court of Appeals had earlier used manipulative subterfuge to hold similarly. It seems to me that the common and ordinary usage of the term "child" is intended to specifically differentiate the individual from an "adult." Otherwise, there would be no need for either term. The Oregon Supreme Court in the same opinion concluded that the children of "any married person" only meant children of "married persons who are not cohabiting." Children of married persons who were living together, were therefore excluded. The court accomplished this deceptive subterfuge by using a semantic scalpel to arrive at the conclusion that the term "any" only meant "some." It was absolutely incredible. Within one single opinion, the Oregon Supreme Court had substantively concluded that the term "child" includes "adults," but excludes children. [16] The meaning of the term had been diametrically reversed. The Court's ultimate decision on the legal issue involved was obviously irrational since it was supported by irrational reasoning. Notably and commendably, the Great Justice Paul De Muniz of the Oregon Supreme Court did not sign on to such Nonsensical Judicial Trash, wisely choosing instead to not participate in the Court's ridiculous opinion. Ironically, only one month previously, the same Court wrote as follows in a different case:

""Any" is defined, . . . (in context, "any" synonymous with "every") [17]
Outdoor Media Dimensions v Oregon, SC S44590

It would seem to be the simplest term in the world. The word "Any." Yet, the Oregon Supreme Court in two different cases, less than two months apart, adopted two completely different definitions of this one simple word. In one case, "any" meant "some" and in another, "any" meant "every." Tomorrow, to meet their immediate goal, "any" will mean "none." It is nothing more than an amateurish game of judicial deception. Once exposed it diminishes the legitimacy of those who write such judicial opinions. Bill Clinton also was criticized for his response to another question. His response consisted of inquiring about counsel's use of the term "is" (What "is" is?) Undoubtedly, he was again playing a game with a semantic scalpel. Yet, in a recent Oregon case, the Court wrote as follows:

"Our construction of the rule is not impaired by the use of the word "or" as a connector between the terms. . . ."Or" does have a disjunctive meaning. . . . However, often "or" is used by the legislature to connect alternatives that are not mutually exclusive but, rather, may each cause a certain result or apply in a given circumstance. . . . Thus, the use of "or" as a connector between the two types of recovery simply acknowledges that an award of one does not require the award of the other. It does not suggest that, when both are awarded, they may be awarded in separate judgments. In fact, the reverse is true." [18]

I see absolutely no reason why we should politically criticize any President of the United States for questioning the meaning of the term "is," if Courts, Judges and attorneys have to engage in extensive litigation over the meaning of the term "or." Judicial support for utilization of the semantic scalpel is found in the historic statement of Justice Oliver Wendell Holmes who wrote:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought, and may vary greatly in color and content according to the circumstances and time in which it is used."
Towne v Eisner, 245 U.S. 418, 425 (1918)

Undoubtedly, there is merit to his statement. Depending on the context, words do mean different things at different times. By the same token however, Holmes' statement was not intended to create a carte blanche environment for Judges to drastically alter word meanings to accomplish judicial goals. Justice Harlan, Great Dissenter on the Warren Court of the 1960s wrote the following historic passage:

"Almost any word or phrase may be rendered vague and ambiguous by dissection with a **semantic scalpel**. . . . <But such an approach> amounts to little more than verbal calisthenics."
Cole v Richardson, 397 U.S. 238, 240 (1970)

As will be demonstrated later herein, Harlan was the strongest supporter on the U.S. Supreme Court for retention of the State Bar admission "good moral character" requirement. He wrote the foregoing statement at a time when the admission process was under heavy legal attack, specifically on the ground that the phrase "good moral character" was vague and ambiguous. His foregoing statement is a proper condemnation of judicial use of the semantic scalpel. It is also an admission on his part, that use of the semantic scalpel does render words and phrases vague and ambiguous. The State Bars and State Supreme Courts by utilizing the instrument known as the "semantic scalpel," have done precisely and exactly what Harlan warned them not to do. They have rendered the "good moral character" requirement totally vague and ambiguous. There is no doubt State Supreme Courts should stop using Humpty Dumpty Semantic Scalpel techniques in their opinions. Cause let's face it. Humpty Dumpty was a fairly clumsy guy who fell off a wall. And clumsy people shouldn't play with scalpels. Naturally, if you're ever accused of breaking the law in Oregon, just inform the Judge that the term "unlawful," actually means "totally legal." All you need is a semantic scalpel.

16

McCARTHYISM and STATE BAR ADMISSIONS

"These cases, which concern inquisitions . . . are relics of a turbulent period known as the "McCarthy era," which drew its name from Senator Joseph McCarthy from Wisconsin."
In Re Stolar, 401 U.S. 23 (1971) Majority opinion by U.S. Supreme Court Justice Hugo Black

The purpose of this section is to demonstrate that McCarthyism is the foundation of the State Bar admission process today, just as U.S. Supreme Court Justice Hugo Black correctly recognized in 1971. The fear of Communism, known as the "Red Scare," which permeated virtually all facets of American life during the 1950s became a cornerstone power bloc for the State Bars. The U.S. Supreme Court cases of *Konigsberg, Schware, Anastaplo, Stolar, Baird* and *Law Students Civil Rights Council*, (discussed subsequently herein) all dealt in one way or another with Bar application questions that inquired into the associations of an Applicant.

Senator Joseph McCarthy was the most notorious instigator of the Red Scare. His tactics were predicated on making unfounded accusations against individuals, with the result that the mere allegation served to destroy the person's credibility. Ultimately, he overplayed his hand and was exposed on national television as a buffoon. He was censured by the U.S. Senate and McCarthyism was for the most part, then discredited. There was one place however, one institution, where it quietly survived and still flourishes today. That place is the State Bar where the exact same tactics used by McCarthy still prevail. As previously discussed, the Bar admissions character review process gained the bulk of it's power during the 1930s. World War II however, led to a diminishment of that power. McCarthyism provided the State Bars with the opportunity to recoup what they lost during World War II.

Unsurprisingly, McCarthy prior to becoming a U.S. Senator was a Wisconsin attorney and Judge. It is clear that McCarthyism has its' roots in Joe McCarthy's judicial background, his experience in the legal profession and dealings with the State Bar. He honed his ruthless tactics by learning from the State Bar. To this day, McCarthy's home state of Wisconsin is one of the most egregious violators of the Constitution with respect to the admission process, as will be demonstrated in the Section of this book discussing admission cases in the various states.

During his short-lived height of power, when virtually every member of the U.S. Congress feared him, McCarthy was essentially a demagogue. He was extremely charismatic possessing great leadership qualities, but lacking markedly in intellectual knowledge. Academically, he was a poor writer, and he did not read much. He typically relied on shortcuts and bluffing techniques. In 1939, at age 30 he became the youngest man ever elected to be a circuit judge in Wisconsin. As a Judge, he had a reputation for possessing a shrewd ability to get to the heart of a matter. On the negative side, he was not a student of the law, lacked comprehension of the rules of evidence and often intentionally made sly remarks in the presence of the jury for the purpose of influencing the outcome of a case. He was also known to admire Adolf Hitler's book, Mein Kampf and would point to the book in his chambers when local attorneys were present, noting that was the way to get things done. Throughout his career, his adversaries accused him of being a Nazi. Certainly, the political tactics he learned from the State Bar and utilized, supported the assertion. One of his biographers, Thomas C. Reeves tells the following story about McCarthy as a Wisconsin Judge:

> "When Lappley requested an immediate or at least early trial to appeal the order, he later explained, Joe launched into a lengthy discourse about the entire case. He said that a trial would be a "waste of the court's time,". . . .
>
> Four days later Lappley petitioned the Wisconsin supreme court for a writ of mandamus. The supreme court responded immediately and requested all of the records in the case. **When the documents arrived, a page was discovered missing from the trial record, and the court demanded an explanation. Joe claimed that after the June 7 hearing he had read some flattering remarks about Lappley into the record at the attorney's request. He had recently ordered that portion of the record destroyed. . . . (Joe told friends privately that his action was pure revenge, prompted by Lappley's sudden decision to appeal.)** Joe no doubt also sought to conceal from the supreme court his informal comments on the case, in particular his assertion that a trial would be a waste of time. . . .
>
> The supreme court issued an opinion shortly . . . sharply rebuking McCarthy. . . ." [162]

In 1946, while still a circuit Judge, McCarthy ran for election to the U.S. Senate as a Republican. In doing so, he flouted judicial ethics. The *Milwaukee Journal* called for his withdrawal from the race on the ground that he was barred from holding any political office other than judicial, during the term he was elected to be a circuit judge. McCarthy was undeterred and during the campaign even had the audacity to publish a newspaper advertisement citing four of his judicial decisions with the headline "Labor Record of Judge Joe McCarthy, Candidate for U.S. Senator." It was a complete slap in the face to judicial ethics. Nevertheless, he was elected and when the issue of whether he could run for the U.S. Senate while still a State Circuit Judge was heard before the State Supreme Court, they ruled in his favor. As a Senator, he formed strong political alliances with Senator Richard Nixon and FBI Director J. Edgar Hoover, both of whom also contributed to instigating the Red Scare, and supported Congressional Hearings pertaining to the loyalties of U.S. State Department employees. He also became an alcoholic while a Senator. As his obsession with Communism grew, and his alcoholism instensified he lost most of his charisma.

On March 21, 1947, President Harry Truman in response to public fears of Communism issued an Executive Order drastically altering conditions for federal employment. Under the Order, all persons entering employment in the Executive branch would be subject to extensive investigations of past activities and associations, including examination of school records and inquiries of former employers and personal references. The doctrine of guilt by mere allegation became the cornerstone of implementing the Order and gave birth to McCarthyism. Testimony about federal job applicants was accepted from people who wanted their identities to remain confidential. Job applicants did not know the identity of their accuser. Shortly thereafter, in November, 1947, the Attorney General issued a list of 82 organizations that the FBI considered disloyal and more names were subsequently added. The standard for denying employment under the Executive Order was stated ambiguously as:

> "on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the government. . . ." [163]

In 1949, McCarthy believed reports that the U.S. Army had tortured confessions out of Nazi SS men after the war, and gave them a sham trial. In support of the Nazi prisoners of war, he launched a political attack on the U.S. Army. Ultimately, the highly inflammatory reports were determined to be

substantially meritless after a Congressional investigation. McCarthy however, claimed that the Congressional Committee had whitewashed the alleged atrocities. He issued a press release that stated:

> " I accuse the subcommittee of being afraid of the facts. I accuse it of attempting to whitewash a shameful episode in the history of our glorious armed forces. . . ."

He subsequently delivered a speech on the Senate floor condemning the Congressional hearings. His speech contained numerous factual errors. He recklessly treated allegations in prisoner affidavits as self-evident truths, even if unsupported by countervailing facts. This tactic became his modus operandi. It was also the chief cause of his downfall. He would shoot from the hip, without being certain of the legitimacy or logic of his position. His attack on the U.S. Army coupled with his support of Nazi prisoners gave him a reputation as a Nazi sympathizer. In 1954, during Hearings attempting to drive him from the Senate, Senator Flanders characterized McCarthy's involvement as fitting in:

> "neatly with other parallels between the amateurish senator from Wisconsin and the accomplished and successful dictator of Germany." [164]

In 1951 and 1952, his financial dealings came under attack. It was alleged that he had welched on a $ 5,500 gambling debt in a wild dice game. Senator Thomas Hennings a member of the committee investigating McCarthy commented:

> ". . . if a man wants to engage in gambling games and pays a debt or does not pay it, that is not a matter the United States Senate is really concerned with." [165]

As McCarthyism gained steam in the 1950s, almost everyone was viewed as a possible Communist. McCarthy's attacks and allegations concentrated predominantly on the U.S. State Department, U.S. Army, and journalists. Most were ultimately proven to be untrue. By the same token however, he threw out so many allegations at so many individuals that a few were proven to be factually correct in later years. The overwhelming majority of people who had their careers and credibility destroyed as a result of McCarthyism were innocent of the allegations made.

On June 1, 1950, the Senate's only woman member, freshman Republican Margaret Chase Smith of Maine read on the Senate floor a "Declaration of Conscience," which she and six other Republican Senators signed that was a stern attack on McCarthyism. On June 6, 1950 Governor Earl Warren of California, later to become Chief Justice of the U.S. Supreme Court, also declared against McCarthyism. President Truman and the U.S. State Department joined in the attack. The State Department accused McCarthy of a "rape of the facts" and declared that "the facts do not deter him from his reckless course."[166] McCarthy labeled Mrs. Smith and her co-signers as "Snow White and the Seven Dwarfs." He continued undeterred. In fact, due to substantial support from the general public, he had not yet nearly reached the apex of his power which would peak in 1953.

On July 17, 1950 the Tydings Committee of the Senate issued a report on an investigation spearheaded by McCarthy pertaining to the arrest of six people on charges of conspiracy to violate the Espionage Act. Those arrested included two co-editors of the publication *Ameriasia,* and a writer for *Collier's* magazine. [167] The Senate Report was a scathing indictment of McCarthy. It characterized McCarthy's charges and methods as:

> "A fraud and hoax perpetrated on the Senate of the United States and the American people. They represent perhaps the most nefarious campaign of half-truths and untruth in the history of this Republic." [168]

It further stated:

> "For the first time in our history, we have seen the totalitarian technique of the "big lie" employed on a sustained basis. The result has been to confuse and divide the American people. . . ." [169]

The impact on the general public of the Tydings Report was entirely negated by J. Edgar Hoover's "coincidental" announcement of the arrest of Julius Rosenberg to commit atomic espionage on the exact same day the Tydings Report was released. [170] If anything, McCarthy's standing was enhanced rather than diminished. In February 1952, McCarthy told an audience in Wisconsin that the nation's leadership was "almost completely morally degenerate" and that the President was a "puppet on the strings." [171] McCarthy assessed "moral character" in a manner similar to State Bar admission committees. Good moral character constituted that which he wanted and believed. Anything else was "degenerate." Senator William Benton on the Senate floor compared McCarthy's tactics to Hitler. [172] Dishonest exploitation of "moral character" assessment was the foundation of McCarthyism and is similarly the foundation of the State Bar admission process today.

When Eisenhower was elected, McCarthy's political position was initially boosted. McCarthy supporter Scott Mcleod who served as assistant Secretary of State for Security Affairs, in his first three weeks on the job, fired twenty-one State Department employees for alleged homosexuality. He and a team of nearly two dozen ex-FBI agents examined desks, drawers, file cabinets, employee reading matter during and after working hours, in pursuit of alleged subversives. They forced the State Department to operate in a virtual police-state atmosphere. Later in the year, McLeod proudly announced that 306 citizen employees and 178 aliens had been removed from employment on numerous grounds without a single hearing. [173] When Charles E. Bohlen, a counsellor of the State Department and former interpreter and adviser at Yalta was announced to become the new U.S. ambassador to the Soviet Union, an FBI report revealed a small quantity of derogatory information. It was predicated on anonymous letters and hearsay reports, including one report from a person who claimed to have a "sixth sense" that detected immorality in Bohlen. [174] On February 19, 1953 the State Department issued Information Guide 272 which banned the books, music and paintings of Communists from the Voice of America and ordered overseas librarians to remove all publications written by "controversial" authors. One official stated:

> "No one seems interested in the truth. If you quit it looks like some tacit admission of guilt. If you protest, it is insubordination, and you might find yourself suspended." [175]

Fear of persecution by the Congressional subcommittee caused Raymond Kaplan, a 42-year old Voice of America engineer, to commit suicide by jumping in front of a truck. In a farewell letter to his wife and son, Kaplan wrote:

> "You see, once the dogs are set on you everything you have done since the beginning of time is suspect. . . . I have never done anything that I consider wrong but I can't take the pressure upon my shoulders any more. " [176]

In 1953, President Eisenhower issued Executive Order 10450, which took Truman's Order pertaining to investigation of Federal employees even further. Eisenhower's Order subjected all present and future employees of the Executive Branch to a broad character scrutiny. It allowed for the firing of employees based on personal traits such as alcoholism, homosexuality or "infamous" conduct unrelated to loyalty to the government.[177] But On July 24, 1953, Arthur Eisenhower, the President's brother called McCarthy "the most dangerous menace to America." "When I think of McCarthy," he told a

reporter, "I automatically think of Hitler." "He is a throwback to the Spanish inquisition."[178] In 1953, Senator Everett Dirksen declared:

"Government employment is **not a right, it is a privilege**."

