No. _____

In The
Supreme Court of the United States

JAMES JOSEPH HAMM,

Petitioner,

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ARIZONA SUPREME COURT,

Respondent.

On Petition For A Writ Of Certiorari To The Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI AND APPENDIX VOLUME I, PAGES 1 TO 156

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Petitioner In Propria Persona

March 27, 2006

QUESTIONS PRESENTED

Under the official rules adopted by the Arizona Supreme Court, no applicant for admission to the practice of law may be barred from admission on the basis of a prior criminal conviction, regardless of the nature or severity of the offense. Instead, each applicant is to be afforded individual consideration for admission, with the determining factor being the possession of current good moral character. The review process is to take into account past unlawful conduct, with the requisite review contextualized by a specific set of factors enumerated in the governing rule. With these constraints in mind, the questions presented are:

(1) Whether the due process clause of the Fourteenth Amendment to the United States Constitution prohibits a State from using a pretextual ground for denial of the right to practice law? And, if so,

(2) Whether the Arizona Supreme Court's ground in this case for denial of Petitioner's application for admission to the practice of law — *i.e.*, a lack of current good moral character allegedly reflected in the evidence before that court — actually was a pretext for denial on a basis prohibited by the formal court rule governing admission — *i.e.*, on the basis of Petitioner's criminal offense, first degree murder, thereby denying Petitioner due process of law?

PARTIES TO THE PROCEEDING

Petitioner is James Joseph Hamm, an applicant for admission to the State Bar of Arizona.

Respondent is the Committee on Character and Fitness of the Arizona Supreme Court, represented by counsel identified herein; and the real party in interest is the Supreme Court of the State of Arizona.

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RULES OF THE ARIZONA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Petitioner James J. Hamm respectfully seeks a Writ of Certiorari to the Arizona Supreme Court with respect to that court's denial of his application for admission to the practice of law.

OPINION OF THE COURT BELOW; FINDINGS OF COMMITTEE ON CHARACTER AND FITNESS

The Decision of the Arizona Supreme Court denying Petitioner's admission to the practice of law is reported, ***In the Matter of Hamm*****,** ___ Ariz. ___, 466 Ariz. Adv. Rep. 42, 123 P.3d 652 (2005), and is reprinted herein as **Appendix A (app. 1-23).** The Findings of Fact and Recommendation of the Committee on Character and Fitness of the Arizona Supreme Court is unreported and is reprinted as **Appendix B (app. 24-43).**

STATEMENT OF JURISDICTION

The published decision of the Arizona Supreme Court was filed December 6, 2005. There was no motion for rehearing. This Court has jurisdiction pursuant to **28 U.S.C. § 1257(a).** The Petition is timely pursuant to **28 U.S.C. § 2101(c), Rule 13.1,** Rules of the Supreme Court, and a **Rule 13.5** extension by Justice Kennedy to March 27, 2006.

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The **Fourteenth Amendment to the United States Constitution** provides, in pertinent part, that "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; . . . .*"

The primary rule adopted by the Arizona Supreme Court to govern the process of admission to the practice of law is that court's **Rule 36,** which is reprinted in full as **Appendix C (app. 44-55).** The principles of **Rule 36** implicated in this case are: (1) that there is no criminal offense which constitutes a *per se* disqualification of an applicant for admission and (2) that admission is to be determined by whether the applicant possesses current good moral character.

A related rule is **Rule 34(c)(2)(B),** *i.e.*, setting forth a requirement "*That applicant is of good moral character.*"

The first degree murder statute in effect on the date of Petitioner's crime provided as follows:

> 13-452. **Degrees of murder**
>
> A murder which is perpetrated by means of poison or lying in wait, torture or by any other kind of wilful, deliberate and premeditated killing, or which is committed in avoiding or preventing lawful arrest or effecting an escape from legal custody, or in the perpetration of, or attempt to perpetrate, arson, rape in the first degree, robbery, burglary, kidnapping, or mayhem, or sexual molestation of a child under the age of thirteen

years, is murder of the first degree. All other kinds of murder are of the second degree.

A.R.S. 13-452 (1974) (effective August 9, 1974).

STATEMENT OF THE CASE

Petitioner and a co-defendant committed armed robbery and first degree murder on September 7, 1974 by a fraudulent drug deal, during which, Willard Morley, Jr. and Zane Staples were shot to death. Both victims were unarmed. Petitioner formally entered a plea of guilty to the murder of Willard Morley, Jr.; but Petitioner knew then and knows now that he morally was responsible for the death of two people. The other charges were dismissed. A life sentence was imposed upon Petitioner.[1] Petitioner was transferred to the Arizona State Prison in Florence, Arizona on the same day that he was sentenced, December 20, 1974.

In prison, where no professional treatment programs existed in 1974, Petitioner addressed, on his own, the serious psychological problems that had led up to and culminated in his crime. Petitioner converted to Taoism and began serious study of analytical psychology in order to address the root causes of his crime. Petitioner's progress through the prison system included serving on many volunteer committees, helping illiterate inmates, taking

[1] The law in effect in Arizona on the date of the offense provided that a life sentence required a person to serve twenty-five calendar years before becoming automatically eligible for parole, and permitted the person, after serving one full calendar year in prison, to request that the sentence be commuted to some lesser term.

offered programs, and earning a Bachelor's Degree in Applied Sociology, graduating *summa cum laude* in 1983.

Petitioner met (1981) and married (1987) Donna Leone Hamm, a non-lawyer limited-jurisdiction judge and, with her, co-founded (1983) Middle Ground Prison Reform, an organization which, to this day, advocates to protect and define the rights and responsibilities of jail and prison inmates.

In preparation for his release, Petitioner took the LSAT, earning a score in the 96th percentile. Following his parole, Petitioner attended and graduated from Arizona State University's College of Law (1997), passed the Arizona Bar Exam (1999), and was granted an absolute discharge from parole (2001). Petitioner performed hundreds of hours of documented volunteer work for Middle Ground as well as hundreds of hours of volunteer work in public education and other public service activities after his release from prison.

Application for Admission to the Practice of Law. In January of 2004, Petitioner applied for admission, submitting a packet of materials consisting of approximately 500 pages, including many letters of support from respected community members and attorneys who know Petitioner well. These individuals included the president of the Arizona Psychological Association and Director of Clinical Studies for the Arizona School of Professional Psychology (Andrew Hogg, Ph.D.) (**app. 319-321**), a distinguished research professor from Arizona State University's School of Justice Studies (John Johnson, Ph.D.) (**app. 325-327**), practicing attorneys in good standing with the bar who have either known or worked with Petitioner for several years (or both) (Richard Parrish (**app. 330-333**), Scott Ambrose (**app. 322-324**), and Ulises

Ferragut, Jr.) (**app. 328-329**)); and former prison instructors, including one who has known Petitioner since 1976 (**app. 334-337**). The packet also contained letters from the Judge who sentenced Petitioner to prison in 1974, the Honorable Robert B. Buchanan, Retired (**app. 312-318**).

Two Days of Hearings Before Character and Fitness Committee. Petitioner attended two days of hearings before the Committee on Character and Fitness, an administrative arm of the Arizona Supreme Court. During the hearing, Petitioner submitted additional documents and testimony relevant to his current moral character.

The Committee ultimately voted to recommend denial (**app. 42**):

> ***While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate the heinous murders committed by Hamm; the serious consequences of the murders; his mischaracterization of the facts surrounding the murders; his failure to fully comply with a long-standing court order; and the unauthorized practice of law complaints.***

The Committee on Character and fitness of the Arizona Supreme Court failed to take into account material essential to the determination to be made and adopted a systematically skewed character evaluation that was a pretext for an *ad hoc per se* exclusionary rule not authorized by the formal regulations. This double error — ignoring essential input that was overwhelmingly favorable while adopting a series of negative conclusions not supported by the record — denied Petitioner due process of law, whether taken separately or together. **app. 63-66.**

Highly-Detailed Petition for Review, Requesting a Hearing Before the Arizona Supreme Court. Petitioner filed a Petition for Review before the Arizona Supreme Court, reprinted as **Appendix D, app. 56-156,** challenging the sufficiency of the evidence **(app. 63)**, contending that the record failed to provide rational support for the grounds upon which the Committee relied in its rejection of Petitioner's application **(app. 63)**, and requesting a hearing **(app. 149)**. Petitioner asserted that, if the basis for the Committee decision lacked rational support in the evidence, then the decision to recommend denial transgressed due process of law, in violation of the Fourteenth Amendment of the United States Constitution. **app. 63.**

Petitioner asserted that he established his current good moral character and his fitness to practice law, and did so by preponderating evidence. **app. 63.** Petitioner contended that there is no evidence in the record which rationally supported a finding of doubt about his present character or his fitness to practice law. Further, Petitioner asserted that the Committee failed to follow the governing rules by an *ad hoc* application of a *per se* rule denying a positive recommendation on the basis of the nature of the underlying offense, first degree murder. **app. 64, 94-102.** Regardless of whether the Committee intended to take such action or implicitly created the *per se* rule by its actions, application of an unauthorized exclusionary rule violates due process of law. **app. 64.** Moreover, a finding that there is no level of rehabilitation commensurate with the offense of first degree murder is merely a means of creating an exclusionary rule that does not exist within Arizona Supreme Court Rule 36. **app. 64.** Petitioner asserted that the Committee decision reflected the application of an unauthorized exclusionary rule, even while the written decision loosely was expressed in terms similar to the

discretionary rule formally adopted by the Arizona Supreme Court for guiding the exercise of discretion in considering applications for admission. **app. 64.**

Response By Committee. The Committee on Character and Fitness filed a Response to the Petition for Review, reprinted as **Appendix E, app. 157-197.**

Amicus Curiae Brief by Board of Governors of State Bar. The Board of Governors of the State Bar of Arizona filed an *Amicus Curiae* brief in support of the Committee, reprinted herein as **Appendix F, app. 198-232.** In fact, the State Bar Board of Governors openly advocated for impermissible action, by letter to the Committee and by *Amicus Curiae* Brief before the Arizona Supreme Court. The President of the Board — on behalf of the Board — submitted a letter requesting the Committee consider several items, not one of which was permissible under the rules governing the process of admission and some of which are outright errors of law. **app. 310-311.** In addition to urging the Committee to deny Petitioner's application on grounds wholly incompatible with the applicable rule adopted by the Arizona Supreme Court to govern admissions, the State Bar of Arizona submitted an *Amicus Curiae* brief opposing admission. **app. 198-232.** That brief is remarkable for the extraordinary positions taken therein, which include (1) the opinion that it is impossible to achieve character reformation after having committed murder **(app. 200-201)**; (2) the view that Petitioner's rehabilitation is either essentially irrelevant or necessarily insufficient **(app. 202)**; (3) the notion that the current status of Petitioner's moral character was fully, finally, and permanently fixed over thirty years ago **(app. 202-203)**; and (4) the sentiment that all other attorneys, living and dead, would be dishonored by Petitioner's admission to practice **(app. 200)**. The principle

that lies beneath the surface of the State Bar's *Amicus* Brief was that character is immutable; or that character is fixed for all time by a single act; or that one legitimately and conclusively may evaluate another's character on the basis of the single worst act ever committed by that person, including an act committed more than three decades ago. **app. 233-238.** That principle and the beliefs and conclusions founded upon that principle inherently are invalid:

> "Almost universal human experience dictates that moral character can and does change both for better and worse — examples of great extremes of both are widely known. The great object of a thousandfold societies, foremost of which are our religious institutions, is based on an almost universal belief that moral character can be improved."

***Application of Guberman*,** 90 Ariz. 27, 30-31, 363 P.2d 617 (1961).

Petitioner's Combined Response/Reply. Petitioner filed a combined Response to the State Bar's *Amicus Curiae* Brief and Reply to the Committee's Response to the Petition for Review, reprinted as **Appendix G, app. 233-306.**

Oral Argument But No Rehearing Before Arizona Supreme Court; Court Errors; Published Opinion. The Arizona Supreme Court granted oral argument on the Petition, but did not grant Petitioner a rehearing before that body or before a re-constituted Committee on Character and Fitness. The Arizona Supreme Court failed to perform a *de novo* review, failed to address or resolve the errors committed by its administrative instrumentality, failed to provide Petitioner a hearing, and exacerbated the prior errors by drawing further conclusions for which

there is no support in the record. **app. 1-23.** The Arizona Supreme Court issued a published opinion denying Petitioner's application and resolving all issues against him. **app. 1-23.**

ARGUMENT

I. THE CONSTITUTION REQUIRES GENUINE CONSIDERATION OF DUE PROCESS PRINCIPLES RATHER THAN MERE LIP SERVICE

Petitioner believes that the due process clause of the United States Constitution promises more than a superficial review directed toward the achievement of a predetermined outcome and justified with pretextual conclusions that fly in the face of the facts. Due process requires more than mere lip service to the fundamental principles that have supported and sustained this nation since its inception. As United States Supreme Court Justice Sandra Day O'Connor stated, with regard to due process review:

> While this Court has the ultimate power to interpret the Constitution, we grant review in only a small number of cases. We therefore rely primarily on state courts to fulfill the constitutional role as primary guarantors of federal rights. But the state courts must do more than recite the constitutional rule. They also must apply it, faithful to its letter and cognizant of the principles underlying it. Unfortunately, such review is not always forthcoming. * * * *
>
> > [W]e understand as well as the next court how to . . . articulate the correct legal principle, and then perversely fit into that principle a set of facts to which the principle

> obviously does not apply. [All judges] know how to mouth the correct legal rules with ironic solemnity while avoiding those rules' logical consequences. [citation omitted]

TXO Production Corporation v. Alliance Resources Corporation, 509 U.S. 443, 499-500 (1993) (Justice O'Connor, dissenting) (quoting material in a discussion of review under the due process clause within a different context).

Due Process means more than mere words; it is a fundamental principle of fairness in all legal matters, both civil and criminal. All formal legal procedures must be followed for each individual in an attempt to lessen the occurrence of prejudicial, biased, or unequal treatment. It is the absolute essential touchstone of fairness that characterizes American jurisprudence.

II. COMMITTEE ERRORS

A. Committee Members Pre-Judged the Outcome

One Committee member (attorney J. Russell Skelton) had to be involuntarily recused prior to commencement of the hearing based on having formally stated, in a letter written in 1998, his predetermined opposition to Petitioner's admission and having advocated for a position not permitted under the rules, *i.e.*, disqualification based solely on Petitioner's offense:

> *. . . [A]s a former member of the Character and Fitness Committee, I am very much opposed to Mr. Hamm's application. While a Committee member, I believe I voted on one or two occasions to admit individuals with prior felony convictions; however, none of those individuals were convicted of murder.*

> *I believe a murder conviction should disqualify anyone from ever being admitted to practice law in the State of Arizona, or anywhere else for that matter. I believe that certain acts, including murder, should forever disqualify individuals from practicing law, notwithstanding any subsequent rehabilitation.*

app. 307-308; presented to state court at **app. 95-96.** It should be noted that the rules in effect at the time of Mr. Skelton's former membership on the Committee were the same rules in effect at the time of Petitioner's application — *i.e.*, no *per se* disqualification. After writing this letter, Mr. Skelton sought to be (and was) re-appointed to the Committee and failed to voluntarily recuse himself from consideration of Petitioner's application.

A second Committee member (Henry Manuelito, a non-lawyer) was involuntarily recused during the hearing process when witness testimony revealed statements from him indicating that he had predetermined his decision in Petitioner's case. Testimony recorded at pages 166-168 of transcript of Committee hearing (hereinafter, "R.T."). Mr. Manuelito's follow-up letter to the Committee revealed an even more restrictive variation of the same invalid ground (disqualification for "*any felony conviction*"). **app. 309.** This issue was presented to the state court with citations to transcript of hearing before the Committee, **app. 97-98.** In addition to concealing his private standard that any felony conviction disqualified an applicant, Mr. Manuelito tainted the review of Petitioner's application as Petitioner was discussing his prison programming and educational activities, by deliberately injecting negative conclusions about Petitioner's character that had no basis in the record: "*What you've learned, apparently, is how to manipulate people as well as yourself. With all the time you*

have been there, you've mastered it, the techniques that you studied. I don't know if you are manipulating us here right now" (R.T. 72).

Moreover, other members of the Committee repeatedly questioned Petitioner and his witnesses on the subject of whether any offense "*trumped rehabilitation*" and thus disqualified an applicant on the basis of the offense, despite any demonstrated level of rehabilitation (*e.g.*, R.T. 141-231, especially at 166-69, 199-200, 220-222).

These matters take on greater significance in relation to the decision of the Committee, which found that Petitioner's rehabilitative efforts failed to "negate" the murders or the consequences of the murders (later modified to assert that what was meant by the Committee was a failure to "offset" rather than to negate). **app. 270-271.** Such a form of weighing — i.e., either "negating" or "offsetting" — violates due process by determining character by a process of comparing the crime with rehabilitation rather than evaluating rehabilitation with an eye toward character deficiencies underlying the commission of the offense. **app. 268-272.** Such a weighing process allows the offense to "trump" rehabilitation despite any level of achievement.

The Committee's prejudice was shown by the questions asked of Petitioner and his witnesses, by the unilateral and universally negative interpretation placed on events, by the selection of only the facts which might tend to support the preferred outcome and by the rejection of or ignoring all controverting evidence. These matters undermine any presumption of correctness which otherwise might be attributed to the Committee's review.

B. Committee Improperly Attributed to Petitioner a Statement by a Committee Member

The Committee alleged that Petitioner mischaracterized his crime as "*a drug deal gone bad at an instant*" (**app. 38 at (C)**), and the Committee's Response before the state supreme court devoted an entire section specifically to that subject (**app. 179-182**) — but without a single citation to a location in the transcript of the hearing or in any document possessed by the Committee wherein Petitioner himself referred to his crime as a drug deal gone bad at an instant. In fact, that phrase was coined by a Committee member, Tucson attorney Stephen Weiss, during his questioning of one of Petitioner's witnesses about whether there was a drug deal at all. R.T. 161-162. Subsequently, the Committee Decision then attributed the Weiss quote to Petitioner and drew negative conclusions from Petitioner's alleged use of that phrase.

Petitioner properly used the phrase, "*drug-related*" in describing the offense, because his crime ***was*** "*drug-related.*" Petitioner used drugs for at least two years prior to the offense. Petitioner was using drugs extensively for the six months immediately prior to the offense, in order to mask his mental problems and to avoid dealing with his own progressively deteriorating mental state, and Petitioner had been selling drugs. Petitioner used drugs the day before the offense, when the meeting was arranged with persons interested in purchasing drugs. Petitioner was under the influence of drugs at the time of the offense. These matters were presented to and discussed with the Committee. R.T. Page 15, lines 6-7; Page 16, lines 3-6; Page 32, lines 20-21; Page 58, line 9; and Page 59, line 14.

C. Committee Placed Improper Reliance on an Ex Parte Document

Two months after Petitioner was sentenced and transferred to prison, the prosecutor prepared a "*Statement of Facts on Conviction*," the content of which was not disclosed either to Petitioner or his attorney. That document was entered into the Record February 10, 1975 in an ex parte manner. Neither Petitioner nor his attorney are listed for a copy of the document. Because Petitioner pled guilty and accepted his sentence as being just, he never filed a direct appeal or collateral challenge to his conviction or sentence. As a consequence, the transcript of the Change of Plea Hearing (and therefore Petitioner's plea colloquy) never was transcribed and the court reporter's hand-written notes are unavailable. Discussion at **app. 108-114; app. 244.**

III. THE ARIZONA SUPREME COURT VIOLATED PETITIONER'S DUE PROCESS RIGHTS IN ITS EVALUATION OF PETITIONER'S CURRENT MORAL CHARACTER WITH REGARD TO SEVERAL SUBJECTS

Despite the numerous errors presented to the state supreme court regarding the impropriety of the Committee's procedures and evaluations, the court adopted the Committee's version of events, its assessment of Petitioner's alleged lack of candor, and its discrediting of Petitioner's contentions on multiple subjects. **app. 13, ¶ 24 and note 5.**

A. Subject One: Failure to Fulfill Parental Responsibilities

Petitioner knew of the order for temporary child support, but did not know whether his spouse had followed through with the divorce or withdrawn it for her own reasons. Without service of a document there was no evidence that a divorce had been granted or that an order for permanent child support had been issued.

Further, contrary to what the court stated in its opinion, Petitioner earned 6 cents per hour for a six-hour day when he initially went to prison in 1974. The one hundred dollars per month earnings began many, many years later and lasted for only a short period of time, after which he returned to a 10-cent per hour job for a four-hour day. While a lack of earnings does not excuse non-payment, it certainly refutes the Court's conclusion (**app. 15 and note 6**) regarding Petitioner's financial ability to pay child support. This is merely one more example of the court taking a single sentence out of a lengthy discussion of the 17-year period Petitioner spent in prison and drawing a conclusion that superficially appears to support the court's decision. Moreover, the court missed the point. When Petitioner went to prison, he was experiencing severe mental difficulties. He was overwhelmed with feelings of guilt, had recurrent nightmares, and even considered suicide. To categorize his conduct as demonstrating a lack of character is arbitrary and divorced from reality.

Once Petitioner did discover, in 1987, that the divorce had gone through but that his former wife had remarried and his son had been adopted — according to two private investigators (**app. 338-340**), he consulted with a person

knowledgeable in parent-child relations and was advised to avoid initiating contact until his son was an adult. The controlling issue was not the relatively small sum of money but the possibility of a healthy and productive relationship stretching into the future and which involved a generation of grandchildren.

The Arizona Supreme Court stated (**app. 18 at note 8**) that Petitioner "*lashed out at the Committee's refusal to agree with Hamm's argument, which the Committee could accept only if it accepted Hamm's testimony as credible. Hamm accused the Committee of 'totally ignor[ing] the content of Hamm's petition to which it supposedly was responding.'*" Here is the alleged "*lashing out*" by Petitioner:

> The Committee Response totally ignored the content of the Petition to which it supposedly was responding. See Licensed private Investigator Letter (Harry Minnick), dated January 22, 1988, provided to the Committee as part of Petitioner's Application; a copy of this three-page letter accompanied the Petition as Item 5 of Appendix Three. The letter expressly stated that Petitioner's son had been adopted. There is no "doubtful adoption theory."

app. 299. This clearly does not constitute "*lashing out*." Rather, it merely points out the fundamental incompatibility between the evidence before the Committee and the conclusion(s) drawn. An unbiased reading of the document (**Appendix G, app. 233-306**) will confirm that the tone of the entire document is calm, professional, and reasonable. An objective reading of the Committee Response (**Appendix E, app. 157-197**), however, and the State Bar's *Amicus Curiae* Brief (**Appendix F, app. 198-232**), will

confirm that both are unprofessional, in that they are ugly in tone, argumentative in content, disparaging in language, dismissive in nature, and extreme in their characterization of the opposition. Somehow, the Arizona Supreme Court failed to notice that, while mischaracterized Petitioner's argument as "*lashing out*." **app. 18 at note 8.**

The court and the Committee adopted the irrational view that Petitioner's voluntary assumption and payment of a legally unenforceable debt somehow reflected a lack of character rather than a willingness to accept responsibility. Petitioner followed this alleged "*lashing out*" with a request for the state court to consider the issue within the context of Petitioner's entire life, and included the following citation and quotation from a California case involving child support payments:

> The sole blemish on Pacheco's record since graduating from law school in 1978 appears to be his ill-advised involvement in the technically legal, but ethically suspect child custody incident. In our view, **Pacheco's involvement in that incident is simply insufficient to demonstrate a lack of rehabilitation.**

***Pacheco v. State Bar*,** 741 P.2d 1138, 43 Cal.3d 1041, at 1058, 239 Cal.Rptr. 897 (1987).

Petitioner does not claim that his handling of his parental responsibilities was fully appropriate, nor did he make that argument to the Committee. Rather, he pointed out that the way he handled the matter turned out in a very favorable way, with current constructive and productive relationships with his son and grandchildren and the opportunity to influence their lives for the

better. Ultimately, Petitioner asserts that the entire matter, given the circumstances within which it occurred, does not constitute a character issue; wisdom and character are related but not identical concepts.

B. Subject Two: Accusation of Plagiarism

The state court also took Plaintiff to task for what it termed plagiarism. **app. 20.** In the process of doing so, it simply ignored the content of Petitioner's response to the Committee's accusation, presented at **app. 303-304.** Petitioner asserts that, regardless of how one views it, the phraseology he used is not a character issue. Compare the following two cases:

> . . . [C]ounsel for Plaintiff, José Ramón Olmo Rodriguez, filed an opposition to the summary judgement motion which plagiarizes full pages of Ortiz v. Colon, No. 96-1153, slip op. at 2-7 (D.P.R. Feb. 11, 2000).
>
> In the future, we expect counsel to maintain the highest standards of integrity in all of his representations with this court. We will not treat so gingerly further lapses in his judgement.

Velez v. Alvarado, 145 F. Supp.2d 146, 160-61 (P.R. 2001) (where approximately 66% of the submitted brief was lifted wholesale from a judge's opinion and where a warning was issued, but no sanction). Wholesale arrogation of another's work, however, is quite different than adopting phraseology:

> Because, however, a particular writer with or without acknowledgment adopts the exact or substantial phraseology of others, it does not

> follow that he has abdicated in favor of mental processes extrinsic to his own.

National Labor Relations Board v. Botany Worsted Mills, 106 F.2d 263, 266 (3rd Cir. 1939) (also discussing judges' use of attorney pleadings and law clerk analyses as bases for formal opinions, published or not).

The ultimate point here, however, is whether Petitioner's use of phraseology from a case to which he cited at another point in the brief (where Petitioner believed that a citation was not merely possible but formally required) reflects a character flaw that should bar him from admission. Assuming for purposes of this issue that the ideal is defined as "attribution wherever attribution might be accorded" (rather than must be accorded), Petitioner is not reluctant in the least to adopt that practice. He does not, however, believe that such conduct would improve his character; it merely meets an external practice preference he is willing to adopt.[2]

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[2] It seems interesting that the state court was quite concerned about Petitioner's use of a description of a factually similar circumstance without attribution where attribution could have been made, but was utterly unconcerned with the Committee's and the Committee's attorney's false attribution of a Committee member's statement ("*drug deal gone bad at an instant*") to Petitioner in order to justify a negative conclusion about Petitioner — and then defending the practice when it was pointed out. **app. 38 at (C)** (Committee Findings); **app. 117-118** (Petition for Review); **app. 179-182** (Committee Response); **app. 289-291** (Petitioner's Reply). Which actually is more indicative of character: falsely putting words in Petitioner's mouth for the specific purpose of drawing otherwise unwarranted negative inferences (and attempting to defend the practice), or using generally similar language to describe broadly similar factual circumstances?

C. Subject Three: Failure to Accept Responsibility for the Crime and Mischaracterization of the Facts of the Crime

The state court adopted an extraordinarily narrow view of what constitutes accepting responsibility for the crime, a view which ignored thirty years of personal, painful, soul-searching remorse and rehabilitation. **app. 12-13,** at ¶ 23. Compare this view to the discussion that was presented to the state court. **app. 76-77.**

The court also performed what it referred to as an independent review and drew inferences from what it characterized as "agreed facts." **app. 13 at ¶ 24.** The court's assertion, however, that the facts — even as the court presented them from the plethora of documentary and testimonial evidence presented to the Committee — "*lead directly to the inference that Hamm intended to kill*" (***Id.***) represents a telling example of the court's failure to provide due process. The court presented a *narrowly selected* series of facts and then used them to justify its conclusion. ***Id.***

The court failed to account for those uncontroverted facts which render the conclusion invalid, namely, that Petitioner had never committed an armed robbery before, whereas the co-defendant had committed many; that Petitioner was not in a leadership role at the scene of the crime (in fact, barely able to speak), but deficiencies in his character allowed him to go along with the plan to rob; that Petitioner did not believe that his co-defendant actually was going to kill the victims, but only to rob them; that Petitioner knew of other robberies committed by the co-defendant in which he claimed that he would kill the victims but did not; that the "street scene" of Tucson, Arizona in 1974 involved many people making boastful

statements of threatening extreme violence but far less often expressed that violence; that Petitioner did not shoot first, as implied by the selected set of facts presented in the court opinion, but rather fired just after the co-defendant shot Mr. Staples, the passenger in the vehicle; and that Petitioner was experiencing severe psychological and emotional problems before and during the crime and was using drugs to self-medicate and mask his problems, including being under the influence of drugs at the time of the crime. Taking these facts into consideration, it cannot reasonably be said that the facts "lead directly" to a conclusion that Petitioner intended to kill the victims, rather than intending only to commit an armed robbery and thereby being guilty of first degree murder, under **A.R.S. § 13-452 (1974).**

Petitioner requested the state court to consider the dispute over felony murder vs. premeditated murder within the context of what character truly means, as exemplified in the following reinstatement case:

> Statements of guilt and repentance may be desirable as evidence that the disbarred attorney recognizes his past wrongdoing and will attempt to avoid repetition in the future. However, to satisfy the requirements of present good moral character in the tests for reinstatement noted above, it is sufficient that the petitioner adduce substantial proof that he has "such an appreciation of the distinctions between right and wrong in the conduct of men toward each other as will make him a fit and safe person to engage in the practice of law." * * * * Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he

> honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule * * * * Honest men would suffer permanent disbarment under such a rule. Others, less sure of their moral positions, would be tempted to commit perjury by admitting to a nonexistent offense (or to an offense they believe is nonexistent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the bar, would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve.

***In the Matter of Hiss*,** 368 Mass. 447, 456-59, 333 N.E.2d 429 (1975) (Presented to state court at **app. 284-286**).[3]

Petitioner was and remains responsible for the murders of the two men on September 7, 1974; he makes no attempt to hedge his guilt or ease his path or deny his responsibility. Petitioner served the sentence the law imposed upon him, focused all his time and energy on progressively accepting responsibility for his crime, worked to change himself as a person, and has spent the intervening thirty years attempting to atone for his actions. It was not refusal to accept responsibility for his crime that Petitioner displayed when he declined to agree

[3] The state court decision ignored the ethical issue involved. **app. 1-23.**

to the Committee's obvious preference for an admission of premeditation — it was character. What is within Petitioner's control is his acknowledgment of responsibility, his acceptance of a life-long duty to atone for his actions, his personal change in thinking and behavior, and his willingness to endure public attention and scrutiny to serve the greater goal of encouraging others.

D. Subject Four: Failure to Disclose Material

Petitioner discussed the incident referred to by the Arizona Supreme Court in detail with the Committee, and the Committee accepted his statement that he intended to discuss the incident as an example of good character in how he handled the situation and all its pressures. Further, the state court did not ask any question about this subject during the oral argument and alleged de novo review. Finally, the state court misconstrued the reason for Petitioner taking action to correct the matter — he was on parole and was susceptible to having his conditional release revoked and being returned to prison. His concern had to do with administrative action, not criminal law. No sanction was applied by the state correctional system via his supervisor, and Petitioner was lauded by his parole officer as having behaved throughout the incident in an exemplary manner. Petitioner and his wife voluntarily participated in constructive marriage counseling. Once again, there is no issue of poor character involved whatsoever.

IV. THE ARIZONA SUPREME COURT IGNORED EVIDENCE ESSENTIAL TO A FAIR AND RATIONAL DETERMINATION OF CURRENT MORAL CHARACTER

At the same time that the Committee was attempting to compel Petitioner to make a statement that was untrue — that is that Petitioner premeditated the murder of the victims — it simultaneously was ignoring the content of the letters that Petitioner's sentencing Judge, the Honorable Robert B. Buchanan (Retired) had written on Petitioner's behalf. Later, at the same time the court was devising its selection of facts to support is conclusions, the court — like the Committee — wholly ignored the support from the Judge who sentenced Petitioner, and other remarkable letters attesting to Petitioner's current good moral character and fitness to practice law.

Judge Buchanan wrote letters in 1997, 1999, and 2001 in support of Petitioner's application for absolute discharge from sentence. **app. 312-318.** Absolute discharge was granted in 2001. In these letters, Judge Buchanan states his support for Petitioner's admission to the practice of law. Prior to the hearing before the Committee, Petitioner called Judge Buchanan, who was leaving on a trip, and Judge Buchanan expressly stated that he supported Petitioner's application for admission and authorized Petitioner to inform the Committee of his position, which Petitioner did. The Committee's formal decision mentioned the receipt of letters in the abstract (letters in support and letters in opposition) but did not address the content of any supporting letter or discuss the import of the extraordinary statements concerning Petitioner's extremely high ethical standards and outstanding moral

character contained in many of them. **app. 31 at ¶ 31; app. 36 at ¶ 53, & ¶ 54.**

Rather than ignoring the content of the letters attesting to Petitioner's current good moral character, however, the state court redefined them so that the court did not even have to consider them in making its decision:

> *We are impressed with the sincerity and fervor of those who testified or submitted letters on Hamm's behalf. Were rehabilitation the only showing Hamm must make to establish good moral character, we would weigh those factors tending to show rehabilitation against those tending to show a lack thereof. Under the facts of this case, however, we need not decide whether the facts of record establish rehabilitation.*

app. 14, ¶ 25. Petitioner contends that an opportunity to present evidence of current good moral character that is not taken into account is not a meaningful opportunity for purposes of the due process clause.

V. DUE PROCESS PRINCIPLES, WITHIN THE CONTEXT OF THE RULE GOVERNING ADMISSION, REQUIRE THE ARIZONA SUPREME COURT TO MAKE APPROPRIATE, MEANINGFUL, OR PARTICULARIZED CONNECTIONS BETWEEN AN APPLICANT'S PRIOR UNLAWFUL CONDUCT AND HIS CURRENT MORAL CHARACTER

A single act thirty years in the past may or may not be consistent with the character and conduct of that same person thirty years later. Whether a specific thirty-year-old act represented a facet or expression of an enduring character orientation can be determined only by an

examination of the intervening thirty years. If subsequent conduct is consistent with the specific act, then reason and logic strongly support a conclusion that there has been no fundamental character change. If the subsequent conduct demonstrably is different, however, then reason demands a deeper examination, in order to determine whether any change that has come about in the intervening years reflects merely a superficial alteration of behavior or a fundamental reorientation of the person's character.

While the Committee simply ignored the issue of rehabilitation, the Arizona Supreme Court essentially looked through the wrong end of the telescope. That court stated: " . . . *[T]his Court must determine what past bad acts reveal about an applicant's current character*." **app. 9.** Petitioner submits that, for an applicant for admission to the practice of law who has committed any form of serious unlawful conduct in the past, the role played by rehabilitation is the key issue in determining the person's current good moral character. All the other issues (of **Rule 36**) carry weight on one side of the evaluation or the other — **with respect to their relationship to this core issue.**

For example, the length of time between the unlawful conduct and the application is important because it represents a significant measure of the consistency of the rehabilitation as well as the depth and permanency of the avowed change. Rehabilitation commencing a week ago does not carry the same import as rehabilitation that actively has been proceeding for more than three decades.

Similarly, each of the other factors provide additional measures of the depth, scope, consistency, longevity, and/or authenticity of the applicant's rehabilitation. With respect

to the issue of the applicant's conduct since the commission of the offense, a key measure of one's orientation and commitment is to be found in the person's investment of time. The sacrifice entailed in devoting significant amounts of volunteer time to public and school presentations that are directed toward communicating the consequences of crime, serving as an example for others, providing information that comes from experience rather than rhetoric, taking personal responsibility for one's criminal acts in public ways and to the benefit of others without compensation, foregoing the income and other economic benefits that could be obtained through an alternate investment of that same time — these matters provide a verification and validation of the underlying rehabilitative process that is at work within the individual:

> Possibly the most definitive independent evidence of the change in his character is Avila's presentation to youth groups of his life's misdirection. Now, as a fifty-two year old man, Avila openly describes his descent into criminal conduct, the consequences he endured as a result of that conduct, and the difficulty he has encountered in trying to rebuild his life. Avila's willingness to represent his choices as examples of conduct to avoid to formative youth and to encourage them to make different choices is strong evidence of Avila's genuine understanding of his prior misconduct and real character change.

Avila v. People, Colo. O.P.D.J.[4] (July 22, 2002), at ¶ 29.

[4] Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado.

In this regard, Petitioner has discussed his offense and rehabilitation with psychiatrists, psychologists, grade school, high school, college, and university students, church members, attendees and members of civic organizations, radio talk show hosts, friends and acquaintances, etc. From the time of his release from prison into the community in 1992, Petitioner has made hundreds — perhaps thousands — of volunteer public presentations to groups of lawyers, judges, and law students; to university classes; civic organizations; churches and church groups; at-risk youth groups, high school and community college classes and student organizations; appeared on television and radio programs; and been the subject of numerous newspaper and magazine articles, addressing his offense, drug use, imprisonment, remorse, and rehabilitation. Petitioner volunteered his time to participate in the filming of an anti-gang related videotape series that was partially funded, ironically, by the Arizona Supreme Court and presented to high school students in approximately 800 schools throughout the state of Arizona.

Petitioner owes his victims the truth; the Arizona Supreme Court wants the pretention of truth, presented so as to pacify the predilections of those who insist upon what they call good faith but actually constitutes nothing more than empty imagery, a show utterly devoid of sincerity, a mockery of remorse.

CONCLUSION

If the profession cannot cope in a reasoned and constructive way with the admission of a person who has devoted more than thirty years of his life to positive character change and ethical conduct that focuses on honoring the memory of his victims, then the profession

and the state court that regulates the profession in Arizona has lost its integrity. If the profession cannot accommodate one who has corrected himself, then it has separated itself from the very community and society it purports to serve. The evidence of Petitioner's serious and unremitting attention to voluntarily accepted responsibilities is equally remarkable:

> *. . . I was very impressed by his capacity for genuine insight. Mr. Hamm demonstrated remorse, empathy, and responsibility.* ***Of all the hundreds of clients whom I have worked with since becoming a psychologist, I know of none who worked harder in therapy to really understand himself. He actively applied what he learned in our psychotherapy sessions to his everyday life. He used psychotherapy to change himself.***

app. 320, quoting from letter from Andy Hogg, Ph.D., A.B.P.P., President, Arizona Psychological Association.

Moreover,

> As Justice Felix Frankfurter observed after twenty-three years on the bench, "Fragile as reason is and limited as law is as the expression of the institutionalized medium of reason, that's all we have standing between us and the tyranny of mere will and the cruelty of unbridled, unprincipled, undisciplined feeling" (as quoted in Time, Sept. 7, 1962, at 150).

Poppell v. City of San Diego, 149 F.3d 951, 954 and note 1 (9th Cir. 1998).

WHEREFORE, Petitioner respectfully requests that this Court accept jurisdiction, grant certiorari to the Arizona Supreme Court, review that court's denial of due

process to Petitioner and denial of his admission to the practice of law, and Order that Petitioner be admitted.

RESPECTFULLY SUBMITTED this 27th day of March, 2006.

JAMES JOSEPH HAMM
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Tempe, Arizona 85281
(480) 966-8116
Petitioner *Pro Se*

APPENDICES

Volume I

Volume II

BLUE DIVIDER

APPENDIX A

DECISION OF ARIZONA SUPREME COURT

IN THE MATTER OF HAMM, SB-04-0079-M (Ariz. 2005)
466 Ariz. Adv. Rep. 42, 123 P.3d 652
In the Matter of JAMES JOSEPH HAMM, Applicant.
SB-04-0079-M
Supreme Court of Arizona,
En Banc
December 6, 2005.

APPLICATION DENIED

JAMES JOSEPH HAMM, Tempe, In Propria Persona.

MONROE & MCDONOUGH, P.C., Tucson, By Lawrence McDonough And JUAN PEREZ-MEDRANO, Chair, Phoenix, Attorneys for the Committee on Character & Fitness CHARLES W. WIRKEN, President, Phoenix, HELEN PERRY GRIMWOOD, President-elect, Phoenix JIM D. SMITH, First Vice President, Phoenix DANIEL J. MCAULIFFE, Second Vice President, Phoenix EDWARD F. NOVAK, Secretary-Treasurer, Phoenix ROBERT B. VAN WYCK, Chief Bar Counsel, Phoenix, Attorneys for Amicus Curiae, State Bar of Arizona.

MICHAEL D. KIMERER, Phoenix, MARTY LIEBERMAN, Phoenix, AMY L. NGUYEN, Phoenix, CARLA RYAN, Tucson ANDREW SILVERMAN, Tucson, Attorneys for Amicus Curiae Arizona Attorneys for Criminal Justice.

ANDREW P. THOMAS, MARICOPA COUNTY ATTORNEY, Phoenix By Andrew P. Thomas, Attorney for Amicus Curiae Maricopa County Attorney's Office.

OPINION

McGREGOR, Chief Justice.

¶ 1 James Hamm petitioned this Court, pursuant to Arizona Supreme Court Rule 36(g), 17A A.R.S.,[1] to review the recommendation of the Committee on Character and Fitness (the Committee) that his application for admission to the State Bar of Arizona (the Bar) be denied. Having reviewed the record and the Committee's report, we conclude that James Hamm has failed to establish the good moral character necessary to be admitted to the practice of law in Arizona and deny his application.

I.

¶ 2 In September 1974, James Hamm was twenty-six years old and living on the streets of Tucson. Although he previously had attended divinity school and worked as a part-time pastor, Hamm describes his life in 1974 as reflecting a series of personal and social failures. In 1973, he had separated from his wife, with whom he had a son. Although he had no criminal record, he supported himself by selling small quantities of marijuana and, again according to Hamm, he used marijuana and other drugs and abused alcohol.

¶ 3 On September 6, 1974, Hamm met two young men who identified themselves as college students from Missouri. The two, Willard Morley and Zane Staples, came to Tucson to buy twenty pounds of marijuana. Hamm agreed to sell it to them, but apparently was unable to acquire

[1] References in this opinion to "Rule ___" are to the Rules of the Arizona Supreme Court.

that quantity of marijuana. Rather than call off the transaction, Hamm and two accomplices, Garland Wells and Bill Reeser, agreed to rob Staples and Morley of the money intended for the purchase. On September 7, Wells gave Hamm a gun to use during the robbery. Later that day, Wells and Hamm directed Morley and Staples to drive to the outskirts of Tucson, purportedly to complete the drug transaction; Reeser followed in another vehicle. Both Wells and Hamm carried guns; Morley and Staples were unarmed. Hamm sat behind Morley, the driver, and Wells sat behind Staples. At some point, Hamm detected that Staples was becoming suspicious. As Morley stopped the car, and without making any demand on the victims for money, Hamm shot Morley in the back of the head, killing him. At the same time, Wells shot Staples. Hamm then shot Staples in the back as he tried to escape and shot Morley once again. Wells also shot Morley, then pursued Staples, whom he ultimately killed outside of the car. Hamm and Wells took $1400.00 from the glove compartment, fled the scene in the van driven by Reeser, and left the bodies of Morley and Staples lying in the desert.

¶ 4 Hamm took his share of the money and visited his sister in California. At the hearing held to consider his application to the Bar, he told the Committee that he "was compelled to come back to Tucson," despite knowing he probably would be caught. Police officers arrested Hamm shortly after his return. While in custody, he told the police that Morley and Staples were killed in a gun battle during the drug deal. Initially charged with two counts of first-degree murder and two counts of armed robbery, Hamm pled guilty to one count of first-degree murder and was sentenced to life in prison, with no possibility of parole for twenty-five years.

¶ 5 Once in prison, Hamm began taking steps toward rehabilitation and became a model prisoner. After spending one year in maximum security, he applied for and received a job in a computer training program that allowed him to be transferred to medium security. Once in medium security, Hamm apparently took advantage of any and every educational opportunity the prison system had to offer. He completed certificates in yoga and meditation and, on his own, studied Jungian psychology. He helped fellow inmates learn to read and write and to take responsibility for their actions. He obtained a bachelor's degree in applied sociology, *summa cum laude,* from Northern Arizona University through a prison study program.

¶ 6 After Hamm completed six years in medium security, prison officials transferred him to minimum security, where he worked on paint and construction crews. He received a significant degree of freedom, which allowed him to live in a dormitory rather than in a cell and occasionally to drive unaccompanied to nearby towns. He testified that he was the only inmate permitted to head a work crew. Hamm reported to the Committee that he played an instrumental role on various prison committees, particularly the committee that developed a new grievance procedure within the Department of Corrections. In addition, he wrote grant proposals for libraries, for handicapped prisoners, and for obtaining greater legal assistance for prisoners.

¶ 7 While in prison, he met and married Donna Leone. She and Hamm founded Middle Ground Prison Reform (Middle Ground), a prisoner and prisoner family advocacy organization involved in lobbying for laws related to the criminal justice system and prisons. Middle Ground also provides public education about those topics.

¶ 8 In 1989, the Governor, acting on the recommendation of the Arizona Board of Pardons and Parole (the Board), commuted Hamm's sentence. When he had served nearly seventeen years, in July 1992, the Board released Hamm on parole, conditioned upon no use of alcohol or drugs, drug and alcohol testing, and fifteen hours of community service each month. In December 2001, the Arizona Board of Executive Clemency[2] granted Hamm's third application for absolute discharge.

¶ 9 Between his release in August 1992 and his absolute discharge in December 2001, Hamm performed thousands of hours of community service. He advocated for prisoners' rights in various forums by writing position papers, appearing on radio programs, testifying in legislative hearings, and speaking at churches, schools, and civic organizations. He also appeared in a public service video encouraging children not to do drugs or join gangs. Hamm now works as the Director of Advocacy Services at Middle Ground Prison Reform.

¶ 10 While on parole, Hamm graduated from the Arizona State University College of Law. In July 1999, Hamm passed the Arizona bar examination and, in 2004, filed his Character and Fitness Report with the Committee.

II.

¶ 11 The Rules of the Supreme Court of Arizona establish the process through which the Committee and

[2] The Board of Pardons and Paroles is now the Arizona Board of Executive Clemency. 1993 Ariz. Sess. Laws, ch. 255, § 64.

this Court evaluate applications for admission to the Bar, and prior case law clarifies the burden an applicant must satisfy to establish good moral character. We begin with a review of the rules.

A.

¶ 12 Rules 34 through 37 define the requirements for admission to the Bar.[3] The Committee may recommend an applicant for admission only if that applicant, in addition to meeting other requirements, satisfies the Committee that he or she is of good moral character. Rule 34(a). The applicant bears the burden of establishing his or her good moral character. *In re Greenberg,* 126 Ariz. 290, 292, 614 P.2d 832, 834 (1980) (citing *In re Levine,* 97 Ariz. 88, 397 P.2d 205 (1964)). In determining whether an applicant's prior conduct indicates a lack of good moral character, the Committee must consider the following non-exhaustive list of factors:

A. The applicant's age, experience and general level of sophistication at the time of the conduct

B. The recency of the conduct

C. The reliability of the information concerning the conduct

D. The seriousness of the conduct

[3] Amendments to Rules 32 through 40 became effective December 1, 2005. Order Amending Rules 32-40, 46, 62, 64 & 65, Rules of Supreme Ct., Ariz. Sup. Ct. No. R-04-0032 (June 9, 2005). In this opinion, we refer to the Rules effective when Hamm filed his application for admission to the practice of law.

> E. Consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct
>
> F. The factors underlying the conduct
>
> G. The cumulative effect of the conduct
>
> H. The evidence of rehabilitation
>
> I. The applicant's positive social contributions since the conduct
>
> J. The applicant's candor in the admissions process
>
> K. The materiality of any omissions or misrepresentations by the applicant.

Rule 36(a)3.

¶ 13 When prior conduct involves the commission of a violent crime, the Committee must, at a minimum, hold an informal hearing. Rule 36(a)4.E. If three or more Committee members who attended the hearing or who have read the entire record do not recommend admission of an applicant, the Committee must hold a formal hearing to consider whether to recommend the applicant for admission to the Bar. *Id.*

¶ 14 If the applicant fails to convince the Committee of his or her good moral character, the Committee has a duty not to recommend that person to this Court. *In re Klahr,* 102 Ariz. 529, 531, 433 P.2d 977, 979 (1967); *Levine,* 97 Ariz. at 91, 397 P.2d at 207 ("If the proof of good moral character falls short of convincing the Committee on Examinations and Admissions, it is its duty not to recommend admission."); *In re Courtney,* 83 Ariz. 231, 233, 319 P.2d 991, 993 (1957) ("In this it has no discretion; if the

members entertain any reservations whatsoever as to the applicant's good moral character, it should not make a favorable recommendation to this court."). After the Committee submits its report, an aggrieved applicant may petition this Court for review. Rule 36(g).

B.

¶ 15 This Court then independently determines whether the applicant possesses good moral character and, based upon that determination, grants or denies the candidate's application. Although we give serious consideration to the facts as found by and the recommendation of the Committee, "[t]he ultimate decision in this difficult matter rests with the Supreme Court." *In re Kiser,* 107 Ariz. 326, 327, 487 P.2d 393, 394 (1971) (holding applicant possessed good moral character); *see also Levine,* 97 Ariz. at 92, 397 P.2d at 207 (holding the Court must, "using our independent judgment, de novo determine whether the necessary qualifications have been shown"). We do not limit our independent review to matters of law; we have "the ultimate responsibility for determination of fact and law." *In re Ronwin,* 139 Ariz. 576, 579, 680 P.2d 107, 110 (1983); *see also In re Walker,* 112 Ariz. 134, 137, 539 P.2d 891, 894 (1975) (making a finding regarding the credibility of testimony, although in agreement with the Committee).