McCarthy stated in June, 1953 that anyone who invoked constitutional rights in refusing to tell a congressional committee about communist party membership is obviously a communist. He would repeatedly assert that the right to remain silent was a shield for the guilty, although the U.S. Supreme Court had held it was designed to protect the innocent from an overly intrusive government. Similar to the State Bar admission process, congressional witnesses were asked about the occupations of brothers, sisters and relatives. It was anything and everything goes. Congressional committees wanted to know everything without exception. Just like the State Bar admission committees. In November, 1953, Ex-President Harry Truman in a nationally televised broadcast vehemently attacked McCarthyism, defining it as follows:

> "It is the corruption of truth, the abandonment of our historical devotion to fair play. It is the abandonment of the "due process" of law. It is the use of the big lie and the unfounded accusation against any citizen in the name of Americanism or security. It is the rise to power of the demagogue who lives on untruth. . . ."[179]

McCarthy then made a huge blunder. He not only attacked Truman which was not unexpected, but he also condemned Eisenhower. Eisenhower's reputation was impeccable throughout the nation. McCarthy followed up with another political attack on the Army which infuriated Eisenhower. When McCarthy turned on his own Republican President, his downfall began. While there was always friction between the Democrats and McCarthy, he now found vast numbers of Republican Senators and Congressman withdrawing their support from him. When his long-time ultra-conservative ally Vice-President Richard Nixon withdrew support in 1954, McCarthy's political career was in ruins. In May, 1954 his fate was sealed and his public image conclusively tarnished when he was required to testify before a Congressional Committee. The Hearings were nationally televised and <u>he ended up doing specifically and exactly that which he had criticized so many other witnesses for doing</u>. He refused to answer questions before Congress. It was unbelievable. A small excerpt was as follows:

> Mr. Welch: The oath included a promise, a solemn promise by you to tell the truth. . . . Is that correct, sir?
>
> Senator McCarthy: Mr. Welch, you are not the first individual that tried to get me to betray the confidence and give out the names of my informants. You will be no more successful than those who tried in the past, period.
>
> Mr. Welch: I am only asking you, sir, did you realize when you took that oath that you were making a solemn promise to tell the whole truth to this committee?
>
> **Senator McCarthy: I understand the oath, Mr. Welch.**
>
> **Mr. Welch: And when you took it, did you have some mental reservation, some Fifth-or Sixth-Amendment notion that you could measure what you would tell?**
>
> **Senator McCarthy: I don't take the Fifth or Sixth Amendment.**

Mr. Welch: Have you some private reservations when you take the oath that you will tell the whole truth that lets you be the judge of what you will testify to?

Senator McCarthy: The answer is there is no reservation about telling the whole truth.

Mr. Welch: Thank you, sir. Then tell us who delivered the document to you.

Senator McCarthy: The answer is no. You will not get that information. [180]

McCarthy was politically demolished after the televised hearings. He was subsequently censured by the Senate and wholly discredited. For the short remainder of his career on Capitol Hill, he was an obstructionist that no one took seriously. He was the only Senator to vote against confirmation of the Great William Brennan, Jr., to the United States Supreme Court. [181] In May, 1957 he died of cirrhosis of the liver due to his alcoholism.

That is the heart and soul of the modern day State Bar admissions process. The Bars make an unreasonably cumbersome inquiry into every single facet of an Applicant's life. Everyone has something that is mildly incriminating. Once the State Bar's ruthless investigative tactics find that minor and often immaterial fact, they then have discretion to deny admission. They will admit the Applicant if they like them, and deny admission if they don't. If admission is denied, it won't ostensibly be based on attitude, appearance or beliefs, but rather instead on the incriminating information unconstitutionally obtained. Substantively however, the true reason for the denial is that the admissions committee just doesn't like the person for some irrational reason.

The manner in which questions are phrased during a Bar admission interview can unavoidably result in tripping the Applicant up on the way they answer. Mildly incriminating responses are irrationally elevated by the Bar to support an inference that an Applicant lied or tried to conceal information. Socrates proved long ago, that just by questioning an individual, you can lead them to support any conclusion you desire, regardless of what the true facts are. That is the way the State Bar admissions process works, and that is the essence of McCarthyism. McCarthyism is discredited. The contemporary Bar admission process is a relic of the turbulent period known as the McCarthy era, as Justice Hugo Black correctly stated.

His testimony before Congress on national TV should serve as a good lesson to State Bars which predicate their admission process on tactics of McCarthyism. They use overbroad inquiries into personal matters to find small bits of derogatory information. Through manipulative questioning they overinflate the significance of such matters. And then of course, they exempt licensed attorneys and Judges from being required to provide the same type of information on a periodic basis.

The lesson for the State Bars from McCarthy's testimony is as follows. The same technique that State Bars use against Bar Applicants can ultimately be turned against the Bar inquisitors. No one is morally perfect. We all have our faults, flaws and weaknesses. Assessing another person's moral character, as the U.S. Supreme Court has stated is a "dangerous instrument." Dangerous instruments should not be used against Bar Applicants. Rather instead, the dangerous instrument of character assessment should only be used with respect to acts of conduct that shock the moral conscience.

Otherwise, there is no doubt that like Joseph McCarthy, the State Bars, and Judges who support the legal profession's anticompetitive goals, will find out, that what goes around, comes around.

NOTE: The presentation of most facts about Joe McCarthy's life herein is based on his biography: **Thomas C. Reeves**, *The Life and Times of Joe McCarthy* (Madison Books, Maryland, 1997).

17

SIX WARNING SIGNS OF A STATE BAR IN NEED OF AN ATTITUDE ADJUSTMENT

In addition, to the overall character assessment process which constitutes the bulk of this book, my research of the State Bar admissions process has identified six key warning signs that I believe indicate a State Bar is trying to wrest control of litigation outcomes from the Courts by subverting the adversarial process. Typically, the existence of these warning signs in a State Bar is indicative that the discretionary element of character assessment is probably being abused by the State Bar admissions committee. The prevalence of these warning signs tend to flourish during periods of political conservatism and dissipate during periods of liberalism. Each one of the warning signs represents a danger to the public interest, yet each one is unsurprisingly publicized for propaganda purposes by the State Bars as intended to promote the public interest. They each have the effect of either increasing State Bar control over the attorney's individuality and freedom, or decreasing the number of licensed attorneys in the marketplace. The warning signs to beware of within any state's legal profession are as follows:

1. **LAW STUDENT REGISTRATION** - The first early warning sign of a State Bar that needs to have its' power curbed is when it requires law students to be subjected to character assessment. This was described in several of the Bar Examiner articles previously discussed. The policy is designed to establish control over the student from the point they enter into the surreal world of the legal profession to ensure that the potential lawyer will adapt to the State Bar's group thought objectives. It is no doubt easier to maintain reins on a person's thought process, if control is established from inception.

2. **PROBATIONARY ADMISSION** – When a State Bar allows probationary admission, it does so to control how the person litigates by leveraging their law license. The concept is that by holding out the "carrot" of full admission, the "pseudo-attorney" will not take action adverse to economic interests of other attorneys. The obvious dilemma created is that it is unfair for that lawyer's client to be represented by an attorney on probation, when the opposing party has someone representing them whose law license is not hanging by a thread. The probationary attorney's clients are at a marked disadvantage compared to other litigants.

3. **HIGH APPLICATION FEES** – During the 1990s, many State Bars began raising admission fees to ridiculously inordinate levels in order to reduce competition amongst lawyers in their state. Some State Bars today charge as much as $ 1,000.00 just to file an application. When it costs roughly $ 150.00 to file an application to become a licensed CPA, and $ 1,000.00 to become a licensed attorney, the fee is irrefutably serving purposes beyond covering necessary costs. High application fees are designed to reduce competition in order to increase the cost of legal services to the general public.

4. **LAW PRACTICE MANAGEMENT PROGRAMS** – Ostensibly designed to provide free assistance to the licensed attorney regarding matters involved in running a law practice, these programs sponsored by the Bars are in truth intended to allow the State Bar to have their "finger in the pie" so to speak. It allows them to informally discover how lawyers conduct themselves. Primarily, these programs are an initial step towards further involvement by the State Bar in the lawyer's practice. Think of it. If all lawyers use and follow the advice of State Bar Lawyer Practice Management programs, then all lawyers will function in a uniform manner. Once again, the group rather than the individual dominates. Creative ingenuity and inventiveness is subjugated. Lawyers who don't function in accordance with the State Bar's advice are then ostracized by their peers, with the result that their clients inevitably suffer the consequences. The Courts will then predicate decisions not on the facts, evidence and law, but instead upon which party has counsel supporting State Bar doctrine. State Bar doctrine is obviously rooted in the economic interests of lawyers.

   In the 1990s, one of the areas of Law Practice Management that the State Bars concentrated on was malpractice insurance. Attorneys within a particular State are typically encouraged to use malpractice insurance companies endorsed by the Bar. This is a particularly worrisome warning sign, since a malpractice cause of action is normally accompanied by a breach of the rules of ethical conduct. By endorsing certain malpractice insurance companies, the State Bar's disciplinary function suffers from a conflict of interest. An incentive is created for the State Bar to treat lawyers who purchase malpractice coverage from Bar-Endorsed insurance companies more leniently in the context of discipline, compared to those attorneys who purchase coverage from other companies. In fact, since 1977 the Oregon State Bar has taken this concept to such a ridiculously egregious level that it has required Oregon attorneys to purchase malpractice coverage directly from the State Bar itself. Oregon lawyers who fail to do so have their law license suspended. The result is that judicial rulings in Oregon are predicated on State Bar financial interests and the disciplinary function is wholly illegitimated.

5. **LAWYER ASSISTANCE PROGRAMS** – These programs ostensibly designed to provide free assistance to lawyers suffering from emotional problems or substance abuse such as alcoholism or drug addiction, are in truth designed to involve the State Bar in the most personal aspects of the lawyer's life for the purpose of leveraging their professional conduct. Once the Bar identifies the lawyer's emotional and physical weaknesses, it has enormous leverage over that lawyer. Lawyer Assistance Programs are falsely promoted to members of the Bar, as being totally and completely confidential. As will be seen later in this book, that purported confidentiality has in many instances been breached. In fact published appellate opinions demonstrate that these programs are often used to obtain evidence against an attorney for use in a disciplinary proceeding against the attorney. I fervently believe that if a lawyer has an emotional or physical problem, by all means they should seek professional help. They are nothing short of a moron however, if they seek such help from any program sponsored by the State Bar that licenses them.

6. **STATE BAR RULES AND COURT RULES DESIGNED TO FRUSTRATE THE LAWYER'S FIRST AMENDMENT FREE SPEECH RIGHTS -**

   This last warning sign is the most serious. When the State Bar threatens the lawyer's First Amendment free speech rights by curbing the lawyer's ability to criticize the Judiciary, or the State Bar, the general public loses the assistance of those individuals who are most capable of protecting their constitutional freedoms. From the Bar's perspective, the concept is ideal. If the

lawyer speaks out against the Judiciary or State Bar, then simply revoke their law license. They are then no longer an economic threat to financial interests of the legal profession. Historically, all governments have attempted to trim the ability of their citizens to freely express opinions. The United States has been no exception. It is well known amongst historians that in this nation we have had three major congressional enactments that violated the First Amendment. Each one was given a name designed to create a false impression that anyone who violated the statute were sinister criminals. In fact however, all three congressional statutes, each of which ultimately fell by the wayside, covered a substantial amount of constitutionally protected speech that was of the most innocent and peaceful nature. In the late 1790s, the Alien and Sedition Acts were adopted by Congress. They were quickly condemned by James Madison and Thomas Jefferson. The so-called "Espionage Act of 1917," a statute possessing an obviously sinister title, was an enactment that made criticism of governmental policies a crime. It resulted in the successful prosecution of numerous pacifists. In one famous "Espionage" prosecution, *Masses Publishing Co. v. Patten*, the government asserted that publishing a cartoon labeled "Congress and Big Business" constituted espionage. The Smith Act of 1940 forbade teaching, advocating or abetting communistic doctrine. Similar issues pertaining to advocacy of communism and associations became a focal point in six major U.S. Supreme Court cases on State Bar admissions.

In the 1990s and into the early 21st century, the State Bar's modus operandi of curbing free speech rights of lawyers has focused on disingenuous State Bar notions of "civility," and "professionalism." The professed concept is that lawyers should be nice, civil and respectful to each other. Ostensibly, the notion is appealing. The problem occurs however, when passionately disagreeing with another lawyer, a State Bar or a Judge's viewpoint in a nonabusive manner; is falsely characterized as being uncivil or disrespectful. Many of the most egregious and unconstitutional appellate opinions on Bar admission have focused on irrational characterizations by Bar Committees that the Applicant has been disrespectful, uncivil, glib, facetious, sarcastic, or arrogant. Notions of "civility" and "professionalism" can be used as "dangerous instruments" by the Judiciary to subjugate attorneys with a strong sense of justice and true love for the interests of the general public. Enactment of rules mandating civility, cooperation and professionalism are the most serious warning signs that a State Bar is attempting to curb the ability of an attorney to provide zealous, passionate and brave representation to a client. Some of the State Bars have within the last decade gone so far as to ridiculously and falsely characterize criticism of the Judiciary as falling within the category of "conduct prejudicial to the administration of justice." Prohibitions or punishments in the form of professional regulation designed to subjugate the lawyer's free speech rights are a significant step towards a totalitarian legal profession. If lawyers can not exercise their own constitutional rights, there is no way they can protect the rights of their clients.

19

CAN THE JUDICIARY WITHSTAND SCRUTINY UNDER ITS' OWN STATE BAR ADMISSION STANDARDS?

The purpose of this section is to demonstrate that the manner in which the Judiciary functions and conducts itself cannot sustain scrutiny under the same standards it imposes upon State Bar Applicants. Generally speaking, a Bar Applicant's moral character is subjectively assessed in light of the following traits:

POSITIVE TRAITS	**NEGATIVE TRAITS**
1. Truthfulness	1. Nondisclosure
2. Candor	2. False Disclosure
3. Honesty	3. Misleading Disclosure
4. Complete Disclosure	4. Evasiveness
5. Good Attitude	5. Bad Attitude

The impact of the existence of any of the above traits is then subjectively assessed by the Bar Committee in terms of materiality. Ultimately, the definition of materiality is itself subject to varying interpretations. The manner in which materiality is defined will often be determinative as to whether admission is granted or denied.

In this section, I briefly analyze 30 subject areas of the law and subject Judicial conduct in these areas to scrutiny under State Bar Character Standards. For ease of reference, I use the acronym **SBCS** to delineate **STATE BAR CHARACTER STANDARDS**. I have selected subject areas in which the Judiciary and State Bars conduct themselves in a manner that would be determined to embody the NEGATIVE TRAITS listed above, if scrutinized in the same irrational manner as a Bar Applicant is assessed.

My goal in doing so is to demonstrate that the SBCS are applied one way to the Applicant, and another to the Judiciary and State Bars. Stated simply, I seek to prove the existence of a double standard. The point is that the Judiciary and State Bars can not meet their own standards of moral character. Since many (but not all) of the following judicial positions are concededly necessary to ensure efficient functioning of the Judiciary, the solution to balancing application and avoiding a hypocritical, double-standard would be a more lenient application of the SBCS to Bar Applicants. A process not predicated on arbitrary discretion, but rather upon objective criteria. The questions to reflect on when considering each subject are:

1. Is the Judiciary in the stated instance being totally candid, frank, truthful and completely disclosing all information?

2. Alternatively, is the Judiciary being misleading, evasive, or failing to disclose material information in a less than candid manner?

1. THE EXISTENCE OF DISSENTING JUDICIAL OPINIONS CAN NOT SUSTAIN SCRUTINY UNDER SBCS

It is impossible to reconcile the manner in which Dissenting judicial opinions make accusations against the majority and vice versa, with the standard of candor demanded in the admissions process. This concept is not unique to any one particular area of the law. The Dissent typically accuses the Majority of failing to disclose pertinent facts in a case, misinterpreting the law, failing to follow case precedent, and a wide host of other severe criticism. The Majority then does the same thing trying to discredit the Dissent. Nor is this concept unique to one particular category of courts. It applies equally to state appellate courts, state supreme courts, federal appellate courts, and even the U.S. Supreme Court.

To assess the impact of allegations made by the Dissent and the Majority against each other, reference to the SBCS is appropriate. Each time judges sitting on an appellate bench disagree with each other and accuse each other of nondisclosure, misstatements of law, misinterpretations of law or miscategorization of the materiality of a factor, one side must unavoidably be engaging in conduct that exemplifies the same type of "character flaw" that results in the denial of so many admissions. Since however, such disagreements are not only integral to the system, but beneficial to the development of law, basic logic mandates that the Judges should not be blamed for doing so.

Two possible fair solutions exist. One would be that the Bar Applicant's disclosure be afforded the same leniency as given appellate Judges writing opinions. The other would be to hold the Applicant to a slightly more stringent standard than appellate Judges, but to only make inquiry of the Applicant in those subject areas that further a compelling state interest. Obviously, inquiry should be made whether the Applicant has been convicted of a crime, and a false answer should be grounds for denial of admission.

There is little doubt that if the SBCS were applied to appellate opinions, there would be literally hundreds, and perhaps thousands of state and federal Judges that could not gain admission into a State Bar. Since it is logistically impossible for two diametrically opposed positions to be correct, every single time the Majority and Dissent disagreed on a particular issue, one of them would have to be deemed as stating a falsehood. Assuming their stated falsehood is not manifested by an "intent to deceive," it should be tolerated as merely an incorrect opinion. The assessment of one's truthfulness therefore, must be predicated on whether they had an "intent to deceive." To the extent that State Bars falsely conclude a nondisclosed or falsely disclosed matter absent an "intent to deceive" reflects poorly on character, they hypocritically adopt a double standard by failing to adopt a similar conclusion with respect to appellate Judges.

2. APPELLATE REVIEW OF TRIAL COURT DECISIONS CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS

The exact same theory germane to accusations in Dissenting and Majority appellate opinions is applicable to consideration of trial court decisions by appellate courts. Since both the trial court and the appellate court can not be correct if their positions are diametrically opposed, then application of the SBCS would require the conclusion that either the trial court or the appellate court has lied. For instance, the law can not simultaneously require that evidence is both admissible and inadmissible. It can not require that a particular motion should have been granted and also that it should not have been granted. Stated simply, the entire appellate review process does not sustain scrutiny under the SBCS.

3. LICENSED ATTORNEYS ARGUING MOTIONS CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS

The same theory applies to attorneys arguing motions. Applying the SBCS, since two attorneys having diametrically opposed positions cannot both be correct, one must be lying. One attorney is right and the other is wrong, so one must be stating the law falsely. Such uniform application of the SBCS between Applicants and licensed attorneys would mandate the conclusion that over 50% of all attorneys lack good moral character. As soon as an attorney lost a motion in any case, they would be labeled a liar.

4. ATTORNEYS AGREEING TO REPRESENT GUILTY CLIENTS CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS.

The matter can be carried even further. What about attorneys who agree to represent clients that they know are guilty? Applying the SBCS, isn't that attorney "misleading" the jury and Court by presenting facts in the light most favorable to their client? If the attorney doesn't do so, then hasn't that attorney lied by agreeing to represent the client to the best of their ability?

5. STATE BAR UNAUTHORIZED PRACTICE OF LAW PROHIBITIONS (UPL) CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS

UPL prohibitions are falsely propagandized by State Bars as intended to ensure that the public receives competent legal services. Even assuming arguendo, that their stated justification was genuine, the legitimacy of UPL prohibitions would still fail scrutiny under the SBCS, because the "competency" argument is undermined by the fact that every single motion contested by attorneys on opposing sides of a case results in one party losing. The SBCS would therefore mandate a conclusion that one attorney performed incompetently. You would be left with over 50% of the attorneys classified as incompetent, even though UPL prohibitions purportedly ensure competency. For UPL prohibitions to sustain scrutiny, they must be exempted from the character assessment applied to Bar Applicants.

6. CERTIFIED COURT TRANSCRIPTS CAN NOT SUSTAIN SCRUTINY UNDER SBCS

The SBCS encompasses a basic requirement that the Bar application must be "Complete and Accurate." The most miniscule errors or immaterial nondisclosures are often falsely construed by the State Bars as supporting an irrational conclusion that the Applicant was untruthful. Yet, certified court transcripts, purportedly "Complete and Accurate" are uniformly replete with minor errors and omissions. Attorneys typically only request transcript corrections for egregiously material false statements included in them.

7. COURT CALENDAR SETTING AND HEARING DATE ASSIGNMENTS CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS

Typically in most Courts, Hearings on minor motions and cases, or sometimes even sentencing are scheduled for a large group of cases at the same time. Often it is called "Motion Day," "Motion Call," "Trial Call," or "Traffic Court." The litigants or their attorneys receive a scheduled date and time for the Hearing. Sometimes two, ten, twenty or fifty cases are scheduled for the exact same day at the same time before the same Court. The Court's concept is that the litigants will be taken one at a time, and should just wait their turn. This often results in litigants waiting for hours or wasting an entire day. Such a policy is arguably unavoidable due to the high volume of cases. Nevertheless, it does not sustain scrutiny under the SBCS. Stated simply, since it is logistically impossible for the Court to hear more than one case at a time, the Court is "knowingly" disseminating false information to the litigants in the other cases. The Court is disseminating a written document that falsely states a Hearing will be at a specific time, when in fact the Court possesses knowledge rendering such an impossibility. Unlike prior issues discussed, in this instance, the Court's false statement is made knowingly, since the Court is fully aware that all litigants cannot possibly be heard simultaneously. Does the Court lack "good moral character?"

8. CHARACTER EVIDENCE NOT ADMISSIBLE AT TRIAL, BUT IS ADMISSIBLE AT A BAR HEARING

The Federal Rules of Evidence and most State Rules of Evidence contain a provision excluding character evidence from admissibility in criminal cases. The concept is that a Defendant should be adjudged guilty or not guilty based on the particular facts of their case, rather than their character. To give an example, if a person is prosecuted for robbery, the Court should not admit evidence that the Defendant is a nasty person. Nastiness is a character trait unrelated to the issue of whether the Defendant committed robbery. The intent of the rule is to avoid having the jury convict the person of robbery, just because they believe the person is nasty.

The Bar admission character review process is totally predicated on character, and therefore character evidence is not only admissible, but considered to be the most significant evidence of all. The issue is whether all character evidence should be admissible or just character evidence related to a person's ability to practice law. How do you determine what is "related to the practice of law?" Doesn't consideration of character evidence related to an individual's personality in the admissions process suffer from the same infirmity as in the context of a criminal prosecution? Should individuals be denied admission because they are nasty? Smart-alecky? Glib? Facetious? Pompous? Arrogant? If arrogance and pompous nature constitute valid grounds for denying admission, there are a whole lot of Judges who lack good moral character. But then again, I'm glib, facetious and smart-alecky.

9. JUDICIAL STANDARD FOR INEFFECTIVE ASSISTANCE OF COUNSEL and "HARMLESS ERROR" DOES NOT SUSTAIN SCRUTINY UNDER THE SBCS

A criminal defendant can have their conviction overturned if they receive ineffective assistance of counsel. That is a basic rule of law, but the standard for establishing ineffective assistance of counsel is virtually impossible to meet. The defendant must demonstrate that the counsel they received was not only ineffective, but also that it caused "reversible error." Ineffective assistance that does not rise to such a level merely constitutes what is known as "harmless error." Two very straightforward examples are as follows.

If counsel for a defendant fails to do any investigation, fails to cross examine any prosecution witnesses, fails to call any witnesses on behalf of the defendant and fails to allow the defendant to testify on his own behalf even though the defendant insists on doing so, chances are that will constitute "reversible error." Conversely, if defense counsel cross-examines most prosecution witnesses, but does not cross-examine one particular witness, chances are it is "harmless error." The above examples are extreme. Most cases fall in between.

The tendency in recent years has been to conclude that most allegations of ineffective assistance of counsel constitute harmless error. Conversely, in Bar admission proceedings, virtually all errors made by the Applicant are determined to justify denial of admission (reversible error), while material errors committed by the Bar committees are determined to be harmless in nature. Essentially, the concept is that rules are applied strictly to the Applicant, but leniently to the Bar. The ineffective assistance of counsel claim similarly results in a strict standard applied to the defendant, and a lenient standard applied to the lawyer.

Two points are certain. First, if defense counsel were subject to the same standard of "reversible error" that the Bar Applicant is subjected to, virtually every single criminal defendant represented by a public defender would have their conviction overturned. Second, if every Bar Applicant were subject to the same standard of "harmless error" that defense counsel currently enjoys the benefit of, there probably wouldn't be a single person denied admission to the Bar.

10. STANDARD FOR JUDICIAL DISQUALIFICATION DOES NOT SUSTAIN SCRUTINY UNDER THE SBCS

Similar to the ineffective assistance of counsel claim, a litigant is purportedly entitled to Disqualify a Judge, if the Judge has an actual bias against the litigant, or even if the Judge merely appears to have a bias against the litigant. The concept is that since a litigant is entitled to a fair trial, that right is only secured if the trial is presided over by a fair and impartial Judge. The letter of the law on this issue, as a matter of form, phrases this constitutional right in a very strong manner. Many appellate opinions give the impression to the reader, that litigants may Disqualify a Judge if there is even the slightest inkling that the Judge may not be impartial. As a matter of substance however, those judicial opinions are "misleading" and "fail to disclose" the true nature of the Motion to Disqualify. The fact is that a Motion to Disqualify is granted in only rare instances. Instead, the mere filing of such a motion, typically functions to anger the irrational, hyper-emotional sensitivities of a Judge. This then causes the litigant to lose their case. The Motion to Disqualify is substantively viewed by the Judiciary in a manner similar to the English Star Chamber notion that one should not file legal documents which offend the crown.

Two points are applicable to assessing the Motion for Disqualification in light of SBCS. First, as stated previously the case law gives the reader a false and misleading impression that cuts directly into the integrity of the judiciary. Second, is the fact that if the accused Judge were held to the same

standard of character faced by the Bar Applicant, the number of Motions to Disqualify that would be granted, would be dramatically increased. Once again, the Judge enjoys a lenient standard, while the Bar Applicant is subjected to an irrationally strict standard. This occurs for the purpose of fostering the economic interests of the legal profession by ensuring that attorneys will be supportive of their Bar rather than their clients, and that the number of attorneys does not exceed that which fosters maximization of legal fees.

11. STATE BAR CONTROL OF THE APPLICANT AND THEREFORE THE LAWYER'S ATTITUDE, LIFESTYLE AND PERSONALITY

The cases discussed later herein will demonstrate that a major purpose of the admissions process is to provide the State Bars with power to control the Applicant's attitude, lifestyle and personality. The cases are replete with admission denials predicated on the Bar's false and irrational determinations that particular Applicants should be rejected because they are glib, facetious, arrogant, or like to go out and party to much. The Bars seek to convey a message that the lawyer not only within the context of their legal practice, but throughout all aspects of their life should conduct themselves as conservative conformists deferring to the status quo.

The Bars have absolute power over the lawyer's ability to earn a living. Through the admissions and disciplinary process they can deny a qualified individual the ability to earn a living practicing law. By leveraging the Applicant's ability to earn a living, the Bars ultimately control the lawyer. They control the lawyer in ways extending far beyond ethical concerns that function as a direct, infringement on the lawyer's constitutional rights. Once the Bar's plot succeeds, (as it already has for the most part), they control litigation outcomes through their power to control the conduct of the lawyers involved. The premise is as follows:

> Control a man's ability to feed his family and you control the man. Control the man's attitude, personality and lifestyle, and you control everything the man does. Since the lawyer's primary function is litigation, then controlling his ability to earn a living allows you to control the manner in which he litigates. Control the manner in which he litigates, and you essentially control litigation outcomes. All other branches of government are then largely nullified and the adversarial process obliterated in favor of State Bar control. Juries are no longer the decision makers, as the outcomes are predetermined by State Bar politics.

12. SBCS DIMINISHES PUBLIC CONFIDENCE IN THE LEGAL SYSTEM DUE TO THE ABSENCE OF CLEARLY, DEFINED CRITERIA THAT RESULTS IN ARBITRARY CHARACTER ASSESSMENTS

The oblique standard for assessing an Applicant is whether they have "good moral character." What constitutes "good moral character" is a theoretical concept that has never been clearly defined. It incorporates social mores, beliefs, philosophy, politics and countless other ambiguous subject areas. As such, the standard has been criticized by the U.S. Supreme Court as follows:

> *"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 views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law."***

Konigsberg v. State Bar of California, 353 U.S. 252 (1957)

It is the manner in which the State Bars have consistently failed to heed the warning of the U.S. Supreme Court in Konigsberg, by engaging in the arbitrary and discriminatory denial of the right to practice law, that forms the heart and soul of this author's criticisms. The result is an unavoidable dimininution of public confidence in the legal system. The Bars have essentially exempted themselves from the constitution. Courts regularly conclude that legislative enactments are unconstitutional on the ground they are vague and ambiguous, but admissions requirements are exempted. Arbitrary and capricious decisions by executive department agencies are regularly overturned, but State Bars enjoy inordinate discretion to render the same types of arbitrary decisions. Due process requirements imposed upon other professional licensing agencies are held by the Courts as inapplicable to the State Bars since the deference given to the Bars, escapes the constitutional restraints imposed on non-lawyer agencies. The State Supreme Courts which have furthered the State Bar's quest for political and economic domination have realistically adopted in substance, the following position:

> "We, the Judiciary Branch will ensure that Due Process concerns are complied with for Non-Judicial agencies. We will ensure that the First Amendment is complied with by Non-Judicial governmental officials. We will ensure that the Constitution is complied with by Non-Judicial Agencies. However, since we alone have the sole right to interpret the law, we have determined that many of these constitutional restraints are inapplicable to our own agencies."

13. MIRANDA APPLIES TO POLICE, BUT NOT JUDGES

Under the historic U.S. Supreme Court case, *Miranda v. Arizona,* 384 U.S. 436 (1966) a judicially created doctrine was implemented that required police officers to read certain criminal suspects their rights. The reading of the "rights" includes informing the person that they have the right to remain silent. This is fairly common knowledge throughout the nation and can be seen on countless television shows. The citizen's right to remain silent is incorporated within the Fifth Amendment to the Constitution. Incorporated within the Fourteenth Amendment is the right to a fair and impartial trial. As discussed previously, litigants including most particularly, criminal defendants purportedly have a right to disqualify a Judge based on the existence or appearance of bias.

It is remarkable that police officers who should not be expected to have knowledge of the law equivalent to a Judge, are required to inform suspects of their Fifth Amendment right to remain silent, but Judges are not required to inform litigants of their right to move for judicial disqualification.

The right to move for judicial disqualification is a constitutional right of at least equal importance to the right to remain silent. Infractions by police officers of the right to remain silent can be quickly remedied by the trial court's exclusion of evidence illegally obtained. However, infractions by Judges against the right to a fair trial before an impartial Judge are tougher to remedy. An appeal that may take years is normally required. Once again, the Judiciary applies an often impracticable requirement on Non-Judicial officials (i.e. police officers), but is not willing to hold themselves to the same stringent standard.

The obvious rebuttal to my position, is that if such were required, virtually every single criminal defendant would move for judicial disqualification. My response is simply that if the defendant does not have adequate grounds, the motion would just be denied. Quick and easy. The litigants should be informed of the existence of the constitutional right however. Currently, very few litigants are even aware of the "purported" constitutional right to move for judicial disqualification. The Court's failure to openly disclose the existence of the right is a large reason. It is a right in form, but not in substance.

14. RACIAL PROFILING IS A BIGGER PROBLEM IN THE STATE BAR THAN THE POLICE FORCE

A great deal of attention has been given by the media to the issue of racial profiling by police. It is predicated largely on police traffic stops based on the race of a car's occupants. While the concerns appear to be well warranted, they pale in comparison to the racial profiling engaged in by State Bars. The entire admissions process as demonstrated by the NCBE Bar Examiner articles discussed previously, has been predicated on keeping racial minorities out of the profession. The ambiguous and vague "good moral character" requirement implemented without clearly, defined criteria has allowed continued attainment of State Bar prejudicial goals. It is a clear and irrefutable example of racial profiling in the worst manner imaginable. It affects the justice system more detrimentally than police racial profiling. The Bar admissions process is the portal to the gates of justice. Exclude minorities from the profession and you exclude their ability to vindicate their constitutional rights and receive competent representation. The anticompetitive State Bar attorneys additionally succeed in maximizing legal fees by such tactics. A lower supply of lawyers to fill an ever-increasing demand, results in higher costs to satisfy that demand, at the expense of a fair justice system for minorities.

15. JUDICIAL ELECTIONS CAN NOT SUSTAIN SCRUTINY UNDER SBCS

In the State of Oregon, like many but not all other States, Judges as a matter of form are elected by the public. As a matter of substance, they are not. What typically happens is as follows. There is an unwritten understanding that when a Judge is ready to retire, they will resign shortly prior to conclusion of their six-year term. The open slot is then filled by an appointed Judge. Once the new Judge is seated, they become the incumbent at election time. Incumbent Judges typically run unopposed and rarely lose if they are opposed. What has occurred as a matter of substance, can be summarized as follows.