¶ 16 The ultimate question in cases such as this is whether the applicant has established good moral character, a concept with which we have wrestled as we have attempted to define its boundaries. *Greenberg,* 126 Ariz. at 292, 614 P.2d at 834. As Hamm asserts, the rules and standards governing admission to the practice of law in Arizona include no *per se* disqualifications. Instead, we

consider each case on its own merits. *Id.* In *Walker,* we described the principles on which we rely as follows:

> 'Upright character' * * * is something more than an absence of bad character. * * * It means that he [an applicant for admission] must have conducted himself as a man of upright character ordinarily would, should, or does. Such character expresses itself not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is wrong.

112 Ariz. at 138, 539 P.2d at 895 (alteration in original) (quoting *In re Farmer,* 131 S.E. 661, 663 (N.C. 1926)).

¶ 17 We also agree with Hamm that, under the Rule applicable to Hamm's application, our concern must be with the applicant's present moral character. In *Greenberg,* we explained that "it is [the applicant's] moral character as of now with which we are concerned." 126 Ariz. at 292, 614 P.2d at 834; *see also* Rule 36(a)3. Past misconduct, however, is not irrelevant. Rather, this Court must determine what past bad acts reveal about an applicant's current character.

III.

¶ 18 In compliance with Rule 36(a)4.E, the Committee conducted a formal hearing to consider Hamm's application. The Committee heard testimony on May 20 and June 2, 2004. Hamm, representing himself, and his wife presented extensive testimony. In addition, the Committee heard from three licensed attorneys who had worked with Hamm and who recommended his admission and also

considered letters from those opposed to and in support of Hamm's application. In detailed findings, the Committee specifically considered the various factors set out in Rule 36(a) to determine Hamm's character and fitness to be admitted to the Bar. In its report, the Committee stated that, in reaching its conclusions, it considered the following:

> 1) Hamm's unlawful conduct, which included the commission of two violent "execution style" murders and his testimony as to the facts surrounding the murders.
>
> 2) Hamm's omissions on his Application and his testimony in explaining his failure to disclose all required information.
>
> 3) Hamm's neglect of his financial responsibilities and/or violation of a longstanding child support court order and his testimony as to his failure to comply with the court order.
>
> 4) Hamm's mental or emotional instability impairing his ability to perform the functions of an attorney including his testimony as to any diagnosis and treatment.[4]

¶ 19 After reviewing all these factors, the Committee concluded that Hamm had not met his burden of establishing that he possesses the requisite character and fitness for admission to the Bar and accordingly recommended that his application be denied. We now consider the Committee's findings, together with pertinent facts.

---

[4] The Committee was divided as to the significance of complaints made concerning Hamm's alleged unauthorized practice of law. This Court's decision does not rely upon those allegations.

A.

¶ 20 The serious nature of Hamm's past criminal conduct is beyond dispute. Hamm acknowledges that no more serious criminal conduct exists than committing first-degree murder. Our society reserves its harshest punishment for those convicted of such conduct. *See Tucson Rapid Transit Co. v. Rubiaz,* 21 Ariz. 221, 231, 187 P. 568, 572 (1920) (describing murder as "the most serious crime known to the law").

¶ 21 Hamm's past criminal conduct and the serious nature of that conduct affect the burden he must meet to establish good moral character. He must first establish rehabilitation from prior criminal conduct, a requirement that adds to his burden of showing current good moral character. *See In re Adams,* 540 S.E.2d 609, 610 (Ga. 2001) ("Where an applicant for admission to the bar has a criminal record, his or her burden of establishing present good moral character takes on the added weight of proving full and complete rehabilitation subsequent to conviction. . . . "); *In re Allan S.,* 387 A.2d 271, 275 (Md. 1978) ("Although a prior conviction is not conclusive of a lack of present good moral character, . . . it adds to his burden of establishing present good character by requiring convincing proof of his full and complete rehabilitation.").

¶ 22 The added burden becomes greater as past unlawful conduct becomes more serious. In *In re Arrotta,* we considered an application for reinstatement from an attorney who, eight years earlier, pled guilty to mail fraud and bribery. 208 Ariz. 509, 96 P.3d 213 (2004). We noted there that "the more serious the misconduct that led to disbarment, the more difficult is the applicant's task in showing rehabilitation." *Id.* at 512 ¶ 12, 96 P.3d at 216.

An applicant for initial admission to the Bar who is attempting to overcome the negative implications of a serious felony on his current moral character likewise must overcome a greater burden for more serious crimes. We agree with the New Jersey Supreme Court, which recognized that "in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make." *In re Matthews,* 462 A.2d 165, 176 (N.J. 1983). Indeed, we are aware of no instance in which a person convicted of first-degree murder has been admitted to the practice of law.

¶ 23 To show rehabilitation, Hamm must show that he has accepted responsibility for his criminal conduct. Hamm fully recognizes his need to make this showing. Indeed, he states that his rehabilitation could not have proceeded absent such acceptance. We recognize the Committee's concern that Hamm has not yet fully accepted responsibility for the two murders. Hamm *says* he has done so, repeatedly and strongly, but some of his other statements indicate to the contrary. The inconsistencies among his various statements related to accepting responsibility are most evident when he discusses Staples' murder. Although he told the Committee that he accepts responsibility for Staples' murder, in fact he consistently assigns that responsibility to his accomplice. His testimony revealed almost no attention to the commission or aftermath of Staples' murder. Hamm concedes that he has focused on his role in Morley's murder rather than on his role in Staples' murder. The difference in approach, he explains, resulted from one postcard written to him by Morley's grandmother and his decision to use his connection to Morley to provide motivation to overcome difficulties. We have no reason to doubt that Hamm's focus on

Morley's murder aided him, using his words, in "accomplishing things that people have been telling me I can't do and we're [Hamm and Morley] still doing it today." That fact, however, does nothing to assure us that Hamm has taken responsibility for Staples' murder, as he must if he is to establish rehabilitation.

¶ 24 We also give serious consideration to the Committee's finding that Hamm was not completely forthright in his testimony about the murders.[5] Hamm has insisted in his filings with this Court that he did not intend to kill, but only to rob, his victims. The agreed facts, however, lead directly to the inference that Hamm intended to kill. He conspired with his accomplices to rob the victims; he accepted the gun provided by Wells and took it with him in the car with the victims; he testified that, although he did not intend to kill the victims, he was "afraid" they would be killed when he got in the car; he shot Morley without ever attempting a robbery and shot him a second time to make certain he was dead; and he also shot Staples to prevent his escape. The Committee observed Hamm testify and was able to judge the credibility of his testimony in light of uncontested facts. We agree that the record shows that Hamm, despite his current protestations to the contrary, intended to kill the victims. His failure to confront the fact that these murders were intentional undermines his statements that he fully accepts responsibility for his actions.

[5] Hamm's lack of candor on this question also impacts our analysis of whether he met his burden of showing present good moral character. *See* Section III, subsections B through E, *infra.*

¶ 25 As did the Committee, we give substantial weight to Hamm's attempts at rehabilitation. In Section I, *supra,* we described in some detail the activities Hamm has undertaken, both while in and since his release from prison. We are impressed with the sincerity and fervor of those who testified or submitted letters on Hamm's behalf. Were rehabilitation the only showing Hamm must make to establish good moral character, we would weigh those factors tending to show rehabilitation against those tending to show a lack thereof. Under the facts of this case, however, we need not decide whether the facts of record establish rehabilitation.

¶ 26 When an applicant has committed first-degree murder, a crime that demonstrates an extreme lack of good moral character, that applicant must make an extraordinary showing of present good moral character to establish that he or she is qualified to be admitted to the practice of law. Even assuming that Hamm has established rehabilitation, showing rehabilitation from criminal conduct does not, in itself, establish good moral character. Rehabilitation is a necessary, but not sufficient, ingredient of good moral character. An applicant must establish his current good moral character, independent of and in addition to, evidence of rehabilitation. We conclude that Hamm failed to make that showing.

B.

¶ 27 We share the Committee's deep concern about Hamm's longstanding failure to fulfill, or even address, his child support obligation to his son, born in 1969, four years before Hamm and his first wife separated. Not until he prepared his application for admission to the Bar in 2004

did Hamm make any effort to meet his responsibility to provide support for his son. During the Committee hearing, Hamm advanced several explanations for his failure to do so. Like the Committee, we find none of his explanations credible.

¶ 28 Although Hamm attempts to excuse his failure to pay child support by pointing out that he never received a copy of a final divorce decree, Hamm scarcely can claim that he lacked awareness of his obligation. A few months after he and his wife separated in 1973, Hamm was arrested on a misdemeanor charge of failing to pay child support. On May 6, 1974, James and Karen Hamm's divorce decree set Hamm's child support payments at $75.00 a month. Hamm made no effort to learn the extent of his financial obligation to his son from 1974, when Hamm was twenty-six years old, until 2004, when he was fifty-five. During those nearly thirty years, he gained sophistication and attended law school. He must have known, and certainly should have known, that he had long avoided a basic parental obligation.[6]

¶ 29 Hamm also attempted to excuse his inattention to his obligation by explaining that he learned, first from a private investigator hired by his wife in 1988, and later from his son, that his former wife's new husband had adopted his son. His reliance on the private investigator's 1988 report to excuse his failure is surprising, given the fact that his son was only months from the age of majority

[6] Hamm also cannot attribute his failure to pay child support to the absence of funds. Even while in prison, Hamm earned "somewhere around a hundred dollars a month probably," but used no portion of those earnings to discharge his obligation.

when Hamm learned of the report; he provides no explanation for his lack of concern prior to that date.

¶ 30 Hamm further explained that only when he applied for admission to the Bar in 2004 did he discover that his son had not been adopted and then "calculated the child support payment [due] over the years." Hamm determined that he owed $10,000.00 and, even though the statute of limitations barred an action to recover past amounts due,[7] contacted his son and set up a repayment schedule.

¶ 31 "Behavior of such long duration cannot be considered as a temporary aberration. . . . " *Walker,* 112 Ariz. at 138, 539 P.2d at 895; *see also Office of Disciplinary Counsel v. Lewis,* 426 A.2d 1138 (Pa. 1981) (holding that

[7] When asked if he had taken steps to formalize his agreement with his son to pay back child support, Hamm replied, "No. No. I simply acknowledged the debt regardless whether it is a legal debt or not and whether it's an enforceable debt or not." In its findings, the Committee noted that Hamm "has since taken it upon himself to attempt to comply with his child support obligations," but expressed concern that he made no admission of a legal obligation to pay. Whether an action to enforce Hamm's obligation to his son is in fact time-barred is unclear. In *Huff v. Huff,* the Texas Supreme Court held that a ten-year statute of limitations under Tex. Rev. Civ. Stat. Ann. art. 5532, since repealed by Acts 1985, 69th Leg., ch. 959, § 9(1), eff. Sept. 1, 1985, applied to violations of child support orders. 648 S.W.2d 286, 287-88 (Tex. 1983) (allowing a claim based on a 1973 divorce decree). Because Hamm's son turned eighteen in 1987, the ten-year statute of limitations expired in 1997. In 2002, however, the Texas Supreme Court held that an administrative writ, created by constitutional amendment in 1997, could be used to enforce a divorce decree issued in 1974, for which no order was obtained, because the administrative writ is a "new and improved enforcement mechanism." *In re A.D.,* 73 S.W.3d 244, 248 (Tex. 2002). We need not resolve this question of Texas law, but share the Committee's concern over Hamm's failure to formally investigate his legal obligations to his son.

even when an attorney made belated restitution for funds taken from clients, because "[s]uch actions cannot be said to be consistent with high ethical standards of the profession, with a lawyer's fiduciary responsibility to his client, with a character that is beyond reproach, or with truth, candor and honesty," the attorney could not continue to practice law). Hamm's failure to meet his parental obligation for nearly thirty years makes it more difficult for him to make the required extraordinary showing that he "has conducted himself as a man ordinarily would, should, or does." *Walker,* 112 Ariz. at 138, 539 P.2d at 895.

¶ 32 We also agree with the Committee that Hamm did not display honesty and candor in discussing his failure to pay child support with the Committee. Hamm testified both that his son told him personally that he had been adopted and that his son "adamantly refused" to accept interest payments on the unpaid child support.

¶ 33 Hamm's son testified, however, that he had never been adopted, that prior to his contact with Hamm he had changed his name himself, and that he had not told Hamm he had been adopted. Hamm's son also did not report adamantly refusing interest payments. In response to a question from the Committee about interest payments, he said:

> Discussions about interest? Seems like whenever we were talking about it, you know, he said it was a large amount, and it seems like the subject of interest did come up. I can't remember exactly, you know, what we said about it. But, you know, I didn't push the issue or anything, say, well, you know, you're going to pay me interest for this or what, or is there any interest. It wasn't really an issue or important to me.

¶ 34 We discern no reason that Hamm's son would have been other than forthright about these matters, while Hamm had every reason to present himself in the best possible light.[8] Like the Committee, we find the testimony of his son to be more credible.

C.

¶ 35 We further conclude that Hamm did not adequately explain his failure to disclose an incident involving him and his current wife, Donna, when he submitted his application to the Committee.

¶ 36 In 1996, Hamm and Donna engaged in a physical altercation outside a convenience store. Donna "yelled the word 'kidnap' out of the window" of the vehicle Hamm was driving, causing him to pull over and leave the vehicle. During their tussle, Donna tore Hamm's shirt. Both called the police, who arrested neither Hamm nor Donna. The incident and what Donna describes as her "embellishments" caused such great concern to the Hamms, particularly because Hamm was on parole, that Donna submitted to a polygraph administered by a private company to demonstrate that Hamm had not kidnapped her. The two also underwent marital counseling.

¶ 37 Nonetheless, when filling out his Character and Fitness Report, Hamm failed to disclose the incident to the

[8] Rather than acknowledge any inconsistencies between his testimony and that of his son, Hamm lashed out at the Committee's refusal to agree with Hamm's argument, which the Committee could accept only if it accepted Hamm's testimony on this issue as credible. Hamm accused the Committee of "totally ignor[ing] the content of [Hamm's Petition] to which it supposedly was responding."

Committee. Question 25 on the report asks specifically whether the applicant, among other things, has been "questioned" concerning any felony or misdemeanor.[9] Hamm told the Committee that, in reading the application, he missed the word "questioned" in the list of encounters with law enforcement that Question 25 directs an applicant to report.

¶ 38 Hamm's explanation strains credulity. In *Walker,* this Court inferred that the son of an Army officer would understand the requirement to register for the draft. 112 Ariz. at 138, 539 P.2d at 895. Likewise, we infer from Hamm's knowledge of the law and his efforts in 1996 to document a defense for the domestic incident that he fully understood its importance and must have known that the incident would be of interest to the Committee. His failure to include it in his initial application further affects his ability to make the needed extraordinary showing of good moral character.

D.

¶ 39 Hamm's actions during these proceedings also raise questions about his fitness to practice law. The introduction to Hamm's petition before this Court begins:

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[9] Question 25 asks:

> Have you either as an adult or a juvenile, ever been served with a criminal summons, questioned, arrested, taken into custody, indicted, charged with, tried for, pleaded guilty to or been convicted of, or ever been the subject of an investigation concerning the violation of, any felony or misdemeanor? (In answering this question, include all incidents, no matter how trivial or minor the infraction or whether guilty or not, whether expunged or not, whether you believe or were advised that you need not disclose any such instance.)

> The consequences of this case for Petitioner take it out of the ordinary realm of civil cases. If the Committee's recommendation is followed, it will prevent him from earning a living through practicing law. This deprivation has consequences of the greatest import for Petitioner, who has invested years of study and a great deal of financial resources in preparing to be a lawyer. . . .

This language repeats nearly verbatim the language of the United States Supreme Court in *Konigsberg v. State Bar,* 353 U.S. 252 (1957), in which the Court wrote:

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

Id. at 257-58. If an attorney submits work to a court that is not his own, his actions may violate the rules of professional conduct. *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Lane,* 642 N.W.2d 296, 299 (Iowa 2002) ("[P]lagiarism constitute[s], among other things, a misrepresentation to the court. An attorney may not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."); *see also* Rule 42, ER 8.4(c) (defining professional misconduct as including "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation"). We are concerned about Hamm's decision to quote from the Supreme Court's opinion without attribution and are equally troubled by his failure to acknowledge his error. When the Committee's response pointed to Hamm's failure to attribute this language to *Konigsberg,* he avoided the serious questions raised and refused to

confront or apologize for his improper actions, asserting instead: "From Petitioner's perspective, any eloquence that might be found in the Petition does not derive from any prior case decided in any jurisdiction, but rather from the gradual development of his own potential through study, reflection, and devotion to the duty created by his commission of murder." Hamm apparently either does not regard his actions as improper or simply refuses to take responsibility. In either case, his actions here do not assist him in making the requisite showing of good moral character.[10]

E.

When Hamm committed first-degree murder in 1974, he demonstrated his extreme lack of good moral character. Although this Court has not adopted a *per se* rule excluding an applicant whose past includes such serious criminal misconduct, we agree with those jurisdictions that have held that an applicant with such a background must make an extraordinary showing of rehabilitation and present good moral character to be admitted to the practice of law.

[10] In addition to the matters discussed above, only four years have passed since James Hamm was absolutely discharged. The fact that Hamm has been free of supervision for this relatively short time weighs against his admission to the practice of law. *Greenberg,* 126 Ariz. at 293, 614 P.2d at 835 (noting that "[r]ehabilitation is seldom accomplished in an instantaneous fashion" and holding that Greenberg had "not convinced [the Court] that *he as yet evidences* the requisite good moral character") (emphasis added); *see also In re Dortch,* 860 A.2d 346, 348 (D.C. 2004) (finding it "would be erosive of public confidence in the legal profession and the administration of justice were we to admit an applicant who is still on parole for crimes as serious as those committed by Dortch"). Because Hamm otherwise failed to establish good moral character, however, we reached our decision without considering this factor.

Perhaps such a showing is, in practical terms, a near impossibility. We need not decide that question today, however, because Hamm's lack of candor before the Committee and this Court, his failure to accept full responsibility for his serious criminal misconduct, and his failure to accept or fulfill, on a timely basis, his parental obligation of support for his son, all show that Hamm has not met the stringent standard that applies to an applicant in his position who seeks to show his present good moral character.

IV.

¶ 40 Hamm asserts that he was denied due process of law because two members of the Committee may have prejudged the merits of his application. Both members, however, left the Committee proceedings when their potential bias came to light, and neither played any role in the Committee's findings and recommendation.

¶ 41 Hamm, like all applicants for membership in the Bar, is entitled to receive due process of law. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965)). Also, "due process requires that a party be given a 'fair trial in a fair tribunal.'" *United States v. Superior Court,* 144 Ariz. 265, 280, 697 P.2d 658, 673 (1985) (quoting *In re Murchison,* 349 U.S. 133, 136 (1955)). Both the Committee and this Court have provided Hamm ample opportunity to be heard through hearings and written arguments. Moreover, this Court, and not the Committee, made the ultimate decision on Hamm's application. Hamm

received a full opportunity to be heard before a fair tribunal.

V.

¶ 42 Because James Hamm has failed to meet his burden of proving that he is of good moral character, we deny his application for admission to the State Bar of Arizona.

Ruth V. McGregor, Chief Justice

CONCURRING:

Michael D. Ryan

Andrew D. Hurwitz

W. Scott Bales, Justice

Jefferson L. Lankford, Judge.[11]

[11] The Honorable Rebecca White Berch recused herself; pursuant to Article VI, Section 3 of the Arizona Constitution, the Honorable Jefferson L. Lankford, Judge of the Court of Appeals, Division One was designated to sit in her stead.

BLUE DIVIDER

APPENDIX B

FINDINGS OF FACT AND RECOMMENDATION OF THE COMMITTEE ON CHARACTER AND FITNESS

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For the Committee on Character and Fitness
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BEFORE THE COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF ARIZONA

In the Matter of the Application of JAMES JOSEPH HAMM to be Admitted as a Member of the State Bar of Arizona	**FINDINGS OF FACT AND RECOMMENDATION**

The Committee on Character and Fitness ("Committee") conducted a Formal Hearing on the Application for admission to the State Bar of Arizona of James Joseph Hamm ("Hamm") on May 20, 2004 and June 2, 2004. Attending the hearing were Chair Virginia Herrera-Gonzales who presented the matter for hearing, Vice-Chair Juan Perez-Medrano who presided over the hearing and Committee members: H. Christina Hill, Ann Birmingham Scheel, Stephen M. Weiss, Howard D. Sukenic, Tobin Rosen, Timothy R. Hyland and David F. Gaona who participated in the hearing on both days and in subsequent deliberations. (TR p. 8, ll. 5-20, p. 245). Member J. Russell Skelton was recused by the Committee from

participating in any of these proceedings. (TR p. 8, ll. 21-25, p. 9, ll. 1-2, p. 246, ll. 4-6). Member Henry C. Manuelito attended the hearing on May 20, 2004, but recused himself from further participation by letter dated May 24, 2004 (TR p. 246, ll. 1-3; *See also*, Ex. 6).

Pursuant to Rule 36(b), Rules of the Supreme Court, *17 A.R.S.*, the Committee makes the following Findings of Fact and Recommendation based upon the entire file and the record of this hearing including, but not limited to: Hamm's Application for Admission and Character Report ("Application"), Amendments to Application, Supplemental filings, court and police records, documents obtained by. Committee staff, letters supporting Hamm's admission, letters opposing. Hamm's admission and the testimony and exhibits presented by Hamm and his witnesses at the hearing as set forth in the Transcript ("TR") of the Formal Hearing.

Based upon the evidence, the Committee finds as follows:

1. A Notice of Hearing was mailed to Hamm on May 4, 2004 outlining the issues to be heard at the hearing which included, in part, a 1974 First Degree Murder conviction; 1973 Misdemeanor arrest and charge for Non-payment of Child Support; 1974 Child Support Order; 1996 Tempe Police Department Incident; Civil Action involvement; Middle Ground Prison Reform position and practice; and, the Disclosure of information. (TR p. 6, ll. 9-14; *See also*, Ex. 2).

2. Hamm waived his right to counsel at the hearing and represented himself. (TR p. 7, ll. 14-22).

3. Hamm's wife, Donna Leone Hamm accompanied him to the hearing and sat with him throughout the two days and testified favorably as a witness on his behalf. (TR p. 4, ll. 12-25, p. 5, ll. 1-23, pgs. 269-312, pgs. 429-462).

4. In 1974, at the age of 26, Hamm was living on the streets of Tucson, Arizona and supporting himself by selling drugs. (TR p. 14, ll. 22-23, p. 15 ll. 6-7, p. 16, l. 10). Hamm was divorced and had a five year old son. (TR p. 45, ll. 17-25, p. 46, ll. 1-4).

5. In 1974 Hamm murdered two young men, Willard Morley ("Morley") and Zane Staples ("Staples"). Both were visiting from Missouri. (TR p. 15, l. 8-10; *See also* Application).

6. Hamm testified that in hindsight, he now realizes that prior to his crime, he was having "progressive serious psychological difficulties", which at the time of the crime, he would have denied. (TR p. 16, ll. 19-24, p. 17, ll. 1-9).

7. Hamm testified that at the time of the crime, he was using marijuana, abusing alcohol and occasionally using other drugs. (TR p. 34, ll. 23-25, p. 35, ll. 1-7).

8. Hamm did not know the victims prior to the murders, although he had seen and spoken with them the day before because he had been asked by another person if he could arrange for them to buy marijuana. (TR p. 15, ll. 8-25, p. 16, ll. 1-2, p. 23, ll. 19-23).

9. On September 6, 1974, while in the process of setting up the drug deal, Hamm and his co-defendant, Garland Wells ("Wells") agreed and planned to rob Morley and Staples as Hamm was unable to arrange for the sale of the amount of marijuana they wanted to buy. (TR p. 15, ll. 19-25, p. 16, ll. 1-2, 26, p. 17, ll. 1, 10-15).

10. 0n the morning of September 7, 1974, Wells came to see Hamm and brought a gun for him and a gun for Hamm to use during the planned robbery. (TR p. 18, ll. 4-9).

11. Later that same day, Wells directed Morley and Staples to drive to the outskirts of Tucson where they planned to rob them, although Morley and Staples believed they were going to buy marijuana. Morley drove, Staples was on the passenger side and Hamm and Wells rode in the back seat of the car. (TR p. 18, ll. 19-25, p. 19, ll. 15-25).

12. Hamm carried a .38 Colt revolver and Wells carried a Walther .380. (TR p. 19, ll. 9-11). Morley and Staples did not carry any guns. (TR p. 28, ll. 23-25, p. 24, ll. 1-2).

13. A third individual, Bill Reeser ("Reeser") followed Hamm and Wells separately in a van out to River Road and waited for them so that they could all return to Tucson together following the robbery. (TR p. 18, ll. 12-18, p. 22, ll. 2-3, 6-16).

14. Hamm testified that upon arrival to the outskirts of River Road, Morley and Staples began asking "where are we going, where are we, where is the house, where is the marijuana, where are we going" . . . and the

"whole atmosphere in the car simply changed instantly." (TR p. 18, ll. 20-25, p. 19, ll. 4-25).

15. At that point, Hamm shot Morley, as he was driving, in the back of the head and killed him. Although Morley was already dead, Wells then shot him again and also shot Staples as he tried to get out of the car. Hamm subsequently shot Staples again as he tried getting out of the car and shot Morley a second time in the head. (TR p. 20, ll. 7-8, 17-25, p. 44, ll. 21-25, p. 45, l. 1).

16. Immediately following the murders, Hamm took the $1400 which was located inside the glove box of the victims' car. (TR p. 21, ll. 22-25, p. 22, l. 1-2, p. 23, l. 5-14). Hamm testified that he received approximately $500 of that amount (TR p 23, ll. 8-14) and used part of it to buy drugs. (TR p. 34, ll. 16-22).

17. Hamm and Wells left the victims' bodies out in the desert and returned to Tucson with Reeser. (TR p. 22, ll. 4-14; p. 23, ll. 15-18).

18. On September 13, 1974, Hamm was arrested by the Pima County Sheriff's Office for the murders. (TR p. 27, ll. 2-5). Hamm testified that he did not confess to the murders, but made a "self serving" statement to the police as he was intending to plead not guilty. (TR p. 28, ll. 11-21).

19. Hamm was initially charged with two counts of First Degree Murder and two counts of Armed Robbery, but ultimately pleaded guilty to one count of First Degree Murder with all other charges dismissed.

(TR p. 24, ll. 8-25, p. 25, ll. 1-17; *See also* Application, specifically court records).

20. On December 20, 1974, Hamm was sentenced by the Pima County Superior Court to the Arizona State Prison for a term of life incarceration. The Court ordered Hamm to serve twenty-five years before he could be considered for parole or release. (TR p. 26, ll. 1-15; *See also* Application, specifically court records).

21. The "Statement of Facts on Conviction" prepared for the prison by the Pima County Attorney's Office and signed by the Superior Court Judge stated, in part: "The evidence showed that the defendant and others negotiated for a sale of marijuana with two young men from the mid west. There was never any intent to actually sell the marijuana. The pre-arranged plan was to rob and kill the buyers. When all parties got to a deserted place in the desert the defendant pulled out a pistol and shot both buyers. Both buyers were killed." (See Application, specifically court records).

22. Hamm served approximately seventeen and one-half years in prison including one year in maximum custody (the "central unit") and six years in medium custody (the "Institute for Education and Rehabilitation"). (TR pgs. 47-49).

23. Hamm was subsequently transferred to an honor camp in Marana, then the Douglas prison, and finally, the minimum security unit in Tucson ("Echo Unit") to serve the

remainder of his sentence. (TR p. 53 ll. 12-25, p. 58, ll. 14-15).

24. Hamm testified that he received some formal treatment for his alcohol/substance abuse and emotional or mental issues while incarcerated and that he also studied and self-diagnosed through the use of Jungian psychology. (TR pgs. 54-59, 61, ll. 7-10, pgs. 67-72).

25. Hamm testified that he has never been diagnosed as having a mental disorder. (TR p. 486, ll. 5-20).

26. In May 1983, while incarcerated, Hamm obtained his Bachelor's Degree in Applied Sociology, *summa cum laude* through a prison education program with Northern Arizona University. (TR p. 66, ll. 1-8; *See also* Application).

27. In July 1989, then Governor Mofford signed a "Commutation of Sentence" and commutated Hamm's sentence to sixteen and one-half years based upon recommendation by the Arizona Board of Pardons and Paroles. The Governor later rescinded the Commutation which resulted in legal action brought by Hamm. The Commutation was ultimately judicially restored. (TR p. 46, ll. 8-25, p. 47 ll. 1-13; *See also* Application).

28. In July 1992, the Arizona Board of Pardons and Paroles authorized Hamm's release on parole to the community conditioned upon: "no use of alcohol or illegal drugs; mandatory random chemical testing for alcohol and illegal drugs; mental health counseling for re-entry; 15 hours per month community

service, recommend that he be involved in dealing with young people involved with drugs". . . . (TR p. 60, ll. 1-25, p. 61, ll. 1-10; *See also* Application).

29. Hamm testified that he has performed thousands of community service hours and volunteer work which have included appearing on radio talk shows; answering telephones for people having problems with the Department of Corrections; appearing at legislative hearings regarding revisions in the criminal code or criminal justice system; appearing and speaking before high schools, colleges, universities, churches, civic organizations, and appearing in a public service tape "done and authorized" by the Supreme Court of Arizona. (TR p. 61, ll. 11-25, p. 62, ll. 1-12; *See also*, Exs. 15 and 28).

30. On December 4, 2001, the Arizona Board of Executive Clemency (formerly Arizona Board of Pardons and Paroles) considered Hamm's third application for Absolute Discharge and granted the discharge. The Arizona Department of Corrections issued the Certificate of Discharge on December 5, 2001. (TR p. 62, ll. 12-25, p. 63, ll. 1-3; *See also* Application).

31. Hamm testified that he solicited several letters written in support of his Application for Absolute Discharge which he submitted with this Application. Hamm further testified that there were also letters in opposition to his Application for Absolute Discharge, including those from the Morley family. (TR p. 63, ll. 4-25, p. 64, ll. 1-18; *See also* Application).

32. Hamm disclosed a 1973 arrest for a misdemeanor charge for nonpayment of temporary child support. Hamm testified that although he assumed there was a Divorce Decree ordering payment of child support, he had never seen it or received a copy and, thus had never paid child support for his son, Jimmy Valdez ("Valdez"). (TR p. 78. ll. 4-25, p. 86, ll. 3-25, p. 87, ll. 1-25).

33. Hamm testified that he had not paid child support because he had been told personally by Valdez that he had been adopted. In January 2004, while filling out his Application, Hamm contacted Valdez, and at that time learned that he had not been adopted, but had simply undergone a name change. (TR p. 80, ll. 1-11).

34. In January 2004, Hamm obtained a copy of the Decree which contained a continuing Order for monthly payments of child support in the amount of $75. (TR p. 79, ll. 9-25). Hamm testified that per his calculations, he owes approximately $10,000 in past child support and has since made arrangements with Valdez to pay that amount on a monthly basis. In January, 2004, Hamm paid Valdez $500 and will continue to pay $300 per month until the arrearages are paid in full. (TR pgs. 80-81, p. 83, ll. 11-17, p. 84, ll. 1-13; *See also* Application).

35. Valdez testified on behalf of his father, but did not corroborate Hamm's testimony that he had told him that he had been adopted or when Hamm first learned that he had not been adopted. Valdez testified that he told Hamm during his visit to Arizona in 1999,

when Hamm asked him about the adoption, that he had never been adopted by his stepfather and had just changed his last name himself. (TR p. 131, ll. 4-22, p. 134, ll. 2-15).

36. Valdez further testified that in January, 2004, he received a call from Hamm to talk about the unresolved child support issue and at that time they made arrangements for payment of the outstanding amount. (TR p. 132, ll. 15-25, p. 133, ll. 1-25, p. 134, ll. 1-11).

37. Hamm testified that he supports himself by primarily working as a paralegal for one local attorney and other attorneys individually which provides the income to make his outstanding child support payments. (TR p. 84, ll. 20-25, p. 85, ll. 1-25).

38. Hamm admitted that he is in violation of the 1974 child support order. He further admitted that he did not include interest in calculating the $10,000 owed in child support arrearages. (TR p. 90, ll. 2-11).

39. Hamm testified that in 1996, he and his wife contacted the Tempe Police Department due to a domestic dispute. Hamm's wife had alleged that she was being kidnapped by him, but later retracted those allegations. (TR pgs. 98-99, p. 124, ll. 10-25, p. 125, ll. 1-25, p. 126, ll. 1-12). Hamm and his wife underwent counseling as a result of this incident, however no administrative sanctions or charges were filed against him in this matter. (TR p. 100, ll. 17-25, p. 101, ll. 1-2).

40. Hamm acknowledged his failure to disclose this incident on his Application but

attributed his failure to a "mistake" on his part in not accurately reading the question. (TR p. 101, ll. 3-25).

41. Hamm acknowledged a 1997 "Arrest Report" by the Tempe Police Department for excessive speed and testified that he was never arrested, but had been cited. Hamm subsequently attended driving school and the citation was dismissed. (TR p. 102, ll. 1-25, p. 103, ll. 1-4).

42. Hamm testified that as an inmate, he had been involved as a party in various civil lawsuits involving the Department of Corrections and, later, individually brought a lawsuit as a result of a motor vehicle accident. (TR pgs. 103-107).

43. Hamm testified that he and his wife are the founders of "Middle Ground Prison Reform" ("Middle Ground"), a prisoner and prisoner family advocacy organization which is involved in lobbying for laws involving the criminal justice system and prisons and provides public education, among other activities. (TR p. 107, ll. 19-25, p. 108, ll. 1-6).

44. Hamm testified that he held the position of "Director of Legal and Program Services" or "Advocacy Services" informally for Middle Ground which entails providing information about the internal subprocesses of the Department of Corrections and directing people to attorneys. (TR p. 110, ll. 13-25, p. 111-113, p. 114, ll. 1-14).

45. Hamm testified that his official title changed to "Director of Advocacy and Program Services" in 2003 when revisions to

Rule 31, Rules of the Supreme Court of Arizona, were implemented, which specifically defined the unauthorized practice of law. (TR p. 317, ll. 15-25, p. 318, ll. 1-20).

46. Hamm testified that he was aware that there had been some complaints of the unauthorized practice of law made against him and Middle Ground. He also testified that his wife may have been contacted by the State Bar of Arizona regarding the unauthorized practice of law, although he was "not really" involved in any of that. (TR p. 114, ll. 15-25, p. 115, ll. 1-25, p. 116 ll. 1-17).

47. Richard Parrish, a licensed Arizona attorney appeared and testified favorably on behalf of Hamm, but acknowledged that he had never reviewed Rule 36, Rules of the Supreme Court of Arizona. (TR pgs. 149-171, p. 173, ll. 5-10).

48. Ulises Ferragut (Ferragut"), a licensed Arizona attorney appeared and testified favorably on behalf of Hamm but acknowledged that he was not familiar with the rules that govern admissions to the State Bar of Arizona. (TR pgs. 179-193, p. 194, ll. 20-25, p. 195, l. 1). Ferragut further testified that he only had "some of the details" regarding Hamm's prior conduct. (TR p. 195-199).

49. Scott Ambrose, a licensed Arizona attorney appeared and testified favorably on Hamm's behalf, but acknowledged that he did not know the factors that the Committee was required to consider to recommend the

admission of attorneys. (TR pgs. 213-220, p. 221, ll. 3-25).

50. Hamm testified regarding his childhood, his family life, including the death of his younger brother, and the separation of another brother. (TR p. 322-325).

51. Hamm graduated from Arizona State University College of Law in December 1997. (TR p. 316, ll. 3-5, *See also* Application).

52. Hamm acknowledged the letters submitted by the Morley family objecting to his admission to practice law and characterized them as "pretty mild objections." He testified, "I understand that these people have been permanently affected emotionally and personally by my crime. But apparently it has not had the same sort of devastating effect that I've seen in some other instances with other people." (TR p. 399, ll. 15-25, p. 400, ll. 1-19; *See also* Application).

53. The Committee acknowledges the receipt of several letters from various individuals in support of Hamm's admission which are included as part of his Application as well as those received into evidence at the hearing. (See Application; *See also*, Exs. 4, 9-12, 20-25, 27 and 30).

54. The Committee acknowledges the receipt of several letters from various individuals or groups in opposition of Hamm's admission, including letters from the Morley family. (See Application).

CONCLUSION

The Committee reviewed and evaluated all evidence submitted in conjunction with Hamm's Application and specifically considered the relevant traits, characteristics and conduct as set forth in Rule 36 (a), Rules of the Supreme Court of Arizona. The Committee considered the following:

1) Hamm's unlawful conduct which included the commission of two violent "execution style" murders and his testimony as to the facts surrounding the murders.

2) Hamm's omissions on his Application and his testimony in explaining his failure to disclose all required information.

3) Hamm's neglect of his financial responsibilities and/or violation of a long-standing child support court order and his testimony as to his failure to comply with the court order.

4) Hamm's mental or emotional instability impairing his ability to perform the functions of an attorney including his testimony as to any diagnosis and treatment.

Pursuant to Rule 36(a)(3), Rules of the Supreme Court of Arizona, the Committee in evaluating all relevant conduct to determine whether Hamm's present character and fitness qualifies him for admission, considered all factors including Hamm's testimony and evidence presented and weighed them as follows:

A.) Applicant's age, experience and general level of sophistication at the time of the conduct: 1) Commission/Conviction of Murder: Hamm was 26 at the time of the

murders, divorced with one son, and had been "drifting" for some time. According to his testimony, he was heavily involved with drugs and alcohol. 2) Child Support Court Order: There has been a long outstanding child support order against Hamm which he has failed to comply with. Hamm has since been educated and law trained and admits his violation of the outstanding court order and understands the nature of such obligation. 3) Unauthorized Practice of Law Complaints: These complaints arose as a result of Hamm's involvement and work with Middle Ground following his graduation from law school.

B.) Recency of the conduct: 1) The Committee acknowledged that Hamm's murders occurred in 1974 and weighed heavily the period of time that has since passed. The Committee also notes that Hamm was not granted Absolute Discharge until December 2001. 2) Hamm's child support order has long been outstanding and until recently had gone unaddressed. 3) Complaints regarding Hamm and the unauthorized practice of law with Middle Ground are fairly recent.

C.) The reliability of the information concerning the conduct: 1) The Committee found Hamm's testimony less than forthright in his explanation of his role in the murders and his characterization of the facts surrounding the murders. The Committee weighed heavily Hamm's mischaracterization of these murders as simply a drug deal gone bad at an instant. On the contrary, the evidence and facts suggest that the

robbing and murder of the victims was carefully pre-planned and well thought out by Hamm and his accomplices. 2) The Committee did not find Hamm's testimony and explanation regarding his failure to comply with his child support order credible in light of his son's failure to corroborate the testimony as to when Hamm first learned that his son had not been adopted. 3) The Committee was divided as to Hamm's explanation of the unauthorized practice of law complaints.

D.) The seriousness of the conduct: 1) Hamm's commission of the two violent murders and subsequent conviction and incarceration, as well as his failure to comply with his outstanding child support order, along with the unauthorized practice of law complaints are serious matters.

E.) Consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct: 1) The Committee as previously stated did not find Hamm's testimony regarding the murders completely forthright and further gave weight to his failure to completely address or assume full responsibility for the murder of the Staples victim, although noting that he was not ultimately convicted of the two murders. 2) The Committee found that Hamm had not addressed the outstanding child support order, although knowing its existence and his obligation, until required to do so in the context of completing his Application. 3) The Committee notes that Rule 31(a), Rules of the Supreme Court of Arizona, as previously written specifically

annotated that no person shall practice law or hold himself out as one who may practice law unless he is an active member of the State Bar.

F.) **The factors underlying the conduct:** 1) By his own admission, Hamm had been involved in drugs and alcohol at the time of the murders. Hamm testified as to the violent nature of the murders which took the lives of two young men. Based on letters received from the Morley family, it is apparent that they were devastated by these murders, have suffered tremendously and continue to grieve. 2) The Committee notes that Hamm's son did not have the benefit of receiving child support as a child, although Hamm knew that there was an outstanding child support order for some time.

G.) **The cumulative effect of the conduct:** 1) Although the Committee found Hamm's testimony of his many accomplishments and successes while incarcerated and the letters submitted on his behalf very impressive, the Committee notes that it does not completely negate the fact that neither the victims or their families were given the full opportunity to enjoy their lives as Hamm has now done. The Committee also found Hamm's testimony unremorseful in his stating that the Morley family's objection to his admission to practice law are "pretty mild objections" and that his crime has not had the same sort of devastating effect as in others. 2) The Committee notes that Hamm's recent steps to locate his son and attempt to fulfill his child support obligations have appeared to bring them closer together as a family.

H.) The evidence of rehabilitation: 1) The Committee gave deference to the Arizona Board of Executive Clemency in its determination that Hamm has been rehabilitated for purposes of returning to and becoming a productive member of society. The Committee was impressed with and weighed heavily Hamm's testimony regarding his involvement in the many service projects and educational and professional successes he has had during his incarceration and subsequent release. The Committee also notes the support that Hamm received from the many individuals that wrote letters or testified on his behalf as to his rehabilitation and successes. 2) The Committee weighed the fact that Hamm has since taken it upon himself to attempt to comply with his child support obligations. The Committee, however, found that Hamm's compliance is without the appropriate court involvement and that his son may be entitled to additional monies given the time that has passed and the fact that Hamm is only paying what he believes he owes based on his own calculations and without any admission by him of a legal obligation to pay.

l.) Applicant's positive social contributions since the conduct: As previously stated, the Committee found Hamm's testimony and that of his witnesses as to Hamm's successes impressive and weighed heavily that he has engaged in many positive social contributions since his commission of the murders and incarceration, specifically noting his non-legal work with Middle Ground in assisting other prisoners

or their families, his other public service work, and his presentations to groups.

J.) Applicant's candor in the admissions process: The Committee weighed Hamm's lack of candor in the testimony and evidence he presented regarding the murders, existing child support obligations and unauthorized practice of law complaints. The Committee, in turn, weighed Hamm's candor in the testimony he presented regarding his many accomplishments and successes during his incarceration and the present.

K.) The materiality of any omissions or misrepresentations by the Applicant: The Committee, although divided, found Hamm's testimony believable in that he made a "mistake" in failing to disclose all information on his Application.

The Committee carefully considered and fully evaluated the evidence and testimony presented in this matter in its totality. Ample time has passed since Hamm's commission of the murders in 1974 and his conviction for First Degree Murder. While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate the heinous murders committed by Hamm; the serious consequences of the murders; his mischaracterization of the facts surrounding the murders; his failure to fully comply with a long standing court order; and, the unauthorized practice of law complaints.

RECOMMENDATION

Accordingly, the Committee concludes that Hamm has not met his burden of proving himself to possess the requisite character and fitness to support a recommendation by this Committee for his admission to the State Bar of Arizona and therefore, the Committee recommends that Hamm's Application be denied.

Dated this 5th day of October, 2004

BY: /s/ _____
Virginia Herrera-Gonzalez, Chair
Committee on Character and Fitness
Supreme Court of Arizona

Originals of the foregoing mailed
this 5th day of October, 2004 to:

James Joseph Hamm
139 East Encanto Drive
Tempe, Arizona 85281
Applicant

Copies of the foregoing mailed
this 5th day of October, 2004 to

Members of the Committee, and

Carolyn de Looper
Committee on Character and Fitness
1501 West Washington, Suite 104
Phoenix, Arizona 85007

By: /s/ Helen E. Maxwell

BLUE DIVIDER

APPENDIX C

RULE 36 OF THE SUPREME COURT OF THE STATE OF ARIZONA

Rule 36. Procedure before the Committee on Character and Fitness.

(a) Determination of Character and Fitness. The Committee on Character and Fitness shall, in determining the character and fitness of an applicant to be admitted to the state bar, review and consider the following:

1. *Relevant Traits and Characteristics.* An attorney should possess the following traits and characteristics; a significant deficiency in one or more of these traits and characteristics in an applicant may constitute a basis for denial of admission:

A. Honesty

B. Trustworthiness

C. Diligence

D. Reliability

E. Respect for law and legal institutions, and ethical codes governing attorneys.

2. *Relevant Conduct*. The revelation or discovery of any of the following should be treated as cause for further detailed investigation by the Committee on Character and Fitness prior to its determination whether the applicant possesses the traits and characteristics evidencing the requisite character and fitness to practice law:

A. Unlawful conduct

B. Academic misconduct

C. Making a false statement, including omissions

D. Misconduct in employment

E. Acts involving dishonesty, fraud, deceit or misrepresentation

F. Abuse of legal process

G. Neglect of financial responsibilities

H. Neglect or disregard of ethical or professional obligations

I. Violation of an order of court

J. Evidence of conduct indicating mental or emotional instability impairing the ability of an applicant to perform the functions of an attorney.

K. Evidence of conduct indicating substance abuse impairing the ability of an applicant to perform the functions of an attorney.

L. Denial of admission to the bar in another jurisdiction on character and fitness grounds

M. Disciplinary complaints or disciplinary action by an attorney disciplinary agency or other professional disciplinary agency of any jurisdiction.

3. *Evaluation of Relevant Conduct.* The Committee on Character and Fitness shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to an applicant's prior conduct:

A. The applicant's age, experience and general level of sophistication at the time of the conduct

B. The recency of the conduct

C. The reliability of the information concerning the conduct

D. The seriousness of the conduct

E. Consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct

F. The factors underlying the conduct

G. The cumulative effect of the conduct

H. The evidence of rehabilitation

I. The applicants positive social contributions since the conduct

J. The applicant's candor in the admissions process

K. The materiality of any omissions or misrepresentations by the applicant.

4. *Determination of Character and Fitness: Recommendation Respecting Admission.*

A. The committee and its staff shall conduct a complete preliminary review of the applications based on the thirteen categories of relevant conduct.

B. If it is determined that there is no conduct that falls within one of these categories, the committee shall recommend the applicant for admission, or recommend the applicant for admission pending the receipt of a passing score on the bar examination(s).

C. If it is determined that there is conduct that falls within one of these categories, a committee member shall be designated to investigate as appropriate and evaluate whether, and to what extent, the applicant's conduct should prevent the applicant's admission.

D. This committee member, after further investigation, if necessary, shall then either (I) dismiss the inquiry, or (ii) recommend that an informal or formal hearing be held. The Committee shall review the recommendation that a formal hearing be held.

E. In all cases in which there are allegations of the conduct of the applicant that involve

(i.) Commission of a violent crime by the applicant,

(ii.) Fraud, deceit or dishonesty on the part of the applicant that has resulted in damage to others,

(iii.) Neglect of financial responsibilities due to circumstances within the control of the applicant, or

(iv.) Disregard of ethical or professional obligations

The applicant shall not be recommended for admission, unless, at a minimum, an informal hearing is held and, following the informal hearing, three or more committee members who have attended the informal hearing or who have read the entire record of the informal hearing, or a majority of those members who have attended the informal hearing or who have read the entire record of the informal hearing, whichever is greater. Recommend admission of the applicant. In the event that this

requirement is not met, a formal hearing shall be held. A majority of the committee members shall attend the formal hearing to consider whether or not to recommend the applicant for admission.

F. The informal or formal hearings may result in the following range of dispositional alternatives:

(i.) Recommend the applicant for admission;

(ii.) Recommend denial of admission;

(iii.) Recommend denial of admission which could be accompanied by a suggestion of reapplication in the future upon the occurrence of specified circumstances;

(iv.) Require that the applicant provide additional information for review prior to a further recommendation;

(v.) Require the applicant to obtain assistance or treatment for a specified period in the case of current substance abuse or mental or emotional instability and provide appropriate evidence of his or her ability to engage in the practice of law prior to reconsideration for admission;

(vi.) Recommend the applicant for admission conditioned on compliance by the applicant with specified behavior for a specified period. Bar counsel shall be responsible for monitoring and supervising the applicant during the conditional admission period. In the event the applicant materially violates a term or terms of the conditional admission, bar counsel shall commence a discipline proceeding. At the end of the conditional period, bar counsel shall forward a report

to the Committee on Character and Fitness regarding the applicant's completion or non-completion of the imposed terms.

G. Upon formal hearing, the Committee shall, by a majority vote, make a recommendation as to the dispositional alternatives set forth in (E) above.