The process of Judicial elections intended to allow the public to select their Judges has been surreptitiously circumvented by the Judiciary, to consolidate their power, by allowing selection of Judges to rest amongst the attorneys, rather than the public. The unwritten policy, which is quietly supported by attorneys and Judges, flies directly into the face of the SBCS, which purportedly requires Judges to not be misleading, evasive or to circumvent the law. The Oregon Judiciary has effectively excluded itself from the moral character standard it ostensibly promotes. It accomplished this by taking control of the elective process. They "mislead" the public into believing Judges are elected, when as a matter of substance, they really are not.

16. THE *MARBURY V. MADISON* JUDICIAL POWER GRAB CAN NOT SUSTAIN SCRUTINY UNDER THE SBCS

It is the most significant case in American legal history and was decided in 1803 by the most famous U.S. Supreme Court Justice ever, John Marshall. *Marbury v. Madison*, 1 Cranch (5 U.S.) 137 (1803) established many important constitutional principles, the most significant of which was the premise that the power to interpret the law rests solely and exclusively with the Judiciary.

Discussion of *Marbury*, could encompass an entire book by itself. I address only a few points briefly and provide an abbreviated summary of the facts. In the early years of the first decade of the nineteenth century, our nation was on the brink of civil war. The presidential election of 1800, events preceding it and events immediately following it were the cause. The two political parties at that time were the Federalists and the Republicans. The Federalist Party was arguably the forerunner to the Republican Party as we know it today, and the Republican Party at that time was arguably the forerunner to the Democrat Party as we know it today. Sounds weird, I know, but that's the way it was.

The Federalists had dominated national politics since 1789 when the Constitution was adopted with George Washington serving two terms as President and John Adams one. President John Adams was a Federalist, but his Vice-President, Thomas Jefferson was the founder of the Republican Party. In later years, the election system was redesigned to preclude a President and Vice-President from being in opposing political parties. In 1800, Jefferson and Adams were running against each other. Aaron Burr, who years later would be tried for treason in a trial presided over by John Marshall was also a presidential candidate. Without addressing all the details, the election was extremely acrimonious even though years before, Jefferson and Adams had been very close friends, and in subsequent years would mend fences. At this time however, they were political enemies. In the election, Adams finished in third place. Burr and Jefferson, tied with 73 votes. The determination of who would be President and who would be Vice-President was therefore thrown to the House of Representatives. Republicans in the House voted straight down the line for Jefferson and Federalists voted straight down the line for Burr. After thirty-five ballots, there was still no winner. On the thirty-sixth ballot, Congressman James A. Bayard who was the sole representative of Delaware, changed his vote to an abstention which resulted in Jefferson's election.

Adams, in any event, was a clear loser having finished third. John Marshall was the Secretary of State in Adams' administration. Adams was bitter about his loss and was still the existing President until Jefferson's inauguration. Marshall was a Federalist. Jefferson and Marshall detested each other. Interestingly, they were second cousins, both tracing their maternal descent to the powerful Virginia Randolphs. Marshall's mother-in-law, Rebecca Ambler had been Jefferson's first fiancee and there is suggestion that she spoke regularly about Jefferson being untrustworthy. Jefferson on the other hand, thought Marshall was a hypocrite.

In an attempt to maintain Federalist control of the U.S. Supreme Court, President Adams nominated John Marshall to the post of Chief Justice. On March 2, 1801 two days before his Presidential term expired, President Adams nominated forty-two people to the office of Justice of the Peace. They were immediately confirmed by the lame-duck Federalist Congress and Adams immediately signed the commissions. They have come to be known historically as "the midnight judges." The commissions were never delivered however, and President Jefferson when he took office found them lying on a table in the State Department.

The individual vested with the responsibility to deliver the commissions, and who was remiss in doing so, was none other than the Secretary of State, John Marshall who by this time was Chief Justice of the U.S. Supreme Court. The reason the commissions were not delivered has never been fully explained. In any event, once Marshall vacated the office of Secretary of State that duty fell upon the new Secretary, James Madison who was appointed by Jefferson.

Madison at Jefferson's behest refused to deliver some of the commissions, including that of a man named Marbury. The new Republican Congress at this time was attempting to secure repeal of the Judiciary Act of 1801 that allowed for the appointments, and the remaining Federalists were opposing repeal. The Federalists wanted the constitutionality of the Act to be determined by the U.S. Supreme Court, since that Court was controlled by the Federalist John Marshall. It is easy to see the whole thing wreaks of politics.

The Supreme Court issued an Order to Show Cause to James Madison, the Secretary of State. The Supreme Court at this time was by far the weakest of the three branches of government. Madison simply ignored the Court's order and didn't respond. The Court set a hearing. Madison under the direction of Jefferson did not appear, did not file a brief, and just flatly ignored the whole matter. Jefferson was essentially slapping Marshall's ego in the face, by completely ignoring the Court's authority. The legal issue facing the Court was the constitutionality of the Judiciary Act of 1801, which allowed for the appointment of Marbury. Jefferson, a Republican President supported by a Republican Congress knew that even if Marshall declared the Act constitutional, and the commissions valid, Marshall had absolutely no way to enforce the decree. A Federalist Supreme Court going up against a popular Republican President, supported by a Republican Congress would not stand a chance.

What Marshall did, has gone down in history as one of the most brilliant political coups ever. Certainly, the most successful seizure of power that ever occurred in this nation. Marshall gave Jefferson the small win, but took a much bigger win. Writing on behalf of the Court, he held that Marbury was not entitled to his commission and that the Judiciary Act of 1801 was unconstitutional. That seemed to be a win for Jefferson who didn't even appear in the proceeding. Marshall did so however, on the ground that the U.S. Supreme Court had **sole authority to determine the constitutionality of a legislative statute.**

At the time, Jefferson didn't give Marshall's opinion a second thought. From his perspective, whatever Marshall did was meaningless, because Jefferson had the power. It would not be until years later that the impact of Marshall's opinion in *Marbury v. Madison* would be felt. He had seized a huge chunk of political power for the Judiciary. The power to interpret law is the power to say what the law is. The power to define it in a manner not intended by the Legislature. The power to nullify it. In fact, the power to interpret law, is immensely greater than the power to enact law.

Now, for the reason I present this historic case herein. **First, the most historic case affecting judicial power in this nation was an opinion written by a Judge who should have disqualified himself from hearing the case. Marshall was personally involved in the events. He had been the Secretary of State with the responsibility to deliver the commissions. He was the one who had initially failed to do so.** If Marshall had held the commissions to be valid, then he would be blamed for their non-delivery. By holding the commissions invalid, Marshall vindicated his own personal position. Second, the politics between the Federalists and Republicans diminished the legitimacy of the opinion. Third, the power to interpret law can be used in the same manner as the power to interpret "good moral character" with respect to State Bar admissions. Essentially, it means whatever the Court says it means at any given point in time. Fourth, one branch of government should never be allowed to seize a huge block of power for itself.

The basic predicates of law established in *Marbury v. Madison* could never withstand scrutiny under the SBCS. Marshall did not adequately disclose his own involvement in the case while functioning as Secretary of State. The failure of the Court to fully disclose its own political interest in the case was "misleading" and "evasive." Applying the SBCS, one must unavoidably conclude the U.S. Supreme Court was untruthful in their presentation for the purpose of increasing their own power. **Take note that I am not asserting the U.S. Supreme Court was untruthful in its presentation of the case. Rather instead, I am asserting that if the State Bar admissions process criteria (SBCS) was applied to the U.S. Supreme Court, that is the conclusion that would be reached.**

Having criticized the manner in which the judicial cornerstone of *Marbury v. Madison* was adopted, it is important to point out that I do not disagree with its ultimate holding. My concern is with the facts surrounding adoption of the opinion. In large part, I agree with the final conclusion, although not totally. I fervently believe the Judiciary is vested with the primary responsibility for determining the constitutionality of a statute. It is best suited to do so, because vesting the Judiciary with this power, keeps Legislatures which frequently adopt crazy and irrational laws, in a position of checked power. If the Judiciary does not determine a statute's constitutionality, then realistically who can? The Legislature? Definitely, not a good idea for obvious reasons. The Governor or President, depending on whether the issue is federal or state law? Once again, definitely not a good idea, since no one person should have that much power.

The Judiciary is best suited to determine a statute's constitutionality, and in fact I believe it has substantially **underutilized** this authority. There are so many ridiculous and unconstitutional statutes floating around, it is unbelievable. The fact that I believe the Judiciary should be vested with the power to declare statutes unconstitutional, does not conflict with my position above. It is when the Judiciary carves out the sole, and not merely the primary responsibility for "interpreting," valid, constitutional statutes that I believe the greater problem arises. **The Judiciary over-utilizes its limited authority to "interpret," valid statutes by turning them into something those statutes are not. Then they become in essence, super-legislatures. Conversely, the Judiciary under-utilizes its' power to declare unconstitutional, those statutes which are irrational, and should do so more often.**

17. AWOPs EQUAL JUDGE SLOP AND CAN NOT SUSTAIN SCRUTINY UNDER SBCS

They're known amongst lawyers as AWOPs, which stands for "Affirmed Without Opinion." A litigant in a civil or criminal case appeals a trial court judgment and the appellate court affirms, but without an opinion. The concept of AWOPs fails scrutiny under the SBCS, because by failing to publish the basic facts of a case, and the reasoning supporting its' conclusion, the Court is "evasive." It is "evasive" by attempting to escape presentation of the contested issue, for the purpose of "concealing" from the public the grounds supporting the litigant's attack upon the trial court's judgment. They are "misleading," because they convey the impression that the litigant's position is completely without merit or legal basis, when in fact AWOPs are often rendered in cases where the litigant has raised valid points. AWOPs are typical in cases involving intellectual attacks upon the legal profession's competency, such as ineffective assistance of counsel, judicial disqualification, evidence tampering, contempt, State Bar power, the unauthorized practice of law, and yes of course, State Bar admissions. Sometimes, AWOPs are even issued in cases that have received a great deal of attention at the trial court level by the media. AWOPs in those instances are the most suspect, as the media and general public have already expressed an interest in the legal issues involved.

18. TOTAL INDEPENDENCE EQUALS BEING ALONE

How many parents have a teenage child that says they are old enough to be independent? A few days later, the kid asks for money? Parents know, that for the kid to be independent, they have to be earning a living. The phrase typically goes, "So long as you're living in my house, you'll abide by our rules."

The Judiciary is designated under our constitution as a branch of government independent from the Legislative and Executive branches. What does that mean though? Does the term "independent," mean "totally independent," or "independent within reasonable constraints," or "more independent than the other branches, but not completely independent?" This issue is constantly disputed, and no one really has a final, definitive answer. The conclusion in this author's belief must lie in reason and rationality. Total independence must immediately be ruled out. The teenage kid analogy takes care of that immediately. If the Judiciary is totally independent, then let them find some other way to pay judicial salaries and run the courts, instead of asking Legislators for funding. By the same token, it must be accepted that the Judiciary is more independent than the other branches, because the term is not applied to the other branches. The mere presence of the term must have some meaning, or it would not have been included in the Constitution. By the same token, reasonable restraints must apply to the notion of independence, or otherwise the government would be condoning irrationality.

If the foregoing premises seem acceptable with respect to independence, how do they apply to the licensing requirement of filing a "complete and accurate" application. Shouldn't the phrase "complete and accurate" be construed in a reasonable manner, so the Applicant is not penalized for immaterial nondisclosures? Shouldn't the concept of "materiality" be defined in a reasonable manner, rather than encompassing minor nondisclosures based on the false assertion that disclosure may have led to the discovery of other negative information? Shouldn't the phrase "good moral character" given its possible use as a "dangerous instrument" be construed in a reasonable manner that minimizes such potential ? No one is totally independent. Independence must be construed in reasonable, limited terms. Otherwise, the Judiciary stands alone, from the rest of the nation. Similarly, admission standards must be applied to the Applicant in a reasonable manner.

19. THE INFAMOUS STAR CHAMBER AND THE STATE BAR ADMISSION PROCESS

It is often cited by Pro Se litigants who are angry with the unfair treatment they receive from courts, prosecutors or the police. It has become a worldwide symbol of what a justice system should not be. Most citizens have heard of it, and perhaps even used the phrase on occasion, but few know what it really was. It was called the "Star Chamber." And it personifies the State Bar licensing process. The character review utilizes the inquisitorial method, by obtaining evidence directly from the Applicant to impugn his own moral character. Essentially, the concept is to place the Applicant in a position where they testify against themselves. Refusal to provide the requested information constitutes grounds for denial of admission. The English Star Chamber has been described by the U.S. Supreme Court in several cases, which the reader should consider when reading Bar admission cases of the various states. The following are notable quotes from the U.S. Supreme Court on the Star Chamber.

A. FARETTA V. CALIFORNIA, 422 U.S. 806 (1975)

"In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber. That curious institution, which flourished in the late 16th and early 17th centuries, was of mixed executive and Judicial character, and characteristically departed from common law traditions. For those reasons, and because it specialized in trying "political" offenses, the Star Chamber has, for centuries, symbolized disregard of basic individual rights. The Star Chamber not merely allowed, but required, defendants to have counsel. **The defendant's answer to an indictment was not accepted unless it was signed by counsel. When counsel refused to sign the answer, for whatever reason, the defendant was considered to have confessed.**

. . .

The Star Chamber was swept away in 1641 by the revolutionary fervor of the Long Parliament. The notion of obligatory counsel disappeared with it.

By the common law of that time, it was not representation by counsel, but self-representation, that was the practice in prosecutions for serious crime. At one time, every litigant was required to "appear before the court in his own person and conduct his own cause in his own words. While a right to counsel developed early in civil cases and in cases of misdemeanor, a prohibition against the assistance of counsel continued for centuries in prosecutions for felony or treason. Thus, in the 16th and 17th centuries, the accused felon or traitor stood alone, with neither counsel nor the benefit of other rights—to notice, confrontation and compulsory process—that we now associate with a genuinely fair adversary proceeding."

. . .

"The proceedings before the Star Chamber began by a Bill "engrossed in parchment and filed with the clerk of the court." It must, like the other pleadings, be signed by counsel. . . . However, **counsel were obligated to be careful what they signed.** If they put their hands to merely frivolous pleas, or otherwise misbehaved themselves in the conduct of their cases, they were liable to rebuke, suspension, a fine, or imprisonment. . . . **Counsel, therefore, had to be cautious that any pleadings they signed would not unduly offend the Crown.**"

. . .

"Star Chamber defendants were not only allowed counsel, but were required to get their answers signed by counsel. The effect of this rule, and probably its object, was that no defence could be put before the Court which counsel would not take the responsibility of signing—a responsibility which, at that time, was extremely serious."

B. MICHIGAN V. TUCKER, 417 U.S. 433 (1974)

"The privilege against compulsory self-incrimination was developed by painful opposition to a course of ecclesiastical inquisitions and Star Chamber proceedings occurring several centuries ago. . . .**Certainly anyone who reads accounts of those investigations, which placed a premium on compelling subjects of the investigation to admit guilt from their own lips, cannot help but be sensitive to the Framers'desire to protect citizens against such compulsion**."

. . .

"The Court has thought the privilege necessary to prevent any "recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality."

C. JENKINS V. MCKEITHEN, 395 U.S. 411 (1969)

"The statutory requirement that the Commission "shall base its findings and reports only upon evidence and testimony given at public hearings . . . is plainly designed to protect witnesses and persons under investigation from what some members of the Court have criticized as secret inquisitions or Star Chamber proceedings."

D. IN RE GAULT, 387 U.S. 1 (1967)

"We are warned that the system must not "degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and moral on indigent people."

E. PIERSON V. RAY, 386 U.S. 547 (1967)

"Historically, judicial immunity was a corollary to that theory. Since the King could do no wrong, the judges, his delegates for dispensing justice, "ought not to be drawn into question for any supposed corruption <for this tends> to the slander of the justice of the King."

F. ANONYMOUS NOS. 6 AND 7 V. BAKER, 360 U.S. 287 (1959)

"In fact, it was Star Chamber judges who helped to make closed-door court proceedings so obnoxious in this country that the Bill of Rights guarantees public trials and the assistance of counsel. And secretly compelled testimony **does not lose its highly dangerous potentialities merely because it represents only a "preliminary inquisition. . . . whereby the court is given information that may move it to other acts thereafter."**

G. HANNAH V. LARCHE, 363 U.S. 420 (1960)

"Secret inquisitions are dangerous things justly feared by free men everywhere. They are the breeding place for arbitrary misuse of official power. They are often the beginning of tyranny . . . . Modern as well as ancient history bears witness that both innocent and guilty have been **seized by officers of the state and whisked away for secret interrogation** or worse until the groundwork has been securely laid for their inevitable conviction."

H. IN RE OLIVER, 333 U.S. 257 (1948)

"The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. . . . Jeremy Bentham over 120 years ago to appreciate the fear of secret trials felt by him, his predecessors and contemporaries . . . said :

> **". . . suppose the proceedings to be completely secret, and the court, on the occasion, to consist of no more than a single judge—that judge will be at once indolent and arbitrary; . . . Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account**. Recordation, appeal, whatever other institutions might present themselves in the character of checks, **would be found to operate rather as cloaks** than checks ; as cloaks in reality, as checks only in appearances."

20. JUDICIARY FEIGNS WEAKNESS TO GAIN POWER

It is an age-old power ploy. Feign weakness, for the purpose of accumulating power. Those in control of the Judiciary and particularly the State Bars, do so by falsely asserting they are the weakest branch of government, whenever their authority in a particular area is disputed. It is nothing more than a diabolical, brilliant trick that obviously fails scrutiny under the SBCS. You could not possibly have a situation where the State Bars are more misleading, than those instances where they feign weakness. They are anything but weak. They are fearsomely powerful.

21. THE NEED TO PROTECT CITIZENS FROM MOB RULE

Mob rule is irrational rule resting on emotions of the moment. The public mob that lynches an innocent person is the most obvious example. A street gang mugging a couple is another. Ten police officers beating a suspect. Mob rule is unacceptable as being obnoxiously in violation of the rule of law, and basic principles of justice and fairness. Similarly, the public needs to be protected from a State Bar predicated on functioning cohesively as a group unit (mob rule) in furtherance of economic goals, by subjecting Nonattorneys to unreasonable UPL prohibitions and irrational Bar admission standards.

22. *STATE OF OREGON V. BALFOUR*, 311 Or. 434 (1991)

State of Oregon v. Balfour, 311 Or. 434 (1991), is a case addressing the ethical responsibilities of an Oregon attorney when a criminal defendant wants to raise issues on appeal that the attorney believes are frivolous. The Oregon Supreme Court in rendering its' opinion made an unprecedented, and incredible statement about U.S. Supreme Court opinions addressing the issue. The Oregon Supreme Court wrote:

> "Thus, **we are neither bound** nor relieved of our own duty in the matter **by the United States Supreme Court's prior estimations** of the proper ethical course of action for an appointed attorney who concludes that only frivolous issues exist for appeal."

Several points strike me with respect to the foregoing that I raise as questions. First, to the extent an appointed attorney concludes only frivolous issues exist for appeal, and thereby refuses to raise those issues, can a correlation be drawn with the Star Chamber tactic of not filing pleadings that may offend the crown? Second, if the Oregon Supreme Court through the use of irrational logic can exempt itself from complying with U.S. Supreme Court opinions, then why should the Oregon Court of Appeals consider itself as bound by State Supreme Court decisions, or Oregon trial judges consider themselves bound by Court of Appeals decisions, or citizens consider themselves bound by trial court orders? Isn't the Oregon Supreme Court's statement an abandonment of the rule of law? How can that same State Supreme Court rationally stress the importance of the rule of law, if it is not willing to be bound by the law itself? Isn't the Oregon Supreme Court committing the precise immoral act condemned by State Bars in admission proceedings of "evading" the law by writing an opinion that utilizes "misleading" logic to convey a false impression, that it has a power which it lacks? Isn't it "failing to disclose" that it is irrefutable the Oregon Supreme Court is bound by U.S. Supreme Court opinions? The answers to these questions, I believe are obvious. The foregoing statement in *Balfour* can not sustain scrutiny under SBCS.

23. JUDICIARY'S INFILTRATION OF LEGISLATIVE BRANCH CAN NOT SUSTAIN SCRUTINY UNDER SBCS

The Judiciary and State Bars consistently assert they are a "totally independent" branch of government, rather than construing independence reasonably. Attorneys are licensed by State Bars, and the Bar is an agency of the Judiciary. Yet, attorneys are regularly elected to Legislative positions and even the Presidency. When an attorney is elected to a Legislative post, the Judiciary gains power. It already has full control of its own branch. When an attorney is elected to the Legislature, a member of the Judiciary (i.e. that attorney), exercises control within the Legislature. What happened to the "total independence notion?" It does not seem to apply when the Judiciary seeks to exercise control over other branches.

To the extent the Judiciary claims "total independence," while simultaneously promoting the election of attorneys to Legislative and Executive positions, its' claim is disingenuous and misleading. The State Bars "fail to disclose" their self-interest in exercising control over other branches of government. In doing so, they "evade" the essence of our government which mandates a separation of powers. The Judiciary has full control over its own branch. To the extent, it infiltrates other branches, it obtains partial control and substantial influence of another. If 40% of Legislators are attorneys, then the Judiciary through its licensing power has control over 40% of the Legislators. It then has control over not only the interpretation of law, but also its' enactment.

24. THE GAMES JUDGES PLAY CAN NOT SUSTAIN SCRUTINY UNDER SBCS

Judges play many, many games that are not within the realm of fair play. Political head games with litigants and lawyers predicated on judicial trickery and deception. None could possibly sustain scrutiny if subjected to SBCS assessment, as they are characterized by evasiveness, misleading conduct and a lack of full disclosure about what the Judge is really seeking to achieve. Here are a few examples:

a. **Intentional Delay in Ruling on Motions or Appeals** - Litigants typically must file certain motions or responses or pleadings within set time frames, but no fixed time limits are imposed on Judges to render a ruling. This includes both State and Federal Courts of Appeals, and even the U.S. Supreme Court. Often, Judges will delay rendering a ruling, even though they know what the law mandates, simply to see what the litigants will do in the interim. They want to determine if either litigant will engage in conduct, that will convince the Judge to issue a different decision than the law demands. Litigant conduct may cause the Judge to not like a litigant's attitude, which then improperly forms the basis for a judicial decision.

b. **Hearing Postponements** – Judicial rulings on requests for postponements are often predicated on the Judge's perception of litigant or attorney attitudes. Factors influencing judicial strategy may play a key role, rather than basing the postponement decision on what the law demands. Often the granting of a postponement is intended by the Court to delay an appeal, or wear down a litigant financially and emotionally, if the Judge wants them to lose. Judges also grant postponements sometimes to avoid ruling because the Judge knows the party he dislikes is correct as a matter of law.

c. The Judicial Pocket Veto - Often the Judge will rule on a motion, but delay entering the Order into the court docket or signing the Order, or fail to send a copy of the Order to a Party. They may do so in an attempt to deprive a party of notice. They also may be trying to trick a party into committing a contempt so that party will have to expend resources defending themselves against a meritless contempt charge. Obviously, one cannot comply with an Order if they have no knowledge of the Order's existence. The Judicial Pocket Veto is often utilized by Judges to give a Party that the Judge likes extra time to plan a counter-attack against the opposing litigant who the Judge dislikes. It's obviously a dishonest judicial tactic, but occurs quite often.

d. The Judicial Tactic of Ruling Without Ruling – It is well known amongst attorneys, that to encourage parties to settle a case, the Judge will often delay ruling on a motion, but nevertheless proceed to tell the attorneys in a private conference, what the ruling would be, <u>if</u> he were ruling at that time. That is a virtual blackmailing designed to coerce the intended losing party into settling the case. Litigants need to be particularly careful in these instances. Judges that engage in such tactics can be deceptive turncoats. They will often say their ruling would be one way during a conference to get the parties to settle, but then rule in the opposite manner if it is not settled.

e. THE ULTIMATE JUDICIAL GAME –
Procedure versus Substance- Standards versus Rules

It's the ultimate game of all. It allows the Judge to circumvent the law even though it is ostensibly designed to do precisely the opposite. Each litigation is supposed to proceed under defined rules and procedures. Virtually any rule or procedure however, can be disregarded by the Judge in his discretion if such furthers the "interests of justice." The vague notion of what constitutes, the "interests of justice" suffers from the same ambiguity as the concept of "good moral character." Stated simply, it allows Judges to substantively render decisions based on whether they like a litigant's attitude, rather than what the rule of law mandates. Rules can be disregarded by the Judge, or alternatively rules can be used to justify the outcome. Whatever the Judge likes.

f. The Certified, Complete and Accurate Court Transcript – The phrase "complete and accurate" is defined quite differently in the context of court certified transcripts, compared to its use in admission proceedings. Any small, immaterial error on the Bar application, leaves the Applicant open to false accusations of untruthfulness, but court transcripts almost always contain "immaterial" errors, and lawyers are expected to ignore them.

g. Objections – Another game Judges will play is depriving litigants or their attorneys of the right to object. The concept flies directly into the face of the litigant's Due Process right to be heard, yet it occurs regularly. Judges will sometimes rule against a litigant, solely because they raise objections. Essentially, this judicial game is predicated on the Judge's desire to "get even" with a litigant for making the Court look bad. It is similar in nature to the Star Chamber mandate that one should not file pleadings that "offend the crown." Judges believe that one should not Object in a manner that offends the crown.

h. Judges determine litigation outcomes, not Juries – The general public is under a misconception that substantively juries render verdicts. Juries do so only as a matter of form. The Judge for the most part determines the ultimate outcome in most jury trials, by controlling what evidence the jury hears. If the Judge excludes evidence favoring a Defendant and admits all evidence favoring the Prosecution, then obviously the Defendant's probability of being convicted has been unjustly increased. The Judge has then "failed to disclose material matters" to the jury, for the purpose of "deceiving" them into making an incorrect decision. Obviously, this judicial game can not withstand scrutiny under SBCS.

i. The Fining and Jailing Judicial Game – The debtor prison is alive and well in America. In any particular case, a Judge can impose a "Fine" upon a litigant or their attorney simply because of their "attitude." The Judge can determine without rational basis that a litigant has the financial ability to pay the Fine, and that failure to pay mandates their imprisonment for contempt. For those that doubt this premise, it is my guess there are more than a few unemployed, noncustodial parents in prison for nonpayment of child support who could attest that the debtor prison is alive and well. Alternatively, one could also find convicted individuals in certain states who didn't pay their "public defender" for the alleged legal services provided, and wound up in jail for contempt. The U.S. Supreme Court has held that inability to pay a debt precludes imprisonment for nonpayment. There are few U.S. Supreme Court opinions violated more pervasively.

25. CORRELATION OF STATE BAR ADMISSION STANDARDS WITH DEPRIVATION OF DUE PROCESS RIGHTS TO PRO SE LITIGANTS

Each time an Applicant is denied admission, ostensibly on the State Bar's falsely asserted ground that they lack "good moral character," the attorneys of a particular state have one less potential attorney to compete against. The Supply of attorneys is therefore diminished, to service the ever-increasing Demand for legal services, resulting in higher legal fees for paying clients. There is another side however, to the equation.

The Demand element has its own distinct Supply component. This is because while the Demand for legal services is always increasing, the Supply of clients <u>able to pay</u> does not necessarily increase. The Supply of clients is limitless, but the Supply of "Paying Clients" is not. The "Supply of Paying Clients" is what the attorneys seek to service. They are not interested in servicing the endless Supply of indigents. Included within the category of indigents are Pro Se litigants (individuals who represent themselves). Pro Se litigants represent themselves because they are unable to pay an attorney, or because they believe an attorney will betray them, or because they believe attorneys are not sufficiently competent in the law, or simply because they feel they can do a better job representing themselves. Pro Se litigants represent the same type of economic threat to the State Bar's interests as Bar Applicants. When a litigant represents himself in lieu of hiring an attorney, the attorney they otherwise would have hired is deprived of a legal fee. The profession therefore suffers an economic detriment. This of course is only the case if the Pro Se would have been able to afford an attorney. An incentive is therefore created to ensure that Pro Se litigants lose their cases. Judges assist with accomplishing this goal by an invidious application of the Procedure-Substance dichotomy when rendering rulings.

The Judge will base rulings on the degree of knowledge that the Pro Se possesses, to best further the legal profession's economic interests. For instance, when the Pro Se is more competent than opposing counsel (as often occurs), the Judge will ignore procedural rules under the guise that doing so is "in the interests" of justice. The Rules of Civil Procedure in a State normally include a catchall

provision that allows the Judge to do this. The catchall rule is typically similar to the following example:

"The court shall, in every stage of an action, ***disregard any error or defect in the pleadings*** *or proceedings* ***which does not affect the substantial rights*** *of the adverse party."*

Oregon Rule of Civil Procedure 12B

"All pleadings shall be liberally construed with a view of substantial justice between the parties."

Oregon Rule of Civil Procedure 12A

The above rules typical of most states, are a blank check to allow counsel to violate the written law, if the Court determines that doing so, "does not affect the substantial rights of the adverse party" and is done so with a "view of substantial justice." Such determinations obviously hinge on vague criteria that the Court alone has discretion to assess. When the above cited rules are applied, the impact is purportedly that the substance of a party's arguments take precedence over legal procedures. Conversely, if the Court is faced with a Pro Se litigant possessing minimal knowledge of the law, going up against a licensed attorney, the Court will apply procedural rules strictly. Minor defects in written submissions are then used to justify ruling against the Pro Se. Opposing counsel in such instances will present petty procedural arguments in order to grab a quick win. The Pro Se is therefore between a rock and a hard place. The Court Rules ostensibly designed to equalize the playing field, instead are used to further State Bar interests by fostering application in a manner that ensures Pro Se litigants lose.

This is designed to discourage other people from litigating Pro Se. Hence, the phrase "A man who represents himself has a fool for attorney." The legitimacy of the saying is predicated not on the Pro Se litigant's legal ability, but rather instead on the legal profession's economic interest that mandates steps be taken to ensure that litigants hire licensed attorneys. In the absence of Judicial Bias against Pro Se litigants, there would be a lower Supply of paying clients available for attorneys. Pro Se litigants are neutralized by the Judiciary to maximize the available Supply of paying clients for licensed attorneys.

26. THE MUTING OF GIDEON'S TRUMPET

(*Gideon v. Wainright*, 372 U.S. 335 (1963))

It is one of the most famous cases in legal history. It was heralded as one of the greatest triumphs of constitutional rights in America. As a result, it inspired a best selling book, called "Gideon's Trumpet." Ultimately however, throughout the decades the case has been so successfully circumvented by State Courts that it functions as a virtual nullity. In fact, the holding in *Gideon* has been used not to further it's original intent, but rather instead, to further the economic interests of attorneys. A brief summary of the case is as follows.

Clarence Gideon, an indigent, was indicted for breaking into a poolroom with intent to commit a crime. The trial court judge refused his request for a lawyer and forced him to conduct his own defense. He was convicted and it was affirmed on appeal. Gideon then sent the U.S. Supreme Court his Petition, scrawled in pencil in childlike handwriting on lined prison sheets, claiming that he was denied due process because he was denied counsel. The Justices appointed Abe Fortas to represent him (later to become a U.S. Supreme Court Justice himself). They voted unanimously in his favor. They held that the Constitution provided a right to counsel in a criminal case. After their decision, criminal defendants

had a right to be represented by an attorney at public expense. Such attorneys are known as "public defenders." Typically, the indigent Defendant is not required to pay for their representation.

Well, you get what you pay for. Public defenders have proven themselves to be absolutely worthless. In their defense, this is largely because they are given case loads that make it logistically impossible to provide zealous representation. *Gideon* was intended to provide indigent defendants with legal representation, so they would not have to represent themselves. Instead, the effect has been that they are provided "no representation," and coerced into relinquishing their right of self-representation. It functions as follows. The prosecution typically tramples over the defendant's rights, while the so-called "public defender" remains silent. Rarely objecting, rarely interviewing witnesses, rarely engaging in any zealous cross-examination and rarely presenting evidence on behalf of the defendant. The tactic of providing a criminal defendant with counsel for the purpose of ensuring their conviction, is exemplified by the following quotes regarding the Star Chamber:

> "The proceedings before the Star Chamber began by a Bill "engrossed in parchment and filed with the clerk of the court." It must, like the other pleadings, be signed by counsel. . . . However, counsel were obligated to be careful what they signed. If they put their hands to merely frivolous pleas, or otherwise misbehaved themselves in the conduct of their cases, they were liable to rebuke, suspension, a fine, or imprisonment. . . . **Counsel, therefore, had to be cautious that any pleadings they signed would not unduly offend the Crown."**
>
> **"Star Chamber defendants were not only allowed counsel, but were required to get their answers signed by counsel.** The effect of this rule, and probably its object, was that no defence could be put before the Court which counsel would not take the responsibility of signing—a responsibility which, at that time, was extremely serious."

After *Gideon*, prosecutors became astutely aware that the opinion provided them with a unique opportunity to legally trample defendants. Many shifted from a mindset of opposing appointment of counsel, to opposing defendant requests of self-representation. The new issue was whether defendants had a constitutional right of self-representation, since they had the right to counsel. Stated simply, did they have a constitutional right to decline the assistance of counsel? The U.S. Supreme Court held they did. As stated previously though, the Pro Se litigant's ability to obtain a fair adjudication is frustrated by the trial court's manipulative use of the Procedure-Substance dichotomy.