(b) Formal Deficiency in Application Procedure Applicable. If the Committee on Character and Fitness finds that the application is deficient, the Committee shall so advise the applicant in writing of the deficiency in the application and shall allow a reasonable time to the applicant to either supply additional information to correct, explain in writing, or otherwise remedy the defects in such applicant's application and supporting papers and documents as the case may be. Thereafter, if such discrepancies have not been cured and if the reasons for the refusal of the Committee to grant permission to such applicant to take an examination are of record as a part of such applicant's file, the Committee may thereupon deny such permission, stating in writing in the applicant's file its reasons for denying permission to such applicant to take the examination, and shall promptly advise applicant of such denial and the reasons therefor.

(c) Inquiries or Informal Hearings. In the event additional information or documentation is required with respect to any applicant to enable the Committee on Character and Fitness, in its opinion, to complete the findings required before it recommends as to admission to the state bar with respect to character and fitness, it may: (1) Make an inquiry, either orally or in writing, to the applicant or any other person, for additional information or documentation, or (2) hold an informal hearing. In all cases where there are allegations of conduct of the

applicant as specified in paragraph (a) 4 (e) of this rule, an informal hearing shall be held. Oral or written notice shall be provided to the applicant, which notice shall advise the applicant generally of the subject, or subjects, of the informal hearing and the time and place thereof. Such inquiry or informal hearing may be conducted by any designated member, or members, of the Committee on Character and Fitness. All informal hearings shall be stenographically recorded. If the Committee's recommendation is not to recommend admission, the proceedings shall be transcribed, a copy of the transcript made a part of the applicant's file, and a formal hearing shall be held pursuant to paragraph (d) of this Rule.

(d) Formal Hearings; Notice. The Committee shall hold a formal hearing, or formal hearings, as may be reasonably required and as required pursuant to this rule, to enable the Committee to pass upon the applicant's qualifications. Notice of such formal hearing or hearings shall be given to the applicant in writing, specifying:

1. The time, place and nature of the hearing

2. The legal authority and jurisdiction under which the hearing is held.

3. A reference to the particular sections of the statutes and rules involved, if applicable.

4. A short plain statement is to the subject, or subjects, and purpose, of the hearing.

5. That the applicant may be represented by an attorney at the hearing, that the applicant shall be afforded an opportunity to respond and present evidence of all issues involved, and shall have the right of cross-examination.

6. That the applicant shall have the burden of proving, by a preponderance of the evidence, the requisite character and fitness qualifying the applicant for admission to the state bar.

After the formal hearing or hearings the Committee on Character and Fitness shall make its findings that the applicant meets the character and fitness requirements and should be admitted or that the Committee is unable to make such findings and recommendation, as the case may be. The applicant shall at the same time be informed of the Committee's recommendation.

(e) Informal and Formal Hearings; Depositions, Subpoena and Appointment of Special Investigator. Upon the issuance of the notice of informal or formal hearing, the proceeding shall be and is considered a civil matter pending before this court referred to the Committee on Character and Fitness for hearings, findings and decision as to the right of such applicant to be admitted to the state bar.

Proceedings shall be styled as follows:

BEFORE THE COMMITTEE ON CHARACTER AND FITNESS

OF THE SUPREME COURT OF ARIZONA

In the Matter of the Application of)
_____)
To be Admitted as a Member of the)
State Bar of the State of Arizona)

1. Thereafter, all of the rules of civil procedure authorizing, relating to and governing depositions in civil proceedings within and outside the state shall become applicable and shall authorize and govern depositions desired either by applicant or by the

Committee on Character and Fitness in connection with said hearing.

2. Either the Committee on Character and Fitness or the applicant shall be entitled to have subpoenas (including duces tecum) issued by the clerk of this court to require the attendance of witnesses at a deposition, informal hearing, formal hearing, and any continuance thereof. The party desiring issuance of such subpoena shall file the application therefor with any justice of this court with a brief statement of the reasons for requiring such subpoena accompanied by a form of order authorizing the clerk of this court to issue such subpoena and the form thereof for issuance by the clerk.

3. In the event the Committee on Character and Fitness by vote of a majority of its members finds that the proposed formal hearing will be complex, or for other reasons deemed sufficient, the Committee may certify to this court that in its opinion a special investigator should be appointed from state bar members to further investigate and present the evidence bearing upon the issue of the applicant's qualifications to be admitted to the state bar. Upon receipt thereof the chief justice of this court, provided he or she approves the need thereof, shall appoint such a special investigator to further investigate said matter and to present all available evidence at the formal hearing. The foregoing provision shall not be deemed or construed as denying to the applicant the right to be represented by counsel of the applicant's choosing who may represent applicant fully and independently of the duties and responsibilities of such special investigator.

(f) Conduct of Formal Hearings.

1. The applicant or the applicant's attorney shall present evidence on behalf of the applicant at

the hearing. One or more members of the Committee on Character and Fitness, or an appointed special investigator, may present evidence on behalf of the Committee. Any member of the Committee may be designated by the chairperson as the presiding member and such member shall make all evidentiary and procedural rulings.

2. The formal hearing shall be stenographically recorded and may be conducted without adherence to the Arizona Rules of Evidence. Neither the manner of conducting the hearing nor the failure to adhere to the Rules of Evidence shall be grounds for reversing any decision by the Committee provided the evidence supporting such decision is substantial, reliable and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The applicant shall have the right to be represented by counsel, to submit evidence and shall have the right of cross-examination.

3. Copies of documentary evidence maybe received at the discretion of the presiding Committee member. Upon request, any Committee member, an appointed special investigator, or the applicant, shall be given an opportunity to compare the copy with the original.

4. Notice may be taken of judicially cognizable facts.

5. The applicant shall have the burden of proving, by a preponderance of the evidence, the requisite character and fitness qualifying the applicant for admission to the state bar.

6. If a majority of the Committee is present at a formal hearing, a decision can be rendered. If a majority of the Committee is not present, the transcript

shall be made available to all members and thereafter, a decision shall be made by a majority of the Committee as soon as practicable.

7. The Committee's final decision shall be in writing. If the Committee recommends against admission, it shall make separate findings of fact. If the Committee's final decision shall be mailed to the applicant at the applicant's last known address, and a copy shall be mailed to the applicant's attorney of record, if applicable.

(g) Review by the Court.

1. An applicant aggrieved by any decision of the Committee on Examinations or the Committee on Character and Fitness may within twenty (20) days after such occurrence file a verified petition with this court for a review, except as provided in Rule 35(e)(6). The petition shall succinctly and briefly state the facts that form the basis for the complaint, and applicant's reasons for believing this court should review the decision of the Committee on Examinations or the Committee on Character and Fitness.

2. A copy of said petition shall be promptly served upon the secretary of the committee from which the complaint arose and that committee shall within fifteen days of such service transmit said applicant's file, including all findings and reports prepared by or for either committee, and a response to the petition fully advising this court as to that committee's reason for its decision and admitting or contesting any assertions made by applicant in said petition. Thereupon this court shall consider the papers so filed together with the petition and response and make such order, hold such hearings and give such directions as it may in its discretion deem best adapted to a

prompt and fair decision as to the rights and obligations of applicant judged in the light of that committee's and this courts obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law.

Amended Jan. 8, 1990, effective Jan. 15, 1990. Amended and effective March 9, 1990. Amended (temporary basis) Jan. 21, 1993, emergency effective Feb. 1, 1993, adopted in final form June 24, 1993; June 1, 1995, effective Dec. 1, 1995. Amended and effective Oct. 10, 2000. Amended Oct. 15, 2001, effective Dec. 1, 2001; May 31, 2002, effective June 1, 2002.

Comment

The investigation conducted by the Committee on Character and Fitness should be thorough in every respect and should be concluded expeditiously. It should be recognized that information may be developed in the course of the investigation that is not germane to the question of limnsure and should be disregarded by the commit-tee.

Conduct of an applicant that is merely socially unacceptable or the exercise of constitutionally protected rights is not to be considered relevant to an applicant's character and fitness to practice law.

The next amendment to Rule 36 occured on June 8, 2004, effective Dec. 1, 2004.

Thus the text above was the text at this time of my application for admission in Jan. of 2004.

JH

BLUE DIVIDER

APPENDIX D

PETITION FOR REVIEW BEFORE ARIZONA SUPREME COURT

James J. Hamm
139 East Encanto Drive
Tempe, Arizona 85281
(480) 966-8116

In Propria Persona

SUPREME COURT OF ARIZONA

In the Matter of the Application of **JAMES JOSEPH HAMM** **to be Admitted as a Member of the State Bar of Arizona**	)	**Case No. ___** **VERIFIED PETITION FOR REVIEW OF DECISION OF COMMITTEE ON CHARACTER AND FITNESS** **(Hearing Requested)**

COMES NOW Petitioner James J. Hamm, *in propria persona*, pursuant to Rule 36(g) of the Rules of the Supreme Court, and petitions this honorable Court to review the decision of the Committee on Character and Fitness (hereinafter, referred to as "CFC" or "Committee," and "CFC decision" or "Committee decision"), which recommended that Petitioner's application for admission be denied. Petitioner contends that the Committee action violated due process and equal protection rights secured by the Fourteenth Amendment to the United States Constitution and the correlative clauses of the Constitution of the State of Arizona. Petitioner contends that the denial of his application for admission to the bar on the basis of the recommendation of the Character and Fitness

Committee would deprive him of a constitutionally protected liberty and property interest in pursuing the practice of law in Arizona and thus violate his right to due process and equal protection of the law.

I. INTRODUCTION

The consequences of this case for Petitioner take it out of the ordinary realm of civil cases. If the Committee's recommendation is followed, it will prevent him from earning a living through practicing law. This deprivation has consequences of the greatest import for Petitioner, who has invested years of study and a great deal of financial resources in preparing to be a lawyer and for whom the practice of law also is a means of fulfilling a debt of honor owed to the victims of his crime and to the society which provided him with opportunity both for a return to the community and for restoration of his civil rights.[1] In short, the recommendation is not to be rendered without due attention to all pertinent aspects of the application. Accordingly, an application should not be denied without the strongest foundation for doing so, because denial closes the door to an entire occupation after the applicant has structured his or her life around entrance to that occupation.

After reading the CFC's Statement of Facts and Recommendation, an initial question might come to mind – that of why the person so described would even bother to

[1] Petitioner asserts that he has a liberty right to seek personal atonement and spiritual fulfillment, and, where his chosen field also involves a property right to employment in the field for which he has trained at great cost in time and financial resources, he emphasizes that the decision of the Committee to recommend denial of his application to practice law has truly significant import on many levels.

submit an application for admission to the practice of law in the first place. After all, according to the CFC, the applicant apparently abandoned his family, deliberately ignored a court order for child support for over two decades, murdered two people in cold blood, refused to admit the real facts of his offense, failed to accept responsibility for his crime, openly demonstrated during the Committee hearing a lack of remorse toward the victims of his offense and their families, lied to the Committee during the formal hearing on his application, and brazenly engaged in the unauthorized practice of law in violation of clear authority barring such conduct. Based on the CFC Report, it would appear that a less likely applicant hardly could be found, and it would seem a colossal waste of judicial resources to handle any appeal of the Committee's negative recommendation with more than merely perfunctory review.

Despite the Committee's definition of the situation, however, the applicant in this case insists on pursuing the opportunity for a career in the law, and asks this Court to review the Committee's recommendation that he be denied admittance to the State Bar of Arizona. In contrast to the wholly inaccurate portrait produced by the Committee's written determination, the applicant believes that his admission would be a credit to the State Bar, that he honorably would serve with distinction, dedication, and skill a constituency currently disenchanted with regard to the profession of law, that he would bring to his practice a worthy and a useful personal background and body of experience, and that, far from disheartening the public, his admission would stand as a bright beacon of hope and guidance for many in need of a realistic exemplar of outstanding character change.

II. THE CONTEXT OF THIS APPLICATION

At the time he submitted his application for admission to practice law, the applicant was fifty-five years old (he now is 56). Up until the time of the commission of the murder crime (1974), Petitioner's personal history was, at best, lackluster, and legitimately could be described as a series of personal and social failures. Although Petitioner had no previous juvenile or adult criminal history, had attended divinity school in the late 1960's, and worked as a part-time minister at a church, Petitioner was in a state of declining personal, psychological, and spiritual well-being. The death of Petitioner's mother, the break-up of his marriage, and his descent into drug abuse exacerbated his situation. In 1974, prior to the murders, the psychological foundation supporting his conscious view of himself and the world already was crumbling, and then rapidly deteriorated under the internal stresses and strains generated by the crime.

In an attempt to draw back from what he perceived as an approaching total mental or psychological collapse, Petitioner insisted on pleading guilty to first degree murder only two months after arrest – as an initial but nonetheless major step towards genuinely accepting responsibility for the crimes he committed. Petitioner believed that, if he did so, it would slow his descent toward a complete psychological break with reality, and potentially provide an opportunity for a turn toward recovery. Although he could not get his mind around the entire scope and depth of his responsibility, he nonetheless began to embrace accepting responsibility as a first step. The sentencing hearing was somewhat of a blur to him, but he

welcomed the formal conviction and genuinely accepted the life sentence imposed upon him.[2]

From the moment he set foot inside the prison at Florence, Arizona, the applicant struggled with the enormous task of attempting to stabilize his grip on reality, accept full responsibility for his actions, conduct himself responsibly with respect to his offense, and attempt to recover self-respect and a sense of personal meaning. Petitioner chose to act in ways that would honor the dignity and memory of his victims in the difficult and extraordinarily negative setting of a prison environment.

Inasmuch as he was untrained and uneducated in any of the social sciences, let alone depth psychology; and because he was aware that his own mental functioning was seriously awry (with the concomitant realization that the validity of the results of his thought processes was therefore open to question), he recognized that he was faced with such a daunting task that success was highly unlikely.

Petitioner was certain of one thing, however – namely, that he had a duty, a personal moral obligation to his victims, to engage the process of accepting responsibility and attempting recovery, however improbable success might be. Petitioner thus began the most serious, concerted, focused, unrestrained effort he ever had exerted in his life. In the privacy of Petitioner's mind, the hope of

[2] The law in effect in Arizona on the date of the offense provided that a life sentence required a person to serve twenty-five calendar years before becoming automatically eligible for parole, and permitted the person, after serving one full calendar year in prison, to request that the sentence be commuted to some lesser term.

redemption for the murders he participated in was dependent upon the quality of his effort at accepting responsibility and recovery, even in the face of what appeared to be an overwhelming probability of failure.

Thus began the real effort of Petitioner's life, not the effort that began when he was born into the world as an infant, not the effort involved in early childhood family life, not the effort evoked by social relations with the world as a young man, or as a wanderer, or as a drug dealer, but the effort that was required by the collapse of his internal mental world and by the duty of atonement that he voluntarily accepted in the privacy of his own mind.

That primary effort began for Petitioner with the death of his victims, and, from Petitioner's perspective, it is as permanent as those deaths. Any change in one's social reality occurs as a shift in the trajectory of one's path through the present and into the future, not through revision of the past. The real effort of Petitioner's life continues to be the selection of duties and limitations with which he surrounds himself, which he voluntarily accepts, and which define him as a person, regardless of how he is perceived or understood by others.

So far as Petitioner was aware in 1974 (and continuing through to the present), there is no socially accepted or collectively acknowledged blueprint for how to conduct one's life after one has committed murder. That life conduct has to be created, and every choice in conduct is a tap or a blow with hammer and chisel at the raw stone from which the character of the individual progressively emerges. "*You cannot dream yourself into character; you*

must hammer and forge yourself one."[3] That character is the most personalized form of social art, and while, for Petitioner, it had its re-birth/beginning in chaos and tragedy, it also has unflinching features of a willingness to stand up and confront himself, without being shaped exclusively by the pressures of traditional social convention.

And so began the journey into character change, spiritual rebirth, psychological stability, self-respect, genuine acceptance of responsibility for having taken the lives of others, atonement, rehabilitation, recovery, and, eventually, reintegration into the society from which he previously and correctly had been barred by operation of law. Petitioner's personal journey necessarily was – and is – a non-traditional one. It has not been easy, but it has been meaningful in highly personal terms related to his life-long atonement. While Petitioner is not proud of what he did that caused him to be banned from society and imprisoned for almost two decades, he is proud of what he did to earn a governor's commutation of sentence, a parole to the community, an absolute discharge from his sentence, and an opportunity to apply for admission to the practice of law in Arizona.

III. THE COMMITTEE'S DECISION ON THE APPLICATION.

Following two days of formal hearing and the submission of a large amount of documentation, the Committee formally recommended that Petitioner not be admitted to

[3] Froude, James, *God's Little Instruction Book on Character*, p. 33, Honor Books, Inc., 1996.

the practice of law in Arizona on the ground that Petitioner had failed to demonstrate that he possessed the present moral character and fitness to practice law. The Committee decision stated:

> ***While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate the heinous murders committed by Hamm; the serious consequences of the murders; his mischaracterization of the facts surrounding the murders; his failure to fully comply with a long-standing court order; and the unauthorized practice of law complaints.***

IV. BASIS FOR CHALLENGE TO THE COMMITTEE'S DECISION

Petitioner challenges the sufficiency of the evidence, in that he contends that the record fails to provide rational support for the grounds upon which the Committee relied in rejecting petitioner's application. If, as Petitioner contends, the basis for the Committee decision lacks rational support in the evidence introduced during the hearing process, then the decision to recommend denial of his application for admission to the bar transgresses both due process of law and equal protection of the law, in violation of the Fourteenth Amendment of the United States Constitution and the correlative provisions of the Constitution of the State of Arizona.

Petitioner asserts that he established his current good moral character and his fitness to practice law, and did so by preponderating evidence. Petitioner contends that there is no evidence in the record which rationally supports a

finding of doubt about his present character or his fitness. Consequently, the Committee recommended denial of Petitioner's application for admission to the practice of law even though there was no basis for the finding that he failed to meet the qualifications which the State demands of a person seeking to become a lawyer.

Further, Petitioner asserts that the Committee failed to follow the governing rules by an *ad hoc* application of a *per se* rule denying a positive recommendation on the basis of the nature of the underlying offense, first degree murder. Regardless of whether the Committee intended to take such action or implicitly created the *pe se* rule by its actions, the exclusionary rule is a violation of due process of law. A finding that there is no level of rehabilitation commensurate with the offense of first degree murder is merely a way of creating an exclusionary rule that does not exist within the provisions of Rule 36 of the Rules of the Arizona Supreme Court. A finding that Petitioner's level of rehabilitation is not commensurate with his offense is the same thing, given the unquestionable facts regarding Petitioner's personal rehabilitational accomplishments spanning more than thirty years.

Because he challenges the sufficiency of the evidence, Petitioner requests the Arizona Supreme Court to examine the *entire* record of the hearings before the Committee on Character and Fitness on his application for admission. To facilitate ease of review, Petitioner submits three appendices in addition to the Petition itself. The transcript of the first day of testimony before the Committee, which occurred on May 20, 2004, is designated **Reporter's Transcript One ("R.T. I")**, presented in Petitioner's Appendix One, and now is incorporated by reference as though fully set forth herein. The transcript of the second (and final)

day of testimony before the Committee, which occurred on June 2, 2004, is designated **Reporter's Transcript Two ("R.T. II")**, presented in **Petitioner's Appendix Two**, and now is incorporated by reference as though fully set forth herein. The third and final appendix consists of excerpted portions of the documentary evidence that was provided to the Committee as part of the petitioner's original application, as part of Petitioner's addendum to the application, or as part of the materials submitted to the Committee during the two days of hearing, using the Exhibit number applied by the Committee (as the documents were accepted),[4] and that third appendix is presented in **Petitioner's Appendix Three**, which now is incorporated by reference as though fully set forth herein.

Petitioner asserts that the Committee decision reflects the application of an unauthorized exclusionary rule, even though the written decision loosely is expressed in terms similar to the discretionary rule formally adopted by this Court for guiding the exercise of discretion in considering applications for admission. Petitioner believes that there is evidence in the record which supports Petitioner's claim about a new exclusionary rule. Petitioner asks this Court to note that he does *not* claim that the Committee *intended* to violate Petitioner's rights; rather, Petitioner

[4] The Committee labeled the entire original Application as Exhibit 1, the entire Application Addendum as Exhibit 2, and then used additional exhibit numbers for individual documents as they were submitted throughout the days of testimony. Consequently, references herein to items from the original Application or from the Addendum will also provide reference to content and location within these two large, multi-document exhibits. One of the reasons for providing a third Appendix is to facilitate ease of reference to documents that otherwise would require a search among many items just to locate the item.

asserts a challenge to the Committee's decision because violations occurred despite any efforts to set aside the natural tendency to view an application with disfavor where the applicant committed murder. The two issues for this Court, ultimately, are as follows: (1) Does the evidence in the record substantially support the existence of reasonable doubts about Petitioner's present good moral character or about Petitioner's fitness to practice law? (2) Does the decision effectively create an *ad hoc per se* rule via the manner in which the Committee reached the decision to recommend denial of Petitioner's application?

V. STATEMENT OF FACTS FORMING BASIS FOR PETITIONER'S CHALLENGE TO THE CHARACTER AND FITNESS COMMITTEE DECISION

A. THE FORMAL HEARING ON THE APPLICATION

Two Full Days For Hearing; Two Transcripts; Significant Amount Of Application Material. The Committee on Character and Fitness recommended that Petitioner's application for admission to the practice of law should be denied, after conducting two full days of formal hearing on the application and reviewing a large volume of material submitted by the applicant and by others. The original application alone comprised nearly 500 pages, and many additional materials were entered into the record during the extensive formal hearing process. Transcripts were prepared of the two days of hearing, one day in Tucson and one day in Phoenix. The Application and accompanying materials and the Hearing Exhibits formally were submitted to the Committee and therefore necessarily became and remain part of the record. As noted earlier, included with this Petition are three

separate Appendices, consisting of two transcripts and a set of excerpts from the documentary record.

B. FACTS REGARDING PETITIONER'S "*FAILURE TO NEGATE THE MURDERS*," FACTS REGARDING PETITIONER'S "*FAILURE TO NEGATE THE SERIOUS CONSEQUENCES OF THE MURDERS*," AND FACTS REGARDING PETITIONER'S ALLEGED "*MISCHARACTERIZATION OF THE FACTS SURROUNDING THE MURDERS*."

1. The Committee's Facts[5] Regarding Petitioner's "*Failure To Negate The Murders*" And *Failure To Negate The Serious Consequences Of The Murders*."

The Committee's consideration is reflected in the **Committee Decision**, Findings ## 5-21; and Weighing Factors and Conclusion:

Factor A) (*i.e.*, age, experience, and general level of sophistication at the time of the conduct), subsection (1), at Page 11, lines. 11-15:

> *1) Commission/Conviction of Murder: Hamm was 26 at the time of the murders, divorced with one son, and had been "drifting" for some time. According to his testimony, he was heavily involved with drugs and alcohol.*

[5] "*Fact: information used as evidence or as part of a report*" from the Oxford English Dictionary, second listed meaning.

Factor B) (*i.e.*, recency of the conduct), subsection (1), at Page 11, lines 22-25:

> *1) The Committee acknowledged that Hamm's murders occurred in 1974 and weighed heavily the period of time that has since passed. The Committee also notes that Hamm was not granted Absolute Discharge until December 2001.*

Factor C) (*i.e.*, the reliability of the information concerning the conduct), subsection (1), at Page 12, lines 1-8:

> *1) The Committee found Hamm's testimony less than forthright in his explanation of his role in the murders and his characterization of the facts surrounding the murders. The Committee weighed heavily Hamm's mischaracterization of these murders as simply a drug deal gone bad at an instant. On the contrary, the evidence and facts suggest that the robbing and murder of the victims was carefully pre-planned and well thought out by Hamm and his accomplices.*

Factor D) (*i.e.*, seriousness of the conduct), at Page 12, lines 14-17:

> *1) Hamm's commission of the two violent murders and subsequent conviction and incarceration . . . are serious matters.*

Factor E) (*i.e.*, consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct), subsection (1), at Page 12, lines 18-23:

> *1) The Committee as previously stated did not find Hamm's testimony regarding the murders completely forthright and further gave weight to his failure to completely address or assume full responsibility for the murder of the Staples victim, although noting that he was not ultimately convicted of the two murders.*

Factor F) (*i.e.*, the factors underlying the conduct), subsection (1), at Page 13, lines 3-8:

> *1) By his own admission, Hamm had been involved in drugs and alcohol at the time of the murders. Hamm testified as to the violent nature of the murders which took the lives of two young men. Based on letters received from the Morley family, it is apparent that they were devastated by these murders, have suffered tremendously and continue to grieve.*

Factor G) (*i.e.*, the cumulative effect of the conduct), subsection (1), at Page 13, lines 11-19:

> *1) Although the Committee found Hamm's testimony of his many accomplishments and successes while incarcerated and the letters submitted on his behalf very impressive, the Committee notes that it does not completely negate the fact that neither the victims or their families were given the full opportunity to enjoy their lives as Hamm has now done. The Committee also found Hamm's testimony unremorseful in his stating that the Morley family's objection to his admission to practice law are "pretty mild objections" and that his crime has not had the same sort of devastating effect as in others.*

Factor H) (*i.e.*, the evidence of rehabilitation), subsection (1), from Page 13, line 23 to Page 14, line 3:

> *1) The Committee gave deference to the Arizona Board of Executive Clemency in its determination that Hamm has been rehabilitated for purposes of returning to and becoming a productive member of society. The Committee was impressed with and weighed heavily Hamm's testimony regarding his involvement in the many service projects and educational and professional*

successes he has had during his incarceration and subsequent release. The Committee also notes the support that Hamm received from the many individuals that wrote letters or testified on his behalf as to his rehabilitation and successes.

Factor I) (*i.e.*, applicant's positive social contributions since the conduct), at Page 14, lines 11-17:

As previously stated, the Committee found Hamm's testimony and that of his witnesses as to Hamm's successes impressive and weighed heavily that he has engaged in many positive social contributions since his commission of the murders and incarceration, specifically noting his non-legal work with Middle Ground in assisting other prisoners or their families, his other public service work, and his presentations to groups.

Factor J) (*i.e.*, applicant's candor in the admissions process), subsection (1), at Page 14, lines 18-20:

The Committee weighed Hamm's lack of candor in the testimony and evidence he presented regarding the murders. . . .

Conclusion, at Page 15, lines 2-7:

Ample time has passed since Hamm's commission of the murders in 1974 and his conviction for First Degree Murder. While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate the heinous murders committed by Hamm; the serious consequences of the murders; his mischaracterization of the facts surrounding the murders;. . . .

2. Petitioner's Facts Regarding The "*Failure To Negate The Murders*" And The *Failure To Negate The Serious Consequences Of The Murders.*"

Petitioner requests the Court take notice of the *fact*[6] that it is impossible to negate murder. By extension of this basic truth, it is an impossibility for any set of facts to possess potential to negate murder.[7] It also is impossible for Petitioner to negate the serious consequences of the murder. Once again, there is no possible set of facts with potential to negate the serious consequences of murder. Consequently, the Committee's use of *failure to negate the murder or the serious consequences of the murder* cannot be accepted as a valid reason for a decision to recommend denial of the application. The very nature of genuinely serious criminal conduct precludes it from being negated.

3. Facts Regarding Petitioner's Alleged "*Mischaracterization Of The Facts Surrounding The Murders.*"

The Committee decision recommending denial of the application for admission stated that Petitioner

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[6] "*Fact: A thing that is indisputably the case*" from the Oxford English Dictionary, first listed meaing.

[7] Petitioner was and is unaware of any provision of the Rules of the Arizona Supreme Court which impose upon an applicant the burden of demonstrating that any prior criminal conduct has been negated. The rules, which focus upon *present* good moral character and *current* fitness to practice law, instead, provide a comprehensive set of issues that are to be considered in making a determination that reflects the relationship between *prior* criminal conduct and *present* good moral character and *current* fitness to practice law. This matter is addressed more fully later in this Petition.

mischaracterized the facts surrounding the offense. *See* ***Facts & Recommendation***, Weighing Factor C) (*i.e.*, the reliability of the information concerning the conduct), subsection (1), at Page 12, lines 1-8 (*The Committee found Hamm's testimony less than forthright in his explanation of his role in the murders and his characterization of the facts surrounding the murders. The Committee weighed heavily Hamm's mischaracterization of these murders as simply a drug deal gone bad at an instant. On the contrary, the evidence and facts suggest that the robbing and murder of the victims was carefully pre-planned and well thought out by Hamm and his accomplices. See* also Finding # 21, at Page 5; Weighing Factor (E) (*i.e.*, consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct), subsection (1), at Page 12; and Conclusion, at Page 15.

The Committee's finding of "*mischaracterization*" was based on the discrepancy between Petitioner's detailed personal testimony before the Committee about the details of the crime and a paragraph within the "Statement Of Facts On Conviction" prepared and signed by the prosecutor and signed by the Superior Court Judge. *See* ***Facts & Recommendation***, at Pages 5 & 12. There is no other source for the Committee's conclusion that Petitioner mischaracterized the facts of the crime, or that Petitioner ever agreed in advance to rob and murder, rather than rob, the victims. The Committee's conclusion rests exclusively upon the document prepared by the prosecutor and signed by the Judge.

It is important to note that Petitioner stood before Honorable Robert Buchanan of the Pima County Superior Court and was sentenced on December 20, 1974, and Petitioner was sent from the Pima County Jail in Tucson,

Arizona, to the state prison in Florence, Arizona, on that same day. The "Statement of Facts on Conviction," on the other hand, was prepared and signed by the prosecutor and signed by the sentencing judge more than a month and a half later, on February 10, 1975, and the document was stamped as filed and entered into the record on that same day – without any input from or review by Petitioner or his attorney of record. *See* "Statement of Facts on Conviction," contained in Petitioner's ***Application*** as an Attachment to Form 4 regarding Application Question #25, a copy of which now is designated as **Excerpt 1** within Appendix Three, and now incorporated by reference as though fully set forth herein.

During the formal hearing, Petitioner's presentation to the Committee of the facts and circumstances of the crime was quite extensive. ***See, e.g.*, R.T. I, at pp. 14-24; 28-29; 30-32; 36-38; 40-45; and R.T. II, at pp. 383-397.**

4. Facts Regarding Petitioner's Alleged "*Mischaracterization Of These Murders As Simply A Drug Deal gone Bad At An Instant.*"

The Committee Decision cited Factor C) (*i.e.*, the reliability of the information concerning the conduct), subsection (1), at Page 12, lines 1-8 (*The Committee found Hamm's testimony less than forthright in his explanation of his role in the murders and his characterization of the facts surrounding the murders. The Committee weighed heavily Hamm's mischaracterization of these murders as simply a drug deal gone bad at an instant. On the contrary, the evidence and facts suggest that the robbing and murder of the victims was carefully pre-planned and well thought*

out by Hamm and his accomplices.) as a basis for recommend denial.

In fact, there is no place in the transcript of the hearing where Petitioner refers to the crime as *a drug deal gone bad*. Petitioner consistently, across the past thirty years, has characterized his crime as "*a drug-related homicide*." Petitioner acknowledges that, in 1974, when he was arrested and while he was pleading innocent, his false story to the police was that it was a drug deal that turned into a gun battle. ***See* R.T. I, at page 29, lines 8-12.** Once Petitioner informed his attorney that he wanted to enter a plea of guilty, however, Petitioner ceased referring to the crime events as a drug deal (except as a "fraudulent drug deal," *see* **R.T. II, at p. 384, lines 13-17 and p. 385, lines 4-14**). Importantly, the Committee appeared to understand that during Petitioner's hearing. *See*, for instance, **R.T. I, at page 35, lines 19-24**, where Petitioner is asked if the alleged drug deal that Petitioner was supposed to be doing was for marijuana or some other drug.

The only time Petitioner referred to engaging in a drug deal throughout over 500 pages of testimony is at **R.T. I, page 18, line 12,** where Petitioner is "walking" the Committee through the events as they occurred and were perceived by the parties in 1974. Petitioner indicated that he had been unable to find a seller to complete the requested drug deal, that he had agreed to rob the victims instead, that he had been handed a gun by his co-defendant, and that he and his co-defendant had left the building to "*go do the drug deal*" – the understanding that the victims had at that time was that they were being taken to a location where a drug deal was to occur. *See* **R.T. I, at page 18.** From Petitioner's perspective, it was a

fraudulent drug deal that was a pretext for robbery. ***See*** **R.T. I, at pages 15-16.**

Petitioner's description of the crime was and is as a planned robbery that turned into a murder because of Petitioner's psychological problems (**R.T. I, p. 15**) combined with an extreme and sudden increase in the tension inside the automobile when the victims began to ask questions about where the (purported) drug deal was going to take place (**R.T. I, p. 19**). Petitioner openly acknowledged that he was unable to arrange for a drug deal (**R.T. I, p. 15**) and (for the first time in his life) agreed to carry a weapon and to engage in a robbery (**R.T. I, p. 16**). At no time in his testimony did Petitioner refer to or characterize his crime as a "*drug deal gone bad at an instant*." Petitioner's testimony before the Committee is consistent in this regard.

The transcript of the hearing reflects that one of Petitioner's witnesses, attorney Richard Parrish of Tucson (*See* Richard Parrish testimony, **R.T. I, at pp. 141-177**), described the crime as a drug deal gone bad ("*the crime was part and parcel of a drug deal that went very sour . . . "* **at p. 161,** lines 16-17). One Committee member questioned Mr. Parrish about his characterization (**at pp. 162-63**), and Mr. Parrish indicated that the entire matter had begun as a drug deal, turned into a robbery, and eventuated in murder, and that he thought that series of events legitimately could be characterized by him as a drug rip-off or drug deal gone bad (**R.T. I, p. 163,** lines 3-16). The use of such language by a witness cannot reasonably be considered to constitute a legitimate basis for concluding that Petitioner himself "*mischaracteriz[ed] . . . these murders as simply a drug deal gone bad at an instant*."

5. Facts Regarding Petitioner's Alleged "*Failure To Completely Address Or Assume Full Responsibility For The Murder Of The Staples Victim.*"

The Committee decision indicated that *the Committee as previously stated did not find Hamm's testimony regarding the murders completely forthright and further gave weight to his failure to completely address or assume full responsibility for the murder of the Staples victim, although noting that he was not ultimately convicted of the two murders.* **Committee Decision** at Page 12, lines 18-23.

All of the evidence Petitioner presented to the Committee (both documentary and testimonial) was directed toward demonstrating Petitioner's voluntary, intentional, and progressive acceptance of personal responsibility for the deaths of both victims, even though Petitioner pled guilty to and was convicted of the murder of one victim (Willard Morley, Jr.) and Petitioner's co-defendant pled guilty to and was convicted of the murder of the other victim (Zane Staples).

One Committee member asked a question about Zane Staples (Petitioner had just completed a lengthy answer which repeatedly referenced Willard Morley, Jr.):

> MR. SUKENIC: I know you've sort of addressed your activity with Mr. Morley and how you rehabilitated in relation to that. What I'm curious about is you shot another individual who also died that day.
>
> MR. HAMM: Yes.
>
> MR. SUKENIC: And although legally you weren't held responsible because you pled to one

murder, how do you associate your rehabilitation with that other victim who also died?

* * * * [intervening discussion]

MR. HAMM: In order to find a way to solve my problems and to address my responsibilities, I had to find something to focus on. I had to find some avenue, some window. When I was in the diagnostic center in the central unit I received a postcard. The post card was from the grandmother of Willard Morley, the person that the coroner – I learned from the coroner's report and through Ruben Salter, my attorney, that I actually was physically responsible for the death of Willard Morley. **I was legally and morally responsible for the death of both people,** but my own actions were the sole cause or the primary cause of the death of Willard Morley. And I received a postcard from the grandmother of Willard Morley, and it essentially said, I'm a Christian, I take my religion seriously, I don't want any contact back from you, but I just want you to know that I am doing everything I can to forgive you, and I want you to – you know, to the extent that you can, I hope that you can do something with yourself and accept responsibility. And that was my window, and that was why I focused on Willard Morley because it gave me an opening that I did not have before. Before I felt like it was – that what I had done was so horrible that it essentially insulated me from the entire world and that there was no one on the other side of that wall that I could make contact with in any meaningful way, and that one postcard opened up a tiny little window. And what I did was – I mean, I had an overwhelming emotional reaction to that. Just absolutely incredible. I was just floods and floods of tears and emotional impact from

that. And what I did was I focused on Willard Morley, and I have continued to do that because the pain that I experienced from having the connection with Willard Morley is the motivation that gets me over whenever I run up against a difficulty, whenever I get lazy or get tired or I feel that life is too hard or whatever you want to call it, I'm not sure that I can go on anymore. Willard Morley gets me over that hump.

Now, I don't mean by that to discount Zane Staples. It's just that Zane Staples doesn't pack the emotional punch for me that Willard Morley does, and as a result, I focused on the area that gets me where I need to go. It arouses in me the kind of pain and emotion that will get me by whatever else I'm dealing with at the time.

Does that –

MR. SUKENIC: It does, thank you.

R.T. II, from page 336, line 8, to page 339, line 16.

Petitioner genuinely is puzzled at the Committee's determination that he had not addressed his own responsibility for or that he had not assumed full responsibility for the deaths of both victims. Petitioner can find no place in the transcript of the hearing which might be taken as rejecting responsibility for the murder of Zane Staples. A statement which points out that a bullet from Petitioner's gun was directly and primarily responsible for one person's death and a bullet from Petitioner's co-defendant's gun was directly and primarily responsible for the other person's death cannot legitimately be construed to mean that Petitioner rejects his own personal moral responsibility for both deaths.

6. Facts Regarding Petitioner's Allegedly "*Unremorseful*" Testimony.

The Committee Decision states that the Committee found Petitioner's testimony "*unremorseful.*" *See* **Committee Decision**, at Page 13, lines 11-19:

> *1) Although the Committee found Hamm's testimony of his many accomplishments and successes while incarcerated and the letters submitted on his behalf very impressive, the Committee notes that it does not completely negate the fact that neither the victims or their families were given the full opportunity to enjoy their lives as Hamm has now done.* ***The Committee also found Hamm's testimony unremorseful*** *in his stating that the Morley family's objection to his admission to practice law are "pretty mild objections" and that his crime has not had the same sort of devastating effect as in others.*

The substance of Petitioner's testimony – about his victims' families' objections and about his evaluation of the comparative effect of their losses was:

> MR. GAONA: In the file you note that there was a letter from family members of Mr. Morley with respect to this process?
>
> MR. HAMM: Yes.
>
> MR. GAONA: Where should we place those letters and the message of those letters?
>
> MR. HAMM: Well, I think that there are two things about that. The first one is that the family did not object to my commutation or to my parole, as I remember it.

MR. GAONA: And I understand that, but they're contesting right now.

MR. HAMM: But they did object to my absolute discharge and they did object to my entrance – my application for admission to the Bar. And all I can say is that the objections that they have lodged, because of my experience with many other people and many other situations, is a pretty mild objection. I mean, I have seen such overwhelming objections that are just absolutely stunning in their power and their depth. I understand that these people have been permanently affected emotionally and personally by my crime. But apparently it has not had the same sort of devastating effect that I've seen in some other instances with other people.

Now, that doesn't have anything to do with me. That just has to do with I think the age of his sister and the age of his niece at the time that the crime happened and their age now and how they've been able to deal with it. So I think in many respects it is a positive attribution to them. It has nothing to do with me. But I have seen so many other instances where the crime has been so devastating where entire families have been ripped apart by that.

MR. GAONA: And I understand that, but is the respect that you feel for the memory of Willard Morley inclusive of family members of his?

MR. HAMM: Well, to the extent that I understand their feelings and I certainly do not in any way discount them, I do not believe that it's appropriate for me to make decisions about what to do with my life based on their feelings. It has

> to be based on something that is so personal to me that it is absolutely the core of where I'm at. So although I recognize that they object, I do not – that does not – I don't feel a necessity to withdraw my application because of that.

R.T. II, from p. 399, line 11 to p. 401, line 7.

Taken as a whole, Petitioner's comments cannot legitimately be seen as attempting to claim that the victim family letters express "mild" feelings toward Petitioner or about his crime. Petitioner acknowledged the depth of loss and impact (*I understand that these people have been permanently affected emotionally and personally by my crime.*) but categorized the opposition as "mild" in comparison to extreme examples of which he has personal knowledge (*And all I can say is that* ***the objections that they have lodged, because of my experience with many other people and many other situations, is a pretty mild objection.*** *I mean, I have seen such overwhelming objections that are just absolutely stunning in their power and their depth. I understand that these people have been permanently affected emotionally and personally by my crime.* ***But apparently it has not had the same sort of devastating effect that I've seen in some other instances with other people.***)

C. FACTS REGARDING PETITIONER'S "*FAILURE TO FULLY COMPLY WITH A LONG STANDING COURT ORDER*."

The Committee decision cited, as one ground for recommending denial of the application, Petitioner's failure fully to comply with a long standing court order, namely, a divorce decree from 1974 awarding monthly

child support in the amount of $75.00 per month. *See* **Committee Decision**, Finding # 32, at pp. 6-7; Finding # 33; Finding # 34; Finding # 35; and Finding # 36;; *see* also Weighing Factors and Conclusion, as follows:

Factor A) (*i.e.*, age, experience, and general level of sophistication at the time of the conduct), subsection (2), at Page 11, lines. 15-19:

> *(2) Child Support Court Order: There has been a long outstanding child support order against Hamm which he has failed to comply with. Hamm has since been educated and law trained and admits his violation of the outstanding court order and understands the nature of such obligation.*

Factor B) (*i.e.*, recency of the conduct), subsection (2), at Page 11, lines 25-26:

> *2) Hamm's child support order has long been outstanding and until recently had gone unaddressed.*

Factor C) (*i.e.*, the reliability of the information concerning the conduct), subsection (2), at Page 12, lines 8-11:

> *(2) The Committee did not find Hamm's testimony and explanation regarding his failure to comply with his child support order credible in light of his son's failure to corroborate the testimony as to when Hamm first learned that his son had not been adopted.*

Factor D) (*i.e.*, seriousness of the conduct), at Page 12, lines 15-17:

> *. . . his failure to comply with his outstanding child support order . . .* [is a] *serious matter.*

Factor E) (*i.e.*, consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct), subsection (2), at Page 12, lines 23-26:

> *2) The Committee found that Hamm had not addressed the outstanding child support order, although knowing its existence and his obligation, until required to do so in the context of completing his Application.*

Factor F) (*i.e.*, the factors underlying the conduct), subsection (2), at Page 13, lines 8-10:

> *2) The Committee notes that Hamm's son did not have the benefit of receiving child support as a child, although Hamm knew that there was an outstanding child support order for some time.*

Factor G) (*i.e.*, the cumulative effect of the conduct), subsection (2), at Page 13, lines 19-22:

> *2) The Committee notes that Hamm's recent steps to locate his son and attempt to fulfill his child support obligations have appeared to bring them closer together as a family.*

Factor H) (*i.e.*, the evidence of rehabilitation), subsection (2), at Page 14, lines 3-10:

> *2) The Committee weighed the fact that Hamm has since taken it upon himself to attempt to comply with his child support obligations. The Committee, however, found that Hamm's compliance is without the appropriate court involvement and that his son may be entitled to additional monies given the time that has passed and the fact that Hamm is only paying what he believes he owes based on his own calculations and without any admission by him of a legal obligation to pay.*

Factor I) (*i.e.*, applicant's positive social contributions since the conduct), at Page 14, lines 11-17:

> *As previously stated, the Committee found Hamm's testimony and that of his witnesses as to Hamm's successes impressive and weighed heavily that he has engaged in many positive social contributions since his commission of the murders and incarceration, specifically noting his non-legal work with Middle Ground in assisting other prisoners or their families, his other public service work, and his presentations to groups.*

Factor J) (*i.e.*, applicant's candor in the admissions process), subsection (2), at Page 14, lines 18-20:

> *The Committee weighed Hamm's lack of candor in the testimony and evidence he presented regarding the . . . existing child support obligations. . . .*

Conclusion, at Page 15:

> *While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate . . . his failure to fully comply with a long standing court order. . . .*

Petitioner presented testimony and supporting documentation to the Committee about the fact that he knew of an order for payment of temporary child support because he had been arrested for non-payment of temporary child support; about the fact that he subsequently had appeared before the issuing court and paid the arrearages and provided a permanent address (a relative's address); about the fact that he was not certain that the divorce proceedings had been pursued to completion until 1984 because he

never had been served with a final divorce decree; about the fact that he never had been served with an order for payment of permanent child support; about the fact that in 1988 he had been informed in writing by a licensed private investigator that his son had been adopted, about his meeting with his son in 1999, with continuing contact from that point on; about his discovery in January of 2004 that in fact there had been no adoption, about his immediate acknowledgment of the legally unenforceable child support debt as a moral obligation, and about the steps he immediately had taken to determine the amount to be paid and to make arrangements to pay that amount. ***See*** **R.T. I, at pp. 79-97; specific references at p. 78, lines 4-25; at p. 80, lines 1-11; at p. 83, lines 11-17; at p. 84, lines 1-13; at p. 86, lines 3-25; at p. 87, lines 1-25; at p. 131, lines 4-22; at p. 134, lines 2-15; at p. 132, lines 15-25; at p. 133, lines 1-25; and at p. 134, lines 1-11; *see* R.T. II, pp. 504-506; *see* also *Application*.**

E. FACTS REGARDING "*THE UNAUTHORIZED PRACTICE OF LAW COMPLAINTS.*"

The Committee decision also used what the Committee characterized as "*Unauthorized Practice of Law Complaints*" as a basis for recommending denial of the application. The issue of unauthorized practice was raised by the Committee prior to the formal hearing, and the issue was discussed at length during the formal hearing on Petitioner's application. Petitioner pointed out that he had never been informed of any complaint of the unauthorized practice of law during the entire period of over eleven years, from August 1992, when he was released from prison, to 2004, when Petitioner learned that the Committee apparently believed that there were complaints against

Petitioner for the unauthorized practice of law. *See* **R.T. II, at p. 267, l. 6-7; p. 268, l. 25; p. 271; p. 292, l. 4-11; and p. 309, l. 1-14.**

In the Committee's formal written decision, the issues and conduct listed as having been considered by the Committee did not include complaints of the unauthorized practice of law. *See* list of issues and conduct considered, **Committee Decision**, from Page 10, line 22, to Page 11, line 6.

On the other hand, inasmuch as Item #3 of each Weighing Factor deals specifically with the subject of unauthorized practice, and inasmuch that issue/subject is listed as a basis for the Committee's recommendation, the Committee obviously did consider the issue.

See Finding # 44;[8] and Finding # 45;[9]

[8] "44. Hamm testified that he held the position of "Director of Legal and Program Services" or "Advocacy Services" informally for Middle Ground which entails providing information about the internal subprocesses of the Department of Corrections and directing people to attorneys. (TR p. 110, lines 13-25, pp. 111-113, p. 114, lines 1-14)."

Committee Decision, Finding # 44, at Page 9, lines 1-5.

[9] "45. Hamm testified that his official title changed to "Director of Advocacy and Program Services" in 2003 when revisions to Rule 31, Rules of the Supreme Court of Arizona, were implemented, which specifically defined the unauthorized practice of law. (TR p. 317, lines 15-25, p. 318, lines 1-20)."

Committee Decision, Finding # 45, at Page 9, lines 6-9;

Finding # 46;[10] *See* also Weighing Factors and Conclusion, as follows:

Factor A) (*i.e.*, age, experience, and general level of sophistication at the time of the conduct), subsection (3), at Page 11, lines. 19-21:

> *3) Unauthorized Practice of Law Complaints: These complaints arose as a result of Hamm's involvement and work with Middle Ground following his graduation from law school.*[11]

Factor B) (*i.e.*, recency of the conduct), subsection (3), at Page 11, lines 26-28:

> *3) Complaints regarding Hamm and the unauthorized practice of law with Middle Ground are fairly recent.*[12]

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[10] "46. Hamm testified that he was aware that there had been some complaints of the unauthorized practice of law made against him and Middle Ground. He also testified that his wife may have been contacted by the State Bar of Arizona regarding the unauthorized practice of law, although he was "not really" involved in any of that. (TR p. 114, lines 15-25, p. 115, lines 1-25, p. 116, lines 1-17)."

Committee Decision, Finding # 46, at Page 9, lines 10-15.

[11] So far as Petitioner is aware, this statement has no basis in fact. To the best of Petitioner's knowledge, Petitioner's activity on behalf of Middle Ground Prison Reform never resulted in any complaint of the unauthorized practice of law, either before or after Petitioner's graduation from Arizona State University's College of Law.

[12] What does "fairly recent" mean? Petitioner's crime occurred thirty years ago. He has been quite active with Middle Ground Prison Reform since 1992. Petitioner is unable to identify the alleged specific recent complaints or any UPL complaints at all to which the Committee Decision refers.

Factor C) (*i.e.*, the reliability of the information concerning the conduct), subsection (3), at Page 12, lines 11-13:

> *3) The Committee was divided as to Hamm's explanation of the unauthorized practice of law complaints.*[13]

Factor D) (*i.e.*, seriousness of the conduct), at Page 12, lines 16-17:

> *. . . the unauthorized practice of law complaints are serious matters*.