The end result is that defendants have their due process rights trampled in one manner if they accept counsel, and in another if they decline counsel. The only criminal defendants with an opportunity for a fair trial with zealous representation, are those with money to pay an attorney. Ah, now that was the true goal all along!

27. LEGISLATIVE STATUTES INCREASE JUDICIAL POWER

Marbury v. Madison held that the Judiciary has the sole power to interpret law. As previously stated, I support giving the Judiciary the right to declare statutes unconstitutional, but have problems with the legitimacy of John Marshall's participation in the case, due to his personal involvement prior to its' adjudication. I agree the Judiciary should have the power to declare statutes unconstitutional, and also believe it is a power **underutilized,** since there are so many unconstitutional statutes floating around. It is however irrefutable that the more statutes a Legislature enacts, the more power it gives the Judiciary. Each time a statute is enacted, the Judiciary obtains a potential opportunity to interpret law. The Judiciary thus has an incentive to promote passage of statutes. Statutes provide the Judiciary with opportunities to make the final assessment of law.

Few legislators consider the degree to which their over-zealousness in lawmaking, results in a transfer of power from the Legislature to the Judiciary for the above reason. **Hypothetically, consider the consequences if a law existed prohibiting every single action a person could possibly take from the most innocent to the most heinous. Ultimately, the complete determination of what societal behavior is acceptable and what is not, would be left to the Judiciary by virtue of its power to interpret law. It could declare valid or invalid each and every law, and therefore would have total control over societal behavior.**

28. THE CONTEMPT POWER CAN NOT WITHSTAND SCRUTINY UNDER SBCS

The power of a Judge to hold a litigant or counsel in Contempt and then fine them or jail them, is predicated on the notion that the Court must be able to maintain order, and enforce its rulings. It is a power historically recognized as subject to dangerous abuse. Nevertheless, it must be conceded that a Court does need some means to ensure compliance with its Orders. The issues are what the scope of that power should be, what penalties the Court should be able to impose, and should the same Judge that renders an Order be allowed to determine whether a Contempt has been committed. Is committing Contempt a Crime? The Sixth Amendment to the United States constitution states:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury . . . ."**

Courts typically hold that Contempt proceedings do not require a jury trial. They classify Contempts between those constituting "Summary Contempt," "Criminal Contempt" and "Civil Contempt." **How can the Judiciary justify the label of "Criminal Contempt," without providing a jury trial?** It cuts directly into the face of the Sixth Amendment, yet occurs regularly. The allowance of Criminal Contempt "convictions" without a jury trial cannot sustain scrutiny under SBCS. The label of "Criminal Contempt" without providing a jury trial, in light of the express language of the Sixth Amendment, is at a bare minimum "MISLEADING."

29. THE PREMISE THAT "IGNORANCE OF THE LAW IS NO EXCUSE FOR VIOLATING IT," CAN NOT SUSTAIN SCRUTINY UNDER SBCS

It is a fundamental predicate of our justice system. Citizens are presumed to be on notice of the laws, and are held responsible for violating them, even if they are ignorant of the law's existence. Stated simply, the argument that "You're honor, I didn't know it was illegal," is not a valid defense. Arguably, the premise is a necessity. Otherwise, every accused person, would assert they didn't know the conduct they are accused of committing was illegal. The laws would then have no meaning.

By the same token, the "ignorance of the law is not an excuse" predicate creates serious dilemmas. Citizens who are knowledgeable in the law have an advantage over other citizens because they know what they can and can't do. Everyone knows certain things are illegal, but in the overwhelming preponderance of areas, the determination is uncertain. Judges don't even know what is legal or illegal in many areas, because there is conflicting case law. Is making a loud statement in a public square legal? Is carrying a sign legal? Does it depend on what the sign says? Most importantly, is it really fair in these ambiguous areas to hold the accused accountable, if the Judges cannot even uniformly decide? To the extent an issue is embraced by conflicting case law, it can be fairly stated that "ignorance of the

law" is a certainty, rather than just a possibility. What constitutes the law in such areas has not even been conclusively determined prior to occurrence of the accused's alleged conduct.

The standard that "ignorance of the law is no excuse for breaking it," is a societal necessity to a certain limited degree, but does not sustain scrutiny under the SBCS. Where the case law is conflicting, the government has "Failed to Disclose" to the accused, prior to occurrence of their allegedly illegal conduct, what the law really is. Applying SBCS, it must be concluded that the attempt to convict individuals in those areas where case law is conflicting, is a situation where the government "misleads" one into thinking their conduct may be lawful. To the extent, the government applies the portion of conflicting case law supporting the assertion that the conduct was illegal it inescapably "evades" opposing case law. The notion that "ignorance of the law is no excuse for violating it," is admittedly necessary to a limited degree to preserve societal order. It does not however, withstand scrutiny under SBCS where the traits of being Misleading, Evasive, and Failing to Disclose are applied in an unreasonable, irrational and hyper-strict manner.

30. PARSING OF WORDS

Attorneys are the best at it. Politicians run a close second, but some say they are the best. The concept was arguably invented by Socrates, whose Socratic method became the basis for teaching in American law schools. Parsing of words is what I'm talking about. The ability to dissect one term or series of words, and then use that definition to arrive at the conclusion you seek. Socrates would ask a student a question, and then through a series of additional questions disprove the answer to the original question. He developed a method whereby he could disprove both of two diametrically opposed answers, even though logic seemingly mandates that they both could not possibly be incorrect.

The State Bars use it to obtain evidence during the inquisition of an Applicant. The concept of parsing words to suit your immediate needs is predicated on the fact that words individually have very precise meanings. The problem is that in order to explain their meaning, you have to use other words which are not nearly so precise, and then determine the definition of those other words. It becomes an almost endless inquiry, predicated on the ability of the person being asked the question, to continually define words beyond their common and ordinary meaning. Here is a quick and easy example. The witness in a hypothetical criminal case is being cross-examined:

Q. You saw him beat the other man, didn't you?
A. I don't know what you mean when you say, beat ; he did push the other man.
Q. Why did he attack the other man?
A. I don't know that I'd say he attacked him either, it was just one push, kind of like a shove.
Q. So he kind of threw the other man then?
A. No, he just shoved him.
Q. What do you mean shoved?
A. He pushed him
Q. Did he push him hard?
A. What do you mean hard?
Q. Did he push him with great force?
A. It was one push with only one hand.

The foregoing demonstrates the problem. The witness and the attorney are each trying to convey a meaning, but can not agree on the simplest of terms such as beat, push, attack, shove, threw,

hard and force. Yet, the everyday citizen probably has in their mind a conception of each. The words have different meanings and convey different messages depending on what other words accompany them. Parsing of words is a dangerous instrument used by the Judiciary. It can be an effective tool to negate protections and rights. When does a "search" become a "search" subject to Fourth Amendment protections? If the term "search" is defined in an incorrect manner beyond its ordinary usage, then that definition could have the effect of negating protections afforded by the Fourth Amendment.

More to the point of the subject matter herein, what is the definition of "good moral character?" If defined to include only those individuals who support the economic interests of their State Bar, then the problems are evident. If "bad moral character" is defined to incorporate minor immaterial instances of questionable conduct, then that definition diminishes reliance on how "good moral conduct" is defined. What does the term "rehabilitation" mean? What is "fair?" What is "just?" And of course, going back to the age-old philosophers, what is "truth?" I wouldn't even attempt to suggest I can answer these questions. Certainly, State Bar admission committees are at least as incompetent to do so, since I'm smarter than they are.

The manner in which the definition of words can be used to mean whatever one desires has been summed up in a dissenting opinion of the Oregon Supreme Court as follows:

> *"When I use a word," Humpty Dumpty said in rather a scornful time, "it means just what I choose it to mean -- neither more nor less."*
>
> *"The question is," said Alice, "whether you can make words mean so many different things" "The question is," said Humpty Dumpty, "which is to be master -- that's all."*
> Lewis Carroll, Through the Looking-Glass, Macmillan and Co. 1872, p. 124
> As Cited in State of Oregon ex rel Frohnmayer, 307 Or. 304 (1989)
> (Footnote 2-Justice Carson - Dissenting)

The point was also made by Justice Oliver Wendel Holmes who wrote:

> "A word is not a crystal, transparent and unchanged, it is the skin of a living thought, and may vary greatly in color and content according to the circumstances and the time in which it is used." Towne v Eisner, 245 U.S. 418 (1918)

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THE SO-CALLED "JUDICIAL FUNCTION EXCEPTION"

Rather than adopting a fair and just definition of candor for everyone, the Judiciary chooses to impose an irrational standard on Nonattorneys. Fully aware that the standard cannot possibly be met by any human being, and not wanting itself to be subjected to an irrational standard, the Judiciary exempts itself from the scope of the standard's application. When a person enters law school, they begin to learn how the legal profession really functions. They are taught as a matter of "substance" how to lie when presenting a client's case to the Court. The entire concept of representing a client (advocacy) is predicated upon presenting the facts supporting the client's case in the light most favorable to the client, and failing to disclose material facts that are detrimental to your client's case. This concept relies entirely on the ability of the attorney to mislead the Court or Jury, about the importance, weight and materiality of the presented facts. These are "traditional trial tactics."

Stated simply, the very heart and soul of a lawyer's professional success is predicated on how well they can nimbly misrepresent, mislead, contort or hide the facts, law and evidence, while simultaneously demonstrating that they do so in furtherance of a genuine quest for truth. The prospective attorney learns that as a matter of practicality, the art of successful lying requires one to repeatedly emphasize the importance of truth. Essentially, the concept is that by giving maximum lip-service to truth, the attorney is not only allowed to lie, but is in fact <u>expected</u> to lie. Licensed attorneys and Judges are then personally protected from the consequences of their lies, by the manner in which the Judiciary strategically defines what constitutes a "lie." That definition notably excludes most conduct and actions of licensed attorneys and Judges, under the guise that such is incorporated within their duty of advocacy. It therefore is not a "lie." It is concededly a clever little manipulative game of word play that the Judiciary plays and demonstrates how the power to interpret law includes the power to evade law.

Since members of the Judiciary cannot possibly meet the irrational standard of candor which they unhesitantly impose on Nonattorneys, the Judiciary simply defines a "lie" in manner that excludes the scope of their own conduct from its' definition. The fact is that no human being on this earth can possibly meet their irrational, subjective character standard and the Judiciary realizes this. Such being the case, in order to protect itself, the Judiciary had to exempt itself from application of its' own character standards. They have done so in many forms. One is by determining that as a matter of law, misleading or false representations made by Judges in appellate opinions are not encompassed within the legal definition of a "lie." Another technique used, is known as the "Judicial Function Exception (JFE)." Federal statute 18 USC 1001 enacted by the U.S. Congress was revised in 1934. The statute criminalizes the following type of conduct:

> ". . . whoever shall knowingly and willfully falsify or conceal . . . a material fact, . . . in any matter within the jurisdiction of **any department** or agency of the United States. . . ."

In 1948, definitions associated with the statute, were adopted by Congress which read in part as follows:

> "The term "department" means one of the executive departments . . . **unless the context shows that such term was intended to describe the** executive, legislative or **judicial branches** of the government."

The question for consideration is whether the statute criminalizes the making of false statements or the concealment of material facts in judicial proceedings. The U.S. Supreme Court first addressed the issue in *U.S. v. Bramblett*, 348 U.S. 503 (1955). The Court held that the statute did in fact apply to the judicial branch of government stating:

> "It would do violence to the purpose of Congress to limit the section to falsifications made to the executive departments. Congress could not have intended to leave frauds such as this without penalty. The development, scope and purpose of the section **shows that "department," as used in this context, was meant to describe the** executive, legislative and **judicial** branches of the Government."

What occurred next was nothing less than astounding. In 1962, the Federal Court of Appeals in the case of *Morgan v. United States*, 114 U.S. App. D.C. 13, 309 F.2d 234 (D.C. Cir. 1962) created the so-called "judicial function exception" to the statute. The case notably dealt with a person convicted of violating Sec. 1001 by holding himself out to practice law, even though he was not an attorney. It was a case dealing with the Unauthorized Practice of Law. The UPL rules as demonstrated previously herein form the basis of the State Bars' legal monopoly. It is therefore unsurprising that the so-called "judicial function exception" was first created in a case addressing UPL, as the exception itself is a protective measure that benefits the legal monopoly. In *Morgan*, the Defendant presented the brilliant argument that upholding his Sec. 1001 conviction, would mean that it would be a Sec. 1001 violation to engage in "traditional trial tactics," such as when a Defense Attorney makes a closing argument on behalf of a client he knows to be guilty. To evade Morgan's inescapable logic, the Court created the so-called "judicial function exception" that excluded "traditional trial tactics," from Sec. 1001. The Court then affirmed his conviction. The *Morgan* Court accomplished its' manipulative subterfuge by writing:

> "We are certain that neither Congress nor the Supreme Court intended the statute to include traditional trial tactics within the statutory terms "conceals or covers up." "

The impact of *Morgan* was an express, frontal assault to a Congressional enactment and the U.S. Supreme Court's opinion in *Bramblett,* which held that Sec. 1001 applies to the judicial branch. It was also a virtual blank check for attorneys and Judges to engage in the exact type of falsifications and concealments, which they regularly condemn when made by Nonattorneys. Notwithstanding the express language of the statute, the express language of the definitions section of the statute, and the holding of the U.S. Supreme Court, the Judiciary exempted "traditional trial tactics" by creation of an artificially concocted "judicial function exception." Subsequent to *Morgan*, almost every other Federal Circuit followed in adopting the so-called "judicial function exception."

As a matter of form, the U.S. Supreme Court's opinion in *Bramblett* was still binding law, but as a matter of substance, the Federal Courts of Appeal by engaging in deceptive manipulation and word play, had succeeded in evading and nullifying the *Bramblett* opinion. In 1967, the Sixth Circuit Federal Court of Appeals, expanded the scope of the so-called "judicial functions exception" by holding in *U.S. v. Erhardt*, 381 F.2d 173 (6th Cir. 1967) that Sec. 1001 was not violated by the submission of a false writing or false testimony in a criminal proceeding. The Court stated:

> "We hold that appellant's conviction under <Sec.> 1001 must be reversed . . . because <Sec.) 1001 does not apply to the introduction of false documents as evidence in a criminal proceeding."

The *Erhardt* Court had expanded the "judicial function exception" and its' exemption from Sec. 1001 to include not only "traditional trial tactics," but also falsified evidence. The Sixth Circuit addressed the issue again in 1994. They diametrically reversed course. They determined in *U.S. v. Hubbard*, 16 F.3d 694 (1994), as follows:

". . . the judicial function exception does not rest on solid legal ground."

Under the Court of Appeals opinion in *Hubbard*, at least in the Sixth Circuit, the "judicial function exception" no longer appeared to provide safe haven for attorneys and Judges to render false or misleading statements or conceal material facts in judicial proceedings. This however jeopardized the ability of attorneys to engage in traditional trial tactics, zealous advocacy. It subjected them in fact, to the same type of irrational, subjective assessment of disclosure that is typically applied to State Bar applicants during the admissions process.

Faced with a split in the Circuits, as to whether the "judicial function exception" existed, the U.S. Supreme Court decided to revisit the issue. It granted Certiorari in *Hubbard*. The U.S. Supreme Court opinion in *Hubbard v. United States*, 514 U.S. 695 (1995) overruled *U.S. v. Bramblett,* 348 U.S. 503, (1955). Under the Supreme Court's opinion, as a matter of <u>form,</u> there was no longer any need for a "judicial function exception" to Sec. 1001, because the scope of Sec. 1001 was held to not include the judiciary branch at all. <u>They were now completely and totally exempt from Sec. 1001</u>. This was accomplished by holding that the term "department" did not include the judiciary. The effect was astonishingly that as a matter of <u>substance</u>, the scope of the "judicial function exception" was vastly expanded, by virtue of its' own elimination. It was simply relabeled.

The "exception" was eliminated on the ground that an entire branch of government was exempted from the rule. **One obviously does not need the benefit of an exception to a rule, when they are not covered in any manner by the rule itself.** Under *Hubbard*, every single falsification, every single concealment of a material fact, and every single dishonest action taken by a licensed attorney or Judge was now exempt from Sec. 1001. Prosecutors could still proceed against Nonattorneys, legislators and members of the executive branch of government for violating Section 1001 in non-judicial proceedings, or could proceed against falsification and concealments of fact if they were covered by other criminal statutes; but prosecuting an individual for a falsification in a judicial proceeding under Section 1001 was now out of the question.

What is the proper assessment of the U.S. Supreme Court's opinion in *Hubbard*? I submit there are two ways of assessing the opinion. First, it could be argued that the opinion was bad because it is unfair for falsifications of fact and concealment of facts to be criminal in nature when made with respect to the executive or legislative branch of government, but not the judicial branch. Such an argument relies on the premise that the judiciary is entitled to no exception from the law, whether such is phrased as previously as a "judicial function exception," or currently as a complete exemption from Sec. 1001 under *Hubbard*.

Alternatively, there is concededly some basis for asserting it was a good opinion. The reasons are as follows. The U.S. Supreme Court properly realized that the nature of advocacy <u>does</u> in fact require the licensed attorney to conceal material facts. The practice of law has always been like that. It is a key element of representation. The good attorney should never voluntarily provide full disclosure of material facts that are detrimental to his client's position. That would be a betrayal. Strict compliance by attorneys with Section 1001 is in fact, totally incompatible with the nature of the legal profession, traditional trial tactics and the nature of advocacy. Every attorney in virtually every litigation would be legally required to betray their client, if strict compliance with Section 1001 was required. How can we possibly require attorneys to disclose facts detrimental to their client's position? Although it is morally reprehensible to allow attorneys to conceal facts, it is also morally reprehensible to require attorneys to betray their clients by disclosing such facts. The issue therefore poses a Catch-22 ethical dilemma beyond resolution no matter what decision is made.

The only way to provide some justification for the Court's opinion in <u>*Hubbard*</u> , mandates focusing on the rights of Nonattorneys to receive zealous representation and zealous advocacy, rather than the attorney's ability to provide such by engaging in "traditional trial tactics." The two however, do obviously tend to go hand in hand. If the benefit to society of providing clients with zealous

advocacy is outweighed by the detriment to society of allowing attorneys to conceal facts, society benefits overall. However, it is unresolved whether the benefits do outweigh the detriments. I am doubtful, but not totally decided as to whether the Hubbard opinion was correct. I do know that any validity to the opinion hinges upon focusing on the Nonattorney's representational rights. That means the Judiciary must demonstrate that the exemption from Sec. 1001 that it has granted to itself is not attributable merely to a desire to satisfy its' own self-serving interest.

In many respects, the determinative factor is similar to the UPL issue, previously discussed herein. UPL prohibitions benefit the economic interests of the legal profession. That fact however, provides absolutely no justification for their existence. UPL rules are only justifiable if they benefit the public. For this reason, as discussed in a separate section of this book, there is an inverse relationship between UPL rules and State Bar admission requirements. Like UPL prohibitions, *Hubbard* also benefits the legal profession by exempting it from a congressional enactment. That fact however, provides absolutely no justification for the exemption. *Hubbard* is only potentially justifiable if it benefits the Nonattorney general public. Even then, its' ethical validity is doubtful.

The U.S. Supreme Court's *Hubbard* decision, intersects with the State Bar admissions process in the following manner. First, the Court's holding is in direct conflict with the irrational nature of inquiries included by State Bars on their applications. Stated simply, the vagueness, ambiguity, scope of time covered, and amount of detail currently required by Bar applications renders compliance with Section 1001's requirements an absolute impossibility for any human being. Similarly, the "traditional trial tactics" argument conflicts with the admissions process because it allows licensed attorneys to engage in concealment of facts that is not permitted of State Bar Applicants.

Focusing on the public's interest mandates that licensed attorneys and judges be held to a standard of moral character no lower than required of the Nonattorney Bar Applicant. This fact, is particularly critical in light of the leeway that the attorneys and Judges have been provided by the *Hubbard* decision. Society must ensure that the discretion provided by *Hubbard* is not abused, and this can only be accomplished by holding attorneys and judges to the same moral character standard required of Nonattorney Bar Applicants. This will ensure that the benefits enjoyed by attorneys and judges as a result of the *Hubbard* decision and UPL prohibitions, function for the primary purpose of enhancing the general public's interest. The failure to do so renders *Hubbard,* the Judicial Function Exception and UPL prohibitions illegitimate. In 1996, Congress enacted amendments to Section 1001, the effect of which was to reinstate the Judicial Function Exception and overrule *Hubbard's* exclusion of the judiciary from Section 1001. Kind of six of one, half dozen of the other. Whether called a Judicial Function Exception or an exclusion from the rule, the effect is largely the same. The revision to the statute by overruling Hubbard did reduce the degree of deception that attorneys and the judiciary can engage in back to its Pre-Hubbard level, but in light of the codification of the Judicial Function Exception the arguments presented herein are equally applicable.

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WHEN A CONVICTION CARRIES NO SHAME and DISBARMENT BECOMES AN HONOR

The comedian Steve Martin used to tell a joke that inflation wasn't a bad thing because everyone would then be a millionaire. The obvious flaw in the theory is it does not recognize that if everyone is a millionaire, the buying power of a dollar is diminished. A loaf of bread that currently costs $ 2.00 would cost $ 50,000.00, give or take several thousand. No one as a matter of substance would really be richer, even though as a matter of form, we would all technically be millionaires.

Similarly, if the majority of citizens have a criminal conviction, the conviction does not carry any shame or disgrace. The intended concept of being convicted of a criminal act is that the "criminal" is supposed to be recognized as a really bad person, whereas the average citizen is respected. However, once laws are adopted prohibiting virtually everything, or are applied in an arbitrary manner so that anyone can be convicted for committing acts which are not violent, heinous, or harmful, the importance of being convicted of a crime is diminished.

If driving an automobile after drinking two glasses of alcohol constitutes a serious felony, it becomes irrationally equivalent to homicide which is also a serious felony. The effect of classifying both as serious felonies, diminishes the horrible nature of homicide by placing it on a level equivalent to driving after having two drinks of alcohol. Criminal convictions should be applied sparingly, so that they carry immense weight and detrimental impact upon those who are really guilty of serious crimes.

Currently, in this nation approximately one out of eight African-American males has a criminal conviction of some type. Consequently, being an African-American male means there's a pretty good chance you're a felon. It also means that applying the most basic principles of logic, African-Americans really shouldn't view having a felony conviction as all that bad of a thing, since so many people have them. If one African-American tells another African-American that they have been convicted of a crime, the recipient should logically interpret the communication as meaning, "well, maybe he committed a crime and maybe he didn't." It would have to be the logical response.

The issue however, is by no means limited to any minority group. It applies equally to the manner in which virtually everything a person does today, potentially subjects them to a criminal prosecution. The result is that the impact of having a Conviction has become immensely diluted. Due to the reckless manner in which legislators enact laws, the prevalence of prosecutions for relatively minor acts has diminished the importance of criminal convictions in our nation. There is something seriously wrong with irrational state legislators, when conduct that was completely legal 20 years ago, results in a lengthy prison sentence today.

When I was 19 years old, I went drinking at Bars regularly. It was totally legal and everyone I knew did the same thing. Today, a 19 year-old may wind up having a "Criminal Conviction" for doing the same thing. That's wrong. The matter is simply to trivial in nature to criminalize. That Conviction will "dog" that person relentlessly for years to come and can not help but breed disrespect for the law. Legislators need to come to the realization that they are not the Babysitters of society. They are wholly unfit to assume the role of moral guardian. As former U.S. Supreme Court Justice Jackson wrote:

> "It is not the function of the government to keep the citizen from falling into error, it is the function of the citizen to keep government from falling into error."

It is well known that many of our Presidents have at one time or another committed criminal acts. Similarly, many Justices of the U.S. Supreme Court at one time or another committed criminal acts. It is irrefutable that we have allowed the importance of the criminal conviction to become greatly diluted by prosecuting people and even sending them to prison for relatively trivial matters that in fact harm absolutely no one.

The launching of prosecutions for minor acts is then coupled with a failure of defense counsel to provide competent representation, resulting in a so-called "conviction." The theory of our criminal justice system is that one must be proven guilty beyond a reasonable doubt. As a matter of substance however, the mere charging of one with a crime typically is sufficient to obtain a plea bargain of guilt, even when the defendant is innocent. Such convictions must logically be construed as carrying no shame.

It must be remembered that legislators are not particularly bright individuals. They rarely consider whether the laws they enact will withstand constitutional scrutiny, and instead for the most part adopt an attitude of "we'll roll the dice and see what happens." The impact of such is that the courts are forced to sift through all of the laws to determine what is constitutional and what is not. Courts have essentially been forced into a position of becoming super-legislatures due to reckless legislators.

Consider the following hypothetical (which I do not believe is all that far-fetched in today's world.) A Legislature in some hypothetical state, (which we'll call "Oregon") adopts a law prohibiting every single conceivable act of any nature that a person could commit. Only two possibilities then exist. The first is that every single citizen in Oregon would be a felon, and therefore a felony conviction would obviously carry no shame. In fact, all of the Oregon felons could get together and joke about their convictions with each other. In such an instance, the legislature would have caused an immense harm to the societal interest, since citizens would be unable to set apart those individuals who were truly violent criminals. In substance, the most violent criminals would have become the beneficiaries of an irrational and foolish legislature that criminalized everything, thereby placing guilty individuals on a level equal to innocent people.

The second possibility under this hypothetical, is that the Oregon courts would have to sift through all the laws to determine which ones were constitutional. Through no fault of their own, they would be forced into deciding which laws citizens should be bound by, and which laws were unconstitutional. The result would be that the Legislature by virtue of its' own ignorant eagerness to assume authority in all areas, totally negated its' own power. The Courts would be deciding in every subject area what was legal, and what was illegal. The Legislative statutes would be rendered substantively meaningless.

Legislators as stated, are not particularly bright individuals. Laws in order to have the maximum degree of respect by both citizens and the courts, should only be enacted to prohibit those areas of conduct which are truly, irrefutably and undoubtedly viewed by most citizens as being criminal in nature. If there exists doubt about whether a law is constitutional, the chances are that it isn't. If it criminalizes conduct that was widely accepted as legal by society during the last several decades, it probably isn't constitutional. If violating a particular law doesn't result in actual harm to someone else, chances are the law is not constitutional. At some point, Legislators should catch on to the fact that the more laws they pass, the more power they transfer to the Judiciary, thereby diluting their Legislative authority.

The Judiciary is by no means absolved of guilt in these matters. We have entered an era where the State Bars vindictively impose so-called ethical discipline on attorneys who buck the system. State Bars consistently classify falsely the brave acts of attorneys by using the ambiguous phrase "prejudicial to the administration of justice." That is quite simply put, nothing less than a meaningless, garbage phrase. Ultimately, if the State Bars are themselves the ones acting in an "unjust" or unethical manner, then engaging in conduct inimical to their false definition of "justice," actually constitutes an act of morality and justice. When the most passionate lawyers are banned from the profession, for reasons

including but not limited to attacking the immoral conduct of the State Bars then Disbarment becomes an honor. When State Bars are proven to have used deceptive and unconstitutional investigation tactics characterized by a marked absence of due process and fairness, for the purpose of enhancing their own interests, Disbarment also becomes an honor.

It is a well-known premise of constitutional law dating back to Marbury v Madison, that the violation of an unconstitutional enactment is not an illegal act. Former Justice William O. Douglas of the U.S. Supreme Court once emphasized that citizens have a civic responsibility to violate unconstitutional laws when he wrote:

> "An ordinance -- unconstitutional on its face or patently unconstitutional as applied -- . . . . can and should be flouted. . . ."

I suggest the eager little, hypocritical Legislators begin thinking a bit more carefully about the laws they enact and whether they can sustain constitutional scrutiny, instead of trying to be moralistic Babysitters. Because the bottom line is that there are a lot of laws that are ripe for "flouting."

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EXHIBIT 3(a)

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

CITIBANK, N.A.

Plaintiff

v.

EVAN S GUTMAN

Defendant, Pro Se

CASE NUMBER:
50-2020-CC-005756-XXXX-MB

AFFIDAVIT OF EVAN GUTMAN

AFFIDAVIT OF EVAN GUTMAN

I, Evan Gutman, hereby swear and certify the following facts are true and correct to the best of my belief and knowledge. I understand I am swearing and affirming to the truthfulness of the matters stated in this affidavit and punishment for knowingly making a false statement includes fines and/or imprisonment. I swear and certify as follows:

1. I have personally prepared and will be submitting to the Palm Beach County Court on or about September 14, 2022 a document titled "DEFENDANT'S MOTION TO DISQUALIFY JUDGE EDWARD GARRISON and ALL OTHER PALM BEACH COUNTY JUDGES."

2. The above referenced document contains delineation of numerous facts, circumstances and citations to law, which I have personally prepared.

3. I hereby adopt and affirm that the facts, circumstances and citations to law, to the best of my knowledge and belief as stated in the above referenced document (i.e. Motion), are true and correct to the best of my knowledge and belief, and I am willing to submit sworn testimony regarding such, if necessary.

I, Evan Gutman, hereby swear and certify the foregoing to be true and correct to the best of my belief and knowledge. I understand I am swearing and affirming to the truthfulness of the matters stated in this affidavit and punishment for knowingly making a false statement includes fines and/or imprisonment.

EXHIBIT 3(b)

DATED: 9/13/22 Evan Gutman

Evan Gutman
1675 NW 4th Avenue, #511
Boca Raton, FL 33432

STATE OF FLORIDA
COUNTY OF PALM BEACH

This instrument was acknowledged before me on this 13th day of September, 2022 by Evan Gutman:

_____ Personally Known

__✓__ Produced Identification

__✓__ Drivers License

Mk Johnson
NOTARY PUBLIC

Notary Public State of Florida
Mark Johnson
My Commission HH 051412
Expires 10/07/2024

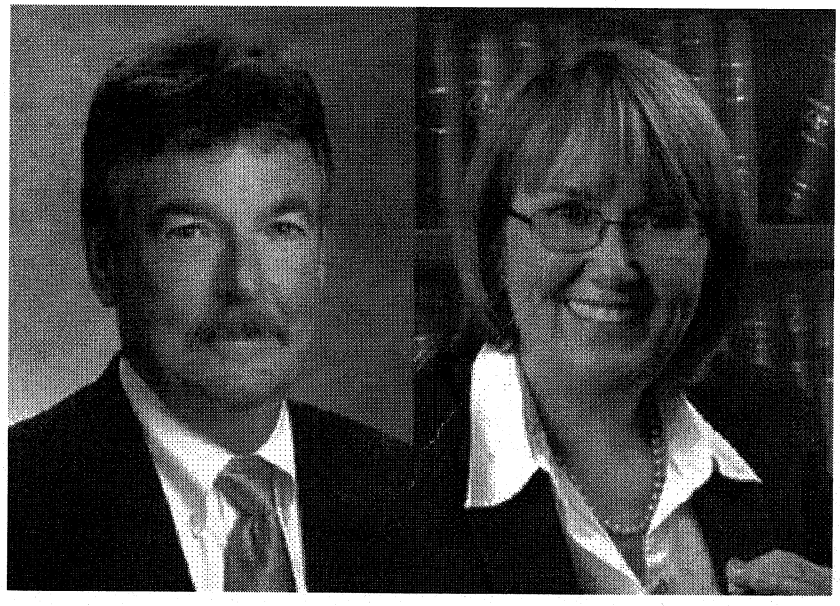
Mark Johnson
Print, Type or Stamp Commissioned name of Notary

EXHIBIT 4(a)

TOWN-CRIER

Former Judge Garrison, Attorney Sullivan Seek Open Court Seat

By **Town-Crier Editor** - August 10, 2012



Two candidates are on the ballot in the race for the open Palm Beach County Court Group 6 seat in the Aug. 14 election.

Former Judge Edward Garrison (above left) and attorney Jane Sullivan (above right) are vying for the seat being vacated by retiring Judge Nelson E. Bailey.

Garrison, 59, has more than 30 years' experience serving as a Palm Beach County judge. He is a native Floridian who received his bachelor's degree from the University of South Florida and his law degree from Florida State University.

The youngest judge ever elected in Palm Beach County, Garrison served as a county court judge from 1980 — when he was 27 — to 1989 before moving to the circuit court, where he served until 2010.

"This race is all about experience," Garrison told the *Town-Crier* Tuesday. "I've been on the bench for 30 years. I have served as a county judge and a circuit judge. I have the experience needed to do the job."

Because of Florida Retirement System rules, Garrison chose to retire in 2010. If elected to this new post, he will continue to receive his pension while also earning a salary.

"Even though I only had 30 years in, I had to make a financial decision," he said. "So I took on the senior judge status and spent a lot of time working on foreclosures."

But Garrison said he chose to run again because he enjoyed his work. "I missed my old job," he

EXHIBIT 4(b)

judge to help manage the circuit court."

Garrison said lawyers appreciate not only his fairness and impartiality but that he is willing to make decisions and keep things moving.

"Lawyers recognize that I move cases," he said. "I don't sit on my decisions. I am considered a decisive judge. I follow the law and keep cases moving."