Factor E) (*i.e.*, consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct), subsection (3), from Page 12, line 26 to Page 13, Line 2:

> *3) The Committee notes that Rule 31 (a), Rules of the Supreme Court of Arizona, as previously written specifically annotated that no person shall practice law or hold himself out as one who may practice law unless he is an active member of the State Bar*.

Factor F) (*i.e.*, the factors underlying the conduct), *see* Page 13, lines 3-10:

> No discussion whatsoever.

Factor G) (*i.e.*, the cumulative effect of the conduct), *see* Page 13, lines 11-22:

> No discussion whatsoever.

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[13] There is no discussion of what difference of opinion existed as to what is characterized as Petitioner's "*explanation of the unauthorized practice of law complaints.*" Which "complaints?" What "explanation?" What were the two (or more?) "Divisions?"

Factor H) (*i.e.*, the evidence of rehabilitation), *see* from Page 13, line 23 to Page 14, Line 10:

> No discussion whatsoever.

Factor I) (*i.e.*, applicant's positive social contributions since the conduct), at Page 14, lines 11-17:

> *As previously stated, the Committee found Hamm's testimony and that of his witnesses as to Hamm's successes impressive and weighed heavily that he has engaged in many positive social contributions since his commission of the murders and incarceration,* ***specifically noting his non-legal work with Middle Ground in assisting other prisoners or their families****, his other public service work, and his presentations to groups.*

Factor J) (*i.e.*, applicant's candor in the admissions process), subsection (2), at Page 14, lines 18-21:

> *The Committee weighed Hamm's lack of candor in the testimony and evidence he presented regarding the . . . unauthorized practice of law complaints.*

Conclusion, at Page 15, Line 3-8:

> *While there is strong evidence of Hamm's rehabilitation and professional successes, as well as a strong support system on his behalf, the Committee finds that this does not negate . . . the unauthorized practice of law complaints.*[14]

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[14] What is it about the "complaints" (which never were passed on to Petitioner) that has not been "negated" (whatever that might mean) by Petitioner's open advocacy prior to adoption of the new rule and his immediate compliance with that new rule once it was adopted? What negative effects allegedly resulted from Petitioner's position and

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Prior to his examination of materials at the CFC office in May, 2004, in preparation for his formal hearing, Petitioner never was notified of any state bar complaint for the unauthorized practice of law or for any other reason. While examining documents at the CFC office, Petitioner discovered a letter written on March 23, 2001 that had been written by Terri Skladaly, a staff person at the Arizona Attorney General's Office, addressed to Fran Johansen, Arizona State Bar, on the subject of assistance that Petitioner and his spouse had provided to a state prisoner with preparing and filing of a Notice of Claim. The prisoner signed his own Notice of Claim, and Petitioner and his spouse signed the same document with him, ensured that the service was accomplished, and provided the prisoner with the documentary evidence that the Notice of Claim had been completed in a timely fashion.

The State Bar took no action. Petitioner was not advised of the concern expressed by the Attorney General staff member, nor did the state bar ever follow up with an investigation, an inquiry or a request for information from Petitioner. In fact, the staff member concluded her letter by stating, "*I refer this complaint to you for appropriate action. Please contact me if you have any further questions regarding this matter.*" Petitioner asserts that, if the state bar had been concerned, it would have taken action to notify Petitioner and request an explanation. Instead, Petitioner learned of the letter through the CFC, not the Bar, more than three years after the Committee had received the letter, and after the Arizona Supreme Court had adopted a rule precisely defining the practice of law

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practice with regard to assisting prisoners and their families, and what lingering consequences and effects remain in need of "negation?"

and providing a formal mechanism for non-lawyers to obtain formal certification in order to perform limited legal work.

Petitioner's wife testified that she had been contacted in 1998 by the State Attorney General's Office, not by the State Bar or the CFC, and that the issue was resolved by dismissal of the complaint. Petitioner's wife was contacted regarding a fee issue and no concern ever was expressed regarding the unauthorized practice of law. **R.T. II, at p. 273, lines 1-10.**

VI. STATEMENT OF REASONS FOR BELIEVING THAT THE SUPREME COURT SHOULD REVIEW THE DECISION OF THE COMMITTEE ON CHARACTER AND FITNESS.

Petitioner believes that the Supreme Court of Arizona should review the Character and Fitness Committee decision recommending denial of Petitioner's application for admission to the practice of law. Petitioner believes that the most appropriate response for this Court is to conduct a hearing on the application and make its own, independent, determination of whether Petitioner possesses current good moral character and fitness to practice law. Petitioner believes that the Court cannot use the recommendation of the Committee to make its final decision as to whether to admit Petitioner to the practice of law in Arizona.

In the conclusion to its Statement of Facts and Recommendation, the Committee stated that it reviewed and evaluated all evidence submitted in conjunction with the application, and did so in light of the traits, characteristics and conduct as set forth in Rule 36(a) of the Rules of the

Supreme Court of Arizona. Petitioner respectfully submits that the Committee's Statement and Recommendation demonstrates a failure to review and evaluate all the evidence admitted; and further demonstrates that the review and evaluation which did occur failed to attend to the letter and the spirit of the governing rule as well as to primary principles which lie at the core of the concept of due process of law.

In dealing with the issue of rehabilitation in light of the highest class of felony offense – first degree murder – the very core of the meaning of justice is at issue. Extremist views should not hold sway over deliberative bodies considering acts occurring thirty years ago, because extremist views result in ignoring the most important aspect of the entire matter, namely, the specifics of rehabilitation. Not all class one offenses are the same, not all offenders are the same, not all rehabilitation is the same.

A careful approach must be adopted and utilized and that approach expressly must draw linkages between the specific person, the specific offense, and the specific evidence of rehabilitation. Only in that light may a reasoned and appropriate decision be rendered that fulfills the requirements of due process and exemplifies the core meaning of justice.

A. THE APPLICABLE LAW – RIGHT TO DUE PROCESS AND EQUAL PROTECTION

1. The Governing Rules; No *Per Se* Ban For Specific Offenses

Petitioner requests the Court note the paucity of the Committee's "facts," in comparison to the full testimony contained in transcripts of the two full days of hearing.

The core fundament of due process is a fair hearing. The core fundament of equal protection is treatment of any given application in a manner consistent with the treatment afforded to other applications. If the information presented during the hearing is not taken into account in the decision on the application, then the final action taken fails the first principle of due process. If the Committee decision results from an *ad hoc* application of an unadopted *per se* exclusionary rule, then the final action taken fails the first principle of equal protection as well as the requirements of due process.

Petitioner asserts that he amply established his present good moral character and his fitness to practice law, and did so by preponderating evidence. Petitioner contends that there is no evidence in the record which rationally supports a finding of doubt about his current good moral character or his fitness to practice law. If there is no rational support for the committee decision, then Petitioner has been denied due process of law. If Petitioner did not fail to meet the qualifications which the State demands of a person seeking to become a lawyer, then he has a constitutionally protected right to practice law in that state. ***Konigsberg v. State Bar of California***, 353 U.S. 252 (1957);[15] ***Schware v. Board of Bar Examiners***, 353 U.S. 232 (1957); ***Wieman v. Updegraff***, 344 U.S. 183 (1957).

[15] Among other things, ***Konigsberg*** explicitly recognizes that the decision to grant or to deny an application for admission determines the future course of events for an applicant's life, and comes only after a truly significant investment of years and financial resources, as well as study and personal sacrifice.

2. Legitimacy Of Claim Regarding Application Of A *Per se* Exclusionary Rule Where The Prior Unlawful Conduct Was First Degree Murder.

The rules governing the process of applying for admission to practice law in Arizona do not contain a *per se* ban on applicants who have committed particular offenses. Petitioner, Petitioner's crime, and Petitioner's express intent to practice law in Arizona have been widely discussed within the state for many years. It was a matter of such attention that the State Bar conducted an informal survey of members about whether Petitioner should be admitted or not. The Legislature considered on at least two different occasions enacting restrictions on applicants. News shows, radio talk shows, newspaper editorials, and feature articles discussed at length Petitioner, his offense, and his intention to practice law in Arizona. If a *per se* rule was desired, there was ample time to adopt any particular formulation felt to be appropriate to the situation. The Arizona Supreme Court instead elected to retain the discretionary rule, which contains no *per se* exclusion for any specific offense. The rule sets forth a set of factors which must be taken into consideration in determining whether, in any specific instance, an applicant has demonstrated (or failed to demonstrate) that he possesses current good moral character and current fitness to practice law. *See* Rule 36 of the Rules of the Supreme Court.

Because there is no automatic exclusion for persons who have committed the offense of murder, Petitioner's application for admission must be processed pursuant to the current rule – and no *ad hoc per se* rule may be created by the Committee to facilitate or to justify a particular preferred outcome. Application of an unadopted and

therefore unauthorized exclusionary rule violates due process of law. An implicit or explicit Committee finding that no level of rehabilitation can be commensurate with or equal to the offense of first degree murder is merely a way of creating an exclusionary rule that does not exist within the provisions of Rule 36 of the Rules of the Arizona Supreme Court. A finding that Petitioner's level of rehabilitation is not commensurate with his offense amounts to the same thing, given the unquestionable facts regarding Petitioner's personal rehabilitational accomplishments across more than thirty years.

The Committee members applied a *per se* exclusionary rule, perhaps because of their lack of experience with such a serious crime, perhaps because of the natural tendency of the mind to shy away from thoughts revolving around murder, perhaps because of the unfamiliarity of the members with the powerful negative emotions and feelings engendered by murder, perhaps because of a desire/intention to ensure that "a murderer" not be admitted to the State Bar of Arizona, whether such desire was conscious or unconscious.

The evidence clearly shows that at least two members of the Committee intended from the beginning to ignore the rules governing consideration for applicants, and that they already had pre-judged the outcome of Petitioner's application without ever having heard any evidence. One attorney member, J. Russell Skelton, put his adamant opposition to Petitioner's admission in writing, even before he sought a position as a current member of the Committee.[16] He did not recuse himself when he learned that

[16] At the time of his letter to the Character and Fitness Committee (September 21, 1998), Mr. Skelton described himself as *a member of the*

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Petitioner's application was to come before the Committee. Instead, when Petitioner examined the letters of opposition in the CFC file in preparation for the hearing, Petitioner discovered the letter, contacted the Committee Chair, and subsequently was informed that Mr. Skelton was recused and would not be participating in or voting on this application. The most important aspect of the letter is its advocacy for a concept that came up repeatedly in questioning by members of the Committee during Petitioner's hearing:

> * * * * *While a Committee member, I believe I voted on one or two occasions to admit individuals with prior felony convictions; however, none of those individuals were convicted of murder.*
>
> *I believe a murder conviction should disqualify anyone from ever being admitted to practice law in the State of Arizona, or anywhere else for that matter. I believe that certain acts, including murder, should forever disqualify individuals from practicing law, notwithstanding any subsequent rehabilitation.*

J. Russell Skelton Letter, dated September 21, 1998, at paragraphs 2 and 3, located in the CFC file prior to the formal hearing on Petitioner's Application; a copy of this one-page letter accompanies this Petition as **Item 2** of **Appendix Three,** and now is incorporated by reference as though fully set forth herein.

The concept that the nature of the prior unlawful conduct could constitute a sufficient basis for denial of an

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Bar, and as a former member of the Character and Fitness Committee and indicated that he was *very much opposed to Mr. Hamm's application.*

application to practice law in Arizona – regardless of the rehabilitation of the individual – was raised repeatedly by members of the Committee during Petitioner's hearing. *See*, *e.g.*, **R.T. II, from p. 413, line 21 to p. 414, line 2** (questioning whether there is any level of rehabilitation commensurate with the crime of murder). Despite the language of the governing rule, it was apparent that the core notion of an informal exclusionary rule grounded in the nature of the criminal offense was a very real consideration. *See*, *e.g.*, **R.T. I, at pp. 141-231** (testimony and questioning of Petitioner's attorney witnesses Richard Parrish, Ulises Ferragut Jr., and Scott Ambrose).

This unique concept – that the governing rule could be interpreted in such a manner as to exclude persons who commit murder on the ground that they committed murder – is bolstered by the language actually used by the Committee in justifying its decision to recommend denial of the application, *viz.,* a failure to negate the murders and a failure to negate the serious consequences of the murders.

Another member, a non-attorney member, Henry Manuelito, verbally expressed his intention to deny Petitioner's application, prior to the application being submitted. In addition to making up his mind prior to the hearing, he also failed to recuse himself before the hearing began. During the formal hearing, prior to the testimony of Petitioner's witnesses, Mr. Manuelito injected inflammatory and derogatory remarks into the record.[17] During a

[17] [Mr. Manuelito] Q. *What you've learned, apparently, is how to manipulate people as well as yourself. With all the time you have been there, you've mastered it, the techniques you've*

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later portion of the hearing, Mr. Manuelito's pre-judgment was revealed through testimony elicited by a Committee member from Attorney Richard Parrish, one of Petitioner's witnesses, who was acquainted with Mr. Manuelito.[18]

Upon recognizing that he would have to be recused, Mr. Manuelito wrote a letter to the Committee, affirming in writing his position that the fact of a felony conviction alone was sufficient in and of itself to bar the applicant from admission – an example of one sort of application of a non-existent *per se* exclusionary rule:

> I remain steadfast in the belief that individuals with any felony conviction cannot serve the Arizona citizens as a sworn Police Officer, and the citizenry does hold them to a higher standard. I adamantly feel the same higher standard should apply to individuals who want to practice law in the State of Arizona.

Henry Manuelito Letter, dated May 24, 2004, sent to the CFC Committee after the end of the first day of hearing and prior to the beginning of the second day of hearing; a copy of this letter accompanies this Petition as **Item 3** of **Appendix Three,** and now is incorporated by reference as though fully set forth herein.

At Petitioner's request, Mr. Manuelito's letter was provided to Petitioner for his immediate review. The letter

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studied. I don't know if you are manipulating us here right now."

R.T. I, at page 72, lines 16-20.

[18] "*And he told me – Henry told me that he though someone who committed murder should not be admitted to the Bar.*"

R.T. I, at page 167, lines 9-11.

was retained in the record without additional comment from any member of the Committee with regard to any aspect of the matter (pre-judging the application, failure to voluntarily recuse himself prior to the formal hearing process, applying a *per se* exclusionary practice that is not authorized by or compatible with the governing rule, or the intention to ignore mandated responsibilities as a Committee member).

If Petitioner had not requested to examine Mr. Manuelito's letter (**R.T. II, at p. 248, lines 13-20**), Petitioner never would have known that Mr. Manuelito continued to support application of a *per se* rule even after he participated in a hearing at which there was discussion of that specific issue (*e.g.*, **R.T. II, at pp. 255-59**).

Several weeks prior to the first day of Petitioner's Character and Fitness hearing, Petitioner became aware that Henry Manuelito intended to vote to deny Petitioner's application for admission.[19] The information was provided to Petitioner in confidence by attorney Richard Parrish, one of the persons Petitioner had asked to appear as a

[19] Petitioner believes that he demonstrated character through his action in preserving the confidentiality of information provided to him, even when doing so would mean walking into one of the most important hearings of his life, knowing in advance that one committee member, Henry Manuelito, already was planning to vote against him and had verbally communicated his view several months in advance of the hearing. In contrast, Petitioner learned of the existence of J. Russell Skelton's predisposition through examination of the CFC file and there thus was no issue of confidentiality with regard to pointing out the predisposition to the Committee Chair prior to the beginning of the hearing.

witness on his behalf, and who also knew Henry Manuelito.[20]

Many letters of opposition urged rejection of Petitioner's application on the basis of a non-existent *per se* rule involving murder. While it is unnecessary to discuss each one, one important such letter of opposition was from the Board of Governors of the State Bar of Arizona and signed by the President of the Board of Governors:

> * * * * The Board respectfully submits this comment for consideration by the Arizona Supreme Court's Committee on Character and Fitness.
>
> The State Bar of Arizona's Board of Governors very strongly believes that Mr. Hamm should not be admitted to practice law in Arizona under any circumstances. * * * *
>
> The publicly known facts of Mr. Hamm's case are incompatible with the professional standards we require of all lawyers. The Bar would seek to disbar any lawyer who committed such acts, and the Bar would actively oppose the reinstatement of any attorney involved in such conduct.
>
> The ability to practice law is a privilege. The Board believes that Mr. Hamm permanently relinquished the privilege to be an officer of the court the moment he murdered another person.
>
> The State Bar Board of Governors urges the Committee to reject James Hamm's application for admission to the State Bar of Arizona.

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[20] " . . . *James could have said at that outset of this hearing, you know, I want Mr. Manuelito removed.*"

R.T.-I, at page 171, lines 20-22.

State Bar Board of Governors Letter, dated May 17, 2004; a copy of this letter accompanies this Petition as **Item 4** of **Appendix Three,** and now is incorporated by reference as though fully set forth herein.

Yet additional evidence of the *de facto* application of a non-existent *per se* rule is to be found in the absence of genuine consideration of highly important material, such as thirty-years of positive consequences arising directly from the crime, in favor of exclusively considering immutable conditions and the continuing absence of a loved one from his family. While Petitioner cannot possibly change the past, nor "negate the consequences" of his prior criminal conduct, he assiduously has applied himself to creating a new and positive and socially appropriate and collectively valuable set of consequences of that act. Reason and balance are not mutually exclusive concepts; they are interrelated, interdependent, and interactive variables.

The Committee's use of "*failure to negate*" language is indicative of the *ad hoc* application of a *per se* rule to exclude Petitioner solely on the basis of the nature of his offense. The fact that many others with prior criminal conduct in their histories – both before their admission to the Bar and upon re-application for admission/ reinstatement after being disbarred for a felony conviction – have been admitted to the practice of law in Arizona conclusively demonstrates that they were not subjected to the same *ad hoc per se* rule that the Committee applied to Petitioner, not because those previous applicants succeeded in negating their prior criminal conduct, but because their prior criminal conduct was evaluated in a reasonable, fair, and unemotional fashion, and that conduct was considered in light of evidence of each applicant's conduct since the time of the prior criminal conduct.

In other words, *taken as a whole,* the prior criminal conduct did not preclude admission of any applicant who demonstrated that he or she had the character to accept responsibility for the conduct and to succeed at the characterological task of effecting positive personal change within his or her life. Petitioner asserts that due process of law entitles him to the same sort of balanced consideration, despite the fact that his offense of thirty years ago was the crime of murder.

B. NEGATING THE MURDER AND ITS CONSEQUENCES

As pointed out briefly at Section V(B)(2) of the FACTS section of this Petition, it is impossible for Petitioner to negate the serious consequences of murder. Nor is there any set of facts which can negate the serious consequences of murder. Instead, the applicable rules provide a specific set of factors that are to be considered in assigning weight and significance to an applicant's prior conduct, *i.e.*, Rule 36(a)(3)(A-K). Many of the factors listed in the rule are interrelated, requiring linked consideration – and inspire, if not require, articulation of the weighing process by which the final decision was reached.

The seriousness of murder (Rule 36(a)(3)(D)) has to be ranked at the top of the scale; and its cumulative effect (Rule 36(a)(3)(G)) also is unchanging, in the sense of the continuing absence of the loved one died who was lost to his family. Those factors alone, however, cannot be considered in a proper manner without also considering (1) the recency of the conduct (Rule 36(a)(3)(B)) (here, thirty (30) years ago constitutes the "distant past" in a person's lifetime); (2) the factors underlying the conduct (Rule

36(a)(3)(F)) (here, serious mental problems, exacerbated by excessive use of drugs); (3) the evidence of rehabilitation (Rule 36(a)(3)(H)) (here, a remarkable level of personal and private rehabilitation achieved, along with an express and public focus of the applicant upon accepting responsibility for the prior criminal conduct); (4) the positive social contributions of the applicant since the conduct (Rule 36(a)(3)(I)) (including serving as an officer, a director, and a designated lobbyist for a not-for-profit social justice advocacy organization, developing of a model for rehabilitation sponsored by Arizona State University's Center for Justice Studies, acting as a criminal justice consultant, being an expert witness in criminal and civil cases including the guilt phase of capital offenses and death penalty sentencing hearings, lecturing under contract on the subject of re-inventing rehabilitation, and an extensive list of other achievements too long to list here); and (5) other considerations mandated by the other subsections of the applicable rule.

Petitioner agrees that these other, nonetheless essential, factors do not sum to a negation of the crime of murder or negate its consequences. Upon consideration of those factors as a matter of due process, however, those factors do suffice to render the prior criminal conduct insufficient to constitute a basis for recommending denial of the application. The weight of the evidence regarding Petitioner's prior unlawful conduct does not tilt against Petitioner. That is to say, there is no evidence that Petitioner has insufficiently addressed his unlawful conduct, failed to accept responsibility for his actions, ignored imperatives arising from his prior criminal conduct, or returned to criminal ways after service of the penalty prescribed by law and imposed upon him. The very opposite

is true: Petitioner stands as an example of how properly to deal with having committed the serious and irreversible crime of murder. Petitioner frequently is referred to by others as a "poster child" or "poster boy" for the rehabilitation process.

The Committee Decision made no attempt to evaluate or consider the depth and difficulty of the rehabilitational effort involved, while taking pains to explore the heinousness of the crime – and purports to call that process fair and in accord with due process of law. Due process requires, within the context of an application for admission to the practice of law, that preponderating weight be assigned to Petitioner's conduct after the murders, conduct which was progressively within his control and about which he could make decisions, rather than to the crime itself – which never can be altered, retrieved, reversed, or negated.

While the opposite assignment of preponderating weight – that is, to the criminal conduct itself – legitimately might be assigned in another case for a person whose subsequent conduct was less lengthy, less directly related to his crime, or less extensively rehabilitative in nature and effect, that alternative possibility can have no bearing or effect on the processing of Petitioner's application. While Petitioner stands as an example for others, each person who commits a serious crime individually must demonstrate acceptance of responsibility and each applicant must conduct himself in such a manner as to exemplify and to express the change that has occurred within himself.

Rehabilitation is mentioned in the Committee decision only in passing, with a summary conclusion that it was

insufficient to negate the crime. The decision presents no reasoning in support of this critical conclusion, nor does the substance of that conclusion – rehabilitation insufficient to negate the crime – inhere as a legitimate determinant criteria in the governing rule – once again indicating that the decision of the Committee was grounded in the nature of the offense, rather than grounded in a legitimate consideration of the various factors that necessarily must be accounted for in the process of rendering due process to the application for admission. With the exception of an occasional and abstract mention of the general subject of rehabilitation, the Committee decision evidences no consideration of the volume or content of the related evidence presented. *See* entire Committee Decision.

Importantly, Petitioner presented a wealth of information to the Committee about a set of consequences of the crime that were well within Petitioner's ability to address. Petitioner's entire life, since the crime, and even more so since his release into the community, has been used to create a new set of consequences arising directly from his crime.

Petitioner explicitly acknowledges in his actions, presentations, personal appearances, lectures, speeches, and in other ways, that he earnestly desires to have the death of Willard Morley, Jr.,[21] have a meaning and an

[21] Here, Petitioner uses the highly emotional, personal, and legal connection to the death of Willard Morley, Jr. as a touchstone for communicating the impact of murder rather than explaining the technical legal differences between participating in a crime where two people were killed but pleading guilty to only one murder. Petitioner does, in public presentations of all types, accept full moral responsibility for both deaths.

effect far beyond that of a mere death statistic or a personal, private loss to Mr. Morley's grieving family. To the extent that Petitioner has been able to imbue Willard Morley's death with a greater meaning, the consequences of the crime extend beyond the pain inflicted and the loss produced. Rather, a new and positive set of consequences have been set in motion, and those consequences continue to expand over time.

Petitioner has been discussed as a prime example of rehabilitation, of the accomplishment of a truly unusual and extraordinarily difficult task, even on a national level through such media outlets as CBS "Sixty Minutes," the New York Times, and the San Francisco Chronicle. Law-related publications have run stories and feature articles about Petitioner and his offense and his desire to practice law. That knowledge, that public information, that stimulus to discussion and to the formulation of new and better correctional policies and more effective crime prevention strategies, have become consequences of the crime just as much and just as surely as the deaths of the victims, and they also clearly are social contributions since the time of the offense.

The existence and the content of those new consequences of Petitioner's crime also stand as evidence that Petitioner's rehabilitation has been grounded in his acceptance of responsibility for his crime. Thus, Petitioner's rehabilitation and social contributions are directly related to his offense, rather than merely having some abstract relationship to "prior unlawful conduct."

Petitioner made it unmistakably clear to the Committee that it was unacceptable to the Petitioner for Willard Morley's death to be relegated to history and

crime statistics, and that he would not let that happen. *See*, *e.g.*, **R.T. II, at page 344, lines 12-16;** *see* also **p. 398** (*a meaningful part of every day of my life*); **p. 399** (*30 years*); and **p. 414** (*my touchstone* . . .). Despite two days of communicating to the members of the Committee the intensity of Petitioner's focus on the impact of Willard Morley's death and the effects that it has had and continues to have,[22] the Committee's written decision provides little indication that the information was factored into deliberations. Instead, it is clear from the written decision that the Committee's definition of the "consequences" of the "prior criminal conduct" began and ended with the death of the victims (a continuing and unchangeable fact) and the loss that imposed upon the victim's families (a continuing experience wholly outside the influence or control of Petitioner). There simply is no rational basis for using Petitioner's prior criminal conduct of thirty years ago as a reason for recommending denial of his application when consideration is given to the subsequent 30 years of conduct demonstrating remorse and responsibility regarding that crime.

[22] The intensity of Petitioner's focus upon Willard Morley rather than Zane Staples or rather than both victims is addressed at Section V(B)(5) of the FACTS section of this Petition, where Petitioner explained the psychological basis for his selection of Willard Morley as a focal point for his rehabilitation (in addition to the fact that Petitioner's conviction and sentence expressly was for the death of that victim) and explained the practical necessity for doing so in order to keep his rehabilitation "real" and grounded and personal and truly meaningful. The language of Petitioner's rehabilitation thus tends to focus almost exclusively upon Willard Morley, but Petitioner fully accepts responsibility for the deaths of both victims.

C. THE ALLEGED *"MISCHARACTERIZATION OF THE FACTS SURROUNDING THE MURDERS."*

1. Discrepancy Between Testimony Before CFC Committee And Content Of Document Created By Prosecutor

Earlier, in the "FACTS" section of this Petition, Petitioner noted that the Committee's finding of mischaracterization was based on the ground that Petitioner's personal testimony before the Committee about the details of the crime did not fully "track" the "Statement Of Facts On Conviction" prepared by the prosecutor and signed by the Superior Court Judge. The "FACTS" section also noted Petitioner's own extensive presentation during the hearing of the facts and circumstances of the crime. Although the Committee did not recognize the import of the information, Petitioner also pointed out at the Committee hearing that Petitioner was sentenced December 20, 1974, and transported to prison on that same day. **R.T. I, p. 26, l. 8-9.** This is important because the "Statement of Facts on Conviction" was prepared by the prosecutor without any input from Petitioner or his legal representative, and was signed by the prosecutor and the sentencing judge on February 10, 1975. ***See Application***, Attachment to Form 4 (Application Question #25), included as **Item 1** of Appendix Three and now incorporated by reference as though fully set forth herein.

If Petitioner had been provided an opportunity to address what the Committee perceived as a discrepancy, Petitioner would have informed the Committee that, while Garland Wells (co-defendant) admitted at the Change of Plea hearing that he planned and intended to kill the victims, Petitioner made no such admission at the Change

of Plea hearing, but rather admitted only that he did commit murder, but not that he planned to, agreed to, or intended to kill the victims.

During the formal hearing, Petitioner's presentation to the Committee of the facts and circumstances of the crime was quite extensive. ***See, e.g.*, R.T. I, at pp. 14-24; 28-29; 30-32; 36-38; 40-45; and R.T. II, at pp. 383-397.** Petitioner described in detail the specific events that led up to the crime and the details of the crime itself. Petitioner specifically testified that he had been experiencing progressively more severe mental problems, which he struggled to mask so as not to reveal to others the extent of his vulnerabilities. He testified that he agreed to rob the victims but did not agree to murder them. He testified that he was guilty of felony murder, which is first degree murder, but not premeditated murder, which is a different form of first degree murder. He testified that he told his attorney that he was insistent upon pleading guilty to first degree murder, and that he did so in order to begin to do the right thing. He testified that he accepted responsibility for the murders and that he spent the next thirty years working on himself, gaining greater insight into the causes of his behavior, progressively accepting to a greater degree responsibility for his actions, and recovering psychologically and spiritually from the personal aftermath of his crime.

While it has been an occasionally recurrent matter that others begin from the position that the murders of Willard Morley and Zane Staples was first degree murder in the sense of premeditated murder, Petitioner has not felt it appropriate under most circumstances to insist upon explicitly correcting that statement. Petitioner ordinarily merely states that he was guilty of felony murder or first

degree murder (murder committed during the commission of a felony offense), and allow the other party to determine whether the issue will be discussed further. In the current situation, members of the Committee felt that it was important to address that issue in detail, and Petitioner responded by providing them with the information they requested.

Petitioner has discussed the details of his offense with psychiatrists, psychologists, university students, church members, attendees and members of civic organizations, radio talk show hosts, friends and acquaintances, etc., and consistently has explained, when asked, the difference between felony murder and premeditated murder, and always has emphasized his complete acceptance of responsibility for the deaths of Zane Staples and Willard Morley. The discrepancy between the document that Petitioner had no part in constructing and to which he never agreed, on the one hand, and Petitioner's own personal knowledge of the events of the crime, on the other, does not constitute a basis for recommending denial of his application to practice law. It does not constitute a mischaracterization by Petitioner of the facts of the crime. It does not constitute a failure to accept responsibility for the deaths of the victims. It is not evidence of a lack of character. It does not demonstrate an unremorseful attitude on the part of Petitioner.

Petitioner insisted upon pleading guilty to first degree murder in order to attempt to preserve his integrity as a human being and to forestall a total psychological collapse. Petitioner knew that he truly was guilty. In order to "*weigh*" a "*lack of candor*" in "*testimony*," there must be a "*lack of candor*" to "*weigh*." The hearing testimony confirms that Petitioner planned a fraudulent drug sale,

planned to commit robbery, and provided minute details of the crime. The testimony indicated that Petitioner was in a bizarre and progressively worsening mental state of mind prior to the crime and during the aftermath of the crime, and that Petitioner felt that he had to plead guilty to begin to recover from the horror of what he had done and to begin the process of accepting responsibility for his actions that resulted in the deaths of two young men.

Even after his release from prison, Petitioner did not attempt to correct inaccuracies (on television and radio, in newspapers and magazines) in various reports of the underlying offense, *see* **R.T. II, p. 498, l. 13-17,** because Petitioner felt that it was inappropriate to do so, in the sense that nitpicking over a detail when Petitioner was unquestionably guilty of murder seemed to Petitioner to be conduct bespeaking a cold and callous heart, and Petitioners' feelings were and are neither cold nor callous.

Petitioner's crime was truly terrible. It needs no embellishment to make it horrific. Perhaps the county prosecutor who prepared a written document a few months after Petitioner and his co-defendant were given life sentences and were sent to prison believed that Garland Wells' admissions were sufficient for both defendants. Perhaps he remembered Mr. Wells' admissions. In any case, Petitioner did not provide that description as a factual basis for the crime and did not admit that fact to the Court.

The point is that the basis for the Committee's conclusions (*i.e.*, that Petitioner's testimony before the Committee was untrue or that he mischaracterized the facts and circumstances of the offense or that he failed to accept responsibility for his offense) is utterly insufficient. A

discrepancy based on a document prepared without Petitioner's input or review is an insufficient basis for a finding of lack of current good moral character or for a finding that Petitioner is unfit to practice law.

If the facts of the offense had been as the Committee believed them to be, Petitioner freely would have admitted them, because the psychological aftermath of the crime was as severe as it can get, short of a total break with reality. Once the descent into insanity was slowed and then halted, recovery depended upon facing the crime in a full and unflinching manner, progressively, over time. If Petitioner had shied away from the facts, it would have ruined any chance of recovery, of spiritual rebirth, and of character development. The individual and social accomplishments Petitioner has achieved stand as powerful evidence that he did not evade or mischaracterize the facts and circumstances of the crime.

In addition, Petitioner has no motivation to mischaracterize his crime. Although Petitioner cannot state with any certainty that members of the CFC fully recognize it, Petitioner is aware that Rule 36 does not allow the Committee to apply a per se exclusion to the practice of law based on any specific crime, no matter how serious. Hence, Petitioner would have no logical motivation to downplay or "mischaracterize" the facts of his crime. Petitioner stands as an applicant for admission to the practice of law, having, as one factor, pled guilty to first degree (felony) murder. There would be little rational explanation for attempting to mischaracterize this fact.

The Committee's chosen course of action serves the outcome the Committee desired to achieve. The Committee seized upon a discrepancy created thirty years ago without

Petitioner's awareness, acknowledgment, consent, or cooperation and used that discrepancy as a basis for ignoring and discounting Petitioner's own testimony as to the facts of the crime itself.

The point here is that Petitioner does not have the same frame of reference as did the Committee. To Petitioner, acknowledging the facts of the crime is not something to be avoided; rather, it was something to be embraced, as a means of achieving an inner recovery, as a means of appropriately acknowledging his personal responsibility, as a means of being worthy of forgiveness, and as a means of demonstrating to others that the path of personal acceptance and voluntary disclosure is a path capable of leading back into legitimate membership in the larger society after even a horrific crime. The point is not how bad the crime was thirty years ago, but whether Petitioner genuinely has rehabilitated in the intervening thirty years or merely marked the passage of time in the hopes that, as the crime ages, the need to deal with the crime dissipates. There is not so much as a single shred of evidence tending to show that Petitioner's attitude toward his crime, his victims, or himself has been anything other than serious, remorseful, sincere, appropriate, and responsible. This has been the case throughout Petitioner's prison term as well as throughout his time on parole in the community and his time since absolute discharge from sentence.

The Committee's mischaracterization of James Hamm as remorseless, as unwilling to accept responsibility for his action, as unwilling to acknowledge the facts of his crime, and – therefore – as demonstrating a lack of character cannot be allowed to stand. It is a slap in the face to all those victims of crime whose perpetrators have failed to

even remotely acknowledge their responsibilities and have imposed even greater levels of anguish by their hard-heartedness. It is a slap in the face to the justice system and to the essential concept of justice itself. In its attempt to discredit Petitioner to serve the end of appearing to justify the decision to recommend denial of his application, the Committee necessarily has initiated a process which undermines the positive and constructive effects of Petitioner's example – thirty years of sincere, courageous, and open encouragement of others to genuinely accept responsibility for one's actions, no matter how painful the process and no matter how great the burden of disapprobation that attends the original acts.

The Committee has done a disservice to the very field it professes to protect, and, by its action, has called into question the willingness of the justice system to serve the ends of justice by living up to its responsibilities. The justice system purports to expect others to live up to their responsibilities, and increases the severity of the penalty for those who refuse to do so. Now the justice system is confronted with the necessity of either acknowledging that the system is a failure even in the face of overwhelming evidence of the individual example of achievement of its stated expectations. Petitioner did not mischaracterize the facts of his crime, did not demonstrate a lack of remorse toward his victims or their families, and did not refuse to acknowledge his responsibility for his own actions. Any attempt to twist the testimony so as to make it appear to support such allegations reveals more about the review than it does about the person reviewed.

2. The Committee Decision Altered The Sequence Of Events In The Commission Of The Crime In An Attempt To Bolster Its "Finding" That Petitioner Had Mischaracterized The Crime And Failed To Accept Full Responsibility For His Actions.

In addition to the Committee finding that Petitioner had agreed in advance to kill the victims (and thus planned the murder and intended to kill the victims from the beginning), the Committee also issued a finding that Petitioner initiated the murders by firing the first shot:

> 9. On September 6, 1974, while in the process of setting up the drug deal, Hamm and his co-defendant, Garland Wells ("Wells") agreed and planned to rob Morley and Staples as Hamm was unable to arrange for the sale of the amount of marijuana they wanted to buy. TR p. 15,11. 19-25, p. 16,11. 1-2, 26, p. 17,11. 1, 10-15).
>
> 14. Hamm testified that upon arrival to the outskirts of River Road, Morley and Staples began asking "*where are we going, where are we, where is the house, where is the marijuana, where are we going*" and the "*whole atmosphere in the car simply changed instantly*." (TR p. 18,11. 20-25, p. 19, ll. 4-25).
>
> 15. At that point, Hamm shot Morley, as he was driving, in the back of the head and killed him. Although Morley was already dead, Wells then shot him again and also shot Staples as he tried to get out of the car. Hamm subsequently shot Staples again as he tried getting out of the car and shot Morley a second time in the head. (TR p. 20,11. 7-8, 17-25, p. 44,11. 21-25, p. 45, I. 1).

CFC Decision, Findings # 9, # 14 & # 15, at page 3.

This "finding" was presaged by a series of questions posed by one of the Committee members which repeatedly incorrectly posited the sequence of events surrounding the shootings. The sequence of events presented in the Committee decision is contradicted by the direct testimony presented to the Committee. ***See*** **R.T. I, at pp. 19-20** (description of crime and sequence of events); at **p. 37** (direct answer to question as to who fired the first shot); at **p. 40** (confirmation of who shot first); at **p. 44** (discussion not of sequence of events of crime but describing in order the three times I fired my weapon during the offense); **R.T. II, at p. 390, lines 11-18.**

Given Petitioner's testimony under oath during the formal hearing (cited above), the Committee apparently felt that its finding of an alleged "mischaracterization" of the crime and "failure to accept full responsibility" finds greater support from a sequence of events that has Petitioner firing the first shot. Perhaps the Committee believes that it is more horrible for Petitioner to be the person who fired the first shot and that, if he had done so, it would make more reasonable the Committee's decision to recommend denial of the application for admission.

Under the governing rules, however, as well as from the standpoint of rehabilitation, it would make no difference at all. If Petitioner had fired first, he would admit it, because it would be a part of his rehabilitation. From the standpoint of the rules, the question is one of rehabilitation, and as long as Petitioner appropriately accepted responsibility and demonstrated character change, the sequence of events would make no difference in consideration of the application. The question for the Committee – and for this Court – is whether Petitioner's current moral character is a good character, not whether the details of

his prior criminal offense appear more horrific or less horrific to any particular group of reviewers. The fact is that Petitioner has accepted full responsibility for his crime and has spent the last thirty years of his life turning his existence into a statement of remorse, atonement, respect for his victims, and an example for others.

3. Alleged Mischaracterization Of The Crime As Being A "*Drug Deal Gone Bad*."

The Committee Decision cited the categorization of the offense as "*a drug deal gone bad in an instant*" as a basis for recommending denial of Petitioner's application to practice law. Petitioner consistently has described the offense, however, as a drug-related homicide, not as a drug deal gone bad. Others – witnesses, not Petitioner – have referred to the crime as "a drug deal that went very sour."[23] Petitioner has no control over the statements of witnesses. That this homicide was, in fact, drug-related is simply beyond question.

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[23] As Petitioner pointed out earlier in the Facts section, the transcript of Petitioner's hearing reflects that one of Petitioner's witnesses, Tucson attorney Richard Parrish (**R.T. I, at pp. 141–177**), described the crime as a drug deal gone bad ("*the crime was part and parcel of a drug deal that went very sour . . . "* **at p. 161**). One Committee member questioned Mr. Parrish about his characterization (**at pp. 162-63**), and Mr. Parrish indicated that the entire matter had begun as a drug deal, turned into a robbery, and eventuated in murder, and that he thought that series of events legitimately could be characterized by him as a drug rip-off or drug deal gone bad. The use of such language by a witness cannot reasonably be considered to constitute a legitimate basis for concluding that Petitioner himself "*mischaracteriz[ed] . . . these murders as simply a drug deal gone bad at an instant*."

The personal preferences of Committee members for phraseology that fits their own perceptions is an insufficient basis for accusing the applicant of "mis-characterizing" the crime, especially where the alleged mis-categorization of the offense was by others, not by Petitioner.

Petitioner's witnesses were asked to come before the Committee and answer any questions Committee members might have with regard to Petitioner's character and with regard to their personal knowledge of and experience with Petitioner. No one ever suggested to Petitioner that each witness would be grilled with regard to the details of the murders and expected to possess a level of knowledge commensurate with having been at the scene of the crime during the commission of the crime itself. In discussing his crime with others, Petitioner allows the other person to determine the level of detail and information. Some persons prefer a more abstract understanding, while others want greater specific detail.

[4.] Committee Assertion That Petitioner Displayed A Lack Of Remorse Toward The Victims' Families.

The CFC comments about Petitioner exhibiting or demonstrating lack of remorse because he drew a distinction, based on his own personal experience, between the level of effect on his victims' families and the level of effect on other victims' families, demonstrates not a lack of remorse on Petitioner's part, but, rather, a lack of experience on the part of the members of the Committee.

Petitioner testified that the grandmother of Willard Morley sent Petitioner a postcard expressing forgiveness

for his crime; that there was no objection whatsoever to his application for commutation of sentence, even after the victim's family was contacted by telephone by an Arizona DPS officer and personally advised of the right to submit objections to the commutation. Nor did the victim's family object to Petitioner's parole, which had the effect of releasing him from prison into the community. The first letters of opposition occurred at the time of Petitioner's request for Absolute Discharge, and the moderate objection submitted was simply that they did not think that continued supervision was an unreasonable burden for Petitioner to bear. Because Arizona law mandated a different criterion for determining whether to grant an absolute discharge in Petitioner's case (whether there was a reasonable probability that Petitioner would remain at liberty without violating the law), the Board of Executive Clemency granted the absolute discharge. It was not that the Board discounted or ignored the victim family input; it was that the Board had a responsibility to fulfill which was guided by constraints different than the issue presented by the letter(s) of opposition

In comparison to Petitioner's extensive personal knowledge of other cases involving strong and sometimes vehement victim opposition at the same hearings mentioned in testimony before the Committee (*i.e.*, commutation, parole, and absolute discharge hearings), Petitioner believes that his victim's family demonstrated restraint and provided measured input; and that their reasonable and understandable objections properly may be categorized as being mild, in comparison to some others of which he is aware.

An objective reading of the testimony leads to the conclusion that Petitioner expressed a subjective opinion,

but an opinion grounded in personal knowledge and prior experience in the area under discussion, experience that far exceeds the average person's. Petitioner and his wife, through their work with Middle Ground Prison Reform, have had hundreds of opportunities for personally dealing with individuals and families who have suffered devastating losses directly related to crimes of death and/or severe violence. Petitioner and his wife have personal experience with families and individuals and have seen situations where victims have been so devastated by criminal acts that they have had to seek long-term psychological counseling; where people have felt that they have to use physical disguises and false names when they oppose parole or commutation of the offender; where divorces result; and/or where there is a lingering and unremitting sense of fear.

Petitioner commented by comparing such overwhelmingly devastating effects he has seen in other cases with the very reasonable objections in his case that were presented through letters from the Morley family members. Petitioner submits that he was neither insensitive to the victim nor unremorseful in his testimony, taking the content of the letters in account along with the fact that the family did not object to the commutation of his sentence even after being personally contacted by the Arizona Department of Public Safety and asked if they wanted to object and informed of the fact that a commutation would alter petitioner's sentence so as to make him eligible for release into the community at an earlier point in his sentence; and did not object to his release from prison into the community on general parole, again, after having been contacted and invited to submit any objection that they wished.

There is no doubt that the letters express opposition and clearly convey a deep and continuing sense of loss as a consequence of Petitioner's crime. That does not mean, however, that the opposition expressed cannot accurately be characterized as reasonable or mild, in comparison to many other instances of extreme or vehement opposition from victims and victim family members. For example, the letters do not suggest that Petitioner will commit new crimes, prey upon the vulnerable, generate unremitting fear for the letters' authors, etc. Instead, they present truly heartfelt expressions of loss, grief, and anger; and they also reveal a general truth, which is that the aftermath of murder tends to leave behind a continuing and evolving set of problems as people live and grow and change and do so without the benefit of contact with the lost and loved family member.

Procedurally and morally, it certainly is appropriate for input from victims and victims' families to be received by the Committee, and morally it is appropriate for Petitioner to take personal note of the objection and the content of the letters. Just as the victim's family's input cannot determine the Committee's independent evaluation of the application, however, so also the victim's family's input cannot determine Petitioner's decisions about how to conduct himself while atoning for his crime.

The Committee's judgment that Petitioner's testimony was "unremorseful" by expressing an opinion that compared the objections and the apparent effect of his crime with other, similar, situations within his personal knowledge in which the objections and the effects were far more extreme or more vehement is not a valid conclusion. Apart from the fact that the judgment is not is not grounded in a history of the Committee's personal experience in dealing

with or even contact with large numbers of victims or victims' families, it also fails to take into account the sum of Petitioner's testimony on the subject.

The Committee's judgment has the appearance of being an automatic and unthinking reaction reflecting a conventional contemporary view that embodies the dichotomy between the two groups – victims and offenders – namely, that any comment which does not rank any victim's comment as the more important item on a list (any list, any time, any comment) demonstrates insensitivity, and, if done by an offender or any person associated with an offender, also demonstrates a lack of genuine remorse. Petitioner has a due process right to expect more from the Committee, and those reasonable expectations arising from due process were not fulfilled. No one said it was going to be easy to sit as a member of the Committee that processed Petitioner's application, but the judgment on this issue clearly fails to meet the bare minimum mandated by due process of law.

Petitioner is dismayed at the Committee's characterization of him as lying to the Committee and as being remorseless. For more than thirty years, Petitioner has focused upon rehabilitation with all of his heart and mind, until it became the center of his being, the core of his life – and then, after two full days of presenting himself to the Committee, he has been told that his is "unremorseful" and unfit to practice law. The Committee Decision is an affront to reason and responsibility.

D. THE CHILD SUPPORT/COURT ORDER ISSUE

1. The Adoption Issue.

Petitioner was informed in writing in 1988 by a licensed private investigator from Texas that his son had been adopted and his son's new name was Valdez rather than Hamm. When Petitioner first discovered, in January of 2004, that his son had not in fact been adopted, he immediately initiated a discussion about payment and communicated that he desired to make payment, regardless of whether the debt remained legally enforceable as a matter of law.

At first, Petitioner's son resisted taking any money at all, and Petitioner's son reluctantly accept Petitioner's offer to pay, only after Petitioner pressed his son to accept the money and to set it aside for the grandchildren. Petitioner informed his son immediately that he wanted to pay not only the unpaid amount of the child support (which he had yet to calculate at the time of the telephone call), but also wanted to pay interest on that amount. At that point, Petitioner's son became adamant and insisted that he would not accept any interest. The discussion then moved on to arrangements that needed to be made between Petitioner's son and his mother. Petitioner still believed (in January 2004) that it was not a good idea for Petitioner to communicate directly with his former spouse, and Petitioner's son concurred with that assessment and agreed to act as an intermediary regarding Petitioner's desire to make payment.

The Committee decision noted Petitioner's testimony that he never was served with any Final Divorce Decree or Order for Payment of Permanent Child Support. *See*

testimony at **R.T.–I, pp. 78-79, and pp. 86-87;** *See* **Committee Decision,** Finding # 32, at pp. 6-7,[24] and Finding # 33,[25] at p. 7.

The Committee Decision then goes on to assert that Petitioner's son's testimony did not support Petitioner's testimony (*i.e.*, that, until January of 2004, Petitioner had not learned that there had been no adoption):

> *"35. Valdez testified on behalf of his father, but did not corroborate Hamm's testimony that he had told him that he had been adopted or when Hamm first learned that he had not been adopted. Valdez testified that he told Hamm during his visit to Arizona in 1999, when Hamm asked him about the adoption, that he had never been adopted by his step-father and had just changed his last name himself. (TR p. 131, l. 4-22, p. 134, l. 2-15)."*
>
> *"36. Valdez further testified that in January, 2004, he received a call from Hamm to talk about the unresolved child support issue and at*

[24] "32. Hamm disclosed a 1973 arrest for a misdemeanor charge for nonpayment of temporary child support. Hamm testified that although he assumed there was a Divorce Decree ordering payment of child support, he had never seen it or received a copy and, thus had never paid child support for his son, Jimmy Valdez ("Valdez"). (TR p. 78, ll. 4-25, p. 86, ll. 3-25, p. 87, ll. 1-25)."

Committee Decision, Finding # 32, at pp. 6-7.

[25] "33. Hamm testified that he had not paid child support because he had been told personally by Valdez that he had been adopted. In January 2004, while filling out his Application, Hamm contacted Valdez, and at that time learned that he had not been adopted, but had simply undergone a name change. (TR p. 80, ll. 1-11)."

Committee Decision, Finding #33, at p. 7.

that time they made arrangements for payment of the outstanding amount. (TR p. 132, l. 15-25, p. 133, l. 1-25, p. 134, l. 1-11).”

Committee Decision, Finding #35, and Finding #36, at p. 7.

Contrary to the Committee decision, nothing in the testimony of James Valdez definitively refutes Petitioner's testimony. The transcript contains ambiguous testimony (presented below), and also testimony which attempts to clarify that ambiguous testimony (also presented below), but the clarification was terminated by the Committee. *See* **R.T. I, at page 136, lines 19-23.**

The Committee incorrectly characterizes James Valdez's testimony (Petitioner's son). Petitioner testified that, until January 2004, when Petitioner was preparing his Application for admission to the State Bar of Arizona, and called Mr. Valdez to obtain information about the court that granted the adoption so that it could be included in the materials to be submitted to the Committee. Petitioner believed, from 1988 until January of 2004, that James Valdez had been adopted.

In his testimony before the Committee, James Valdez was confused, and, when asked when Mr. Valdez first advised Petitioner that Mr. Valdez had not been adopted, stated, *You know, I'm not exactly sure when it was.* **R.T. I, at page 31, line 12.** The testimony from page 129 forward does not indicate that the adoption conversation occurred in 1999 rather than 2004. The Committee simply did not read the transcript carefully before jumping to an incorrect conclusion.

Later, on a question seeking to clarify the time that the adoption matter came up, James Valdez testified:

> *I don't know. Well, let me see now. I can't remember what the time frame was whenever you first asked me the question. What I remember initially – whenever we met – I don't really think we talked about it. I don't think the subject ever actually came up, you know what I'm saying?*

R.T. I, at page 136, lines 7-15.

Further, the implication of the Committee Decision – that Petitioner intentionally delayed or avoided a known child support debt until January of 2004 – is wholly incompatible with the apparent reasoning used to support it. There was no benefit to Petitioner that possibly could arise from intentionally delaying or avoiding the issue of child support payment. Petitioner's intention to apply for admission to the practice of law has been not only a private goal of Petitioner's for many years, dating back to a period prior to his 1992 release from prison, but also has been the express subject of public discussion from 1992 forward to the present.

From the time of his release from prison into the community in 1992, Petitioner has made hundreds – perhaps thousands – of public presentations, to groups of lawyers, judges, and law students; to university classes; civic organizations; churches and church groups; community college classes and student organizations; appeared on television and radio programs; and been the subject of numerous newspaper and magazine articles – all of which (or virtually all of which) discuss his intention to practice law in Arizona and elsewhere. The notion that some benefit was to be obtained by intentionally delaying or avoiding the issue of child support payments is completely incompatible with the known facts and public record.

At the time Petitioner met his adult son, James Valdez, in 1999, Petitioner discussed with his son the fact that Petitioner had located him many years before, through a licensed private investigator, and had been informed that his son had been adopted and that his name at that time was James Valdez and not James Hamm, Jr. Petitioner discussed with his son the advice he had received to hold off on contacting his son until he had lived several years as an adult, and the reasoning behind the advice. Petitioner's son informed Petitioner that, in retrospect, he believed it was a very good idea that no contact had been initiated earlier, because it would not have worked out – due to Mr. Valdez's attitude about Petitioner's departure, and absence.[26]

Furthermore, Petitioner's testimony – that he made a special telephone call in January of 2004 for the express purpose of finding out where the adoption took place so that he could obtain whatever pubic records would be

[26] The Court should note the Committee's failure to assess weighing factor (I) (*i.e.*, applicant's positive social contributions since the conduct) – subsection (2) is absent. One effect of handling the situation as Petitioner did was the positive outcome of the social relationships involved. Petitioner's relationship with his son is quite good and he has an excellent relationship with his son's children, Petitioner's two granddaughters, Valeria Valdez and Allejandra Valdez, all of which might well have been quite problematic if the contact had been initiated at a much earlier stage of development. Petitioner specifically was advised to wait until his son had spent several years as an adult before making any contact, given the nature of the circumstances. As it turned out, that advice worked out very well. No one can say with certainty that the situation would have ended equally as well if the contact had been made at an earlier point in time. Any second-guessing of the manner in which it was handled constitutes pure speculation, if the outcome is not limited to merely a monetary issue but also includes consideration of life-long relationships between Petitioner and his son and between Petitioner and his grandchildren.

available (and obtain an affidavit from his son if it turned out that no public records were available) in order to provide documentation to the CFC regarding the adoption – is fully consistent with the facts of Petitioner's situation.

Petitioner was quite concerned when he learned during that telephone call that no adoption had taken place, and he explained to his son his strong feelings about needing to take steps to pay the debt, *even if it was legally unenforceable*. It required some discussion before Petitioner's son would accept any payment at all, because he (Petitioner's son) did not feel that the issue was important.

Petitioner testified that he thought it probable that his former spouse had remarried soon after a divorce, that his son had been adopted by her new husband, and that his former spouse did not want any contact with Petitioner at all. Until Petitioner was considering remarriage, however, he took no steps to ascertain the actual facts. He submitted an affidavit from a licensed private investigator from Texas who informed Petitioner in writing that his son had been adopted – not *perhaps*, not *maybe*, not *I assume*, not *it is possible that* . . . , but flatly stated it as a fact:

> Reference to our recent telephone conversation. Please be advised of the following:
>
> 1. Karen LaRue Mansfield, remarried one Albert Valdez, subsequently adopting James Joseph Ham;

Licensed private Investigator Letter (Harry Minnick), dated January 22, 1988, provided to the Committee as part of Petitioner's **Application;** a copy of this three-page letter accompanies this Petition as **Item 5** of **Appendix Three,** and now is incorporated by reference as though fully set forth herein.

At that time (1999), Petitioner verbally was advised by his son that he (Petitioner's son) had been adopted (*see* **R.T. I, at p. 131, Line 12),** This information was wholly consistent with the information that previously had been provided to Petitioner by Texas Private Investigator Harry Minnick. The Committee asked numerous questions of Petitioner that implied that he somehow had acted inappropriately by failing, on his own, to seek and obtain hard copies of actual adoption papers, and the Committee members acted as though the licensed private investigator's statement was of no import in the absence of such documentation. The implication of the Committee questioning clearly was that Petitioner had a legal obligation to pay the child support pursuant to an order that never had been served and that he had no right to accept the statement of a professional licensed private investigator in the absence of documentation conclusively proving that the investigator's report was accurate.

Petitioner had not hired the investigator. The investigator was hired by Donna Hamm (nee Leone), who wished to determine whether Petitioner actually was divorced, because that fact carried significant legal implications about whether a subsequent marriage would constitute bigamy or a legally binding relationship. As a courtesy, she also asked the investigator to find out whether the child of the marriage had been adopted. The investigator confirmed the divorce, providing the name of the court which entered the decree in 1975 (no copy of the decree was included with the communication), provided the date of the remarriage (1978) and stated that the child had been adopted (and gave the child's new surname).

The Committee questions included whether Petitioner was aware that adoption required termination of parental

rights (he was aware of that), and gave the impression that his awareness of that fact constituted evidence that he did not really believe that the child had been adopted (or, alternatively, that it was unreasonable to accept that his rights had been terminated without notice). Courts are not loath to terminate parental rights of prisoners serving lengthy sentences, and a 25 year to life sentence certainly falls within the definition of a "lengthy sentence." Petitioner did not seek to interject himself into the domestic life of his former wife, and chose not to exercise the procedural rights that he was fairly certain were available to him. He believed that his former wife and his son were both better off without him in their lives, and had no reason to believe that any form of contact with or from him would be welcome. That belief is not evidence of a character deficiency. To make the mistake of so attributing it is to commit an error that reveals more about the latent nature of the formal hearing than about the character of the person under review.

2. Petitioner Provided An Address For A Final Decree And/Or Order For Permanent Child Support.

Petitioner knew of a court order for payment of temporary child support, only because he was arrested in June of 1973 for noncompliance with that order (and provided information about that arrest in his original CFC Application packet). Subsequently, Petitioner personally appeared before the clerk of the court that issued the warrant, paid the arrearages in the temporary support order, provided a permanent address for all future contact (*i.e.*, a relative's permanent home address), and then heard nothing further in the matter. Many years later, Petitioner

learned that the final divorce decree was dated eleven months later, on May 6, 1974. Petitioner never was served, however, with any Final Divorce Decree or Order for Permanent Child Support. Petitioner's permanent address that he placed on file with the Potter County Domestic Relations Court remained a viable address for many years.

Petitioner believed – because he never was informed of the 1975 completion of divorce proceedings, because he never was served with the 1975 Order for payment of permanent child support, because he had been informed writing in 1988 by a licensed Texas private investigator that his son had been adopted, and because his son did not inform Petitioner until January 2004 (when Petitioner specifically asked in order to locate the adoption papers for submission to the Character and Fitness Committee as part of his application for admission) that, in fact, there had been no adoption – that he had no debt, other than for some brief period of unknown length between his domestic separation and his former wife's remarriage.

When Petitioner learned that no adoption had taken place, he earnestly desired to pay the debt and worked to convince his son to accept an offer to pay that money. Petitioner asserts that his willingness to accept responsibility to pay a moral debt, even if a legally unenforceable debt, is a demonstration of good moral character. Petitioner subsequently learned that the long-standing child support debt is not legally enforceable for technical reasons, and, therefore as a practical matter never will be prosecuted in any court of law. The technical legal enforceability status of the debt, however, was not the critical issue for Petitioner. The discussion of the divorce, adoption, and child support issue before the Committee is reflected in the transcripts of the hearing, at the locations

cited earlier, in **Section V(C)** (FACTS section) of this Petition.

The issue of whether Petitioner's former spouse was aware of Petitioner's incarceration is not relevant to the question of whether she could have served Petitioner with an Order for Child Support, because she was able to complete service upon Petitioner through the address on file with the court. *See* **R.T. I, p. 78, lines 13-21; p. 79, lines 7-11; and p. 91, lines 11-20.** Petitioner did not know whether his former spouse had followed through with the divorce action or whether she had sought a permanent order for payment of child support. In the absence of any service of documents, it was only a possibility that she had proceeded to completion with the divorce. Petitioner had no factual basis for concluding that she had proceeded to completion with divorce proceedings or with obtaining a permanent child support order.

Petitioner's personal opinion was that she had obtained a divorce, with or without child support, that she failed to serve Petitioner because she desired to have no contact with him whatsoever, and that she did not seek to enforce any order that might exist because she had not served him and wanted no contact with him. Petitioner believed, however, that his opinion did not impose a legal obligation on Petitioner to verify the accuracy of his suspicions.

While most cases involve situations in which child support is an option that is available, not every spouse seeks child support. Not every spouse seeks to have even minimal contact with the other party. Petitioner was entitled, under the law, to learn of whether a divorce had been granted, whether an order for child support had been

included, whether there were provisions for visitation, etc. He did not seek to exercise any of those rights. The Committee decision chastises Petitioner for failing to follow up on the preliminary court proceedings related to the marital relationship, attributing to that failure a character deficiency. Since Petitioner's spouse failed to follow through with notifying Petitioner of the outcome of the proceedings by service of legal documents, is that evidence of a deficiency in her character? Petitioner's spouse took no action to locate Petitioner before the child Support order legally expired – was that evidence of a character deficiency? After all, a *possibility* is not a *necessity*; simply because something *can* be done does not mean that it *must* be done.

3. There Was No Need For Court Involvement And There Was No "*Appropriate Court Involvement*."

The Committee decision states that Petitioner's voluntary acknowledgment of a legally unenforceable debt was inappropriate on the ground that he failed to obtain what the Committee referred to as "appropriate court involvement." Inasmuch as there is no appropriate court involvement, that reason fails to substantiate the Committee's view. The child reached the age of majority on July 31, 1987. Under the Texas law that was applicable to the child support order, Petitioner's spouse had four years following that date in which to seek a legally enforceable judicial order for payment of the child support that accrued during the years in which the unserved order had been in effect. Following a change in the law, the time period was extended to ten (10) years for persons who continued to have the State of Texas as their permanent

residence. Rather than remaining in Texas, Petitioner's former spouse changed permanent residence to a different state and failed to seek enforcement or collection of the debt within the statute of limitations period for that state.

Petitioner again points out that any attempt to seek enforcement when enforcement was legally possible would have required his former spouse to initiate communication with Petitioner, even if through an intermediary, such as an attorney. She elected not to do that, and the order for payment of permanent child support legally became unenforceable as a matter of law. Petitioner's former spouse may have had her own reasons for not utilizing the judicial system, and it would not be appropriate for Petitioner to force her into using a system she may have intentionally sought to avoid. The debt is a private and personal matter which is being handled appropriately without necessity for recourse to any judicial system. Where there is no "appropriate court involvement," and no need for any court involvement, and no evidence that the spouse desires any court involvement, then the Committee decision that uses a legal nullity as a formal basis for a finding of deficient character introduces an entirely new set of variables into this "equation."

4. The Issue Of Interest On The Debt.

The Committee decision also states that Petitioner's voluntary acknowledgment of the unenforceable debt was inappropriate on the ground that he failed to acknowledge the accumulated interest that his former spouse and child might be entitled to. The testimony before the Committee, however, was to the contrary. Petitioner offered interest, and was willing to include it in his

voluntary acknowledgment. His offer was rejected. Petitioner had to press hard to get his son to accept any payment, and his son was adamant that it should not include interest. Once again, the Committee failed to take account of evidence presented for consideration, and confused the issue of what is possible with what is required.

In the absence of an attempt by Petitioner's former spouse to initiate legal action – and no such action is available in the state of her residence – there is only a negotiation. After rejecting Petitioner's offer of interest, the terms provide Petitioner's son with additional funds for Petitioner's grandchildren, and does so in a way that is acceptable to Petitioner's son and to Petitioner's former spouse.[27] The Committee decision focuses exclusively upon (legally unavailable) court action, and thus unreasonably discounts as insufficient, inadequate, and inappropriate, any other non-judicial means of handling the same matter.

The Committee decision evidences a failure to objectively evaluate the character of the applicant based on the actions he did take with regard to the child support issue. It is always easy to judge an action for what it isn't; fairness, however, requires evaluating it for what it is. Petitioner's payment of child support to his thirty-one year-old son is a moral obligation, not a legal one. The decision to acknowledge an otherwise unenforceable legal debt and voluntarily pay it evidences appropriate moral character.

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[27] The arrangement between James Valdez and his mother (Petitioner's former spouse) are presented in the testimony before the Committee at **R.T I, at pp. 133-34.**

Petitioner's actions in paying the child support as he currently is doing are not "inappropriate." He is not the only party to the action. Any agreement must be reached as part of an accommodation of the attitudes and desires of his son, who has his own strong adult feelings and preferences. Petitioner's son is not inclined to view the world the way that lawyers do, with attention to each individual and fractional aspect of a situation; rather, he sees things in a more global and more general fashion, and the most that he was willing to accept was to allow Petitioner to pay a sum equal to the unpaid child support but was not payment of interest. The error of the Committee's view that court involvement was required, important, or appropriate was amplified by the related conclusion that failing to pay interest evidenced a lack of character.

An applicant's admission of conduct that is not illegal, but nonetheless does not conform to a hyper-technical view of ethical conduct, must be evaluated carefully, especially where the applicant proffers reasons/justifications for the conduct that legitimately bear a relationship to other principles that are equally important in life. After all, law is not the be-all and end-all of life; it is one of the most important aspects, and understandably so for one who seeks admittance to the practice of law, but it is not the philosopher's touch-stone for the evaluation of conduct.

E. UNAUTHORIZED PRACTICE OF LAW

At the CFC hearing, the Committee was informed that there never have been any state bar complaints of the unauthorized practice of law to which he, his spouse, or the organization for which they perform volunteer work – Middle Ground Prison Reform – have been given a due

process opportunity to respond.[28] *See* **R.T. I, at p. 115; and R.T. II, at pp. 269-310.** Preparing a document for a person is different from submitting the document as a representative of that person.

While examining the documents that the CFC intended to consider at his hearing, Petitioner learned of a letter written on March 23, 2001 by Terri Sckladany, a staff person at the Arizona Attorney General's Office to Fran Johansen, at the State Bar, with respect to the assistance that Petitioner and his spouse had provided to a state prisoner with respect to preparing and filing of a Notice of Claim. The state prisoner signed his own Notice of Claim, and Petitioner and his spouse signed the same document with him.

The testimony on the record specifically indicated that, because Mark Anzivino wrote to Middle Ground, asking for assistance and admitting his then-current mental health problems, Petitioner and his wife intended to monitor the situation to examine any response to determine whether Mr. Anzivino might need a recommendation to an attorney. Mr. Anzivino was not interested in turning his matter over to an attorney at the time he

[28] Petitioner finds it interesting that materials regarding the unauthorized practice of law did not surface nor were they available to him, nor even known to him, until he applied for admission to the practice of law. The materials he discovered at the CFC office had never been provided to him and he had no way to learn of their existence. Moreover, some of the materials dealt with under the putative issue of complaints of Petitioner's unauthorized practice of law at the CFC hearing did not address Petitioner at all; instead, they dealt wholly with his spouse and did not involve the practice of law, either authorized or unauthorized. For the record, Petitioner's spouse also never has received a complaint from the State Bar or any other entity regarding the unauthorized practice of law.

contacted us, because he had previously contacted attorneys who quoted retainer fees to him far in excess of what he could afford, and because he had no faith in their objectivity with respect to complaints against the Arizona Department of Corrections.

Petitioner never was advised of the concern expressed by the attorney general staff member to the state bar, nor did the state bar ever follow up with any investigation, inquiry, or request for information from Petitioner. In fact, the staff member concluded her letter by stating, "*I refer this complaint to you for appropriate action. Please contact me if you have any further questions regarding this matter.*" The state bar took no action. Petitioner can only conclude that if, in order to "act appropriately," some further action was required, the state bar would have at least notified Petitioner and requested an explanation or clarification. **(R.T. I, pp.114-116; R.T. II, at p. 269-317).**

The factors underlying the conduct that were presented to the Committee on the general subject of the unauthorized practice of law (and which the Committee Decision completely ignored) included the following: (1) the fact that the rule in effect at the time of the conduct was ambiguous, (2) the fact that Petitioner formally, openly, and publicly opposed enactment of an unauthorized practice of law statute and consistently advocated an alternative position before the Arizona Legislature over a period of several years, (3) the fact that Petitioner's conduct was on behalf of persons who could not afford the services of an attorney or who distrusted attorneys (for example, Mark Anzivino attempted to and was unable to obtain the services of an attorney), (4) the fact that no complaint ever was received indicating that the level of assistance provided by Petitioner was deficient or

problematic in any way or to any degree whatsoever, and (5) the supportive implications arising from the fact that, upon the Arizona Supreme Court's formal adoption of an unambiguous rule, Petitioner immediately ceased all activity that conceivably might be considered the unauthorized practice of law.

Further, the Committee's comment in its Decision, at Page 12, lines 11-13 (*The Committee was divided as to Hamm's explanation of the unauthorized practice of law complaints*) deals with a discussion which addresses factors underlying the conduct. Petitioner's explanation of the circumstances, his testimony before Legislative committees, etc., clearly are factors to be taken into account. Instead, the Committee Decision contains no discussion whatsoever of these matters – thus erroneously/falsely implies, by the absence of discussion, that there were no underlying factors worthy of consideration by the Committee.

The Committee took no notice of any cumulative effect of the conduct on either side of the scale. The Committee pointed to no evidence of harm caused by Petitioner's advocacy on behalf of prisoner and their families, identified no impairment of the legal profession arising from Petitioner's conduct, and made no finding of any negative impact whatsoever. On the other side of the scale, the Committee decision failed to take into account Petitioner's consistent voluntary/*pro bono* advocacy over a span of many years (*i.e.*, until such time as a definitive resolution of the issue formally was enacted and implemented) on behalf of a segment of the population which could not afford or could not obtain the services of an attorney, and failed to take into account Petitioner's open and highly-public advocacy for the continuation of non-attorney

services in order to ensure that a category of un-served or under-served persons could avail themselves of an alternative source of assistance.

By language expressly indicating that the Committee limited its consideration of Petitioner's positive social contributions to "*non-legal work*," the Committee Decision implied that (or at least allowed for the inference that) Petitioner's legal work was *not* a positive social contribution. By excluding Petitioner's legal work from consideration, the Committee decision avoided any attempt to demonstrate that Petitioner's legal work was destructive or otherwise socially negative in its impact and effect. Petitioner submits that his legal work – even *during* the time prior to the Arizona Supreme Court's adoption of a rule governing the work of non-lawyers – constituted a positive social contribution. Whatever examples exist of negative consequences arising from non-attorney legal work – by persons untrained in the law or by persons not competent to practice law – Petitioner's assistance to prisoners and their families cannot be included. Petitioner is trained in the law and is competent to practice. Petitioner successfully litigated against the State of Arizona, the Department of Corrections, and the Board of Executive Clemency (then the Board of Pardons and Paroles), even prior to completion of legal training – indeed, even prior to the start of formal legal training.

In addition, constructive criticism from the fringes of the law does not constitute destructive conduct; rather, such conduct is one means by which the institution can expand its attention to encompass (or at least address) matters which otherwise might languish in neglect. Many aspects of the profession of law legitimately deserve criticism, some of it, harsh criticism. The fact that he was

able to provide assistance to others prior to his applying for admission to the Bar should not be counted against Petitioner unless it can be shown that, by so doing, Petitioner harmed the recipients and/or beneficiaries, or that, by so doing, Petitioner harmed the field of law. Petitioner asserts that, in his case, the opposite is true: Petitioner assisted many persons for very little recompense, with well over half of his work being performed on an entirely *pro bono* basis.

It seems axiomatic to Petitioner that, in order to "*weigh*" a "*lack of candor*" in "*testimony*," there must be a "*lack of candor*" to "*weigh*." The only possible connection between the testimony presented to the Committee and the Committee Decision's language to the effect that Petitioner had not been candid regarding the "*unauthorized practice of law complaints*" is the Committee finding number 46:

> 46. *Hamm testified that he was aware that there had been some complaints of the unauthorized practice of law made against him and Middle Ground. He also testified that his wife may have been contacted by the State Bar of Arizona regarding the unauthorized practice of law, although he was "not really" involved in any of that. (TR p. 114, lines 15-25, p. 115, lines 1-25, p. 116, lines 1-17).*

The above "Finding" in the Committee Decision materially misstates the testimony before the Committee, misleads the reader with regard to the testimony which was presented, mischaracterizes the statements made by Petitioner, and disregards the precise language of testimony confirming **(1) that Petitioner never was aware of any "*complaints of the unauthorized practice of***

***law*" prior to the discovery of letters in the Committee's file just before the formal hearing, when Petitioner "*became aware*" of complaints; (2) that the State Bar never had contacted either Petitioner or his wife regarding any complaint of the unauthorized practice of law; (3) and that the specific matter which involved Petitioner's wife had nothing to do with Petitioner and did not involve the unauthorized practice of law by anyone.** Petitioner submits that the only "*lack of candor*" regarding the "*unauthorized practice of law*" was not on the part of Petitioner, but rather on the part of the Committee.

It seems important to note that the Committee was informed that, at the same time that Petitioner was going to law school, lobbying at the Legislature, performing vast amounts of pro bono work assisting prisoners and their families, providing presentations for which attendees were granted Continuing Legal Education credits, and maintaining gainful self-employment, the State Bar was referring persons who called for assistance to Middle Ground Prison Reform and providing an unsolicited listing for that organization in its Bar Directory as a "legal organization." So long as Petitioner's work served the purposes of the Bar, there was no complaint about his activities; once he submitted an application, however, the official position appeared to change.

The express basis for the Arizona Supreme Court's decision to enact a rule unambiguously defining and governing the law-related activities of non-lawyers was the protection of the public. The language of the Committee's decision ("*the unauthorized practice of law complaints are serious matters*") appears to imply (or at least allow for the inference) that Petitioner's law-related activities

somehow threatened the public or were cause for concern about the quality of assistance he provided. Which "complaints" provide an objective factual basis for such a conclusion, implication, or inference? Petitioner believes that the facts support an opposite view. If the "complaints" actually were "serious matters," why was Petitioner never informed of them; why did he learn shortly prior to the formal hearing of a letter written several years ago but which was never sent to Petitioner?

With regard to Petitioner's consideration of relevant rules and laws, there is no legitimate basis for the Committee decision ignoring the fact that, upon the Arizona Supreme Court's formal adoption of an unambiguous rule, Petitioner immediately ceased all activity that conceivably might be considered the practice of law. The Committee decision quotes the prior ambiguous rule while failing to take account of the fact that petitioner instantly altered his self-employment and *pro bono* activity when the Arizona Supreme Court adopted a rule defining and governing the law-related activities of non-lawyers; that Petitioner openly advocated at the Arizona Legislature for continuance of his law-related activities on behalf of prisoners and their families until such time as an unambiguous rule or statute was adopted or enacted; and that he openly expressed his personal belief that, in Arizona, there was no restriction on the "unauthorized practice of law" by non-lawyers that had the force and effect of law. These matters unquestionably bear directly upon "*consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct.* The fact that those factors were excluded from consideration in the rendering of a decision demonstrates an utter failure to fulfill "due process" by adopting a course of conduct which eliminated

from consideration all evidence on one side of the scale, no matter how forthright and clear, while considering only evidence on the other side, no matter how ambiguous.

F. APPROPRIATE CONSIDERATION OF PRIOR UNLAWFUL CONDUCT WITH RESPECT TO CURRENT GOOD MORAL CHARACTER AND FITNESS TO PRACTICE LAW.

1. Relationship Between Past Unlawful Conduct And Present Good Moral Character.

The good character of an applicant who has committed a serious criminal offense – even one not involving the death of any victim – can be demonstrated in large part by reference to post-offense conduct which bears some discernable relationship to the offense. Put another way, the true character of a person is revealed by his or her own reaction to his own actions and to the actions of others.

For example, it is self-evident that anger, denial, and resentment are inappropriate reactions within the context of taking responsibility for the harm and loss that one has caused others. Conversely, remorse, acknowledgment of responsibility, and rehabilitation / personal change demonstrate good character.

In life, character is the wild card that enables a person to reach beyond his or her limitations and reach achievements in internal or external realms that far exceed any reasonable expectations that objectively arise from the circumstances and limitations that legitimately characterize the situation.

The greater the span of time between the offense and the application, the less that the offense itself can be used in isolation as an indication of current character. If the post-offense conduct demonstrates an unwillingness to bear that set of burdens which legitimately arise from the offense, then the post-offense conduct tends clearly to confirm, rather than to alter, the character implications of the offense itself. If the post-offense conduct, however, differs markedly from the course indicated by the offense, then a reasonable and objective evaluation of current character must focus of necessity upon the implications of that post-offense conduct. Further, the more that the post-offense conduct implies self-directed, self-initiated, and self-governed positive re-direction, the less legitimately can one contend that the applicant's current character may be measured with reference to the original criminal conduct.

There is a countervailing perception which also finds confirmation in well-known social events, that of the "con man" who practices deception and misdirection with varying success. Thus, if there was a finding that the applicant had undertaken a course of conduct intended falsely to convey an impression of rehabilitation which is not borne out by the actual and ascertainable facts, then one reasonably could draw a conclusion that discounts the otherwise valid implications arising from the post-offense conduct. In the absence of any such legitimate basis for a conclusion at variance from the facts, however, character evaluation must be performed with reference to the known post-offense conduct to the extent and in the manner in which it bears a relationship to the offense.

In Petitioner's case, the letters submitted to the CFC, as well as the testimony provided by his attorney witnesses

(Richard Parrish, Ulises Ferragut, and Scott Ambrose) are compelling in their passion and depth of conviction in their belief in Petitioner's current character. In some circles, these letters might be referred to as "*walk-on-water*" letters. These letters, as well as others written by individuals who have known Petitioner for many years paint for the CFC and for the Arizona Supreme Court, a picture of a person who should be highly sought after and coveted as a member of the legal profession. *See* **letters from attorneys Richard Parrish, Ulises Ferragut, and Scott Ambrose and Letter from ASU Professor John M. Johnson,** copies of which are included as **Item 6, Item 7, Item 8, and Item 9,** respectively, within **Appendix Three,** and now are incorporated by reference as though fully set forth herein.

Petitioner believes that it is important to note that Honorable Robert Buchanan wrote letters of support for Petitioner's applications for Absolute Discharge and expressly extended his support to Petitioner's admission to the practice of law. *See* Judge Buchanan's supporting letter included in Petitioner's original **Application** and *see* related discussion of his support for Petitioner's application for admission in testimony before Committee, **R.T. II, at pp. 470-71.**

The only reference in the CFC Decision to Petitioner's witnesses was to take special care to note for the record that they had not read Rule 36 of the Rules of the Supreme Court prior to providing testimony to the CFC regarding their knowledge of and experience with Petitioner and their opinion as to his character and fitness to practice law. *See* **CFC Decision,** Findings #47, #48, and #49, at page 9, lines 16-28. It is telling that the CFC decision made no similar note regarding Henry

Manuelito's letter or his recusal, no similar note regarding J. Russell Skelton's letter, and no similar note regarding the letter on behalf of the Board of Governors of the State Bar of Arizona. Each of those three letters urged the Committee to apply a non-existent per se rule barring Petitioner from the practice of law. It is clear from those letters that the President of the Board of Governors of the State Bar of Arizona as well as at least two members of the Committee did not read Rule 36, either.

What might pass unnoticed under these circumstances is the distinction to be drawn between the content of the input from the two groups. Petitioner's witnesses did not urge the Committee to take any action or to consider any input that was not appropriate under the rules governing the Committee's duties; All three of the mentioned letters did urge the Committee to take an action which would necessitate the Committee disregarding the applicable rule and disregarding its own responsibilities.

Under these circumstances, a question naturally arises as to why the Committee felt it necessary expressly to include a note about Petitioner's witnesses not having read Rule 36, when the entirety of their input was fully appropriate under that rule, while simultaneously not including such a note for members of its own committee and for the governing body of the State Bar itself, when the entirety of their input was inappropriate under the rule the Committee legally and ethically was bound to follow. Critical treatment of favorable (but legitimate) input on the one hand and uncritical treatment of unfavorable (and illegitimate) input on the other creates the appearance of impropriety and potential bias.

2. Relationship Between Past Unlawful Conduct And Fitness To Practice Law.

Fitness to practice law for an applicant who has committed a serious criminal offense – even one not involving the death of any victim – does not relate to past events, except insofar, and only insofar, as they constitute evidence of continuing disregard for the responsibilities that are attendant upon the actual practice of law.

For instance, evidence of an inability to grasp the complexities of laws and regulations, lack of facility in language necessary to advocate for clients, fiscal irresponsibility with regard to accounting for client funds, failure to perform contracted work, socially inappropriate behavior which would bring disrepute upon the profession, mental or emotional impairment demonstrated by more than isolated instances and sufficiently recent to contradict any claim of correction or treatment, failure to complete the training and education that qualify a candidate to practice law, etc., would qualify as matters calling into question an applicant's fitness to practice law.

Similarly, the failure to address and correct personal deficiencies which led to or which contributed in major way to the commission of serious criminal conduct would constitute evidence that there is a continuing potential disregard for responsibilities, even where the nature of the prior unlawful conduct does not bear a direct relationship to the functions performed by an attorney.

Neither of these circumstances applies to the case now under review. The past events in this case are remarkable for their seriousness and must be considered for that reason as well as for other reasons, but they must be considered in light of the wealth of additional information

spanning the thirty years that have passed since the time of the crime. Here, the evidence of serious and unremitting attention to the responsibilities attendant upon the offense is equally remarkable:

> *. . . I was very impressed by his capacity for genuine insight. Mr. Hamm demonstrated remorse, empathy, and responsibility.* ***Of all the hundreds of clients whom I have worked with since becoming a psychologist, I know of none who worked harder in therapy to really understand himself. He actively applied what he learned in our psychotherapy sessions to his everyday life. He used psychotherapy to change himself.***

R.T. II, pp. 509-510, quoting from letter from Andy Hogg, Ph.D., A.B.P.P., President, Arizona Psychological Association, included as **Item 10** in Appendix Three, now incorporated by reference as though fully set forth herein.

VII. CONCLUSION; REQUEST FOR HEARING BEFORE ARIZONA SUPREME COURT

Petitioner has fully met the requirements of Rule 36, demonstrating present good moral character and fitness to practice law. Petitioner's handling of child support issues since learning that his son was not adopted demonstrates ethical and moral behavior, and thus, good character. Petitioner's testimony under oath during two full days of hearing regarding his thirty year old crime was detailed and truthful. Petitioner was the only person present at the hearing who also was present at the crime. The discrepancy between a court document and Petitioner's testimony has been demonstrated to be a matter beyond Petitioner's

ability to control but does not constitute grounds for rejections of his application.

Petitioner's forthrightness with respect to the details of his crime are a demonstration of responsibility, rehabilitation, and good character. Petitioner's life during the past thirty years has been focused almost exclusively upon demonstration of remorse, empathy, atonement, and willingness to accept full responsibility for the serious crime he committed in 1974. This demonstrates present good moral character.

Petitioner's professional work since 1992 has exposed him to literally hundreds of prisoner cases which involve victims of serious crimes. By comparison, the victim's family in Petitioner's case have demonstrated restraint and expressed their objections in a reasonable manner when speaking about Petitioner. Petitioner's opinion that their objections are mild in comparison to others within his experience is valid, does not reflect poorly upon his core character, and certainly does not demonstrate a lack of remorse toward the victim's family.

Petitioner is utterly without the power to negate the act of murder or its serious consequences. That Petitioner recognizes this fact is a demonstration of the depth of his acceptance of responsibility for his serious crime. This demonstrates good character.

Petitioner has no pending or historical complaints against him for the unauthorized practice of law. Beginning in 1974 with a guilty plea to first degree murder, Petitioner's acts have demonstrated respect for the law and legal institutions. His voluntary work, as well as his professional activities, clearly demonstrate for a respect

for working within the system of laws and courts in his community.

As Petitioner wrote in a guest editorial for the Arizona Republic, published on March 14, 2004, *At the most fundamental level, character is a personal commitment to orient ones life around a set of principles that, at the very least, are consistent with and, hopefully, supportive of the core values of the larger society. After having committed such a serious crime, experiencing serious psychological difficulties, and being sent to prison with a life sentence, I was forced to fall back upon my own resources and to make decisions and choices for myself about what principles I wish to live by.*

Petitioner also wrote then, and still believes now, that *The Arizona Supreme Court is not only the gatekeeper for those who practice law in Arizona, but also symbolically represents the justice system itself. If that system is to have real substance, then it must act to exemplify the highest standard in dealing with people who not only have transgressed the law, but who also have fulfilled their legal obligations, fully accepted responsibility for their actions, corrected themselves, and returned to the community prepared to contribute in a constructive way. Accordingly, any denial of my admission to the state bar must be for more than the sake of appearances; anything else is unjust. Anything else sends the wrong message.*

The nature of the current conflict is clear. It is a conflict between prejudice and principle, between an inflexible present based on an immutable past and a principled present based on a commendable path; it is not a conflict between bad character and good character, nor between fitness to practice and unfitness to practice.

Worse, the Committee Decision fails to encourage acceptance of responsibility for criminal acts and re-directing one's life around rehabilitation, which will have an unfortunate impact on corrections and on society, leaving offenders without a viable path for personal recovery.

The evidence in the record fails to provide rational support for the grounds upon which the Committee relied in rejecting petitioner's application, and, therefore, the Committee's decision to recommend denial of his application for admission to the bar transgressed both due process of law and equal protection of the law, in violation of the Fourteenth Amendment and the correlative provisions of the Constitution of the State of Arizona.

Petitioner stands as an example of rehabilitation, achieved not according to some abstract blueprint by a self-constituted authority which purports to know what needs to be done without having the slightest personal experience in facing the challenges and accomplishing genuine character change, but achieved instead through expenditures of immense pain and personal sacrifice and undaunted endeavor in the face of extreme social disapprobation from those who offer only lip service to ideals that form the foundation of who Petitioner has become. Petitioner's life,[29] not his words, speak for many of those who cannot speak words for themselves. Petitioner's example offers something more precious than an unmarred passage through life: his life holds out the promise of hope of recovery for those who have made very serious

[29] Sir Herbert Read (British critic & poet) once said: ***A man of personality can formulate ideals, but only a man of character can achieve them.***

mistakes, most of which are far less serious than those Petitioner committed, but which, nonetheless, overwhelm them, paralyze them, and subject them to unremitting condemnation from the society in which they were reared.

Ultimately, no person has the right to set himself up as the final arbiter of his own life, because each life has effects on other lives. While the applicant acknowledges the continuing tragic consequences of his actions in 1974, he also recognizes that he symbolizes for many others a role model in an sphere of life where virtually no one wants to stand out in the public eye and bear the internal stresses and external pressures of social disapprobation as a person who has committed murder. Petitioner tries to live in such a way as to encourage others to work hard, to help one another, to struggle onward in the face of adversity and resistance, to eschew bitterness and resentfulness, to cling to ideals regardless of whether those ideals are demonstrated in the world around them, and to take what comfort they can from the fact that it is better to lose while fighting for what is right and fair and reasonable than to win while fighting for what is wrong and unfair and unreasonable. On the other hand, as a social activist and registered lobbyist, Petitioner speaks out to try to change and improve the governmental corrections system, which stifles genuine opportunity for recovery and reintegration,[30] in an attempt to increase the dismally low rate of positive outcomes.

[30] **. . . [T]here are persons who seem to have overcome obstacles and by character and perseverance to have risen to the top. But we have no record of the numbers of able persons who fall by the wayside, persons who, with enough encouragement**

(Continued on following page)

Petitioner's admittance to the bar will not broaden the passageway by which applicants achieve the goal of practicing law; rather, his admission would set a very high standard by which the next applicant – if ever there be one – will be judged.

A formal hearing is not merely an opportunity or occasion formally to issue an expected pronouncement arising from a predetermined belief or attitude; rather, it is a call to duty, to set aside one's own personal perspective and render judgment and justice to all, including the applicant. If slogans and categories are sufficient, then facts become superfluous and careful review becomes unnecessary. The Committee's duty is to protect the public from persons unfit to practice law, not to protect the profession from criticism.

Only necessity is sufficient cause for denial of the opportunity to practice law, because pursuing a line of work, a type of employment, is indeed a right, not a privilege, and may be denied only for legitimate and substantial reasons.

There is an even more fundamental aspect to this particular application which apparently has passed unnoticed in the rendering of judgment. Petitioner expressly seeks to pay a moral debt, after having fulfilled all the legal obligations attendant upon his criminal offense (pleading guilty, serving nearly two decades in prison, obtaining an education, having his sentence commuted, being paroled to the community, being granted an absolute discharge). What is the justification for blocking that

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and opportunity, might make great contributions. Mary Barnett Gilson, in *What's Past is Prologue*, ch. 12 (1940).

attempt to undertake what is perceived as morally appropriate action?[31] Is it that Petitioner is untrustworthy? Dishonest? Unscrupulous? Deceitful? Unwilling to shoulder his burden, his load of responsibility? Disrespectful? Lacking in intelligence or training? Too distracted to focus on the issues of clients? What has been found, in his current character, that constitutes sufficient cause to erect walls in his path of redemption?

Petitioner does not believe that the underlying values of our society and of our master institutions (of which Law is one) have shifted to such an extent that it has been reduced to a set of rules and procedures without meaningful relationship to the social world we inhabit? Is an error the same as a character defect? Is activism synonymous with disrespect for the law and its institutions? Petitioner asserts that the answer is, "*NO*."

In the final analysis, it is the composite picture that must be evaluated, not a single aspect examined in an atomistic manner tending unreasonably to increase the weight of one or two items rather than weighing them within the context of the larger whole of which they are an integral part. If there is a better, or more logical, or more appropriate analysis of character and fitness to practice law that conforms to the mandates and restrictions of the formal rules adopted by the Arizona Supreme Court for admission to the practice of law; and if that alternative analysis tends to support the conclusions and findings of

[31] Is it inconceivable to the members of the Committee (or of the Court) that the Law can be seen as a field appropriate to the scrupulous fulfillment of a debt of honor arising from the crime he committed? Are other fields of endeavor appropriate for repayment of a debt of honor, but the Law, an inappropriate field for that?

the CFC in this case, Petitioner is unaware of that approach.

Respectfully Submitted this 30th day of November, 2004.

James J. Hamm

Copy served this date upon Character and Fitness Committee

By _____
James J. Hamm

No. _____

In The
Supreme Court of the United States

JAMES JOSEPH HAMM,

Petitioner,

v.

THE COMMITTEE ON CHARACTER AND FITNESS OF THE ARIZONA SUPREME COURT,

Respondent.

On Petition For A Writ Of Certiorari To The Arizona Supreme Court

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II, PAGES 157 TO 340

JAMES JOSEPH HAMM
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Tempe, Arizona 85281
(480) 966-8116

Petitioner *In Propria Persona*

March 27, 2006

BLUE DIVIDER

APPENDIX E

RESPONSE BY COMMITTEE ON CHARACTER AND FITNESS

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of the Application of **JAMES JOSEPH HAMM** **to be admitted as a member of the State Bar of Arizona.**	**No. SB-04-0079-M**

RESPONSE OF THE COMMITTEE ON CHARACTER AND FITNESS

TABLE OF CONTENTS

TABLE OF CASES

The applicant, James Joseph Hamm has petitioned the Court for review of the adverse decision of the Court's Committee on Character and Fitness under Rule 36(g), Rules of the Supreme Court. The Committee concluded that Hamm had not met his burden of proving himself to possess the requisite character and fitness necessary to support the Committee's recommendation for admission to the State Bar of Arizona. The Committee therefore recommended that Hamm's application be denied. This is the Committee's response to Hamm's petition for review.

OVERVIEW

In 1974, Mr. Hamm was a small time drug dealer in Tucson, living on the streets and selling enough drugs to eke out a living. He was then 26 years old with a recently divorced wife and a five year old child who lived in Texas. On September 7, 1974, he and an accomplice armed themselves with pistols, made arrangements with another accomplice to accompany them in a get-away car and then set out to "rip off" two young men of the money intended to buy drugs from Hamm. Hamm didn't have any drugs to sell. The evidence suggests and the court subsequently determined that Hamm and his accomplice intended to rob

and kill the young men, though Hamm now denies any intention to kill them. Hamm and his accomplice were seated behind the young men in their car and when they were out in the desert sufficiently away from all other persons, Hamm and his accomplice shot and killed the two young men and stole $1,400 from them. They divided the money in the get-away car on their way back to town.

Hamm was arrested a week or so later and charged with the armed robbery and murder of both young men. He denied responsibility for the murders but after a couple of months in jail, he pled guilty to one murder charge in return for the dismissal of the other murder charge and the two armed robbery charges and he was sentenced to life in prison.

Hamm testified that when he got to the prison, he immediately began a process of reforming himself. He involved himself in as many worthwhile activities as were available to him and earned the respect of his fellow prisoners as well as the Department of Corrections employees with whom he interacted. In 1983, he earned an undergraduate degree in a prisoner education program sponsored by Northern Arizona University. Governor Rose Mofford commuted his sentence in July of 1989, and in July of 1992, he was released from prison on parole. In 1987 while still in prison, Hamm married a woman who operated a business of assisting prisoners and members of their families in dealing with the Department of Corrections. Upon his release from prison, Hamm involved himself in that business and has enjoyed considerable success in working with prisoners and their families and in community service activities addressing prisoners' rights and the hazards of drugs and illegal activities. Hamm's and his wife's activities were the subjects of

complaints filed with the State Bar of Arizona by persons who thought the Hamms' activities constituted the practice of law for which neither was authorized.

In 1993, Hamm gained admission to the Arizona State University School of Law from which he graduated in December, 1997.

In June of 1998, Mr. Hamm applied for admission to the State Bar of Arizona, failed the July, 1998 examination and achieved a passing score on the July, 1999 examination. On January 8, 2004, Mr. Hamm filed his Character Report with the Committee. At about the same time, he began for the first time to research the status of his unpaid child support obligation which had been ignored for some thirty years. Claiming to have misread a printed question on the Character Report form, Hamm had omitted a substantial amount of significant information from his Character Report, and so just three days before his formal hearing began, he filed a lengthy amendment to his Character Report. The formal hearing on Hamm's application was held before the Committee on May 20, 2004 and adjourned to June 2, 2004 when it was completed. On October 5, 2004, the Committee issued its Findings of Fact and Recommendation which Mr. Hamm has requested the Court's review.

GOVERNING LEGAL, PRINCIPLES

The Committee understands its position to be governed by the following legal principles frequently set forth by this and other courts and that this Court's considerations may also be governed by the same principles.

1. In Arizona, the practice of law is not a privilege but a right. While similar to the right to engage in other occupations, it is subject to regulation to ensure that those who engage in the practice of law have the necessary mental, physical and moral qualities required. *Matter of Ronwin*, 139 Ariz. 576, 579, 680 P.2d 107, 110 (1983) cert. denied 464 U.S. 977, 104 S.Ct. 413, 78 L.ed 2d 351 (1983); *Application of Macartney,* 163 Ariz. 116, 119, 786 P.2d 967, 970 (1990).

2. The Supreme Court of Arizona has the exclusive jurisdiction to regulate the admission to the practice of law in Arizona and the discipline of those admitted." *In re Riley,* 142 Ariz. 604, 607, 691 P.2d 695, 698 (1984); *In re Zawada,* 208 Ariz. 232, 235, 92 P.3d 862, 865, (2004).

3. The Court's Committee on Character and Fitness is an investigatorial body. It is the duty of the Committee to investigate the applicant's qualifications and fitness to practice law. An applicant is in no sense on trial; he or she is simply obliged to convince the committee that he or she is worthy of the Committee's recommendation. *Application of Burke,* 87 Ariz. 336, 351 P.2d 169 (1960).

4. It is not the function of the committee to grant or deny admission to the bar. That power rests solely in the Supreme Court. The committee's bounden duty is to 'put up the flag' as to those applicants about whom it has some substantial doubt. *Application of Burke,* 87 Ariz. 336, 338, 351 P.2d 169, 171 (1960).

5. As a prerequisite to the admission to practice, an applicant has the burden of proving his or her present good moral character by a preponderance of the evidence. *Application of Courtney,* 83 Ariz. 231, 319 P.2d 991 (1957); *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1964);

Application of Greenberg, 126 Ariz. 290, 614 P.2d 832, (1980); Rule 36(a)(3), Rules of the Supreme Court.

6. In making its determination as to the applicant's present character and fitness, the Committee is required to consider an applicant's prior conduct and to assign the weight and significance of the factors stated in Rule 36(a)(3), Rules of the Supreme Court.

7. When an applicant fails to convince the Committee of his or her good moral character, the Committee has a duty not to certify the applicant to this Court for admission. *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1965). In the event the proof of good moral character falls short of convincing the Committee, it is its duty not to recommend an admission. *Spears v. State Bar of California,* 211 Cal. 183, 294 P. 697, 72 A.L.R. 923. In this it has no discretion; if the members entertain any reservations whatsoever as to the applicant's good moral character, it should not make a favorable recommendation to this Court. *Application of Courtney,* 83 Ariz. 231,233, 319 P.2d 991,993, (1957).

8. In *Application of Walker,* 112 Ariz. 134, 138, 539 P.2d 891, 895 (1975), this Court quoted from a North Carolina case which defined "upright character", a term stated to be synonymous with the phrase "good moral character." The quotation read "Upright character' * * * is something more than an absence of bad character. * * * It means that he (an applicant for admission) must have conducted himself a man of upright character ordinarily would, should, or does. Such character expresses itself not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is

wrong." *In Re Farmer,* 191 N.C. 235, 238, 131 S.E. 661, 663 (1926).

9. This Court also noted in *Application of Walker,* supra at 112 Ariz. 138 539 P.2d 895 that the felonious violation of law is alone sufficient to establish a want of good moral character. See, e.g., *Spears v. State Bar of California,* 211 Cal. 183, 2 P. 697, 72 A.L.R. 923 (1930). The felonious doing of what is forbidden or the felonious failure to do what is required is ordinarily considered immoral. Even an acquittal in a criminal action has been held not to be res judicata upon an inquiry to determine an applicant's character and fitness to become a member of the bar. *Application of Cassidy*, 268 App.Div. 282, 51 N.Y.S.2d 202 (1944), Rearg. den. 270 App.Div. 1046, 63 N.Y.S.2d 840, Aff'd 296 N.Y. 926, 72 N.E.2d 41 (1947).

10. In *Application of Klahr,* 102 Ariz. 529, 531, 433 P.2d 977, 979 (1967) this Court noted that " . . . unfortunately for those who would like a black letter rule, the concept of 'good moral character' escapes definition in the abstract. Instead, a particular case must be judged on its own merits, and an ad hoc determination in each instance must be made by the court."

11. One cannot lawfully be excluded from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. *Application of Levine*, 97 Ariz. 88, 91, 397 P.2d 205, 207 (1965); *Dent v. West Virginia,* 129 U.S. 114, 95 S.Ct. 231, 32L.Ed 623 (1889). Cf. *Slochower v. Board of Education*, 350 U.S. 551, 18 L.Ed 356; 4 Wall 277 (1866); *Wieman v. Updegraff,* 344 U.S. 183, 73 S.Ct 215, 97 L.Ed. 216 (1952); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 288 (1957).