Garrison said that his experience means he is ready to hit the ground running, no matter which division he's assigned to.

"With my experience, on day one I can serve anyone," he said. "I don't have that learning curve. You could call me a 'utility infielder.' I can fill in anywhere."

For more information, visit www.garrisonjudicialcampaign.com.

Sullivan, 62, has been an assistant public defender for 13 years, representing defendants in felony, misdemeanor, juvenile and appeals cases.

She received her bachelor's degree in sociology from Regis College in Weston, Mass. She returned to school at age 38 and received her master's degree in public administration from Harvard University. At age 48, she earned her law degree from Nova Southeastern University.

Sullivan worked in Volusia County for two years, and has spent 11 years in Palm Beach County.

In 2010, Sullivan lost her bid for a county court seat eventually won by Marni Bryson. Sullivan came in third, taking 21 percent of the vote.

Sullivan said she chose to seek the vacant seat not because of an issue with her opponent but because she feels she is the best candidate for the job.

"My most recent experience is obviously in the circuit court, but I have years of trial experience in county court as well," she said.

Sullivan noted that although most of her experience is in criminal court cases, she has experience in civil court. "Wherever I am assigned, I'll be willing to go," she said.

If elected, Sullivan said she would remain fair and impartial on the bench, and help to move cases through the system.

"I will do my best to maintain the integrity of the judicial system and keep up with the workload," she said. "I will be fair and impartial, and treat everyone with respect."

Sullivan noted that because she "wants to remain impartial," she has not been accepting campaign contributions.

Sullivan said she hopes voters will recognize her drive and choose her for county court judge.

"I love being in the courtroom," she said. "I think we need more women judges on the bench."

For more information, visit www.janeforjudge.com.

Town-Crier Editor

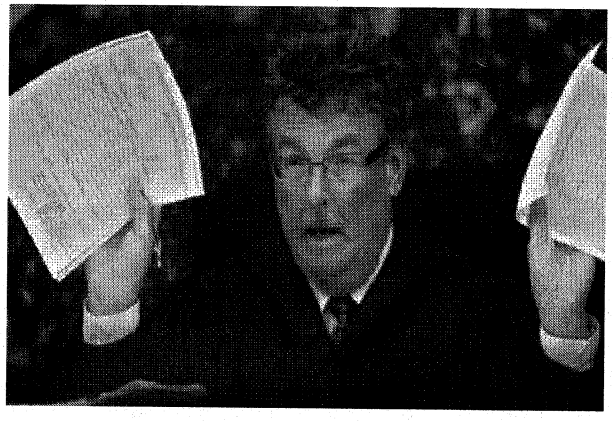
https://www.gotowncrier.com

Clarkston Legal

EXHIBIT 5(a)

Family Court Judge Denies Divorce

Clarkston Legal Dec. 17, 2013



This one comes to us from Southern Florida, courtesy of our blogging friend, Jeanne Hannah. A family court judge in Palm Beach County took a divorcing couple to task in a tersely-worded opinion, ordering the couple to remain married and refusing to grant the requested divorce.

Why? You ask. After a two day trial in November during which both husband and wife testified as to significant unreported income, cooked business books, hidden assets, re-titling assets in other family members' names and other mutual marital misdeeds, Judge Edward Garrison wanted to jail the couple but could not, being only a family court judge and not presiding over a criminal case.

Apparently, in denying the couple's prayer for equitable relief, the good judge also sensed that he was being played. The court assessed the joint demeanor of the couple as being indicative of an intact relationship.

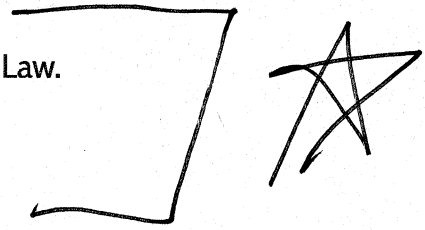
Perhaps the judge sensed that the requested divorce was simply another ruse by the couple to defraud their creditors and business associates. So Judge Garrison refused to divorce the couple, laying down a ruling believed to be the first of its kind in an American family court:

> *This Court is unable to impose the appropriate remedy for the parties since this is not a criminal court, but, if the appropriate agencies do not read the transcript, or if the indictments are slow in coming, perhaps the parties may remain out of jail long enough to raise their fifteen year old daughter to the age of majority. For now, the only appropriate remedy is for them to remain married to each other.*

EXHIBIT 5(b)

The divorce request in the Husband's chief complaint: Denied. The divorce requested in the Wife's counter claim: Denied. Husband is appealing the court's decision.

This case is truly a first in the annals of American Family Law.



Schedule a Free Consultation

Fill out the attached form to get in touch.

Name

Name

Phone

Phone

Email

Email

Tell us about your case

Tell us about your case

EXHIBIT 6(a)

https://www.flcourier.com/townnews/law/the-epitome-of-the-american-dream/article_8b056654-1a01-11ed-b094-4fd2397a73fb.html

FEATURED

'The epitome of the American dream'

DARA KAM | NEWS SERVICE OF FLORIDA
Aug 12, 2022

Renatha Francis will be the first Jamaican American justice on the Florida Supreme Court

Palm Beach County Circuit Judge Renatha Francis speaks as Gov. Ron DeSantis looks on. Francis will join the Florida Supreme Court in early September.

NEWS SERVICE OF FLORIDA

TALLAHASSEE – Two years after justices thwarted his first attempt to place Renatha Francis on the Florida Supreme Court, Gov. Ron DeSantis on Aug. 5 tapped the Palm Beach County circuit judge to serve on a high court dominated by conservative jurists.

With four of the seven-member court's justices appointed by DeSantis, the Republican governor will leave his Federalist Society imprint on the Supreme Court for decades to come.

Francis, who was among six finalists sent to DeSantis by the Florida Supreme Court Judicial Nominating Commission this summer, will replace outgoing Justice Alan Lawson, who will retire from the bench on Aug. 31.

EXHIBIT 6(b)

Lawson stepped down more than a decade in advance of justices' mandatory retirement age of 75.

Only Black on list

DeSantis, a Harvard Law School graduate, sketched out his judicial philosophy the morning of Aug. 5 at the Richard & Pat Johnson Palm Beach County History Museum, referring to the "founding fathers" as he introduced Francis.

"Our government here in the United States and in the state of Florida is supposed to be what's called a government of laws, not a government of men," he said, calling out judges who have "taken power away from people's elected representatives" by having "legislated from the bench."

"And that's not their role. Their role is to apply the law and Constitution as it's written," he added. "It's really important that courts are discharging the duties that they have under the Constitution within the confines of those limitations."

Francis, who will be the court's first Jamaican-American justice, was the only Black nominee on the list presented to the governor this summer. The court has not had a Black justice since former Justice Peggy Quince stepped down after reaching a mandatory retirement age in 2019.

Former Gov. Rick Scott appointed Francis in 2018 to serve as a judge in Miami-Dade County. The following year, DeSantis tapped her to serve as a 15th Judicial Circuit judge in Palm Beach County. DeSantis said she will join the Supreme Court in early September.

Bar requirement issue

Francis, who was born in Jamaica, "understands what the proper role of the judge is in America's constitutional system," DeSantis said.

EXHIBIT 6(c)

"And I also think being an immigrant, she probably has more appreciation for our constitutional system," the governor said, noting that she attended law school after starting her own business. "I believe this appointment of Judge Francis is one that will really reinvigorate and fortify our judiciary in a very positive way but also send a great message that you can realize your dreams."

Francis, who called herself the "epitome of the American dream," echoed DeSantis' ideology during the Aug. 5 event.

"As a student of history, I was and I remain in awe of the United States Constitution," she said. "The Florida Supreme Court protects the people's liberty, and inherent in the way that we do that is by respecting and observing the limited role that judges play in our constitutional system of government."

DeSantis also named Francis to the Supreme Court in 2020, but her appointment became embroiled in a legal and political battle.

Wrangling over Francis' appointment began when state Rep. Geraldine Thompson, D-Windermere, asked the Supreme Court to find that DeSantis' choice of Francis violated the state Constitution because Francis would not reach a 10-year Bar membership requirement for justices until Sept. 24, 2020.

Conservative court shift

DeSantis in May 2020 announced he was choosing Francis and John Couriel to fill two Supreme Court openings, selecting them from a list of nine candidates submitted by the nominating commission.

Couriel immediately joined the Supreme Court, but DeSantis said Francis would be sworn in as a justice after she reached the Bar requirement months later.

In a rebuke to DeSantis, the Supreme Court unanimously rejected his selection of Francis and ordered the governor to appoint another candidate from the list of nominees. He subsequently appointed Justice Jamie Grosshans.

DeSantis reiterated on Aug. 5 that he disagreed with the court's decision about Francis. had chosen her two years ago, Francis wasn't "entitled" to be named as Lawson's succes

"I said I am going to do it from scratch, no preconceived notions and we're going to go with the person that we think has done the best job," he said. "We were happy to appoint or trying to appoint Judge Francis two years ago ... but then seeing how she's progressed since then, she's done even better."

EXHIBIT 6(d)

Since he took office less than four years ago, DeSantis' appointments have secured a conservative shift on the seven-member court, following the mandatory retirements in 2019 of Quince and two other longtime justices, Barbara Pariente and R. Fred Lewis.

Solid conservative majority

DeSantis appointed Couriel, Gross-hans and now-Chief Justice Carlos Muniz, who joined Lawson and Justices Charles Canady and Ricky Polston to form a solid conservative majority. Justice Jorge Labarga, who joined Pariente, Lewis and Quince on many major issues, is now often a lone dissenter.

Shortly after taking office, DeSantis also appointed Robert Luck and Barbara Lagoa to the Supreme Court, but they were later tapped by former President Donald Trump to serve on the 11th U.S. Circuit Court of Appeals. DeSantis subsequently selected Couriel and Grosshans.

Francis' brandished her Federalist Society credentials with a quote from Alexander Hamilton's admonition in the Federalist Papers that judges "exercise neither force nor will, but merely judgment."

"We apply the law as written. This timeless principle of civil society not only promotes uniformity, predictability. It's essential to preserving liberty. It restrains arbitrariness. It restrains abuses of power. And if history teaches us anything, is that as simple and enduring as this principle is, it's evaded the vast majority of human history until this American experiment," she said.

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EXHIBIT 7

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

CITIBANK, N.A.,

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:
50-2020-CC-005756-XXXX-MB

DEFENDANT'S REQUEST FOR PRODUCTION TO PLAINTIFF CITIBANK, N.A.

Defendant, Evan Gutman, propounds the following Request for Production to the Plaintiff, Citibank, N.A., to produce for inspection and/or copying the following documents at 1675 NW 4th Avenue, #511, Boca Raton, Florida 33432 within 30 days in accordance with Rule 1.350, of the Florida Rules of Civil Procedure.

DEFINITIONS

a. "Documents" or "written communications" is used in the broad and liberal sense and shall include. but not be limited to the original or copies of (1) all paper material of any kind, whether written, typed or printed, filmed or marked in any way; (2) any books, manuals, pamphlets, periodicals, letters, correspondence, telegrams, contracts, memoranda, inter-office communication, intra-office communication, working papers; (3) all other memorializations of any conversations and meetings. (4) electronically stored information.

b. The terms "you" and "your" refer to the party to whom these Requests are directed, and includes their agents, employees, representatives and attorneys.

c. The term "communication" means the act or fact of communicating, whether by correspondence, telephone, meeting or any occassion of joint or material presence, as well as the transfer of any document from one person to the other.

d. The words "and" and "or" shall be construed conjunctively and disjunctively as necessary to make the request inclusive rather than exclusive.

e. "Person" shall be defined in the broad and liberal sense to mean an individual, firm, partnership, corporation, or other legal, business or governmental entity.

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EXHIBIT 8

IN THE COUNTY COURT IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 50-2020-CC-005756-XXXX-MB DIV:

CITIBANK, N.A.,

Plaintiff,

vs.

EVAN S GUTMAN,

Defendant.
_____/

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DISCOVERY

COMES NOW Plaintiff, CITIBANK, N.A., by and through its undersigned attorneys, pursuant to applicable Florida Rules of Civil Procedure, hereby respectively moves this Court to grant this Motion for Extension of Time to Respond to Defendant's Request for Admissions to Plaintiff Citibank, N.A., Notice of Propounding Interrogatories to Plaintiff Citibank, N.A., and Defendant's Request for Production to Plaintiff Citibank, N.A., dated July 01, 2021 (hereinafter "Discovery Requests"). In support thereof, Plaintiff shows that:

1. On or about July 1, 2021, Defendant served Defendant's Discovery Requests to the Plaintiff.

2. Plaintiff is in the process of researching and reviewing its records in order to respond to Defendant's Discovery Requests.

3. Plaintiff desires a reasonable extension of time to complete its research and review.

4. The instant Motion is not for purposes of delay.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order providing a reasonable extension of time to respond to Defendant's Discovery Requests.

EXHIBIT 9

ADAMS AND REESE LLP

Attorneys at Law
Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

Kenneth M. Curtin
Admitted in Florida, Illinois and New York
Direct: 813.227.5521
E-Fax: 813.227.5621
kenneth.curtin@arlaw.com

July 14, 2022

Via Email (egutman@gutmanvaluations.com)
Evan S. Gutman
1675 NW 4th Avenue #511
Boca Raton, FL 33432

RE: **Additional Documents Responsive to First Request to Produce**
Citibank, N.A. v. Gutman, Case No. 2020-005756-CC, in the County Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

Dear Mr. Gutman:

In relation to the above referenced matter, in the email accompanying this letter you will find a sharefile link which contains additional documents that Citibank, N.A. was recently able to locate and retrieve which may be responsive to your First Request to Produce. I have bate stamped these documents as CITIBANK 0000130-000455. Please note that the sharefile link will disappear in five (5) days, therefore, if you desire to retain copies of the documents, please download the documents before the expiration of the sharefile link. If you have any further questions or concerns, please do not hesitate to contact me directly.

Sincerely,

Kenneth M. Curtin, Esq.

KMC:tms

cc: Chantal Pillay, Esq.

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EXHIBIT 10

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITIBANK, N.A.,

Plaintiff,

Case No. 2020-005756-CC

v.

EVAN S. GUTMAN,

Defendant.
_____/

PLAINTIFF'S FIRST REQUEST TO PRODUCE TO DEFENDANT

Plaintiff, Citibank, N.A. ("Citibank"), by and through its undersigned counsel, and in accordance with the Florida Rules of Civil Procedure, propounds this First Request to Produce to be answered by Defendant, Evan S. Gutman ("Gutman"), within thirty (30) days after service hereof.

DATED this 1st day of July, 2022.

/s/ Kenneth M. Curtin
Kenneth M. Curtin, Esq.
Florida Bar No. 087319
Primary: kenneth.curtin@arlaw.com
Secondary: teresa.soluri@arlaw.com

Chantal M. Pillay, Esq.
Florida Bar No. 108369
Primary: chantal.pillay@arlaw.com
Secondary: lisa.stallard@arlaw.com

ADAMS AND REESE LLP
100 North Tampa Street, Suite 4000
Tampa, FL 33602
813-402-2880 (Telephone)
813-402-2887 (Facsimile)
Attorneys for Plaintiff, Citibank, N.A.

Filing # 154291698 E-Filed 07/28/2022 06:54:44 PM

EXHIBIT 11

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

CITIBANK, N.A., Plaintiff v. EVAN S. GUTMAN, Defendant, Pro Se	CASE NUMBER: 50-2020-CC-005756-XXXX-MB **DEFENDANT'S MOTION FOR EXTENSION OF A "REASONABLE" PERIOD OF TIME TO RESPOND TO DISCOVERY**

Defendant Evan Gutman, JD, CPA respectfully MOVES the Court for an Order granting an Extension of Time to Respond to Discovery served upon him by Plaintiff for the first time on or about July 1, 2022, (almost two years after filing their Complaint) consisting of a Request to Produce documents and Written Interrogatories. On July 14, 2022, Plaintiff submitted additional responses to Defendant's Request to Produce, which had been served on or about July 1, 2021, more than one year earlier. Accordingly, Defendant requests a **reasonable extension of time** to submit a comprehensive response to Plaintiff's Discovery requests and concurrently asserts a "reasonable time" is a period that does not exceed 60 days. Defendant continues to vigorously and respectfully assert Plaintiff should not be allowed more than one year to respond to Discovery served upon them, and that accordingly their pending Motion to Extend should be denied.

Lastly, Defendant asserts the instant motion is not for purposes of delay and that in contrast, Plaintiff's Motion to Extend (which depending on how the Court rules on their pending Motion to Extend may have provided One Full Year of an Extension) was filed precisely and exactly for the purpose of Delay.