12. A State can require high standards of qualification, such as good moral character or proficiency in its law as a condition to its admission of an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness capacity to practice law. *Douglas v. Noble*, 261 U.S. 165, 43 S.Ct 303, 67 L.Ed 590 (1923); *Cummings v. Missouri*, 71 U.S. 277, 18 L.Ed. 356, 4 Wall. 277 (1866). Cf. *Nebbia v. New York,* 291 U.S. 502 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469 (1934); *Schware, supra.*

REASONS FOR COMMITTEE'S DECISION

I 1974 MURDERS

Hamm acknowledges his responsibility for his 1974 murder of Willard Morley and he acknowledges legal and moral responsibility for the death of Zane Staples (but not the "physical responsibility" for Staples. Tr. 338, L2-6) but he argues that his subsequent rehabilitation, positive social contributions since 1974 and his present good character counterbalance and outweigh his previous criminal conduct. It is an important function in this counterbalancing process to consider the specific facts of Mr. Hamm's murders because that is the conduct against which his rehabilitative efforts must be measured. The case of *In re Manville,* 538 A2d 1128 (DC Ct. of App 1988) one of the few reported cases involving applications for admission to practice law by persons responsible for various degrees of homicide. In that case, in footnote 7 at 538 A2d 1134, the court noted that:

> " . . . evidence of criminal. convictions usually suggests unfitness and therefore should be considered in the overall assessment of an applicant's fitness to practice law. Evidence of the applicant's reform and rehabilitation must also be taken into account. Although an

> applicant's prior criminal conviction is not conclusive of a lack of fitness, "his burden of establishing his present good moral character takes on the added weight of proving his full and complete rehabilitation subsequent to the conviction." *Application of Davis,* 38 Ohio St.2d 273, 274, 313 N.E.2d 363, 364 (1974). As Justice Handler has observed, speaking for the Supreme Court of New Jersey in *In re Matthews* [94 N.J. 59, 81, 462 A.2d 165, 176 (1983)]:
>
> > The more serious the misconduct, the greater the showing of rehabilitation that will be required. . . . However, it must be recognized that in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make. *Id.* at 1295-96 (footnotes omitted).
>
> We reiterate that . . . an applicant with a background of a conviction of a felony or other serious crime must carry a very heavy burden in order to establish good moral character."

For this reason, it is necessary to set forth the facts of Hamm's murders in considerable detail in order to form the basis against which his subsequent rehabilitation, positive social achievements and claimed good moral character can be measured.

COMMITTEE'S PERSPECTIVE ON MURDERS

Hamm seems to argue that the Committee is restricted to his testimony alone in establishing the facts of the murders. While his testimony was necessary and highly detailed, there is additional evidence as well as logical inferences to be drawn from his testimony which render portions of his account less than completely credible. From

all of the available evidence, the Committee is entitled to adopt the following perspective of the murders.

Hamm was 26 years old in early September of 1974. (Tr. 14, L22-25) He now claims that he was then suffering from serious psychological problems but he also acknowledges that he would not then have admitted that to be true nor would other persons have been able to detect such conditions. (Tr. 16, L19-25 and Tr. 17, L1-9) He was an unemployed drifter living on the streets of Tucson and selling small amounts of drugs to make a living. Two young men from Missouri named Willard Morley and Zane Staples contacted Hamm about the purchase of marijuana but after checking around, Hamm found that he could not get the marijuana from his sources.

Rather than tell Morley and Staples that he could not get the marijuana, (Tr. 397) Hamm and two accomplices met on the night before the killings to set up a plan to lure Morley and Staples to the outskirts of Tucson (Tr. 390) and rob them of the money intended for the purchase of the drugs. He testified "I actually heard myself agree to rob these people". This meeting occurred the night before the murders and Hamm had adequate opportunity to back out of the scheme but went through with the plan because of his abnormal mental state. (Tr. 16, L 1-2; Tr. 385, 387) When asked why he had not backed out of the scheme on the night before, Hamm said " . . . I can't answer that because I heard myself say OK. And literally I heard myself as though I was a third person, so I certainly can't tell you why I did that." (Tr. 397)

On the morning of September 7, 1974, Hamm and one accomplice armed themselves with pistols (Tr. 18, 384-385) and arranged with another accomplice to lead or follow

them in a different car to the outskirts of the city in order to provide them a ride back to the city. Hamm got into Morley's car and was seated behind the driver Morley while his accomplice was seated behind the front seat passenger Staples. Hamm had Morley drive to the outskirts of the city to an area far enough out in the desert and away from any other persons. Staples began to ask where they were going and where was the marijuana. Hamm did not respond, did not tell them that this was a robbery, didn't say anything at all. (Tr. 41, 390-392) Hamm recognized that the time had come; so before the car had even come to a stop and without saying a word, he shot Morley in the back of the head while his accomplice shot Staples three times in the right side and shot the already dead Morley. (Tr. 392-395).[1] Staples tried to get out of the car, so Hamm shot him and then Hamm shot yet another bullet into the head of the already dead Morley. (Tr. 37) Staples succeeded in getting out of the car and running into the desert; Hamm's accomplice chased after him and killed Staples. Meanwhile, Hamm got out of the car and took $1,400 out of the glove box and then went to the get-away car to await his accomplice's return from chasing down and killing Zane Staples. They left Morley and Staples dead in the desert. They divided the money among themselves as they returned to the city in the get-away vehicle driven by the third accomplice. (Tr. 15-23)

[1] *Hamm complains at page 48 of his Petition for Review that the Committee erred in finding that Hamm rather than his accomplice fired the first shot. The Committee does not believe the point to be significant because even though Hamm testified later that his accomplice was the first to shoot, Hamm testified at (Tr. 18, L 3-5) that he fired at the same time that his accomplice first fired.*

Hamm was arrested a week or so later and was charged with the armed robbery and murder of both Morley and Staples. (Tr. 24, L 8-12; App. p. 1) He initially denied responsibility for the murders. He told the police that he had been involved in a drug deal and the victims had a gun and engaged him in a gun battle. (Tr. 28, L19-25; Tr. 29, L 1-14) Hamm maintained his not guilty plea for over two months and through three hearings before the court. (Tr. 24, L 17-25) Finally, on November 26, 1974, Hamm entered into a plea agreement (App., p 2) to plead guilty to one murder charge in return for the dismissal of the other murder charge and the two armed robbery charges. He thereby avoided the death penalty and was sentenced to life in prison. Hamm has a different twist to the timing of his plea. He argues that he insisted on pleading guilty to first degree murder only two months after his arrest – as an initial major step toward genuinely accepting responsibility for the crimes. (Petition for Review, p. 4)

Hamm argues that he had not intended to kill the victims. (Tr. 40, L9-17) However, the sentencing judge approved the Statement of Facts on Conviction which he signed and which states in pertinent part as follows:

> "The evidence showed that the defendant and others negotiated for the sale of marijuana with two young men from the Midwest. There was never any intent to actually sell the marijuana. The prearranged plan was to rob and kill the buyers. When all parties got to a deserted place in the desert the defendant pulled out a pistol and shot both buyers. Both buyers were killed. The defendant and others split up". (App. p. 5)

The document has been among the court's records as well as the records of the Department of Corrections for over thirty years At the sentencing, Hamm and his accomplice both answered the sentencing judge's questions about the factual basis for their pleas and that would naturally form the basis for the Statement. (Tr. 394) The accomplice told the judge that the intention was to rob and kill the victims, (Petition for Review, p. 42) and that was indeed just what occurred. The Committee is entitled to accept and give due weight to the court's Statement of Facts especially supported as it is by facts admitted by Hamm himself.

HAMM'S PERSPECTIVE ON THE MURDERS

Hamm complains of the Committee's finding that he had mischaracterized the facts of the crime and he criticizes the Committee's reliance on the court's finding that he had intended to rob and kill Morley and Staples. (Petition for Review, p. 14, 42) Hamm argues that he had no part in constructing the Statement of Facts on Conviction, that he had not agreed to it and that it constitutes a "discrepancy" upon which the Committee should not be allowed to rely. (Petition for Review, p. 44) Hamm now insists that his intention was to rob and not kill. He complains that "The Committee's conclusion rests exclusively upon the document prepared by the prosecutor and signed by the judge." (Petition for Review, p. 14).[2] Hamm does not accept the concept that the Committee is entitled to draw its own conclusions and inferences from his

[2] *Were that true, it would not be an unreasonable position for the Committee to take.*

testimony and other evidence nor that such conclusions and inferences might not be the same as his. The Committee found aspects of the crimes with which Hamm *has* not yet come to grips.

Hamm argues that his "murder" *(as if he were not responsible for both murders)* was a felony murder and was not a premeditated murder. (Petition for Review, p. 43, 46) To the extent that the murder of Morley is the murder to which Hamm refers, there is neither any evidence nor any justifiable inference from evidence that Morley's murder was a felony murder. The issue may seem to be a distinction without a difference because felony murder and premeditated murder are merely two forms of the same crime, first degree murder. *State v. Hallman,* 137 Ariz 31, 668 P.2d 874, (1983) Nevertheless, the evidence of Hamm's premeditation tends to render his actions more reprehensible than the typical felony murder for the purpose of measuring Hamm's moral character, even though both are classified as first degree murder. If that were not true, Hamm would have no reason now to argue so strongly in favor of felony murder and against premeditated murder. Why would he continue to argue that he had not intended to kill the victims some thirty years after that fact had been decided against him?

As he argues that Morley's murder was not premeditated, Hamm demonstrates an inability to accept the logical inferences and conclusions to be drawn by an objective analysis of the evidence. This may be a result of his choice to represent himself in this proceeding but the evidence – primarily from his own speech – is clear that he planned the scheme in advance, he conspired with other persons to "rip off" the victims, the accomplice's intention was to rob and kill, Hamm carried the gun with which he

would kill, he fired a bullet into Morley's head without any attempt to rob him first or otherwise avoid killing him, he shot a second bullet into Morley's head to make sure he had killed him, he arranged in advance for the get-away car presumably so they would not have to get back to the city in the murder car and finally, the court adopted the specific finding over thirty years ago that Hamm intended to rob and kill.

The case of *In re Dortch*, 860 A.2d 346, (DC Ct Appls 2004) involves a typical and less reprehensible felony murder by an applicant for admission to the District of Columbia bar. Dortch had been responsible 30 years previous for a death which occurred outside of his presence. His responsibility was for a felony murder because he was not even present at the time of the killing. He had planned and participated in an abortive robbery attempt. After the participants gave up the planned robbery and escaped their separate ways, one of the escaping participants who was several blocks away from Dortch killed a policewoman. As a result, Dortch was charged with felony murder and pled guilty to second degree murder. The Committee members believe that Hamm's conduct was more reprehensible than was Dortch's. The *Dortch* case shares some remarkable similarities to the Hamm case.

- The District of Columbia factors relevant to consider in evaluating the moral fitness of applicants with criminal backgrounds are similar to those found in this Court's Rule 36(a)(3), Rules of the Supreme Court.
- Dortch's standing in the community before his crime was much more favorable than was Hamm's and the evidence of his rehabilitation after the

crime was equal to or more impressive than Hamm's.

- Dortch had to overcome a clear and convincing evidence burden in the District of Columbia whereas Hamm has a preponderance of the evidence burden to overcome.
- Neither Arizona nor the District of Columbia have a *per se* rule of exclusion.
- In the District of Columbia, it is appropriate to consider the public perception of and confidence in the bar when determining the fitness of applicants to practice law.

The District of Columbia court upheld the decision of its investigatory committee in ruling that Dortch had failed to meet his burden, but the basis for the decision was that Dortch remained on parole, a circumstance which created a fundamental and glaring incompatibility between serving a criminal sentence and serving as an agent of law and justice. A minority of the committee members opined that Dortch's rehabilitation did not adequately counterbalance his criminal history and that was an adequate basis for denying his application for admission. A previous District of Columbia decision involving the applications for admission to the bar of three persons previously convicted of homicides who showed evidence of rehabilitation is reported at *In Re Manville*, 538 A.2d 1128, (DC Ct Appls 1988). The court's discussion of the applicants' various crimes and rehabilitative activities is of interest but the legal principles are the same. None of the homicides reported in *Manville* nor those found in any other reported case involving application for admission to the bar are as egregious as Hamm's murders of Morley and Staples.

The Committee members judging Hamm's moral character were certainly entitled under the evidence to believe that Hamm's intention was to kill, notwithstanding his current denial. His accomplice understood that was their intention. Why otherwise would it be necessary for Hamm to have the gun with which he killed Morley, to arrange a get-away car, why not tell the victims it was a robbery, why the necessity to shoot them without warning, why shoot the already dead Morley a second time to make sure he was killed? The Committee members were also entitled to judge the credibility of Hamm's current claim that he had not intended to kill Hamm's responsibility for the killing of Zane Staples may fit the felony murder rule, but his denial of the premeditation in the killing of Willard Morley is at least suspect if not a simple falsehood. The Committee members were entitled to weigh Hamm's characterization of that responsibility as well as to determine the seriousness of Hamm's crimes in order to measure those factors against his rehabilitative efforts.

This is the process described in *Manville, supra* of balancing the "extremely damning past misconduct" against the evidence of rehabilitation. The Committee accepted and recognized Hamm's evidence of rehabilitation and commended him for the positive contributions made in recent years. Perhaps Hamm is the poster child for rehabilitation as he has claimed. (Tr. 414, L. 23) On the other hand, no one seems to question that his murders constitute extremely damning past misconduct. It became the Committee's function to counterbalance those factors and having done so, the Committee found that the rehabilitation did not "negate" the murders or the consequences of the murders. Hamm criticizes this conclusion

and seems to disagree with the propriety of the use of the word "negate" as he argues on page 13 of his Petition for Review that it is impossible to negate a murder or its serious consequences Hamm seems to define the meaning of the word "negate" as used by the Committee with the action of making the murders and the serious consequences disappear as if hey never existed. That is indeed impossible and certainly was not the intention of the Committee. The word is intended to be synonymous with the word "offset" in that given the nature of the crimes and resulting consequences, the rehabilitation and positive social works did not completely counterbalance or offset the crimes and consequences.

II. CHILD SUPPORT ISSUES

Hamm and his first wife had a son born to them in 1969. Some time later, he and his wife split up and his wife and child went to Amarillo where her family lived. (Tr. 325) In June, 1973, Hamm was arrested for his failure to pay $75.00 per month for child support and he spent a night in jail before he was able to obtain his release on bond". (Tr. 76; App. 18) It is therefore fair for the Committee to have concluded that Hamm had knowledge as of June of 1973 of a requirement to pay child support. The final decree of divorce was dated May 6, 1974 (App. p. 52). It recites that "The respondent (Hamm) waived issuance and service of citation by waiver duly filed and did not appear." The order required Hamm to pay $75.00 per month for the support of his child, commencing May 20, 1974 and continuing until the child achieved the age of 18 years. (App. p. 54) The child's 18th birthday was July 31, 1987. (Petition for review p.63) From June of 1973 through July, 1987 there were 169 months for a total obligation of $12,675

without any calculation for accruing interest. Hamm stated that he had never paid any child support.

One would expect a person in Hamm's position – that is, a self-professed high visibility person who previously committed two murders and now seeks admission to practice law in Arizona, would make certain that there were no outstanding behavioral issues occurring during the years of his rehabilitation for which he could be criticized. On the contrary, Hamm now concedes that he is in violation of his child support order. (Tr. 90) Though he argues that he had never seen a temporary child support order (Tr. 79) implying that he had been unaware of its existence even though he had been arrested and jailed for violation of that order, he testified that after his 1973 arrest, he knew he had a child support obligation (Tr. 86). He implied that he had been unaware of any permanent child support order because he had not received it at the mailing address he had provided the court. (Tr. 79) Despite his inferences to the contrary, Hamm did not and cannot logically state under oath that he was unaware of a child support obligation. Having graduated from law school, he is charged with knowledge of a legal obligation to pay for the support of one's children. Hamm cannot credibly deny knowledge of his obligation, yet at page 60 of his Petition for Review, he is critical that the Committee members' questions may have implied that he actually had a legal obligation to pay child support pursuant to an order " . . . that had never been served . . ."

Hamm asserts that he thought his child had been adopted and therefore he had no child support obligation. He points to a letter from his wife's private investigator dated January 22, 1988 (Petitioner's Appendix Three, Item 5) advising that his son had been adopted. The letter does

not purport to identify a date of adoption and is in fact dated some six months after Hamm's son had turned 18 years of age. Is Hamm entitled on the strength of such a letter to conclude that he has no child support obligation? Obviously not. It is not proof of adoption and does not even indicate a date of adoption. He next offers his own testimony that he had been told by his son that he had been adopted but his son did not corroborate Hamm's claim. On the contrary, the son testified that during his visit with Hamm in 1999:

Q.	(By Hamm)	And at that time did I ask you if you had been adopted?
A.	(By Hamm's son)	You know, I'm not sure when exactly it was, but I do remember the subject came up. And when the subject came up, you know, I told you that actually they never had adopted me. (Tr. 131)

Hamm was subsequently allowed to lead his son's testimony in order to try to get his son to corroborate Hamm's position, but even with the Committee's allowance in that respect, Hamm could not get his son to back up Hamm's adoption story. (Tr. 135-136)

It was not until Hamm was preparing his Character Report to submit to the Committee in January of 2004 that Hamm began to seriously address his having failed for thirty years to honor his obligation to pay for the support of his son. In January, 2004, he obtained a copy of the 1974 divorce decree, called his son on the phone and made an agreement to begin sending him payments which

the son agreed to share with his mother. (Tr. 133-134) Hamm stated that he began in January, 2004 to pay the obligation at the rate of $300 per month.

Hamm's failure to comply with the court ordered child support payments under the circumstances is reprehensible enough. His attempts to convince the Committee that the child support order was not effective because it had not been served upon him or had not been mailed to an address he had left with the court bespeak a lack of candor. His attempt to explain away his failure with the doubtful adoption theory is worse yet. The order was available for him to get a copy when he first tried to do so in January, 2004. There is no evidence of his inability to make the payments, even while in prison. (Tr. 86-87) His failure to honor his obligation raised the issue of his ongoing as well as very recent neglect of his financial responsibilities and violation of an order of court, both of which are deemed to be serious matters. This conduct alone – without Hamm's criminal history – could warrant the recommendation against his admission. *In Re M.A.R.*, 755 So.2d 89 (2000) This conduct weighs very heavily against Hamm's admission to practice law when combined with the criminal history. Rather than recognizing the seriousness of this issue, Hamm argues that his failure to obey a court order is not illegal conduct but simply does not conform to "a hyper-technical view of ethical conduct." (Petition for Review, p. 66) Maybe Hamm went overboard in his argument because his stated defense of his position on this issue demonstrates a lack of fitness to practice law.

III. DRUG DEAL GONE BAD IN AN INSTANT

Hamm complains that the Committee weighed heavily his mischaracterization of the murders as "a drug deal

gone bad in an instant" whereas it was not Hamm but was his witness, Richard Parrish who used that particular phrase. (Petition for Review, pp 15-17, 50) Parrish and Hamm have been very close personal friends for over five years (Tr. 146, L23-25) and he and Hamm had discussed the details of Hamm's murders on occasions and at very great length. (Tr. 152, L9-16) It is fair for the Committee members to conclude that Mr. Parrish's understanding of the murders derived from Hamm's descriptions.

Hamm centers his complaint on the claim by him that "The only time Petitioner referred to engaging in a drug deal throughout over 500 pages of testimony . . ." was as he explained the events of the day of the murders at Tr. 18. The actual reference to the quoted "a drug deal gone bad in an instant" is not as important as is Hamm's repeated references to the crimes as a drug deal. Hamm tried to reduce the culpability of his murders by references to drug trafficking where violent crimes are perhaps to be expected. Indeed, this was the tactic Hamm employed with the police department when he was arrested; he told the police that he had been involved in a drug deal that turned into a gun battle. (Tr. 29) The Committee members believed that the murders had nothing to do with a drug deal because as Hamm admits, the "deal" was a robbery and killing and not a drug sale. It was Hamm's accomplice who suggested that they rob these people instead of doing a drug deal. (Tr. 15, L.23) The Committee members believed that the crimes occurred as Hamm and his accomplice completed a carefully made plan to rob and kill the two young men, that these killings were nothing less than premeditated murders after plenty of time for reflection and any references to a drug deal were inappropriate as

an attempt to soften the effect of the killings.(Tr. 163, L3-6)

The Committee's criticism of Hamm's reference to the matter as a "drug transaction" or a "drug deal" or a "drug deal gone bad" arose from at least the following references either by Hamm himself or others who had obtained their information from Hamm:

App. 55	I participated in a drug related homicide. (Hamm)
Tr. 18, L.12	Then we went down to do the drug deal . . . (Hamm)
Tr. 29, L.8	But certainly I told them (police) that I was involved in a drug deal. (Hamm)
Tr. 38, L 14	No, we talked about it that evening, he left and when he came back he brought the gun and we did the deal. (Hamm)
Tr. 161, L.17	By Mr. Parrish who obtained his information about the incident from Hamm – The crime was part and parcel of a drug deal that went very sour. . . .
Tr. 197, L. 11	By Mr. Ferragut who described that Hamm told him that it was a drug related incident. I know that it was a sale for drugs.
App. p.15	Hamm's Personal Statement on applying for law school admission – I was a participant in a drug related homicide.

App. p. 44 — Hamm and wife's biography in which Hamm states that he served a prison term of almost 18 years for a drug related murder.

IV. LACK OF REMORSE

MORLEY

The Committee members were troubled by certain of Hamm's words, actions and failures to act in certain matters which have been interpreted as a lack of remorse for Morley and Staples and their respective families. Indeed some of Hamm's statements are interpreted to indicate that he has not even at this late date fully accepted responsibility for his actions in September of 1974. It is admittedly difficult to objectively measure remorse on the part of one who committed acts such as those described above; the occasion does not often present itself.

Perhaps the most troublesome example of this is Hamm's attitude toward the letters from members of the Willard Morley family objecting to Hamm's admission to the practice of law. When asked how the Committee should value those letters and the message in the letters, Hamm responded that the Morley family did not object to the commutation of his sentence or his parole, and with respect to their objection to his admission to the bar, Hamm stated:

> " . . .And all I can say is that the objections that they have lodged, because of my experience with many other people and many other situations, is a pretty mild objection. . . . I understand that these people have been permanently affected

> emotionally and personally by my crime. But apparently it has not had the same sort of devastating effect that I've seen in some other instances with other people." (Tr. 400)

One must look to the letters from the Morley family members to adequately judge Hamm's comment. Those letters may be found in App., pp 6-12.

- The first letter is from I'Della Vogel who was Willard Morley's sister. She attached pictures of Willard and his family in order that they might help the Supreme Court to put a face with a name and to realize that they were not just a case or a file number, but a real loving family. The pictures are at pages 7 and 8.

- App. Page 9 is a more formal letter by the same Ms. Vogel addressed to the Committee and dated May 12, 2004. In it she points out that her parents went to their graves with the pain in their hearts caused by Hamm's murder as will she. She agrees that thirty years is a long time as Hamm's supporters suggest; it is a long time to be without her brother that she loved so dearly, that the nine years her parents lived without their son seemed like an eternity. She expresses the same concerns held by the Committee members about the premeditated nature of Hamm's killing of Willard. Ms. Vogel closes her letter with a very compelling comment made by a lay person: "Mr. Hamm may be a shining star for the Arizona Penal System, but I would hate to see the Arizona Bar tarnished by having a convicted murderer as one of its members."

- App. Page 10 is a letter from Ms. Vogel's daughter, Sherry who was Willard Morley's

niece. The letter is dated November 23, 1999 addressed to the Arizona Board of Executive Clemency. Sherry Vogel points out that she was twelve years old when Willard was killed. She noted that Hamm will never know or understand the pain and suffering he caused when he made the decision to kill Willard. When she saw Willard in his casket, only then did she realize that they would never again be able to go on motorcycle rides, play catch, go hunting or just hang out. Willard was missed in the good times and also in the bad times when Sherry's mother needed help in making decisions about her parents' care without Willard to help.

- In I'Della Vogel's letter of November 18, 2001 addressed to the Arizona Board of Executive Clemency (App. p. 11) she notes that Hamm now gets to enjoy the embrace of loved ones or to hear the laughter of a child but these things have been denied to her brother by Hamm himself.

- Finally and most tellingly, Ms. Vogel's letter to the Arizona Board of Executive Clemency of November 19, 2001 (App. p 12) states that the bullets Hamm fired into her brother's head might as well have been fired into her parents' hearts. As she stood with her daddy at Willard's casket, he kept saying, "This is hard to take." as he patted Willard's chest. It was the only time she had seen her father cry. She wrote on about the experiences she missed without having Willard to share them.

In the face of these letters, Hamm actually criticizes the Committee's judgment that his comment shows a lack of remorse. He states on page 54 of his Petition for Review

that the Committee members do not have the substantial experience that Hamm possesses, that the Committee's judgment is ". . .an automatic and unthinking reaction reflecting a conventional contemporary view that embodies the dichotomy between the two groups – victims and offenders. . ." He argues that he has a due process right to expect more from the Committee, again without reference to a single authority. "No one said it was going to be easy to sit as a member of the Committee that processed Petitioner's application, but the judgment on this issue clearly fails to meet the bare minimum mandated by due process of law."

Hamm may be correct in stating that the Committee's judgment is a reaction reflecting a conventional contemporary view, a view that might be shared by perhaps 95% of the population of the world, the view that Hamm's denigrating statement about the deeply emotional comments of Willard Morley's family members is insensitive and reflects a genuine lack of remorse. It is entirely proper and to be expected that anyone with a background of normal lifetime experiences would be offended by the insensitivity of Hamm's comment about the Morley family notes and the arrogance of his defense of his comment.

It should be noted that Hamm has made no attempt whatsoever to contact any member of the Morley family either personally or through an intermediary for any purpose whatsoever. (Tr. 25)

STAPLES

Hamm has focused his rehabilitation and his efforts to make something good and decent out of his life by riding on the back of Willard Morley. In his own words,

> ". . .I actually was physically responsible for the death of Willard Morley. I was legally and morally responsible for the death of both people, but my own actions were the sole cause or the primary cause of the death of Willard Morley. . . ." (Tr, 338)
>
> ". . . the pain that I experienced from having the connection with Willard Morley is the motivation that gets me over whenever I run up against a difficulty, whenever I get lazy or get tired or I feel like life is too hard or whatever you want to call it, I'm not sure that I can go on anymore. Willard Morley gets me over that hump.
>
> Now I don't mean by that to discount Zane Staples. It's just that Zane Staples doesn't pack the emotional punch for me that Willard Morley does, and as a result, I've focused on the area that gets me where I need to go. . ." (Tr. 339)
>
> ". . .I feel that every day for 30 years I have been struggling with Willard Morley and he and I have been accomplishing things that people have been telling me I can't do and we're still doing it today. And for me that matches the crime that I committed." (Tr. 399)
>
> "With a co-defendant, I participated in a drug-related homicide resulting in the deaths of Willard Morley (my victim) and Zane Staples (my co-defendant's victim)." (App. P. 55)

In his own handwriting on his Character Report, Hamm claims Morley as his victim and assigns responsibility for Zane Staples' death to his co-defendant. (App.55) Even in his Petition for Review at page 17, Hamm adopts responsibility for Morley's murder and assigns the responsibility for the murder of Zane Staples to his co-defendant.

There was no such assignment of responsibility by the sentencing court. (App. pp 1-5) Yet Hamm argues at the top of page 19 of his Petition for Review that he can find no place in the transcript which might be taken as rejecting responsibility for the murder of Zane Staples. From the foregoing, one would have to conclude that Hamm's acceptance of responsibility for Zane Staples death is little more than spoken or written words without any real genuine conviction. It is clear from Hamm's extended testimony that he has truly transferred from his mind and psyche to that of his accomplice the moral responsibility for Zane Staples death and except for the necessity to acknowledge legal responsibility to the Committee and to this Court, Staples is no longer a moral concern to Hamm. He has assigned that responsibility to his co-defendant and that's the end of it for him. That is not a realistic and candid method of dealing with his moral and legal responsibility for Zane Staple's death and the Committee is entitled to criticize him for that.

V. UNAUTHORIZED PRACTICE OF LAW

As noted on page 12 of the Committee's report, the Committee was divided on the effect of Hamm's explanation of the complaints of his unauthorized practice of law. The issue came before the Committee because of correspondence provided to the Committee by the State Bar. The actual complaint is by an attorney in the Attorney General's office who wrote to the State Bar on March 23, 2001. (App. P. 30-51) In that letter, Terri Skladany, Special Counsel for Ethics, Professionalism and Training for the Arizona Attorney General's office notes that Hamm and his wife have engaged in the unauthorized practice of law in violation of then Rule 31(a)(3), Rules of the Supreme

Court. They did so by assisting another in preparing a legal document, giving advice to another as to his legal rights and attempting to negotiate a legal matter on behalf of another. The activity of which Skladany complains occurred after Hamm had graduated from law school, after he had successfully completed the bar exam but some three years before he was to file his Character Report with the Committee. The subject of Sladany's concern was a Notice of Claim filed against the State of Arizona. The document was prepared by Hamm and his wife on behalf of Mark Arizivino a prisoner under the custody of the Department of Corrections. The Notice of Claim is very clear that the Hamms, as "Consultants" and Arizivno as "Victim" state a claim against the State for damages and advise that they are prepared to discuss settling the claim for some $200,000.00. (App. P. 42)

Attached to the Skladany letter is a copy of the print-out from the Hamms' Internet web site for their Middle Ground Prison Reform, Inc. The Hamms are pictured on the first page, (App. P. 44) she with an American flag wrapped around her and representing herself as having been a lower court judge for almost ten years. (She was a non-lawyer justice court judge). Hamm identifies himself as James Hamm, J.D. As Skladany points out in her letter, nowhere in the 2001 web site information is there any indication that the Hamms are not authorized to practice law. The Hamms' current web site still identifies James Hamm, J.D. which the Court's current rule specifically prohibits, but the Hamms have added a footnote that they are not licensed attorneys. (Hamm's Exhibit 8)

There were several exhibits in the Committee's file (Exhibit 1) involving complaints about either Mrs. Hamm or both Mr. & Mrs. Hamm attempting to practice law

without becoming admitted to the bar. Those matters are discussed in a general and rambling manner by both Hamms beginning at Tr. 266 and continuing through Tr. 309 where they begin a discussion of the Skladany letter. Hamm notes that the Skladany letter material precedes the date of the Court's change of Rule 31 and he claims that after the date of that change, he has been careful not to violate that rule even though he disagrees with it. Since the date of the rule change, he has restricted his activities to the preparation of such documents for the clients alone to sign. (Tr. 315)

The Committee made no specific findings about the unauthorized practice of law complaints.

VI. MISCELLANEOUS

INTRODUCTION TO PETITION FOR REVIEW

It should be noted at the outset that the eloquence with which the Petitioner introduces his Petition for Review is not his own, but is instead that of Mr. Justice Black of the U.S. Supreme Court who authored the 1957 opinion *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957). Mr. Hamm complains about the deprivation of his constitutional rights and the hardship that will be visited upon him if he is not admitted to the practice of law, all without attribution to a single legal authority. However, his arguments have been copied – in some instances verbatim from the report of the *Konigsberg* case. As an academic exercise, one may compare the report of *Konigsberg* at 353 U.S. 258 against the paragraph at the top of page 2 of Hamm's Petition.

Konigsberg	Hamm
While this is not a criminal case, its consequences for Konigsberg take it out of the ordinary run of civil cases. The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer."	"The consequences of this case for Petitioner take it out of the ordinary realm of civil cases. If the Committee's recommendation is followed, it will prevent him from earning a living through practicing law. This deprivation has consequences of the greatest import for Petitioner, who has invested years of study and a great deal of financial resources preparing to be a lawyer . . ."

Why did Hamm fail to cite *Konigsberg* and its companion case of *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957) decided on the same day in 1957? Why would Hamm fashion his arguments so closely upon *Konigsberg* without attributing the arguments to that authority? Perhaps the reason is that Hamm's own moral character does not compare well to that reported of Konigsberg and Schware, both examples of excellent character and moral standing. While it is fair for Hamm to argue that he is entitled to application of the legal principles established by the two cases (paragraphs 11 and 12 above), he loses ground when his background and moral character are compared to the reported backgrounds and excellent moral character of both Konigsberg and Schware.

Konigsberg, for example, was born in Austria, he was brought to this country when eight years old. After graduating from Ohio State University, he taught American history and literature for a time in a Cleveland high school. He was given a scholarship to Ohio State University and there received his Master of Arts degree in Social Administration. He was then employed by the District of Columbia as a supervisor in its Department of Health. He went to California where he worked as an executive for several social agencies and at one time served as District Supervisor for California State Relief Administration. Upon the United States' entry into the Second World War, he volunteered for the Army and was commissioned a second lieutenant. He was selected for training as an orientation officer in the Army's information and education program and in that capacity served in North Africa, Italy, France, and Germany. He was promoted to captain and while in Germany was made orientation officer for the entire Seventh Army. As an orientation officer one of his principal functions was to explain to soldiers the advantages of democracy as compared with totalitarianism. After his honorable discharge he resumed his career in social work. At the age of thirty-nine, Konigsberg entered the Law School of the University of Southern California and was graduated.

Mr. Schware's background was equally strong and impressive. Perhaps together they establish a standard for good moral character.

IS ADMISSION TO BAR AS IMPORTANT AS HAMM CLAIMS?

In his eloquent introduction to his Petition for Review, Hamm likens himself to those persons who have structured their whole lives around entrance to the practice of law. (Petition for Review, p. 2, end of first paragraph)

On June 2, 2004, Hamm testified that when he graduated from Northern Arizona University with a degree in applied sociology including an emphasis on corrections, he did not ask the school to put the correction's reference on his transcript:

> " . . . although I had it, *I didn't want to be limited in that regard because I didn't know what I was going to do with my education*. And as it turns out, my education moved in a different direction. It moved into the law rather than into psychology and sociology." (Emphasis added) (Tr. 371)

When Hamm applied for admission to law school on February 12, 1993 (App. 13), he prepared the Personal Statement required of all applicants to explain why they wish to undertake legal training. In that Statement, Hamm described his imprisonment, his rehabilitation efforts and his positive social works. He stated that he needed the legal education to complement his practical legal experience, natural abilities and philosophical orientation. He then wrote the following:

> "Whether I will ever be admitted to the Bar in Arizona is not my primary concern. I feel I will be able to use my legal training in many valuable ways to better contribute to my community and society." (App. p. 17)

LETTERS OPPOSING ADMISSION TO PRACTICE LAW

Hamm attached in his Appendix, Vol. 3, a number of letters from persons supporting his application for admission to the bar or supporting his previous application for a discharge. In order to balance the Court's perspective, the Committee provides a few selected letters from persons who are opposed to Hamm's admission to the bar.

- The then President of the State Bar of Arizona wrote on May 17, 2004 to advise that the Board of Governors of the State Bar of Arizona strongly urges the Committee to reject Hamm's application. She noted that the publicly known facts of Hamm's case are incompatible with the standards required of lawyers. (App. 20)

- On April 13, 2004, an attorney named Joni L. Hoffman wrote to express her displeasure at the thought of Hamm joining her in the legal profession. Ms. Hoffman knew Willard Morley as a friend of her family and has in recent years come to know Hamm's wife. She previously staffed the Judiciary Committee at the Arizona Senate and knew of Mrs. Hamm's frequent testimony before that committee on behalf of prisoners' rights. Ms. Hoffman heard that the crime Hamm committed involved a "drug deal gone bad." Hamm's wife provided her the details of the crime so that Ms. Hoffman could in turn provide those details to the Morley family. Ms. Hoffman noted as did the Committee that the incident was not a drug deal gone bad, but was a brutal premeditated murder of two young men. She met Hamm and

found him to be intelligent, pleasant and remorseful, but strongly urges that his application be denied. She notes that Hamm can be a contributing member of society, but he should not become a practicing attorney. (App. P. 21)

- On September 23, 1998, Michael W. Pearson, Assistant Professor at Arizona State University and a member of the State Bar expressed his grave concern about the potential admission of Hamm to the practice of law. He notes the harm to the profession if Hamm were admitted and notes his anticipated difficulty in instructing young minds that crime does not pay if Hamm is admitted to practice because it will be obvious that Hamm's crime paid very well indeed if he is admitted. (App. P. 23)

- On October 21, 1999, a letter was received from a man named Steve Shapiro who vigorously opposes Hamm's admission to practice law. He comments that Hamm is a very strange man whose personal demeanor around people is extremely odd. He states that his misanthropic attitude toward people is a reflection of the cold blooded for-profit murder he committed. (App. P. 24)

- On September 29, 1998, then Governor Jane D. Hull wrote to oppose Hamm's admission to practice law. Governor Hull noted that if good character matters, Hamm must not be admitted. She pleads that the names of those who chose the law as a profession not be sullied by the admission of Hamm. (App. P. 26)

- On October 18, 1999, Maricopa County Attorney Richard M. Romley wrote in opposition to Hamm's admission. He notes that our legal profession is judged by the character and conduct – past and present – of its members. There is something inherently contradictory for us as upholders of the law to embrace as a colleague a person who consciously and willfully committed the ultimate criminal act. (App. P 27)
- Catherine K. Weidman, a prosecuting attorney of many years wrote on June 25, 1998 opposing Hamm's admission. She noted that to allow the admission of Hamm to the practice of law would be to pull another handful of threads from the already threadbare tapestry that is the moral conscience of our society. (App. P. 28)

COMMITTEE DID NOT EMPLOY *PER SE* RULE

What has been said in this response disposes of Hamm's claim that the Committee consciously or otherwise used a *per se* exclusionary rule to recommend against his admission. (Petition for Review, p. 31) His justifications for his argument are nonsensical and reveal his ignorance of the lifetime and legal experiences and the integrity of the members of the Committee. He further damages whatever moral standing he has remaining by making baseless arguments which find no support in the law or in the record of this case.

For all of the foregoing reasons, the Court's Committee on Character and Fitness recommends that the Court consider the record, the petition and this response together with the Committee's Appendix to Record, and

make such orders as it may in its discretion deem best adapted to a prompt and fair decision as to the rights and obligations of the applicant judged in the light of the obligation to the public to assure that only qualified applicants are admitted to practice as attorneys at law.

Respectfully submitted this 14th day of February, 2005.

MONROE & McDONOUGH, P.C.

Lawrence McDonough
Attorney for Committee
on Character and Fitness

Original of the foregoing
and the Committee's Appendix to Record
hand-delivered this 14th
day of February, 2005 to:

Noel K. Dessaint
Clerk Supreme Court of Arizona
1501 W. Washington
Phoenix, Arizona 85007-3231

and copies thereof
hand-delivered this 14th
day of February, 2005 to

Chief Justice Charles E. Jones
Vice Chief Justice Ruth V. McGregor
Justice Rebecca White Berch
Justice Michael D. Ryan
Justice Andrew D. Hurwitz
all at
Supreme Court of Arizona
1501 W. Washington
Phoenix, Arizona 85007-3231

and

COPY of the foregoing
mailed this 14th day of
February, 2005 to:

James J. Hamm
139 East Encanto Drive
Tempe, Arizona 85281

By:_____

BLUE DIVIDER

APPENDIX F

AMICUS CURIAE BRIEF BY BOARD OF GOVERNORS OF ARIZONA STATE BAR

IN THE SUPREME COURT OF ARIZONA

In the Matter of JAMES JOSEPH HAMM, Applicant.	**Supreme Court No. SB-04-0079-M**

BRIEF OF AMICUS CURIAE STATE BAR OF ARIZONA

Charles W. Wirken (004276)
President
Helen Perry Grimwood (006355)
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First Vice President
Daniel J. McAuliffe (003435)
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ARGUMENT

The Board of Governors of the State Bar of Arizona unanimously opposes Petitioner's admission to practice law. The Board speaks for thousands of its members in saying that no condition or circumstance alone or in combination negates Petitioner's past conduct sufficiently to admit him to the practice of law. To admit Petitioner would dishonor the thousands of lawyers, living and dead, who have served the people of Arizona since its formation as a territory during the Civil War and its admission to statehood in 1912.

Granting a law license to a person who has been convicted of first-degree murder – a conviction resulting from an execution-style double slaying, no less – contravenes the very idea that lawyers are the professional keepers of "all the interests of man that are comprised under the constitutional guarantees given to 'life, liberty and property' . . . " *Schware v. Board of Bar Examiners of*

the State of New Mexico, 353 U.S. 232, 247, 77 S.Ct. 752, 760-61 (1957) (Frankfurter, J., concurring). Allowing a person who has been convicted of murder to safeguard these precious constitutional guarantees would at best be anomalous, at complete odds with an attorney's "supreme commitment to preserve and uphold the law." *Application of Walker*, 112 Ariz. 134, 138, 539 P.2d 891, 895 (1975) *cert. den.* 424 U.S. 956 (1976).

Whether Petitioner currently possesses the "good moral character" required by Rule 34(c)(2)(B), Ariz.R.S.Ct.[1], to justify becoming an officer of the court is a question that was answered more than 30 years ago when he murdered two men in the desert outside of Tucson. His crime *dictates* the conclusion that he lacks the requisite good moral character to become a lawyer in Arizona. Indeed, it is patently farcical to suggest otherwise.

Our state constitution grants this Court the exclusive authority to decide who may engage in the practice of law. *Hunt v. Maricopa Co. Employees Merit Sys. Comm'n*, 127 Ariz. 259, 261-62, 619 P.2d 1036, 1038-39 (1980). Petitioner thus must convince this Court, as the final arbiter of who receives a coveted license to practice law, that he possesses good moral character. The burden is squarely on his shoulders. *In re Greenberg*, 126 Ariz. 290, 292, 614 P.2d 832, 834 (1980); *Walker, supra*, 112 Ariz. at 137, 539 P.2d at 894.

[1] "No applicant shall be recommended to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied . . . [t]hat applicant is of good moral character."

Petitioner failed to convince this Court's Committee on Character and Fitness.[2] This Court likewise should not be swayed either by his claim to be a "poster child" for rehabilitation or his accusations of due-process violations.[3] Whether he has been rehabilitated was simply one of many factors for the Committee to consider, and the detailed weighing and balancing required by Rule 36(a), Ariz.R.S.Ct., shows that he was afforded due process.

In adopting Rule 36, this Court clearly was concerned with every aspect of prior unlawful conduct of applicants for the bar, ranging from the seriousness of that conduct to its effects. The Committee appropriately determined that the seriousness of the conduct and the consequences, among other factors, substantially outweighed the positive evidence of rehabilitation. He simple did not meet his burden of proving good moral character. [Committee recommendation at 11-15]

Although this Court once stated that because "the concept of 'good moral character' escapes definition in the abstract," each case must be judged on its merits, *Application of Klahr*, 102 Ariz. 529, 531, 433 P.2d 977, 979 (1967), it later conclusively defined the concept in the context relevant to Petitioner's case: a felony conviction alone is sufficient to establish the lack of good moral character. *Walker, supra*, 112 Ariz. at 137, 539 P.2d at 894.

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[2] Committee on Character and Fitness Findings of Fact and Recommendation, which will be referred to as "Committee recommendation."

[3] Petition for review at 38 ("Petitioner stands as an example of how properly to deal with having committed the serious and irreversible crime of murder") and pages 1, 7-9 and 28-37.

That should end the inquiry in this case. Petitioner made choices 30 years ago that foreclose his ability to join this profession.

Even assuming rehabilitation is the most important factor in overcoming the lack of good moral character, the fact is that "in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make." *In re Matthews*, 94 N.J. 59, 81-82, 462 A.2d 165, 176 (1983). Rehabilitation cannot be determined separate from the offenses from which the applicant claims to be rehabilitated. *In re Gossage*, 99 Cal.Rptr.2d 130, 142 n. 21, 5 P.3d 186, 197 n. 21 (2000) (calling that a "commonsense notion"). In fact, "[w]here serious or criminal conduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable." *Id.* at 144, 5 P.3d at 198.

Petitioner's crimes were not the product of inexperience or immaturity. *See In re Prager*, 422 Mass. 86, 92, 661 N.E.2d 84, 96 (1996). He was 26, divorced and a father at the time of the crimes. [Committee recommendation at 2, ¶ 4] Petitioner killed two people in cold blood, for monetary gain. [*Id.* at 4, ¶¶ 15, 16] The act of murder showed an enduring lack of moral judgment that cannot be rectified by the passage of time, erased by education or diluted by efforts to live the sort of law-abiding life that most people in American society have managed their entire adult existences. *Cf. Walker, supra* 112 Ariz. at 139, 539 P.2d at 896 ("[I]f Walker honestly believed, having spent nearly the whole of his adult life criminally evading the laws of the United States, that his past was not a reflection upon the person he presently is, then he lacked the

ingrained sense of moral judgment so necessary to advise and counsel others").

On review, this Court must judge applicants "in the light of [the] Committee's and this court's obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law." Rule 36(g)(2), Ariz.R.S.Ct.

In its few reported decisions denying admission based on the lack of good moral character, this Court has rejected applicants who have committed far, far less serious crimes than Petitioner. *See, e.g., Greenberg, supra* (admission denied to applicant who, while attending law school, spent more than six months selling marijuana and later ignored the Internal Revenue Service's inquiries about his income during that period); *Walker, supra* (admission denied to applicant who not only had failed to register for the draft when he turned 18, but continued to fail to do so for five years after his asserted psychological problems were resolved).[4] Thus, the threshold for what is considered "good moral character" clearly is much loftier than first-degree murder, even 30-year-old first-degree murder.

To reject Petitioner's claim of rehabilitation from first-degree murder is not a due process violation as he repeatedly claims. As a practical matter, rehabilitation from a first-degree murder conviction, for purposes of bar admission, is virtually impossible.[5] *Cf. Matthews, supra*, 94 N.J.

[4] Both of these applicants eventually were admitted. Their crimes were substantially lesser than Petitioner's.

[5] In fact, at least one state – Oregon – has a rule that appears to absolutely bar from admission an applicant who has a criminal conviction that would cause an attorney to be disbarred. Rule 3.10, Oregon Supreme Court Rules Regulating Admissions to Practice Law in Oregon ("An applicant shall not be eligible for admission to the Bar

(Continued on following page)

at 81-82, 462 A.2d at 176. In fact, the heavy burden must be commensurate with the gravity of the crimes. *Gossage, supra*, 99 Cal.Rptr.2d at 144, 5 P.3d at 198. "Felony misconduct is highly probative of a person's character, and overcoming such evidence of one's character – even with the passage of years – is a difficult task." *In re Dortch*, 860 A.2d 346, 357 (D.C. 2004). In the case of first-degree murder, it is an insurmountable task.

Admittedly, the absence of good moral character in the past is secondary to the existence of good moral character in the future. *In re Manville (Manville I)*, 494 A.2d 1289, 1295 (D.C. 1985). It would be easy to conclude that because Petitioner served his sentence and has been discharged from parole, he has paid his debt to society and should be eligible for all rights and privileges. And, surely he has regained certain rights possessed by other citizens such as, for example, the right to walk free among law-abiding citizens of Arizona, to attend movies, to eat at restaurants and even to travel to Missouri to apologize personally to the families of the men he brutally murdered. The victims will never be able to do any of these things.

Petitioner's single conviction for first-degree murder should be enough to deny admission, but the fact of the conviction only begins to tell the story of his heinous, depraved and immoral criminal conduct. *In re Rowe*, 80 N.Y.2d 336, 604 N.E.2d 728 (1992) (lawyer disbarred for murdering wife and three children even though he was

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after having been convicted of a crime, the commission of which would have led to disbarment in all the circumstances present, had the person been an Oregon attorney at the time of conviction").

acquitted by reason of insanity). *See also Walker, supra*, at 112 Ariz. at 138, 539 P.2d at 895 ("Even an acquittal in a criminal action has been held not to be res judicata upon an inquiry to determine an applicant's character and fitness to become a member of the bar"). Not only did he murder two men for monetary gain, he shot one victim in the back of the head while that victim was driving a car and Petitioner sat in the backseat, and he shot the second victim when that man attempted to escape from the vehicle. [Committee recommendation at 4, ¶ 15]

No state has publicly reported having admitted anyone convicted of first-degree murder.[6] No state has publicly reported a decision in which it admitted someone who committed second-degree murder. *See, e.g., Dortch, supra* (declining admission to an applicant who had been convicted of second-degree murder); *In re Wright*, 102 Wash.2d 855, 690 P.2d 1134 (1984) (declining admission, because of an evenly split court, to an applicant who had committed second-degree murder, "[d]espite his perseverance and despite apparently successful efforts at rehabilitation"). Few states have even admitted people convicted of manslaughter. *See e.g., In re Manville (Manville II)*, 538 A.2d 1128 (D.C. 1987) (allowing admission of applicant who pled guilty to charge of voluntary manslaughter that

[6] The only apparent case in which someone convicted of murder was admitted to the bar is the unreported case of *In re Farmer*, case no. 164 (Ohio 1998). The facts of the underlying crime clearly had as much to do with the decision to admit Farmer, more than 20 years after his conviction, as did Farmer's stellar efforts at rehabilitation. At the time of the crimes, he was 16, and intending only to rob a jewelry store with his 18-year-old cousin. The cousin ended up killing one person inside the store and, when he resisted arrest, a police officer. Farmer did not display a weapon and attempted to comply with police officers' orders. Farmer didn't pull any trigger; Petitioner did.

occurred when he was a college student).[7] *But see Gossage, supra* (declining admission to applicant who was convicted of voluntary manslaughter for murdering his sister). The courts in *Gossage* and *Wright* were not swayed even when the profession recommended that those applicants be admitted.[8]

Since committing his crimes, Petitioner claims to have lived an exemplary life, with an aim toward rehabilitation. He views his admission to the bar as part of his "path to redemption" and a way to pay "a debt of honor." [Petition for review at 82] But the point of bar admissions is not to reward a person simply for behaving and living like the vast majority of people who live in a civilized society. The point of bar admissions is to select the person who will honestly and competently handle the law and also not diminish the role and reputation of the legal profession as an institution. When Petitioner entered and exploited the killing field he and his accomplices (including a getaway driver, a fact conveniently overlooked) had carefully constructed, he forfeited for all time rights to engage in certain activities in which law-abiding citizens remain free to engage. The practice of law, given the place it holds in

[7] Manville, with his manslaughter conviction, was admitted when the District of Columbia required that applicants show good moral character by a preponderance of the evidence. *Manville II, supra*, 538 A.2d at 1134. By the time Dortch, with his second-degree murder conviction, applied, the standard had been dauntingly increased to clear and convincing evidence. *Dortch*, 860 A.2d at 357-58.

[8] In *Gossage*, a State Bar of California committee conducted a preliminary investigation and declined to certify Gossage for admission on the ground that he lacked good moral character. Gossage appealed to the State Bar Court, which, following an evidentiary hearing, recommended that he be admitted. In *Wright*, the Washington State Bar Association board of governors recommended that Wright be admitted.

the pantheon of professions in a society committed to the rule of law, should certainly be among them.

The fact that Petitioner wants so desperately to practice law, and believes that he is *entitled* to do so *simply* because of his educational investment [Petition for review at 2], makes his claim of rehabilitation even more questionable. He claims that to not admit him will send a message to others that rehabilitation is not a worthy goal. [Petition for review at 79] Rehabilitation is obviously a worthy goal, but only if it is altruistic, with the goal of living as a productive human being free from the constraints of past transgressions.

Petitioner persists in using the passive voice ("a drug-related homicide") to describe his acts, thus continuing to portray his murders as something "that happened," not something that he willed to happen through his conscious exercise of mind. He also characterizes the reaction of the parents of one of his victims as "pretty mild objections" and opines that "apparently *it* has not had the same sort of devastating effect that I've seen in some other instances with other people." [Committee recommendation at 10, ¶ 52 (emphasis added)] He has sufficiently insulated his psyche from the horror of his acts so that he speaks of them as "things" that "happened," minimizing the effect of his crimes on the victim's survivors, all to advance his case for bar admission. These two executions did not simply "happen"; he committed them.

When determining admissions, it is appropriate to consider public perception of and confidence in the bar. *Prager, supra*, 422 Mass. at 93, 661 N.E.2d at 90. Admission is an endorsement that the applicant is worthy of public trust. *Id.* To allow a convicted murderer among the

ranks of lawyers, who serve as fiduciaries, trusted advisers and officers of the court would necessarily lower the public's confidence. "Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society." *Rowe, supra*, 80 N.Y.2d at 340, 604 N.E.2d at 730. In fact, to admit someone convicted of such an egregious crime as Petitioner's could send the message to the public that this Court did not view the original offense with sufficient gravity. *Cf. Dortch, supra*, 860 A.2d at 357.

It also is entirely appropriate to consider the impact on the internal functioning of the profession as well as the profession's perception of itself State Bar members are justifiably proud of this profession because it performs an essential role in the administration of justice. They expect to be inquiries by the Internal Revenue Service about his income during that period, but also because he answered a question about his criminal history on the bar application in an unresponsive and evasive Manner. 126 Ariz. at 292, 614 P.2d at 834. Significantly, the *Greenberg* Court also recognized the role that rehabilitation plays in evaluating an applicant's application for admission to the bar, stating that "[r]ehabilitation is seldom accomplished in an instantaneous fashion." *Id.* In the present case, it is asserted that rehabilitation has occurred and been maintained over a 30 year period, not 15 months as in *Greenberg*.

Similarly, in *Walker*, the Court refused to decide the case based solely on the applicant's past felonious conduct, but placed greater significance on the fact that the applicant spent "nearly the whole of his life criminally evading the laws of the United States." *Walker*, 112 Ariz. at 139, 539 P.2d at 896. These cases clearly demonstrate that a

prior conviction is only *one factor of many* that the Court must consider in making a determination of whether an applicant possesses the requisite good moral character.[6]

In its Amicus Brief, the State Bar actually cites *Walker* to support its proposition that Petitioner's crime "dictates" the conclusion that he lacks good moral character, and its suggestion that a *per se* rule should be adopted and applied mortgage companies by executing an assignment of settlement proceeds he knew did not exist). Admitting Petitioner but then disbarring an attorney for conduct less egregious than murder not only sends an inconsistent message to the membership, but devalues the State Bar's attempts to curb unethical conduct and promote professionalism. After all, how could members continue to promote and uphold the integrity of the legal profession if someone who has committed the most egregious crime possible is allowed to join it?

CONCLUSION

This Court has admonished the Committee on Character and Fitness not to recommend admission if it harbors "any reservations whatsoever" about an applicant's good moral character. *See Application of Courtney*, 83 Ariz. 231, 233, 319 P.2d 991, 993 (1957) (committee on examinations and admissions must not make a favorable recommendation "if members entertain any reservations whatsoever about an applicant's good moral character"). To say that Petitioner's case meets this standard drastically

[6] Indeed, the State Bar recognizes that rehabilitation is "one of many factors for the Committee to consider," yet requests this Court to deny Petitioner admission solely on the basis of his prior conviction. (State Bar Amicus Brief at 3).

understates reality. Petitioner simply cannot rebut the finding that he lacks moral character.

If Petitioner is admitted to practice, this state's lawyers could never explain – to any Arizonan old enough to understand that murder is an immoral, vile and absolutely wrong act – why James Hamm was welcomed into the profession.

If Petitioner is admitted, his past will impede this profession's future and the integrity and functioning of the judicial system. The specter of Petitioner's first-degree murder conviction would sit beside him in any courtroom, where lawyers are supposed to uphold the law. The specter would hang over every client who hires him and expects, as is reasonable, to have hired someone who meets the ideals and professional qualifications necessary and expected of lawyers. It would impede efforts to discipline attorneys who commit far less heinous transgressions and would lower the standards lawyers strive to meet. It would, unfortunately, brand Arizona as the state that admitted a first-degree murderer to the practice of law.

As Justice Frankfurter said, the bar "has not enjoyed prerogatives; it has been entrusted with anxious responsibilities." *Schware, supra*, 353 U.S. at 247, 77 S.Ct. at 760 (Frankfurter, J., concurring). People make choices every day that can have long-lasting implications, often precluding them from having children, attaining particular jobs or otherwise living their lives in a way they might not have known they wanted when they made their choices. Arizona's legal profession must not entrust "anxious responsibilities" to someone who as an adult chose to commit heinous criminal acts and now wants to pursue a profession that demands "not only ability of a high order, but the strictest integrity." *Application of T.J.S.*, 141 N.H. 697, 703, 692 A.2d 498, 502 (1997).

Petitioner does not present a close case. Someone who has been convicted of first-degree murder simply should not, as a matter of policy, be allowed to practice law. In this case, Petitioner has not met his almost impossible burden of demonstrating the required good moral character to warrant admission to our profession.

For these reasons, the State Bar of Arizona Board of Governors respectfully requests that the Court agree with the Committee on Character and Fitness and deny Petitioner's application for admission.

Submitted this 14th day of February, 2005.

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CERTIFICATE OF SERVICE

The undersigned certifies that the original and six copies of this brief were filed Monday, February 14, 2005, with:

Clerk of the Arizona Supreme Court
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The undersigned certifies that two copies of this brief were mailed, via U.S. Mail, postage prepaid, on Monday, February 14, 2005, to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 6(c), 16 and 23, Ariz.R.Civ.App.P., I certify that the attached brief was prepared using Times New Roman 14-point proportionality spaced typeface. The text is double-spaced, except that indented quotations and footnotes are single-spaced. The left-hand margins of each page are 1.5 inches; the right-hand margins, 1.0 inches.

The brief contains 2,960 words and does not exceed 35 pages.

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APPENDIX 1 [To State Bar Amicus Curiae Brief]

Excerpt from Rule 34, Ariz.R.S.Ct.

Rule 34. Application for Admission

(a) Application. Any person desiring to be admitted to the practice of law in the State of Arizona must submit to the secretary of the Committee on Character and Fitness, a written application in the form supplied by the Committee. The application must be accompanied by required supporting documents, examination fee and application fee. The applicant shall complete and submit a character report accompanied by a character investigation fee as established by the supreme court. The character report and related fee maybe submitted separately from the application for admission.

(b) Documents Required in Support of Application. The following must accompany every application:

1. Subject to the exception made and provided for in paragraph (c)(1)(D) of this rule, the applicant's law school diploma, or other evidence satisfactory to the Committee on Character and Fitness showing that he or she is a graduate with a juris doctor or bachelor of laws and letters degree of a law school provisionally or fully approved by the American Bar Association at the time of graduation.

2. If the applicant has been previously admitted to practice law in any jurisdiction; foreign or domestic, the certificate of the appropriate court agency(ies) or the mandatory bar association, whichever has custody of the roll of attorneys in such jurisdiction. The certificate must indicate the date of admission, and that the applicant is presently in good standing; or, that the applicant resigned

in good standing or is capable of achieving good standing status in that jurisdiction.

3. An examination fee as established by the supreme court

4. An application fee as established by the supreme court.

5. Application for admission must be accompanied by a full face photograph of the applicant's head, neck and shoulders; without a hat, and not larger than two and one-half (2.5) inches by two and one-half (2.5) inches nor smaller than two (2) inches by two (2) inches, taken within six months prior to filing with the Committee on Character and Fitness.

6. Application for admission must be accompanied by a complete set of the applicant's fingerprints. The Supreme Court's Committee on Character and Fitness is authorized to receive criminal history information regarding any applicant for admission from any law enforcement agency in conjunction with the admissions process.

(c) Applicant Requirements and Qualifications.

1. On the basis of an application for admission properly and timely filed, with all required supporting documents and fees, the applicant will be certified to sit for the bar examination.

2. No applicant shall be recommended to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied:

A. That the applicant is or at the time of the examination will be over the age of twenty-one years;

B. That applicant is of good moral character;

C. That applicant is mentally, emotionally and physically able to engage in the practice of law;

D. That applicant is a graduate with a juris doctor or bachelor of laws and letters degree of a law school provisionally or fully approved by the American Bar Association at the time of graduation; provided that this requirement shall not apply to an applicant who has been actively engaged in the practice of law in some other state or states for at least five of the last seven years prior to filing an application for admission to practice in Arizona; and

E. That, if ever admitted to practice law in any jurisdiction, foreign or domestic, applicant is presently in good standing, or that applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction.

3. The Committee on Character and Fitness may provide for early filing of an intention to seek admission to the state bar on the part of Arizona law students, after completion of their first year at the University of Arizona College of Law or Arizona State University College of Law, to enable expeditious inquiry into the character and fitness of the applicant and to facilitate the giving of advice and counsel on issues relating to character and fitness.

4. The Committee on Character and Fitness should complete its inquiries, some or all of which may be delegated to the National Conference of Bar Examiners, so as to be in a position to recommend for or against a successful examinee's admission to the state bar no later than the time the results from the bar examination are available. In extraordinary cases more extended time for inquiry and formulation of a recommendation may be required.

(d) Application Filing Schedule; Penalties.

1. The application for admission and all of the documents required to be submitted by the applicant (except law school diploma in the case of law school graduates who have graduated immediately prior to the examination to be taken) must be timely submitted, with required fees, in accordance with the schedule and filing fees established by the Court. In the event an application, documents or fees are submitted after the initial filing deadline, late fees as established by the Court shall be assessed. No application, documents or fees will be accepted after the close of filing deadline, as established by the Court.

Any applicant failing to pass a written examination who wishes to take the next subsequent examination must submit an application for examination, required supporting documentation, and application and examination fees as established by the Court, no later than twenty days after the date of the letter notifying the applicant of his or her failure to pass the written examination. If the application is submitted after twenty days, a late application fee shall be paid in accordance with the schedule and filing fees established by the Court.

2. When an application to take the bar examination is properly filed with required supporting documents, the applicant shall be promptly notified that the application is in order and that the applicant is certified to sit for the bar examination, specifying the time and place of such examination.

(e) Deficiency in Application and Supporting Documents. If the Committee on Character and Fitness finds that the application is deficient, or the required

supporting documents are deficient, or both, the Committee shall advise the applicant in writing of the deficiency, and the assessment of applicable late fees as established by the Court. The Committee shall allow the applicant either to supply additional information or to correct, explain in writing or otherwise remedy the defects in such applicant's application, supporting documents, or fees as the case may be. If such deficiencies are not cured by the deadlines established by the Court, and if the Committee's reasons for refusing to grant permission for the applicant to take an examination are of record as a part of the applicant's file, the Committee shall withdraw the application and advise the applicant of such withdrawal and the reasons therefor.

(f) Completion of Professionalism Course.

1. *New Admittee Professionalism Course.* Except as otherwise provided in this rule, within one year after being admitted to the state bar, the applicant shall complete the state bar course on professionalism, or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona for this purpose.

* * *

APPENDIX 2

Rule 36, Ariz.R.S.Ct.

Rule 36. Procedure before the Committee on Character and Fitness.

(a) Determination of Character and Fitness. The Committee on Character and Fitness shall, in determining

the character and fitness of an applicant to be admitted to the state bar, review and consider the following:

1. *Relevant Traits and Characteristics.* An attorney should possess the following traits and characteristics; a significant deficiency in one or more of these traits and characteristics in an applicant may constitute a basis for denial of admission:

A. Honesty

B. Trustworthiness

C. Diligence

D. Reliability

E. Respect for law and legal institutions, and ethical codes governing attorneys.

2. *Relevant Conduct*. The revelation or discovery of any of the following should be treated as cause for further detailed investigation by the Committee on Character and Fitness prior to its determination whether the applicant possesses the traits and characteristics evidencing the requisite character and fitness to practice law:

A. Unlawful conduct

B. Academic misconduct

C. Making a false statement, including omissions

D. Misconduct in employment

E. Acts involving dishonesty, fraud, deceit or misrepresentation

F. Abuse of legal process

G. Neglect of financial responsibilities

H. Neglect or disregard of ethical or professional obligations

I. Violation of an order of court

J. Evidence of conduct indicating mental or emotional instability impairing the ability of an applicant to perform the functions of an attorney.

K. Evidence of conduct indicating substance abuse impairing the ability of an applicant to perform the functions of an attorney.

L. Denial of admission to the bar in another jurisdiction on character and fitness grounds

M. Disciplinary complaints or disciplinary action by an attorney disciplinary agency or other professional disciplinary agency of any jurisdiction.

3. *Evaluation of Relevant Conduct.* The Committee on Character and Fitness shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination; the following factors shall be considered in assigning weight and significance to an applicant's prior conduct:

A. The applicant's age; experience and general level of sophistication at the time of the conduct

B. The recency of the conduct

C. The reliability of the information concerning the conduct

D. The seriousness of the conduct

E. Consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct

F. The factors underlying the conduct

G. The cumulative effect of the conduct

H. The evidence of rehabilitation

I. The applicants positive social contributions since the conduct

J. The applicant's candor in the admissions process

K. The materiality of any omissions or misrepresentations by the applicant.

4. *Determination of character and fitness; recommendation respecting admission.*

A. The Committee and its staff shall conduct a complete preliminary review of the applications based on the categories of relevant conduct listed in (a)(2).

B. If it is determined that there is no conduct that falls within one of these categories, the committee shall recommend the applicant for admission, or recommend the applicant for admission pending the receipt of a passing score on the bar examination(s).

C. If it is determined that there is conduct that falls within one of these categories, a committee member shall be designated to investigate as appropriate and evaluate whether, and to what extent, the applicant's conduct should prevent the applicant's admission.

D. This committee member, after further investigation, if necessary, shall then either (I) dismiss the inquiry, or (ii) recommend that an informal or formal

hearing be held. The Committee shall review the recommendation that a formal hearing be held.

E. In all cases in which, the Committee determines that there are serious allegations of the conduct of the applicant that involve:

(i.) commission of a violent crime

(ii.) fraud, deceit or dishonesty on the part of the applicant that has resulted in damage to others,

(iii.) neglect of financial responsibilities due to circumstances within the control of the applicant, or

(iv.) disregard of ethical or professional obligations the applicant shall not be recommended for admission, unless, at a minimum, an informal hearing is held and, following the informal hearing, three or more Committee members who have attended the informal hearing or who have read the entire record of the informal hearing, or a majority of those members who have attended the informal hearing or who have read the entire record of the informal hearing, whichever is greater, recommend admission of the applicant. In the event that this requirement is not met, a formal hearing shall be held. A majority of the Committee members shall attend the formal hearing to consider whether or not to recommend the applicant for admission.

F. The Committee's investigation or the informal or formal hearings may result in the following range of dispositional alternatives:

(i.) Recommend the applicant for admission;

(ii.) Recommend denial of admission;

(iii.) Recommend denial of admission which could be accompanied by a suggestion of re-application in the future upon the occurrence of specified circumstances;

(iv.) Require that the applicant provide additional information for review prior to a further recommendation;

(v.) Require the applicant to obtain assistance or treatment for a specified period in the case of current substance abuse or mental or emotional instability and provide appropriate evidence of his or her ability to engage in the practice of law prior to reconsideration for admission;

(vi.) Recommend the applicant for admission conditioned on compliance by the applicant with specified behavior for a specified period. Bar counsel shall be responsible for monitoring and supervising the applicant during the conditional admission period. In the event the applicant materially violates a term or terms of the conditional admission, bar counsel shall commence a discipline proceeding. At the end of the conditional period, bar counsel shall forward a report to the Committee on Character and Fitness regarding the applicant's completion or non-completion of the imposed terms.

G. Upon formal hearing, the Committee shall, by a majority vote, make a recommendation as to the dispositional alternatives set forth in (F) above.

(b) Formal Deficiency in Application Procedure Applicable. If the Committee on Character and Fitness finds that the application is deficient; the Committee shall so advise the applicant in writing of the deficiency in the

application and shall allow a reasonable time to the applicant to either supply additional information to correct, explain in writing, or otherwise remedy the defects in such applicant's application and supporting papers and documents as the case may be. Thereafter, if such discrepancies have not been cured and if the reasons for the refusal of the Committee to grant permission to such applicant to take an examination are of record as a part of such applicant's file, the Committee may thereupon deny such permission, stating in writing in the applicant's file its reasons for denying permission to such applicant to take the examination, and shall promptly advise applicant of such denial and the reasons therefor.

(c) Inquiries or Informal Hearings. In the event additional information or documentation is required with respect to any applicant to enable the Committee on Character and Fitness, in its opinion, to complete the findings required before it recommends as to admission to the state bar with respect to character and fitness, it may: (1) Make an inquiry, either orally or in writing, to the applicant or any other person, for additional information or documentation, or (2) hold an informal hearing. In all cases where the Committee determines that there are serious allegations of conduct of the applicant as specified in paragraph (a)4(E) of this rule, an informal hearing shall be held. Oral or written notice shall be provided to the applicant, which notice shall advise the applicant generally of the subject, or subjects, of the informal hearing and the time and place thereof. Such inquiry or informal hearing may be conducted by any designated member, or members, of the Committee on Character and Fitness. All informal hearings shall be stenographically recorded. The Committee's decision shall be in writing. If

the Committee's recommendation is not to recommend admission, the proceedings shall be transcribed, a copy of the transcript made a part of the applicant's file, and a formal hearing shall be held pursuant to paragraph (d) of this Rule. If the Committee recommends admission with conditions, the Committee shall prepare a written decision containing. findings and a recommendation outlining the conditions of the admission, and transmit this decision to the Court for review in accordance with paragraph (g)(2) of this rule. The Committee's decision shall be mailed to the applicant at the applicant's last known address, and a copy shall be mailed to the applicant's attorney of record, if applicable.

(d) Formal Hearings; Notice. The Committee shall hold a formal hearing, or formal hearings, as may be reasonably required and as required pursuant to this Rule, to enable the Committee to pass upon the applicant's qualifications. Notice of such formal hearing or hearings shall be given to the applicant in writing, specifying:

1. The time, place and nature of the hearing

2. The legal authority and jurisdiction under which the hearing is held.

3. A reference to the particular sections of the statutes and rules involved, if applicable.

4. A short plain statement as to the subject, or subjects, and purpose, of the hearing.

5. That the applicant may be represented by an attorney at the hearing; that the applicant shall be afforded an opportunity to respond and present evidence of all issues involved, and shall have the right of cross-examination.

6. That the applicant shall have the burden of proving, by a preponderance of the evidence, the requisite character and fitness qualifying the applicant for admission to the state bar.

(e) Informal and Formal Hearings; Depositions, Subpoena and Appointment of Special Investigator. Upon the issuance of the notice of informal or formal hearing, the proceeding shall be and is considered a civil matter pending before this court referred to the Committee on Character and Fitness for hearings, findings and decision as to the right of such applicant to be admitted to the state bar.

Proceedings shall be styled as follows:

BEFORE THE COMMITTEE ON CHARACTER AND FITNESS

OF THE SUPREME COURT OF ARIZONA

In the Matter of the Application of)
_____)
To be Admitted as a Member of the)
State Bar of the State of Arizona)

1. Thereafter, all of the rules of civil procedure authorizing, relating to and governing depositions in civil proceedings within and outside the state shall become applicable and shall authorize and govern depositions desired either by applicant or by the Committee on Character and Fitness in connection with said hearing.

2. Either the Committee on Character and Fitness or the applicant shall be entitled to have subpoenas (including duces tecum) issued by the clerk of this court to require the attendance of witnesses at a deposition, informal hearing, formal hearing, and any

continuance thereof. The party desiring issuance of such subpoena shall file the application therefor with any justice of this court with a brief statement of the reasons for requiring such subpoena accompanied by a form of order authorizing the clerk of this court to issue such subpoena and the form thereof for issuance by the clerk.

3. In the event the Committee on Character and Fitness by vote of a majority of its members finds that the proposed formal hearing will be complex, or for other reasons deemed sufficient, the Committee may certify to this court that in its opinion a special investigator should be appointed from state bar members to further investigate and present the evidence bearing upon the issue of the applicant's qualifications to be admitted to the state bar. Upon receipt thereof the chief justice of this court, provided he or she approves the need thereof, shall appoint such a special investigator to further investigate said matter and to present all available evidence at the formal hearing. The foregoing provision shall not be deemed or construed as denying to the applicant the right to be represented by counsel of the applicant's choosing who may represent applicant fully and independently of the duties and responsibilities of such special investigator.

(f) Conduct of Formal Hearings.

1. The applicant or the applicant's attorney shall present evidence on behalf of the applicant at the hearing. One or more members of the Committee on Character and Fitness, or an appointed special investigator, may present evidence on behalf of the Committee. Any member of the Committee may be designated by the chairperson as the presiding member and such member shall make all evidentiary and procedural rulings.

2. The formal hearing shall be stenographically recorded and may be conducted without adherence to the Arizona Rules of Evidence. Neither the manner of conducting the hearing nor the failure to adhere to the Rules of Evidence shall be grounds for reversing any decision by the Committee provided the evidence supporting such decision is substantial, reliable and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The applicant shall have the right to be represented by counsel, to submit evidence and shall have the right of cross-examination.

3. Copies of documentary evidence may be received at the discretion of the presiding Committee member. Upon request, any Committee member, an appointed special investigator, or the applicant, shall be given an opportunity to compare the copy with the original.

4. Notice may be taken of judicially cognizable facts.

5. The applicant shall have the burden of proving, by a preponderance of the evidence, the requisite character and fitness qualifying the applicant for admission to the state bar.

6. If a majority of the Committee is present at a formal hearing, a decision can be rendered. If a majority of the Committee is not present, the transcript shall be made available to all members and thereafter, a decision shall be made by a majority of the Committee as soon as practicable.

7. The Committee's final decision shall be in writing. If the Committee recommends against admission, it shall make separate findings of fact. If the Committee recommends admission with conditions, the Committee shall prepare a written decision

containing findings and a recommendation outlining the conditions of the admission, and transmit this decision to the Court for review in accordance with paragraph (g)(2) of this rule. The Committee's final decision shall be mailed to the applicant at the applicant's last known address, and a copy shall be mailed to the applicant's attorney of record, if applicable.

(g) Review by the Court.

1. *Petition for Review.*

A. An applicant aggrieved by any decision of the Committee on Examinations or the Committee on Character and Fitness may within twenty (20) days after such occurrence file a verified petition with this court for a review, except as provided in Rule 35(e)(6). The petition shall succinctly and briefly state the facts that form the basis for the complaint, and applicant's reasons' for believing this court should review the decision of the Committee on Examinations or the Committee on Character and Fitness.

B. A copy of said petition shall be promptly served upon the secretary of the Committee from which the complaint arose and that Committee shall within fifteen days of such service transmit said applicant's file, including all findings and reports prepared by or for either Committee, and a response to the petition fully advising this court as to that Committee's reason for its decision and admitting or contesting any assertions made by applicant in said petition. Thereupon this court shall consider the papers so filed together with the petition and response and make such order, hold such hearings and give such directions as it may in its discretion deem best adapted to a prompt and fair decision as to the rights and

obligations of applicant judged in the light of that Committee's and this courts obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law.

2. *Review on Court*'s *Own Motion.* All recommendations for admission with conditions are subject to *de novo* review by the Court. The Committee on Character and Fitness shall file its written decision recommending admission with conditions, along with the memorandum of understanding between the applicant and the Committee, with the clerk. The Court may decline review, or it may grant review on its own motion. If the Court declines review, the Committee's recommendation for admission with conditions shall be final. If the Court grants review, the Court may issue such orders as may be appropriate for its review including remanding the matter to the Committee for further action, ordering transmittal of the applicant's file, ordering additional briefing and/or setting the matter for oral argument. After receiving all the appropriate pleadings and record, the matter shall be deemed submitted to the Court for its decision.

Amended Jan. 8, 1990, effective Jan. 15, 1990. Amended and effective March 9, 1990. Amended (temporary basis) Jan. 21, 1993, emergency effective Feb. 1, 1993, adopted in final form June 24, 1993; June 1, 1995, effective Dec. 1, 1995. Amended and effective Oct. 10, 2000. Amended Oct. 15, 2001, effective Dec. 1, 2001; May 31, 2002, effective June 1, 2002; June 8, 2004, effective Dec. 1, 2004.

[Original] Comment

The investigation conducted by the Committee on Character and Fitness should be thorough

in every respect and should be concluded expeditiously. It should be recognized that information may be developed in. the course of the investigation that is not germane to the question of licensure and should be disregarded by the committee.

Conduct of an applicant that is merely socially unacceptable or the exercise of constitutionally protected rights is not to be considered relevant to an applicant's character and fitness to practice law.

BLUE DIVIDER

APPENDIX G

COMBINED RESPONSE TO AMICUS BRIEF AND REPLY TO COMMITTEE RESPONSE

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In Propria Persona

SUPREME COURT OF ARIZONA

In the Matter of the Application of **JAMES JOSEPH HAMM** **To Be Admitted as A Member of the State Bar of Arizona**	**No. SB-04-0079-PR** **PETITIONER'S VERIFIED RESPONSE TO THE *AMICUS CURIAE* BRIEF FILED BY THE BOARD OF GOVERNORS OF THE STATE BAR OF ARIZONA; AND VERIFIED REPLY TO THE COMMITTEE'S RESPONSE TO PETITION FOR REVIEW**

Comes Now Applicant/Petitioner James J. Hamm and hereby respectfully submits his Verified Response to the *Amicus Curiae* brief filed by the Board of Governors of the State Bar of Arizona (hereinafter, "State Bar *Amicus Curiae* Brief") and his Reply to the Response filed by the Committee on Character and Fitness of the Supreme Court of Arizona (hereinafter, "Committee Response").

I. PRESENTATION OF NOVEL VIEWS OF CHARACTER UNSUPPORTED IN SCIENCE, LITERATURE, RELIGION, OR LAW

The State Bar *Amicus Curiae* Brief asserts several novel positions on the subject of human character, including (1) the opinion that it is impossible to achieve character reformation after having committed murder;[1] (2) the view that Petitioner's rehabilitation is either essentially irrelevant or necessarily insufficient;[2] (3) the notion that the current status of Petitioner's moral character was

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[1] State Bar *Amicus Curiae* Brief, at page 1, ¶ 1 (. . . *no condition or circumstance alone or in combination negates Petitioner's past conduct sufficiently to admit him to the practice of law*); at page 2, ¶ 1 (*[w]hether Petitioner currently possesses the "good moral character" required . . . was answered more than 30 years ago. . . .*); at page 4, ¶ 2 (*Petitioner made choices 30 years ago that foreclose his ability to join this profession*); and at page 6, last sentence on page (*In the case of first-degree murder, it* [rehabilitation or evidence of rehabilitation] *is an insurmountable task*).

[2] State Bar *Amicus Curiae* Brief, at page 1, ¶ 1 (. . . *no condition or circumstance alone or in combination negates Petitioner's past conduct sufficiently to admit him to the practice of law*); at page 2, ¶ 1 (*[h]is crime dictates the conclusion that he lacks the requisite good moral character to become a lawyer in Arizona. Indeed, it is patently farcical to suggest otherwise.*); at page 3, ¶ 1 (*[w]hether he has been rehabilitated was simply one of many factors for the Committee to consider. . . .*); at page 3, ¶ 2 (*[t]he Committee appropriately determined that the seriousness of the conduct and the consequences, among other factors, substantially outweighed the positive evidence of rehabilitation. He simple [sic] did not meet his burden of proving good moral character.*); at page 4, ¶ 2 (*Petitioner made choices 30 years ago that foreclose his ability to join this profession*); at page 5, ¶ 1 (continued from page 4) (*[t]he act of murder showed an enduring lack of moral character that cannot be rectified. . . .*); and at page 10, ¶ 1 (continued from page 9) (*. . . he forfeited for all time rights to engage in certain activities in which law-abiding citizens remain free to engage*).

fully, finally, and permanently fixed over thirty years ago);[3] and the sentiment that all other attorneys would be dishonored by Petitioner's admission to practice.[4] The principle that lies beneath the surface of the Brief is that character is immutable; or that character is fixed for all time by a single act; or that one legitimately and conclusively may evaluate another's character on the basis of the single worst act ever committed by that person, including an act committed more than three decades ago.

This principle regarding character, and the beliefs and conclusions founded upon this principle, inherently are invalid. If science, literature, religion, or law instruct us at all about human beings, they tell us that behavior is mutable; beliefs are mutable; personality is mutable; character is mutable.

A single act thirty years in the past may or may not be consistent with the character and conduct of that same

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[3] State Bar *Amicus Curiae* Brief, at page 2, ¶ 1 (first sentence) (*[w]hether Petitioner currently possesses the "good moral character" required . . . was answered more than 30 years ago. . . .*); at page 2, ¶ 1 (second sentence) (*[h]is crime dictates the conclusion that he lacks the requisite good moral character to become a lawyer in Arizona. Indeed, it is patently farcical to suggest otherwise.*); at page 4, end of continued paragraph and ¶ 2 (*a felony conviction alone is sufficient to establish the lack of good moral character. [cite omitted] That should end the inquiry in this case. Petitioner made choices 30 years ago that foreclose his ability to join this profession*); and at page 5, ¶ 1 (continued from page 4) (*[t]he act of murder showed an enduring lack of moral character that cannot be rectified. . . .*).

[4] State Bar *Amicus Curiae* Brief, at page 1, ¶ 1 (*[t]o admit Petitioner would dishonor the thousands of lawyers, living and dead, who have served the people of Arizona since its formation as a territory during the Civil War and its admission to statehood in 1912*).

person thirty years later. Whether a specific thirty-year-old act represented a facet or expression of an enduring character orientation can be determined only by an examination of the intervening thirty years. If subsequent conduct was consistent with the specific act, then reason and logic strongly support a conclusion that there has been no fundamental character change. If the subsequent conduct demonstrably is different, however, then reason demands a deeper examination, in order to determine whether any change that has come about in the intervening years reflects merely a superficial alteration of behavior or a fundamental reorientation of the person's character.

The fact that one embraces an immutability principle rather than a neutral evaluative position clearly reveals the perspective of the evaluator, but provides no objective support for the validity of the position. *See*, *e.g.*, commentary by Tamara Dietrich,[5] October 15, 1999, *The Tribune*, "*Hamm's pursuit to practice law stirs unforgiving feelings*:"

> The Committee on Character and Fitness must, by all means, give full weight to his dreadful crime. By the same token, it must give full credit to a man who sank so low, but managed to reverse his course and raise himself up again. **We have to admit, however grudgingly, that that took no small amount of character** (emphasis by bold print added).

While the social sciences, as yet, have not advanced to the point where they can identify the precise nature of fundamental behavior change, there is no study or

[5] Tamara Dietrich is staff columnist for *The Tribune* newspaper and winner of the 2000 Arizona Press Club Don Schellie award for feature columns.

consensus adopting the view that character is immutable. Indeed, human history points toward the opposite conclusion, that character is alterable in varying combinations of internal and external factors and processes:

> "Almost universal human experience dictates that moral character can and does change both for better and worse – examples of great extremes of both are widely known. The great object of a thousandfold societies, foremost of which are our religious institutions, is based on an almost universal belief that moral character can be improved."

Application of Guberman, 90 Ariz. 27, 30-31, 363 P.2d 617, ___ (1961).

Law not only recognizes rehabilitation – character change – but the justice system formally is structured around encouragement of character change as the desired and ideal outcome not only of the correctional process but also of the attorney discipline process:

> The position of the Bar Counsel presupposes that certain disbarred attorneys, guilty of particularly heinous offenses against the judicial system, are incapable of meaningful reform which would qualify them to be attorneys and, further, that the public will never be willing to revise an earlier opinion that the offender was not a proper person to function as an attorney. If adopted the rule would provide that "**no matter what a disbarred attorney's subsequent conduct may be; no matter how hard and successfully he has tried to live down his past and atone for his offense; no matter how complete his reformation – the door to restoration is forever sealed against him.**" *In re Stump*, 272 Ky.

> 593, 597-598 (1938). **Such a harsh, unforgiving position is foreign to our system of reasonable, merciful justice.** It denies any potentiality for reform of character. **A fundamental precept of our system (particularly our correctional system) is that men can be rehabilitated. "*Rehabilitation . . . is a 'state of mind'* and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved '*reformation and regeneration.*'"** *March v. Committee of Bar Examrs*. 67 Cal.2d 718, 732 (1967).

In the Matter of Hiss, 368 Mass. 447, 454, 333 N.E.2d 429 (1975) (emphasis by bold print added); *accord*, ***Avila v. People,*** (Colo..O.P.D.J.[6] July 22, 2002) (citing ***Hiss,*** *supra*, with approval and quoting same passage at length).

The political foundation of our nation – arguably the greatest political experiment in human history – arises from a firmly fixed belief in a citizenry composed of self-regulating individuals.

In short, the State Bar *Amicus Curiae* Brief seeks to achieve a politically-preferred outcome[7] by asserting and supporting a concept about character that innately is foreign to American educational, legal, political, and religious beliefs and foundations.

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[6] Office of the Presiding Disciplinary Judge of the Supreme Court of Colorado.

[7] *See* State Bar *Amicus Curiae* Brief, at page 14, end of the first full paragraph, which reveals the Board of governors' desire to avoid a particular political outcome: "*It* [admitting Petitioner] *would, unfortunately,* ***brand*** *Arizona as the state that admitted a first-degree murderer to the practice of law*" (emphasis by bold print added).

II. ASSERTION OF POSITIONS THAT UNDERMINE THE SPIRIT AND INTENT OF THE RULE GOVERNING ADMISSION TO PRACTICE AND THAT AMOUNT TO THE APPLICATION OF AN *AD HOC PER SE* RULE

The State Bar *Amicus Curiae* Brief asserts positions with respect to the issue of what constitutes legitimate grounds for the denial of Petitioner's application for admission to practice law that fundamentally are incompatible with the letter, spirit and intent of the rule adopted by this Court and which not only applies to but also governs the evaluation of his case.

Those positions include (1) the assertion that Petitioner's crime (*i.e.*, first-degree murder) alone constitutes a sufficient basis for denial of his application for admission to practice;[8] (2) the assertion that his crime of thirty years ago caused a permanent forfeiture of the right to practice law;[9] and (3) the assertion that a criticism of the profession, or a difference of opinion from within the profession, about the propriety of Petitioner's admission, justifies denial of his application for admission.[10]

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[8] State Bar *Amicus Curiae* Brief, at page 2, ¶ 1 (*[h]is crime dictates the conclusion that he lacks the requisite good moral character to become a lawyer in Arizona. Indeed, it is patently farcical to suggest otherwise.*).

[9] State Bar *Amicus Curiae* Brief, at page 4, ¶ 2 (*Petitioner made choices 30 years ago that foreclose his ability to join this profession*); and at page 10, ¶ 1 (continued from page 9) (*. . . he forfeited for all time rights to engage in certain activities in which law-abiding citizens remain free to engage*).

[10] State Bar *Amicus Curiae* Brief, at page 2, ¶ 1 ("*To admit Petitioner would dishonor the thousands of lawyers, living and dead, who have served the people of Arizona since its formation as a territory during the Civil War and its admission to statehood in 1912*"); and at page 11, first full paragraph ("*It is appropriate to consider public perception of and confidence in the bar * * * To allow a convicted*

(Continued on following page)

A. A DENIAL BASED ON THE CRIME ALONE WOULD VIOLATE THE APPLICABLE RULE AND VIOLATE DUE PROCESS OF LAW.

Quite apart from the fact that the preceding sentiments on the subject of character are at odds with all we know about human personality, those same assertions are used in an even more insidious manner – to support the application of a *per se* rule where no such rule is authorized by the Court. Arizona does not have a *per se* rule barring admission for persons convicted of any particular offense. Consequently, the crime alone cannot properly constitute a sufficient basis for denial of Petitioner's application for admission to practice. To do so would violate Petitioner's due process rights by failing to follow the governing rule, by applying a rule not authorized by the state's supreme court, by creating a *de facto* rule without compliance with the formal procedures for adopting new rules of the Supreme Court, by applying to Petitioner a rule not applied to other applicants in this jurisdiction, and by depriving Petitioner of a reasonable expectation arising from the existing admission process and the long-standing formal rules.

The State Bar *Amicus Curiae* Brief, citing to ***Application of Walker***, 112 Ariz. 134, 539 P.2d 891 *cert. denied.*, 424 U.S. 956 (1976), stated:

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*murderer among the ranks of lawyers, who serve as fiduciaries, trusted advisers and officers of the court would necessarily lower the public's confidence * * * In fact, to admit someone convicted of such an egregious crime as Petitioner's could send the message to the public that this Court did not view the original offense with sufficient gravity*).

> " . . . a felony conviction alone is sufficient to establish the lack of good moral character. *Walker*, supra, 112 Ariz. at 137, 539 P. 2d at 894.
>
> That should end the inquiry in this case. Petitioner made choices 30 years ago that foreclose his ability to join this profession."

State Bar *Amicus Curiae* Brief, at page 4, ¶ 1 (continued from page 3) and ¶ 2.

Unless Petitioner fails to understand the structure of the English language, the antecedent of the pronoun, "*that*" is the proposition and citation immediately preceding the pronoun. The argument, then, of necessity, is an assertion that what should "*end the inquiry in this case*" is the lack of moral character arising from Petitioner's felony conviction alone, as supported by a prior holding of this Court.

Walker*,** however, doesn't support the argument. ***Walker stands for the proposition that a felony conviction alone is sufficient to establish the lack of good moral character – **at the time of the conviction.** ***Walker*** does *not* stand for the proposition that a thirty-year-old crime, standing alone, should end the inquiry or foreclose the opportunity to practice law. The ***Walker*** court did not "*end the inquiry*" with the felonious conduct and even went so far as to disabuse any reader of such a notion ("*[w]e do not base this decision upon a want of good moral character because of Walker's initial failure to register for the draft,* ***Walker*,** *supra*, 112 Ariz. at 137). The very case cited for "ending the inquiry" with the prior unlawful conduct took pains to communicate that it was not following that course of action. Even more telling is the eventual admission of Walker to the practice of law (*see* State Bar *Amicus Curiae*

Brief, at page 6, n. 4). If felonious conduct "should have ended the inquiry," admission never could have occurred.

In ***Walker,*** the family background of the applicant (Walker's father was an Army officer, a lawyer in the Judge Advocate General Corps, ***Walker,*** *supra*, 112 Ariz. at 135) precluded acceptance of Walker's statement that he did not know he had a duty to appear in person and sign papers for purposes of the draft. ***Walker,*** *supra*, 112 Ariz. at 135 (Walker's statement) and at 138 (analysis of statement in light of family background). Assuming, *arguendo*, that Walker did not know of the duty at the time he turned eighteen years of age, he nonetheless delayed for six years beyond the time he said he did learn of the duty (***Walker,*** *supra*, 112 Ariz. at 135-36). Walker also stated that he was experiencing psychological problems during the early portion of his college career and that his problems contributed to his failure to register (***Id.***). In considering this explanation, the ***Walker*** court acknowledged the reality that young men often experience psychological and/or emotional difficulties and acknowledged the circumstances of Walker's life at the time; but found it unjustifiable that Walker continued his knowing violation of the Selective Service Act for at least another five years after his psychological problems were completely resolved (***Walker,*** *supra*, 112 Ariz. at 135-36).

Walker testified that he registered for the draft and notified his local draft board approximately three months prior to submitting an application for admission (***Walker,*** 112 Ariz. at 137), and his justification after knowing of the duty and resolving his psychological problems was that he "*wasn't quite ready*" (***Walker,*** *supra*, 112 Ariz. at 136). The ***Walker*** court considered all the information presented and concluded that there was no substantial reason or

credible evidence justifying the continued delay and found that a period of three months (*i.e.*, between registration and application for admission) was fundamentally insufficient to demonstrate the moral character of commitment to follow the law. (***Walker,*** *supra*, 112 Ariz. at 138).

Even with all this, the ***Walker*** court continued its character evaluation and drew additional conclusions. Walker concealed his felonious conduct, failed to include it in his application, and proffered justifications that the Court categorically rejected, not merely as being insufficient, but as independent evidence of impaired moral functioning (essentially claiming that he did not think it was relevant; didn't think it reflected on him as a person or on his character, that he was told he didn't need to list it on the application and that because he gave his Selective service number, he thought he had provided the necessary information for the committee to discover the facts (and this was after Walker was informed by another person that the person had written a letter to the committee detailing Walker's felonious conduct), ***Walker,*** *supra*, 112 Ariz. at 138-39).

> Walker's first reason justifying his failure to disclose presented the Committee with this dilemma. If on the one hand Walker was concealing his past in order to gain admittance to the Arizona State Bar, then unmistakably he was lacking the good moral character essential to the practice of law. But if Walker honestly believed, having spent nearly the whole of his adult life criminally evading the laws of the United States, that his past was not a reflection upon the person he presently is, then he lacked the ingrained

> sense of moral judgment so necessary to advise and counsel others.

Walker, *supra*, 112 Ariz. at 139.

The ***Walker*** court then proceeded to consider yet another omission from his application for admission, namely, the issuance of an arrest warrant for failure to appear on a (third) traffic citation while attending law school. ***Walker,*** *supra*, 112 Ariz. at 139-40 (he avoided being arrested when a friend informed him that the police were looking for him and he went to the Tucson traffic court and paid a fine).

Ultimately, the ***Walker*** court did anything but "*end the inquiry*" with the applicant's prior unlawful conduct. The consideration of the application was exceptionally even-handed and did not seize upon any single item that might have been minimally sufficient to deny admission. Taking the applicant's conduct as a whole and considering the time frames involved, the decision was that

> . . . [I]f Walker honestly believed, having spent nearly the whole of his adult life criminally evading the laws of the United States, that his past was not a reflection upon the person he presently is, then he lacked the ingrained sense of moral judgment so necessary to advise and counsel others.

Walker, *supra*, 112 Ariz. at 139.

> We are of the opinion that the failure to disclose cannot be treated as a simple failure to be candid with the Committee. ***In its best light*** it is an unwillingness to do the unpleasant thing if it is right, even to acknowledging past transgressions.

> In its worst, it is an evasion of both moral and legal responsibilities.

Walker, *supra*, 112 Ariz. at 140.

Thus it can be gleaned that the principle for which ***Walker*** was cited – unlawful conduct standing alone-is a conditional principle and a time-related principle, in that the shorter the period of time between the crime and the application and/or the shorter the period of time between accepting responsibility and the application to practice, the more conclusive the presumptive judgment about character arising solely from the criminal act.

The passage of thirty years between an offense and an application for admission is nothing like the conduct-time circumstance discussed in ***Walker***. The State Bar brief immediately followed the reference to ***Walker*** with an assertion that the felony conviction should end the inquiry in this case. There are only two possible interpretations, namely, that the felony conviction itself is sufficient (a pure *per se* rule) or that the lack of moral character as shown by the felony conviction is sufficient, thus eliminating or discounting the entire subsequent thirty years from consideration in the evaluation of character (a variation of a *per se* rule). Either alternative is improper.

Put another way, if the current inquiry (whether Petitioner possesses the requisite current good moral character for admission) conclusively ends either with the fact of the thirty-year-old offense or with the conclusion that the offense demonstrated a lack of moral character at the time (thirty years ago) then the application has been denied on the basis of an *ad hoc per se* rule rather than on the basis of the Arizona Supreme Court's expressly conditional rule. Under that rule, what Petitioner did thirty

years ago cannot foreclose his admission; only a legitimate finding of a current lack of good moral character can do so.

Thus, the Board of Governors of the State Bar of Arizona asks this Court to utilize an administratively unauthorized, expressly illegal, and constitutionally impermissible procedure.

B. A DENIAL OF ADMISSION BASED ON THE APPLICATION OF A NON-EXISTENT FORFEITURE WOULD CONSTITUTE A VIOLATION OF DUE PROCESS OF LAW.

The assertion that Petitioner's crime worked a forfeiture of the right to practice law not only mis-states the law; it states a law that does not exist. Formal forfeiture of a right as a consequence of a criminal conviction has been ruled to be legitimate only if the forfeiture formally was in effect on the date that the offense occurred.[11] Here, any limitation is defined by the rule applicable to Petitioner's application for admission to the practice of law, not by the offense he committed thirty years ago. If the applicable rule currently barred admission based on the commission of a particular offense, then it would be a correct interpretation that the offense disqualified the applicant. Disqualification and forfeiture unquestionably are related concepts; but – especially in the law – precision is important. The offense did not work a forfeiture unless, at the

[11] Arizona law also provides that a first-offender's civil rights are automatically restored upon completion of his sentence, except for the right to possess a weapon, and a person with a prior felony conviction can apply for restoration of civil rights two years after the completion of his sentence. **A.R.S. § 13-912** (first offenders); **A.R.S. § 13-906, § 13-908** (offenders with more than one conviction).

time the offense occurred, the right to admission was foreclosed by operation of some then-existing statute or administrative rule.

The State Bar *Amicus Curiae* Brief did not cite to any legislative statute, administrative rule, or judicial holding imposing a forfeiture of the right to practice law as a consequence of a conviction for any offense whatsoever. The absence of a citation is understandable in this instance, however, because no such statute, rule, or holding exists. Indeed, the practice of law is not a right forfeited by a felony conviction of any type because Rule 36(a), Ariz.R.S.Ct., is an expressly discretionary rule that weighs subsequent rehabilitation and numerous other factors along with the past unlawful conduct.

Completely undeterred by the stark absence of any forfeiture statute or any administrative or judicial rule barring admission on the basis of any particular felony or any class of felony conviction, however, the State Bar *Amicus Curiae* Brief contends that Petitioner:

> " **. . . forfeited for all time rights to engage in certain activities in which law-abiding citizens remain free to engage.** The practice of law, given the place it holds in the pantheon of professions in a society committed to the rule of law, *should* certainly be among them."

State Bar *Amicus Curiae* Brief, at page 10, ¶ 1 (continued from previous page) (emphasis by bold print and underlining added).

Thus, in an argument against Petitioner's admission that allegedly is founded upon the elevated position of the legal profession in a society "*committed to the rule of law*," the brief filed by the Board of Governors of the State Bar

of Arizona urges this Court to ignore the law as written, apply a law that has not been enacted or adopted, bypass the express provisions of the applicable rule governing admission, violate the oath the Justices have sworn to uphold, and apply an interpretation contrary to those the Court has followed throughout its history. Finding a forfeiture that does not exist and applying that non-existent forfeiture to Petitioner is merely another method of creating/applying a *per se* rule barring admission on the basis of the felony conviction. This variant of a *per se* rule is as invalid as all the others.

C. THE POSSIBILITY OF CRITICISM OF THE PROFESSION OR CRITICISM FROM WITHIN THE PROFESSION, FOLLOWING A DECISION TO ADMIT PETITIONER, DOES NOT JUSTIFY DENIAL

When the State Bar Amicus Curiae Brief contended that admitting Petitioner "*could send the message to the public that this Court did not view the original offense with sufficient gravity*," the Board of Governors of the State Bar confused "sending a message" with receiving and understanding or interpreting a message. Independent of the question of whether one accepts the idea that judicial decisions should be made with an eye toward what commonly is referred to as "*sending a message*" (to the public or other audience), there nonetheless always exists a distinct possibility that the "message" one intends to "send" will be interpreted or perceived as being a very different message by individuals or segments of the audience.[12] The fact that some might feel aggrieved by

[12] When the federal courts ruled that States could not maintain segregated school systems, millions of members of the public believed

(Continued on following page)

Petitioner's admission, while others rejoice, is not material to the admission decision.

The "message" selected by the Board for inclusion in its argument against admitting Petitioner is not the only "message" possible. Admitting Petitioner to the practice of law, sends a message that recovery from serious offenses is possible; that the required standard for admission to the practice of law is very high for a person with a felony conviction, but not impossible; that authentically recovering from such a serious offense reflects an attribute of good character; and that good character itself is the final determinant. It also sends a message to offenders that it is better to accept full responsibility for one's behavior than to engage in denial, and that a fair and just system of justice will not continue to penalize one who engages in genuine self-reformation, atonement and redemption.

Considering "*the profession's perception of itself*," as the State Bar Amicus Curiae Brief contends,[13] on the ground that " . . . *members are justifiably proud of this profession because it performs an essential role in the administration of justice*" or on the ground that "*[t]o grant someone who has committed first-degree murder the right and privilege to practice law in a very real sense breaks faith with the thousands of Arizona attorneys, past and present, who have steadfastly adhered to a high standard*

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that the "message" being sent had to do with unwarranted interference with the constitutional rights of individual states to govern themselves, not with enforcing the constitutional rights of all citizens in a democratic republic committed to the rule of law. Similarly, the prospect of Petitioner's admission to the practice of law will, to some, signal a reinvigoration of the concept of justice, while others will perceive that "*the sky is falling*" (*cf.*, the *Chicken Little* fairy tale).

[13] State Bar *Amicus Curiae* Brief, at page 11, last paragraph.

of moral character throughout their personal and professional lives" introduces matters wholly tangential to the admission decision. Such a consideration would forestall not only Petitioner, but also all others with felony convictions of any type, and effectively create a *per se* rule of staggering breadth.

A person who has committed a very serious felony many years ago and has devoted his life to rehabilitation, atonement, redemption, and public service has a reasonable basis for asserting that he could be trusted by members of the public with important and highly sensitive confidences/responsibilities. This application for admission is unique in the annals of Arizona law, not merely because it involves an applicant who committed first-degree murder, but also because of the highly public spotlight that Petitioner has experienced and accepted for the sake of encouraging others to engage in rehabilitation.

Once again, the gravity of the offense, while obviously important, remains as only one factor that the Court must consider. The State Bar Amicus Curiae Brief repeatedly returns to its single focus on the offense itself as being either the only important consideration or the most important consideration, and thus commits two errors. It erroneously attributes far too much significance to the admittance of a single person to the practice of law, and it improperly discounts Petitioner's own expressed sense of honor and responsibility that he would bring to the profession along with his admission.

When the State Bar *Amicus Curiae* Brief asserted that "*[t]o admit Petitioner would dishonor the thousands of lawyers, living and dead, who have served the people of Arizona since its formation as a territory during the Civil*

War and its admission to statehood in 1912," the Board of governors presented its opinion as though it was a fact and selected hyperbole as the preferred form of presentation.

By and large, however, the legal profession shuns extravagant exaggeration – except, perhaps, during criminal trials, where the highly adversarial nature of the proceeding has come to be an expected aspect (at least, to some extent). Hyperbole is the language of prejudice; and law functions best when reason is divorced from prejudice – and therefore from hyperbole (except when used solely for emphasis rather than support).

Petitioner has spoken with many practicing Arizona attorneys who have informed him directly that they would be proud to have him as a colleague in the legal profession, a number of attorneys who do not see it as a particularly important issue one way or another, and a number of attorneys who, while opposed to Petitioner's admission, have stated that they do not feel dishonored by his application and would not feel dishonored by his admission.

The State Bar *Amicus Curiae* Brief presents the contention as though there is only one view, and that view is negative; but the presentation misstates the facts. In fact, there are several positions, ranged along a continuum that includes strongly held views, both positive and negative, and also includes indifference. It is inappropriate to purport to represent the views of both prior and current attorneys without attempting to qualify one's words in the slightest. It is disingenuous to present such a statement without mentioning or accounting for the many letters of support from attorneys that were submitted with the

application packet,[14] mentioned in the Committee Recommendation,[15] and discussed in the Petition for Review.[16] There is no question whatsoever as to whether the Board of Governors had access to the Committee Recommendation and the Petition for Review, because the State Bar *Amicus Curiae* Brief cited both the Recommendation and the Petition.[17]

Each individual member of the bar must monitor and be responsible for his/her own conduct and behavior as an attorney. Petitioner has no responsibility for the already-existing images or negative public perceptions of attorneys, which have existed well before Petitioner attended law school and passed the bar exam or filed his application for admission. As recently as March 2005, Petitioner received in the mail a legal profession gift catalog,[18]

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[14] In addition to many letters of support from non-attorneys, including university professors and psychologists, there were approximately 20 letters of support from current and former attorneys that were submitted with the Application for Admission, and additional letters submitted during the two-day hearing process. There were over 30 support letters submitted with the Application from all supporters. One of the attorneys supporting Petitioner's admission to practice is his sentencing judge, Hon. Robert Buchanan (Ret.).

[15] *See*, *e.g.*, Committee Recommendation, at page 13, lines 11-19; at page 13, line 23 to page 14, line 3;

[16] The Petition for Review discussed support letters from attorneys at page 74, ¶ 2 (letters of support from Petitioner's hearing witnesses who were attorneys); and ¶ 3 (letter of support from Petitioner's sentencing Judge);

[17] For example, the State Bar *Amicus Curiae* Brief cited the Recommendation at page 3, note 2; at page 4, ¶ 4; at page 5, ¶ 1 (continued from previous page); at page 8, ¶ 1; and at page 10, ¶ 3.; and cited the Petition at page 3, note 3; at page 9, ¶ 2; at page 10 (petition cited twice in ¶ 2 and once in ¶ 3).

[18] *For Counsel* Gift Catalog, Graduation Issue, Spring 2005.

marketing (1) jewelry in the shape of sharks, (2) baseball caps embroidered with the slogan "*The Honest Lawyer – Can You Find One?*", and (3) various references poking fun at the poor reputation of lawyers. It could go without saying that Petitioner was not responsible for those long-standing perceptions. Inasmuch as the State Bar *Amicus Curiae* Brief expressly asserts criticism of the profession as a basis for denial of Petitioner's application for admission, however, further discussion is appropriate.[19]

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[19] The Committee Response also asserted the argument regarding criticism of the profession. Petitioner asks the Court to note the following:

> "A LAWYER'S CREED OF PROFESSIONALISM OF THE STATE BAR OF ARIZONA," D. WITH RESPECT TO THE PUBLIC AND TO OUR SYSTEM OF JUSTICE:
>
> (Paragraph 4:) "I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and contents of advertising; (paragraph 5:) I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

The oath of admission to the Bar is

> *I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arizona; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding that shall appear to me to be without merit or to be unjust; I will not assert any defense except such as I honestly believe to be debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor; I will never seek to mislead the judge or jury by any misstatement or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client; I will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval; I will abstain from all offensive conduct; I will not advance any fact*

(Continued on following page)

The reasoned basis for diversity in a service organization is to ensure that the organization can better relate to the clientele/consumers of its services. One of the benefits of Petitioner's admission to Arizona State University's College of Law also was to increase diversity and thus improve and expand the formal classroom educational experience for potential future attorneys. Our society is a diverse one, accepting the existence of many cultural norms, some of which are in conflict with others. Multiculturalism is not a hodge-podge of conflict, however, nor yet a gumbo of blended perspectives. Instead, our society functions with an unprecedented level of disparate views, far greater than any previous society in history. American activism and advocacy in the form of what appears at first to be a fractured and splintered factionalism reveals itself, upon closer reflection, to be a healthy mechanism for self-reinvention and social renewal. While many – perhaps even most – decry the lack of broad consensus with respect to virtually any aspect of social life, the fact remains that unilateralism in a society constitutes a fast-track to stagnation.

Every larger groups must find a genuine – even if limited – place at the table in every aspect of social life, and that principle holds true for the practice of law just as well as for economics, education, religion, and politics. The

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prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, nor will I delay any person's case for greed or malice; I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona.

Nothing in these matters militate against Petitioner's admission.

law is an honorable profession, but it also is a profession limited by its own overweening sense of self-importance and self-exaltation. At its core, the practice of law is the resolution of disputes about rights in a way that affords to each interest the value and affirmation it deserves. If the profession cannot cope in a reasoned and constructive way with the admission of a person who has devoted more than thirty years of his life to character change, simply on the basis of distaste for the crime he committed, then the profession is in desperate need for reinvention. The rule of law is the rule of reason and logic, not passion and social convention. If the profession cannot accommodate one who has corrected himself, then it has separated itself from the very community and society it purports to serve.

By asserting that possible criticism of the profession arising from Petitioner's admission constitutes a legitimate justification for denial of his application, the State Bar *Amicus* Brief inappropriately attempts to inject both internal and external politics into the admission process, a situation that demeans the law, impairs respect for the law, and runs counter to one of the foundations of our American form of government as envisioned by the framers: an independent judiciary impartially applying the law:

> "The last thing that a litigant wants to have happen is to come away from court on the losing side of an issue feeling as though he or she had been the victim of a decision that was politically motivated."

Arizona Capitol Times, January 2005, at page 12, quoting Arizona Supreme Court Chief Justice Charles Jones.

This will not be the first time that Petitioner has been faced with the injustice of a politically motivated decision or the injection of politics into the decision-making process. In 1989, the meritorious executive clemency action which commuted Petitioner's sentence illegally was rescinded for a purely political purpose:

> **"Ex-Governor Rose Mofford rescinded plaintiff's commutation to defuse press attention in order to protect her election campaign plans.**
>
> "'**** The implications [of negative media coverage] for Governor Mofford's intended election campaign were of primary importance and discussed in executive staff meetings which Mr. Milstead[20] attended. **It was determined that a politically acceptable solution needed to be quickly found to protect the Governor's election plans.**
>
> "**** **'Mr. Milstead later requested that the Arizona Department of Public Safety contact the family of Mr. Hamm's victim (as well as the family of Jones' victim). The victim's sister was contacted and stated that she had no objection to Mr. Hamm's commutation. Mr. Milstead conveyed this information to the Arizona Board of Pardons and Paroles, Governor Mofford, the new Chief-of-Staff . . . , and others on the Governor's staff.** ***It was decided not to consider reinstating Mr. Hamm's commutation, despite***

[20] Ralph Milstead, formerly the Director of the Arizona Department of Public Safety, was Governor Mofford's Special Assistant for Criminal Justice Issues during portions of her tenure.

> ***the lack of objection from the victim's family, because it would again bring negative media attention to the commutation issue.*** It was decided not to include Jones in the voiding decisions . . . because media attention had not focused on Jones' case.'
>
> "IT IS ORDERED reversing the prior granting of summary judgment in favor of defendants.
>
> "FURTHER ORDERED granting plaintiff's Motion for Summary Judgment on Count One of the Complaint."

March 31, 1992 Maricopa County Superior Court four-page Minute Entry Order that judicially restored Petitioner's commutation, submitted as part of the Application for Admission, at *Form 3, Response to Questions 23-24, Record of Civil Actions*. (emphasis by bold print and underlining added).

A second instance of politically motivated influence arose when Petitioner was admitted to the College of Law at Arizona State University in the fall of 1993. The Dean and faculty of the College of Law stood up to the firestorm of attempted political influence and insisted on allowing Petitioner to matriculate at that institution, despite such matters as the then-state attorney general refusing to deliver the welcoming speech at the beginning of the academic year, the state legislature introducing and attempting to pass a bill financially penalizing the College of Law for admitting Petitioner, and the loss of some alumni financial support for the College of Law based on Petitioner having been admitted. The media injection of politics into the process produced a form of near-hysteria, perhaps captured most succinctly with the following quote:

> "When the next Gibbon sits down to write the 'Decline and Fall of the United States of America,' he can begin with James Hamm's admittance to ASU law school. There's no better example of our moral and intellectual rot than this woolly-headed 'expression' of academic freedom."

The Phoenix Gazette, Editorial Page, September, 1993. James Hll, Editor.[21]

The ASU College of Law took the position that Petitioner would be an asset to its student body, would provide an increase in the diversity of perspectives within the classroom experience, and cited Petitioner's forthright presentation of his background and offense during the application process even though it was not required by the application. Petitioner asks this Court to take note of the fact that, despite the dire predictions of the fall of civilization as we know it, the earth is still spinning on its axis and the ASU College of Law flourishes today even with Petitioner as an alumnus.

Another example of Petitioner suffering the injustice of a politically motivated decision occurred when Arizona State University breached a previously finalized employment contract with Petitioner, following newspaper headlines announcing that Petitioner had been hired to teach pre-law classes at ASU's Center for Justice Studies in 1999.

In that instance, Petitioner was supported by the faculty of the Center for Justice Studies. The Acting Dean of the Center publicly stated and defended his decision to

[21] The *Phoenix Gazette* no longer is in business.

hire Petitioner, and pointed to Petitioner's recovery and rehabilitation as being a valuable example and an asset to the Center. The Center for Justice Studies' faculty vote was overridden by the Dean of the College of Public Affairs, at the direction of University Provost Milton Glick, based on media attention and influential opposition.[22] Rather than litigate the breach, Petitioner proposed – and the Center for Justice Studies accepted – an alternative arrangement under which Petitioner delivered a public lecture on ASU's Main Campus on the subject of **"Re-Inventing Rehabilitation"** during which Petitioner presented a new definition of corrections, a plan for addressing the deficiencies of the current corrections setting, and a method for developing the required level of motivation within the prisoner population that is necessary for significant advances in correctional success.

With regard to Petitioner's admission to the practice of law, the issue of possible criticism of the profession must take its proper place among the many issues that arise from Petitioner's application. Many of the most important social developments in American society have been led by decisions in the law. Racial segregation arguably could still be the practice in the Deep South if not for legislation, litigation, and judicial decisions. Discrimination against minorities, against women, against adherents of various religious faiths, age discrimination, the fictitious "civil death" of prisoners as a way of refusing them access to the courts of our nation, physical and psychological practices

[22] This information was provided to Petitioner at the time by Professor Dennis Palumbo, Ph.D., then Acting Chair of the Center for Justice Studies and the person who hired Petitioner to teach in the Center.

of correctional institutions that were unjust in the extreme, the practice of convicting persons without the assistance of a person trained in the law – and, later, the *effective* assistance of a person trained in the law – these and hundreds of other examples of unpopular but correct and courageous decisions by courts have contributed significantly to the majesty of the law and to respect for the legal profession. Popularity and convention are not touchstones of the law.

In the American South, having to socialize with people of color was considered a disgrace, and there was no shortage of criticism of the judicial decisions which not only allowed such social mingling, but actively required it, by striking down segregation in schools, marriage, and commerce. But the criticism and the claim that the practice was disgraceful arose from ignorance and prejudice, not from science or reason.

It is the same here. Prisoners and ex-felons are citizens of this country just as much as non-prisoners and non-felons. Once a person has turned his back on criminal ways, adopted and sustained a responsible way of life, rejoined the larger community without ulterior motives, and begun to make his own contribution to the society, and – in this particular case – fully credentialized himself in preparation for a specific career in the law, then the tendency to discriminate must be resisted in favor of the greater good and despite the temporary irritation and disagreement that his application for admission might generate.

Petitioner has a reasonable expectation that political motivation will not be the basis on which the pending decision regarding his chosen life's work will be made,

despite suggestions to interject such considerations in an attempt to achieve a preferred outcome.

III. THE STATE BAR *AMICUS CURIAE* BRIEF DEMONSTRATES A MISUNDERSTANDING OF THE ROLE OF REHABILITATION IN THE EVALUATION OF AN APPLICATION THAT INCLUDES PAST UNLAWFUL CONDUCT

The State Bar *Amicus Curiae* Brief asserts that rehabilitation is merely one of several items that must be taken into account in passing upon an application for admission.[23] While this is true in one sense, it misses the point in another. The role played by rehabilitation is the key issue in determining the current good moral character of an applicant for admission to the practice of law who has committed any form of serious unlawful conduct in the past. All the other issues carry weight on one side of the evaluation or the other, with respect to their relationship to this core issue.

For example, the length of time between the unlawful conduct and the application is important because it represents a significant measure of the consistency of the rehabilitation as well as the depth and permanency of the avowed change. Rehabilitation commencing a week ago does not carry the same import as rehabilitation that actively has been proceeding for three decades.

Similarly, each of the other factors provide additional measures of the depth, scope, consistency, longevity, and/or sincerity of the applicant's rehabilitation. With respect to

[23] State Bar *Amicus Curiae* Brief, at page 3, ¶ 1 ("*Whether he has been rehabilitated was simply one of many factors for the Committee to consider*. . . . ").

the issue of the applicant's conduct since the commission of the offense, one key measure of one's orientation and committment is to be found in the investment of time. The sacrifice entailed in devoting significant amounts of time to public presentations that are directed toward communicating the consequences of crime, serving as an example for others, providing information that comes from experience rather than rhetoric, taking personal responsibility for one's criminal acts in public ways and to the benefit of others without compensation, foregoing the income and other economic benefits that could be obtained through an alternate investment of that same time – these matters provide a verification and validation of the underlying rehabilitative process that is at work within the individual:

> [28] More important than the opinion of those for whom he has worked, however, is Avila's own conduct. In an effort to understand the underlying reasons for his criminal behavior, Avila has sought professional evaluation and counseling. He has taken the results of that counseling and applied it to his normal routine. Avila is actively involved in community affairs, continues to assist young adults in obtaining high school equivalency education, participates in youth activities and continues to maintain a close, guiding relationship with his sons.
>
> [29] Possibly the most definitive independent evidence of the change in his character is Avila's presentation to youth groups of his life's misdirection. Now, as a fifty-two year old man, Avila openly describes his descent into criminal conduct, the consequences he endured as a result of that conduct, and the difficulty he has encountered in trying to rebuild his life.

> Avila's willingness to represent his choices as examples of conduct to avoid to formative youth and to encourage them to make different choices is strong evidence of Avila's genuine understanding of his prior misconduct and real character change.

Avila v. People, *supra*, at ¶ 28-29.

In this regard, Petitioner has discussed his offense and rehabilitation with psychiatrists, psychologists, university students, church members, attendees and members of civic organizations, radio talk show hosts, friends and acquaintances, etc. From the time of his release from prison into the community in 1992, Petitioner has made hundreds – perhaps thousands – of volunteer public presentations to groups of lawyers, judges, and law students; to university classes; civic organizations; churches and church groups; community college classes and student organizations; appeared on television and radio programs; and been the subject of numerous newspaper and magazine articles, addressing his offense, drug use, imprisonment, remorse, and rehabilitation. Petitioner volunteered his time to participate in the filming of an anti-gang related videotape series that was partially funded by the Arizona Supreme Court and presented to high school students in approximately 800 schools throughout the state of Arizona (Portions of the videotape, "Be Down, Go Down," which included Petitioner's contributions were screened by the Committee and submitted into the record of the proceedings) *Exhibit # omitted).*

When these various factors are coupled or combined (the amount of time devoted, the type of activity engaged in, and the total number of years that the community service has been ongoing), then the resulting measure-

ment of character is even more compelling (or revealing). "Talking the talk" is not that hard; "walking the walk" is not that easy.

IV. UNREASONED OR SUPERFICIAL CRITICISMS DO NOT CONSTITUTE LEGITIMATE GROUNDS FOR DENIAL OF THE APPLICATION FOR ADMISSION

Rejection of Applicants With Less Serious Crimes. The State Bar *Amicus Curiae* Brief points out that this Court has denied admission to applicants for the lack of good moral character who have committed offenses far less serious than Petitioner's,[24] citing to ***Walker,*** *supra*, and ***In re Greenberg,*** 126 Ariz. 290 (1080). This demonstrates the continuing failure to grasp the proper application of the conditional rule. If any applicant – including one who has no felony in his past – fails to demonstrate current good moral character, then the application properly is denied. The dispositive issue is not the presence or absence of past unlawful conduct, nor is it the relative seriousness of that conduct; the critical issue is the demonstration of current good moral character. Where past unlawful conduct is a factor, then the evaluation of current good moral character takes an in-depth look at the applicant's attitudes and values, at his behavior (especially in relationship to the prior criminal offense), and at those things which tend to show that the applicant has – or has not – engaged in and succeeded at altering his character in such a way as to have earned the right to be trusted with the duties of an attorney. Each application must be

[24] State Bar *Amicus Curiae* Brief, at page 5, ¶ 3 (continues to page 6).

subjected to the same evaluative rule, but each application must be evaluated independently. Further, in each of these cases (***Walker/Greenberg***) this Court granted them admission to the practice of law on a later application (*see* note 4 of State Bar Brief, at page 6).

Failure to travel to Missouri to Apologize to Victims' Families. At page 7, the State Bar Brief stated:

> It would be easy to conclude that because Petitioner served his sentence and has been discharged from parole, he has paid his debt to society and should be eligible for all rights and privileges. And, surely he has regained certain rights possessed by other citizens such as, for example, the right to walk free among law-abiding citizens of Arizona, to attend movies, to eat at restaurants and even to travel to Missouri to apologize personally to the families of the men he brutally murdered. The victims will never be able to do any of these things.

It is the law in Arizona that Petitioner has regained all rights and privileges with the exception of (1) the right to possess a weapon and (2) the right to admission to certain occupations which, by statute or administrative rule, are unconditionally barred to him. This does not include the practice of law, which does not require Petitioner to possess a weapon and also has no statute or administrative rule unconditionally barring him from admittance.

The comment by the Board of Governors about traveling to apologize to the family members of his victims clearly reflects a serious lack of information about and sensitivity to crime victims. While the comment reflects what some would refer to as a patently sarcastic *sound*

bite, it actually posits a process that does not – and should not – exist. Does the Board of Governors suggest that it is a good idea for persons convicted of murder to have ready access to the names and addresses of victims' immediate families – which, coincidentally, explicitly violates Arizona's Victim's Rights laws, which provide for confidentiality?[25] Does the Board actually want victims's families to answer the door and discover the person who murdered a family member, standing on their doorstep?[26] Apparently, the Committee on Character and Fitness ("Committee") also shares the view of the State Bar.[27]

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[25] *Beginning January 1, 1992 the victim has the right at any court proceeding not to testify* ***regarding the victim's addresses, telephone numbers, place of employment or other locating information*** *unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.*

A.R.S. § 13-4434 (Victim's right to privacy) (emphasis by bold print added).

[26] Perhaps the Board of Governors of the State Bar of Arizona would like to propose an amendment to existing Arizona law and argue at a legislative hearing on victim's rights for felons to have such access to victim's addresses and names. Petitioner attends legislative hearings on victim's rights issues on a regular basis and testifies on such matters before legislative committees. To the best of Petitioner's knowledge, representatives of the Board of Governors of the State Bar are conspicuously absent from such hearings. It is one thing to sit on the sidelines and make ill-informed and/or sarcastic statements, but it is a very different thing – and a very difficult thing – to deal with real people and the heartfelt emotions that come from the aftermath of serious crimes and to deal with them in appropriate and sensitive ways.

[27] Committee Response, at page 26: following a paragraph castigating Petitioner for insensitivity to to his victims' families and having the "arrogance" to defend his statements to the Committee during the hearing process, the Response states: "*It should be noted that Hamm has made no attempt whatsoever to contact any member of the Morley*

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Although the current set of victim's rights laws were not enacted prior to Petitioner's offense, his attorney expressly informed him in 1974 that he was not to contact the victims' families for any reason, prior to, during, or following his incarceration. Petitioner scrupulously has followed that instruction. He voluntarily would follow that practice even if there had been no admonition, because he believes that respect for the privacy of the victims' families necessarily includes them having the right to control whether there will be contact.[28]

In this case, it is a certainty that the victims' families desired contact on any level with Petitioner, they could initiate contact through the Board of Executive Clemency, which has been in contact with them on several occasions; through reporters, who have contacted them regarding stories; through the Internet, where Petitioner's name produces links to the Middle Ground Prison Reform email address; and through friends of the families who reside in Arizona. Petitioner has stated on television, radio and in printed stories and articles that he is very open to contact with the victims' families – but he will not invade their privacy for the purpose of satisfying some uninvolved third party's opinion as to what "should be done." For purposes

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family either personally or through an intermediary for any purpose whatsoever.

[28] When, late in Petitioner's incarceration, he became interested in the law, he looked up the rules governing admission to practice, and there was no Arizona provision regarding the victims of crime (some states have a provision of the rule governing admission to practice that requires a person convicted of homicide to begin making payments in the nature of restitution after release from incarceration, when the person is financially able to do so). Petitioner also kept abreast of the statutes addressing victim's rights. Arizona statutes – such as A.R.S. § 13-4434 – act to strongly protect the privacy of victims.

of respecting the victims' families privacy and dignity, Petitioner strongly believes that any decision to initiate contact should come from the victim's families.

V. ALTERNATIVE FORMULATION(S) OF *PER SE* RULE

The opening of the Committee Response, at pp. 6-9, accurately describes the basic process for admission, the standard to be met, and the basic parameters of the applicable law (*i.e.*, that the practice of law is a right rather than a privilege, that the Committee makes only a recommendation, that the Court approves or denies an application for admission, and that one cannot be excluded from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection clause of the Fourteenth Amendment).

In its opening sections, the Committee Response failed to note, however, that Arizona, unlike a few other states, does not have a *per se* rule against admitting a person with a felony record or a person convicted of any particular felony or class of felony.[29] The Committee Response also

[29] In fact, the Committee Response says virtually nothing about the Committee's application of an *ad hoc per se* rule. Instead of addressing the argument directly, the Committee Response evades the issue by utilizing the expedient of ridicule, asserting that the arguments are *nonsensical and reveal his ignorance of the lifetime and legal experiences and the integrity of the members of the Committee.* Committee Response, at page 35. This line of evasion, of course, avoids the inconvenience of acknowledging Petitioner's statement that he did not claim the application of a *per se* rule was intentional, but rather that it arose from discomfort and inexperience with the highly emotional nature of murder (entire section of Petition devoted to this issue, at pages 30-37, and especially at page 31) and addressing the openly-displayed lack of integrity of some Committee members with respect to

(Continued on following page)

recasts the issue of admission in the form of whether Petitioner's "*subsequent rehabilitation, positive social contributions and current good moral character counterbalance and outweigh his previous criminal conduct.*" Committee Response at page 9, lines 16-18.

This recasting of the rule is not an accurate reflection of the letter or the spirit of the rule, and revision is especially important in light of the remark that the Committee perceives its duty as one involving no discretion in one particular way: "*In this it has no discretion; if the members entertain any reservations whatsoever as the applicant's good moral character, it should not make a favorable recommendation to the Court*," citing to ***Application of Courtney*,** 83 Ariz. 231, 233, 319 P.2d 991, 993 (1957). Committee Response at page 7, lines 20-23.

Thus we come to the crux of the legal issue before this Court: Is it that Petitioner does not possess current good moral character; or that his current good moral character, even in combination with thirty years of rehabilitation and decades of positive social contribution, does not "**counterbalance and outweigh**" his previous criminal conduct? These are two very different questions, and only one of them constitutes a basis for denial of the right to practice law. The other is a personal opinion that cannot be answered in the abstract or with consistency and therefore is resolvable only by means of the adoption of a policy rather than by means of a factual inquiry.

Such a policy currently is under consideration. One current member of the Board of Governors of the State Bar

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the express lack of a *per se* rule. The Committee Response evades both the facts and the arguments by the use of the word, "*nonsensical*."

of Arizona,[30] current members of the Court's Committee on Character and Fitness and current members of the Board of Governors of the State Bar of Arizona, along with a representative of the Administrative Office of the Supreme Court and other representatives have proposed to this Court the adoption of precisely such a policy. Indeed, the proposed policy is so restrictive as to preclude, as a matter of law, every person convicted of serious misdemeanors as well as all felonies.[31]

Petitioner contends that the Committee finding that Petitioner does not possess current good moral character is actually an opinion that his current good moral character, even in combination with thirty years of rehabilitation and decades of positive social contribution, does not "**counterbalance and outweigh**" his previous criminal conduct. Petitioner contends that the record of Petitioner's life, as reflected in the hundreds of pages of material presented to the Committee and as discussed in the Committee hearing, support his assertion of current good moral character.

This "counterbalance and outweigh" reformulation of a non-existent *per se* rule finds yet another variant form of expression, in the Committee Response argument regarding whether Petitioner's offense can be "*negated*." The Committee Response states that "*[p]erhaps Hamm is the*

[30] Attorney Charles Wirken, President of the State Bar of Arizona, writing in the April 2005 edition of the *Arizona Attorney*, the magazine of the State Bar.

[31] "*Applicants for admission or reinstatement who have been 'convicted of a misdemeanor involving a serious crime or any felony' shall be presumptively disqualified*." *Arizona Attorney*, *April 2005*, "*President's Message*."

poster child for rehabilitation as he has claimed."[32] Assuming that to be so, the Committee Response then makes light of the fact that Petitioner pointed out that it is impossible to negate the crime of murder. The Committee Response reinterprets the Committee recommendation and states that it was never the intention of the Committee to invoke the standard meaning of that word; rather, the word "*negate*" was intended to be synonymous with the word "*offset*" in that "*the rehabilitation and positive social works did not completely counterbalance or offset the crimes and consequences.*" Committee Response, at page 18, lines 5-8.

This argument misses the point. Setting aside the fact that the Committee is composed primarily of practicing attorneys who have a personal working knowledge of the precision required by law and who therefore presumably would have used the word "offset" if offset they meant, there still is the problem of the *per se* rule.

Within the context of murders, the family of Willard Morley, Jr., generally occupy the position of most families of murder victims. Unusual cases certainly exist – wherein family members have prolonged or even permanent psychological problems, where family members change their names and move from residence to residence out of fear of continued or repeated predations, where there are divorces and/or suicides, and many other examples of extreme reaction – but such cases do not represent the usual situation.

[32] Committee Response, at page 17, lines 19-20.

The usual situation is of a family confronted by a tragic loss, who come to terms with an extreme emotional crisis, who live with a continuing absence of a loved one, and who struggle on with their lives to the best of their ability to do so. That is an accurate description of the situation obtaining in this case.

If Petitioner's steadfast determination to accept responsibility, devote himself to making a difference in the world as a way of honoring his victim, so that his victim did not die in vain and become simply a crime statistic, if that effort spanning thirty years is not sufficient in the case of a usual set of consequences, then the Committee decision reduces in reality to a principle that murder itself constitutes a crime which overrides subsequent rehabilitation and positive social contribution and therefore constitutes a *per se* bar to admission even in the absence of a *per se* rule.

What additional social contributions should Petitioner have made? What added rehabilitation should he have accomplished? What deficiencies were found in his rehabilitation, and where is the evidence of such deficiency? How much additional time beyond thirty years would be enough time? If not now, when? If not enough, what more? If not Petitioner, then who?

VI. THE AUTHENTICITY OF PETITIONER'S REHABILITATION

One of the most fundamental issues involved in this case is the validity of Petitioner's rehabilitation, because it underlies so many of the smaller issues that potentially could take dozens of pages to address individually, such as who shot first, whether Petitioner planned to kill the

victims, whether he refuses to accept responsibility for his actions, whether he is insensitive toward the family members of his victims, whether he was candid with the Committee, and many, many, other issues.

Petitioner does not expect this Court to be aware, on a personal level, of the inmost psychological and spiritual struggles attendant upon attempting to come to terms with having committed murder, of the difficulties presented by being confined for seventeen and one-half years in close quarters with large numbers of people who actively look for evidence of vulnerabilities in order mercilessly to take advantage of them, of the monumental task of resolving serious mental problems mostly without benefit of professional assistance, of replacing a lost religious outlook with a new and heartfelt spirituality, or of the inner strength that is required to bear the brunt of virtually universal social disapprobation.

Petitioner does hope, however, that this Court will be able to understand that fakery and superficial changes for the sake of appearances cannot provide a sufficient basis for genuine, prolonged, and painful self-examination and character reorientation. One cannot have it both ways. Further, even if one adopted the view that a skillful con artist could imitate sincerity to such an extent that it would facilitate the rare granting of executive clemency resulting in a reduction in sentence, it simply is beyond reason that it would or could be undertaken for the purpose of moving into a way of life that literally invites scrutiny of the most intense and unending kind – or that, even if attempted, that it would be successful.

Petitioner has no desire for public attention. He is not attracted to the glare of publicity or fame or infamy.

Rather, he feels an obligation to endure the scrutiny and the waves of negative stereotypy that necessarily accompany his position as a social activist, a legislative advocate for prisoners and their families, as a former prisoner who pled guilty to murder because it is a role that has been thrust upon him by time and circumstance, because of his own sense of responsibility for his crime, and because he recognizes that he, somewhat more than others, is capable of bearing without rancor the burden of such scrutiny – and thus encourage others to follow the path of responsibility, as well.

Petitioner's chosen course of action is consistent with one of the food-for-thought comments to the State Bar membership on character change:

> "*As human beings, our greatness lies not so much in being able to remake the world as in being able to remake ourselves.*".

***Arizona Attorney*,** September 2002, p. 44, "End Notes ('Historical September')," quoting Mohandas Gandhi.

VII. THE "LACK OF REMORSE"

The Committee Response asserts that Petitioner demonstrated a lack of character through his insensitivity toward his victims during the hearing process.[33]

> . . . the objections that they have lodged, because of my experience with many other people and many other situations, is a pretty mild objection. I mean, I have seen such overwhelming objections that are just absolutely stunning in their

[33] Committee Response, at pages 23-26.

> power and their depth. I understand that these people have been permanently affected emotionally and personally by my crime. But apparently it has not had the same sort of devastating effect that I've seen in some other instances with other people.

R.T. II, at page 400, lines 1-10 (quoted in the Petition for Review, at page 20 and followed with detailed discussion).

The Response fails to take into account the content of the Petition with regard to the alleged lack of remorse on Petitioner's part. Instead, the Committee Response asserts that the proper method for evaluating Petitioner's statement to the Committee during its hearing was to "*look to the letters from the Morley family members. . . .*" Committee Response, at page 24, lines 3-4. In choosing to utilize such a method, the Committee Response elected to ignore not only the content of the information provided to the Committee during the hearing process, but also ignored the discussion provided in the Petition to this Court.

In his work as an expert witness and criminal justice consultant/paralegal, as well as during the seventeen and one-half years that he was in prison, Petitioner has seen victim opposition letters in other cases that were much more strongly-worded and vitriolic (sometimes even containing unmitigated invective) – all of which is completely absent from the letters written by members of Willard Morley's family. Petitioner shared cell space with many other men who committed first-degree murder, and is aware of their victims' families strident efforts to insure that some of these men would never, ever be released from prison. Some other victims' families' letters have expressed palpable fear of the offender if released. As mentioned in the petition, Petitioner is aware of some victim family

members who have changed their names and/or gone into hiding as a reaction to the murder of a loved one; others have suffered divorce, alcoholism, mental illness, etc.

On balance, when asked by the Committee for his reaction to the opposition letters from the Morley family, Petitioner was accurate in stating that the objections were "mild" (the expressed objections, not the seriousness of the crime) and that the family – to the best of Petitioner's knowledge arising from that information which has been communicated in the opposition letters – has not gone into hiding, changed their names, suffered from long-term mental illnesses or a panoply of other maladies which have afflicted some others who have been less able to deal with the sudden and violent loss suffered in their cases.

The Committee Response thus moves away from an evaluation of Petitioner's current character to an exercise in which every nuance is dissected, and distorted and his comments are re-written for the purpose of finding an excuse, not a reason, to achieve a pre-determined outcome.

The Morley family has been communicating with the Board of Executive Clemency about Petitioner's case only since 1989. During Petitioner's applications for executive clemency and parole, there was no objection at all, even when the victim's sister was personally contacted by telephone to ask her opinion. There has never been a hint in their letters that they believe Petitioner is unremorseful, insensitive, arrogant or that he has denigrated them or Willard Morley.

This Court is confronted with the unsupportable conclusions of a group quite inexperienced with the extreme emotions that are attendant upon murder. The Committee apparently has an interest in attempting to see

that their profession is not "tarnished" because of the offense that Petitioner committed. As a result, the Committee drew conclusions that are completely at odds with the actual comments they purport to be evaluating. When the lack of objectivity and the stereotypical nature of the reaction was pointed out, The Committee increased the level of invective and add pejorative descriptors such as "denigrating" and "arrogance" that are not found in the Committee Recommendation. This reaction is an example of precisely what Petitioner stated in his Petition: That it is a expression of the dichotomy between two groups – victims and offenders. It is an "us-vs.-them" mentality. Petitioner was asked a question and provided a reasonable answer, based on his full experience, which is not replicated or equaled by any member of the Committee or by the Committee as a whole, and Petitioner's response has been distorted and twisted in order to support a self-serving, pre-judgmental determination that Petitioner should not be permitted admission to the bar.

All of this demonstrates that Petitioner can bring to the practice of law a wider and deeper scope of experience that allows Petitioner a greater level of objectivity without sacrificing individual sensitivity based on his own personal emotional pain and remorse for his crimes.

The Morely family letters clearly reflect the genuine trauma and loss of an entire family for a loved one. Objectively speaking, however, they are genuine expressions of inner anguish and grief (which are justified and expected) but they do not allege any lack of remorse on the offender's part, nor do that contain any hate-filled invective toward Petitioner. **Importantly, Petitioner stated that the family's objections to Petitioner becoming an attorney were mild, not that the effects of the murder on**

the Morley family was mild. The inability of the Committee to make this distinction virtually proves Petitioner's point about the global "us-vs-them" mentality he mentioned in his petition.

The Committee Response, however, elected to focus upon a particular portion of a letter from Mr. Morley's sister:

> "*Mr. Hamm may be a shining star for the Arizona Penal System, but I would hate to see the Arizona Bar tarnished by having a convicted murdered as one of its members.*"

Committee Response, at page 24, lines 21-23.

The most significant aspect of this is that the Committee Response characterizes the quote as "*a very compelling comment by a lay person*." Committee Response, at page 24, lines 20-21. The significance of the characterization by the Committee Response is that the comment has absolutely nothing to do with any portion of the applicable rule governing the process of evaluation for applications for admission to the practice of law, and thus reveals the true nature of the evaluation process utilized in Petitioner's case and the true nature of the recommendation to this Court.

The comments in the letter about the pain of loss experienced by the parents of Ms. Vogel (Willard Morley's sister) are appropriate to her circumstances and, while not touching upon the criteria for admission, nonetheless demand, as a matter of humanity, that they be taken into account and given some weight in some way, perhaps

within the context of evaluating the consequences of the crime.[34]

A comment from a victim's family about the Bar possibly being "tarnished" by Petitioner's admission reveals only that the victim's family members do not hold Petitioner in high regard, a fact which should surprise no one and which has no bearing whatsoever in applying the governing rule to Petitioner's application for admission.

The fact, however, that the Committee perceived that comment as being "*a very compelling comment by a lay person*" is quite revealing, in light of the obligation of the members of the Committee to examine the applicable rule, follow its admonitions and requirements, set aside their personal feelings, and apply the rule as it is written, not as they might prefer it to be.

Petitioner submits that the statements made by him at his hearing before the Committee and relied upon by the Committee as the sole basis for the Committee's perception of a "lack of remorse" reflected his good faith belief in what he perceived to be significant differences between the effects of a murder on one family and the effects of another murder upon other families of whom he is personally aware. While there is a devastating effect that arises from any murder, it is well-recognized that the effects differ from family to family. Further, Petitioner submits that he pointed out to the Committee that the

[34] That is the answer Petitioner gave to the Committee to the question of how the Committee should consider the letter from the victim's family in considering Petitioner's application for admission. He addressed the substance of his comments to the comparative level of effect that he personally was aware of in other cases as well as this case.

difference did not arise from any difference in the commission of the crime, but rather was to be attributed to the ability of the victim's family to cope with the devastation wrought by the loss. This exhibits no lack of respect for the feelings of the family nor any evidence of a lack of remorse for his crime. If Petitioner is not permitted to rely upon the scope of his own unique experience in answering questions before the Committee, then Petitioner is being constrained in a manner that does not comport with due process.

VIII. THE FELONY MURDER ISSUE: INTENT TO ROB OR INTENT TO KILL

The Committee Response argues forcefully that Petitioner intended to kill Willard Morley, Jr. and Zane Staples, that he planned it, and that he carried it out in cold blood (premeditated murder vs. felony murder).[35] The Response argues that Petitioner has not accepted full responsibility for his crime (rejecting responsibility for the murder of Zane Staples),[36] has emotionally distanced himself from the consequences of his actions,[37] that he is engaging in revisionist techniques in order to further his chances of being admitted to the Bar.[38]

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[35] Committee Response, at pages 10-13.

[36] Committee Response, at page 14, ¶ 1 (continued from previous page); and at pages 26-28.

[37] Committee Response, at bottom of page 27 and top of page 28.

[38] Committee Response, at page 12, ¶ 2; the Committee Response claims that Petitioner "*now insists*" that his intention was to rob rather than to kill the victims. Committee Response at page 13, lines 22-23. In fact, that is what Petitioner always has stated. It is what he pled guilty to; was sentenced for; dealt with in the privacy of his mind; presented to

(Continued on following page)

The Pima County court document entitled, "Statement of Facts on Conviction" was constructed, completed, and inserted into the judicial record without Petitioner's knowledge or consent and without either his or his attorney's participation, as Petitioner pointed out in his Petition and which cannot be refuted. The Committee Response treats this fact, which appears on the face of the document itself, as irrelevant. Worse, the Committee Response plays the game of double inconsistency, by arguing on the one hand that the record was available to Petitioner for thirty years if he wished to challenge it, and then refusing to accord merit to the fact that Petitioner never challenged his conviction[39] because he accepted responsibility – and thus never sought access to his own record. This is an example of the difficulties that arise from an exclusively one-sided view of the facts.

Petitioner did not focus on the content of his criminal record because he focused upon changing himself as a person. He knew then, and knows now, what his role was and what his responsibility was, and he dealt with the reality of his offense, not the paperwork sitting in some office in a file box. If the consequence of that choice in focus is to prevent Petitioner from practicing law, then it is the law that is in error, not Petitioner.

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the board that recommended commutation of his sentence and paroled him to the community and granted him an absolute discharge from sentence; and it is what he testified to before the Committee.

[39] Petitioner was eligible to file both a Direct Appeal and a Post-Conviction Relief action for an offense committed on September 7, 1974. He filed neither a Direct Appeal nor a Post-Conviction Relief because he accepted his guilt.

The very fact that the Committee and the Committee Response ignores the creation of an official version of the crime different from the one to which Petitioner provided a factual basis during his Change of Plea proceeding, and doing so without notice to Petitioner or his attorney, highlights the approach that has been taken to Petitioner's application for admission. For example, "*Hamm does not accept the concept that the Committee is entitled to draw its own conclusions and inferences from his testimony and other evidence nor that such conclusions and inferences might not be the same as his. The Committee found aspects of the crimes with which Hamm has not yet come to grips.*" Committee Response, at page 14, lines 1-5.

No one has "*found aspects of the crime which Petitioner has not yet come to grips.*" Instead, The Committee Response used language in a pejorative way in order to undermine Petitioner's assertion of rehabilitation. Attempting to undermine something, however, is not the same as succeeding at undermining it. Petitioner's rehabilitation is real and the fact that he stands before this Court and asks the Court to make its own determination supports his claim.

Thus, the Committee Response attempts to revise the law and ignore the facts – including its own proffered version of the facts – when it claims that *there is neither any evidence nor any justifiable inference from evidence that Morley's murder was felony murder.*" Committee Response, at page 14, lines 8-10. A murder committed during certain enumerated crimes is a form of first-degree murder called felony murder. Robbery is one of the enumerated crimes. Petitioner admitted in 1974 and ever since then that he agreed in advance to participate in robbing the victims when he was unable to locate the

quantity of marijuana the victims requested to purchase, and that he and his co-defendant took them to a location for the purpose of robbing them. He testified that he had never committed a robbery before. He also testified that co-defendant Garland Wells fired first,[40] after the tension in the car rose significantly in the space of a very short period of time without Garland (or Petitioner) making a demand for money. Garland admitted that he planned to kill the victims, but Petitioner had not planned to do any such thing, and did not know that Garland Wells intended to do so from the outset.

An objective evaluation of that evidence supports felony murder rather than premeditated murder. The quoted passage in the previous paragraph has no basis in law or fact. It simply is the preferred position of the Committee in spite of the facts.

Once again, Petitioner emphasizes that failing to address his actual responsibility for his acts would not enable Petitioner to overcome the serious mental problems

[40] The sequence of events that was presented in the Committee decision and defended in the Committee Response at page 12, note 1, where the Committee Response claims that the transcript supports the contention(TR. at p. 18, lines 3-5) is contradicted by the direct testimony presented to the Committee. ***See*** **R.T. I, at pp. 19-20** (description of crime and sequence of events); at **p. 37** (direct answer to question as to who fired the first shot); at **p. 40** (confirmation of who shot first); at **p. 44** (discussion not of sequence of events of crime but describing in order the three times Petitioner fired his weapon during the offense). The reference to the transcript by the Committee Response refers to the day prior to the offense. The Committee Response apparently intended to refer to page 20, but that description is of my firing at the "same time" I raised my gun, not at the "same time" that my co-defendant fired. This is another example of a willingness to mis-read the testimony in order to support a Committee statement that never should have been made in the first place.

that preceded, accompanied, and followed his crime. One cannot fake an inner reality; and while people can engage in denial, they cannot succeed at genuine self-correction while doing so.

Petitioner requests the Court to consider the current dispute over felony murder vs. premeditated murder within the context of the following discussion, which involved the reinstatement of an attorney following conviction and imprisonment and his refusal to acknowledge guilt during the admission / reinstatement hearing:

> Statements of guilt and repentance may be desirable as evidence that the disbarred attorney recognizes his past wrongdoing and will attempt to avoid repetition in the future. However, to satisfy the requirements of present good moral character in the tests for reinstatement noted above, it is sufficient that the petitioner adduce substantial proof that he has "such an appreciation of the distinctions between right and wrong in the conduct of men toward each other as will make him a fit and safe person to engage in the practice of law." *In re Koenig*, 152 Conn. 125, 132 (1964). See *In re Stump*, 272 Ky. 593, 598-599 (1938). Such an appreciation, if deeply felt and strongly anchored, will serve as a firm foundation and justification for the order of reinstatement. Mere words of repentance are easily uttered and just as easily forgotten.
>
> The continued assertion of innocence in the face of a prior conviction does not, as might be argued, constitute conclusive proof of lack of the necessary moral character to merit reinstatement. Though we deem prior judgments dispositive of all factual issues and deny attorneys subject to disciplinary proceedings the right to

relitigate issues of guilt, we recognize that a convicted person may on sincere reasoning believe himself to be innocent. We also take cognizance of Hiss's argument that miscarriages of justice are possible. Basically, his underlying theory is that innocent men conceivably could be convicted, that a contrary view would place a mantle of absolute and inviolate perfection on our system of justice, and that this is an attribute that cannot be claimed for any human institution or activity. We do not believe we can say with certainty in this case, or perhaps any case, what is the true state of mind of the petitioner. Thus, we cannot say that every person who, under oath, protests his innocence after conviction and refuses to repent is committing perjury.

Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule: "Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt . . . may be rejected – preferring to be the victim of the law rather than its acknowledged transgressor – preferring death even to such certain infamy. *Burdick v. United States*, 236 U.S. 79, 90-91 (1915). Honest men would suffer permanent disbarment under such a rule. Others, less sure of

> their moral positions, would be tempted to commit perjury by admitting to a nonexistent offense (or to an offense they believe is nonexistent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the bar, would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve. We do not consider in this context the person who admits committing the alleged criminal act but honestly believes it is not unlawful.
>
> Accordingly, we refuse to disqualify a petitioner for reinstatement solely because he continues to protest his innocence of the crime of which he was convicted. Repentance or lack of repentance is evidence, like any other, to be considered in the evaluation of a petitioner's character and of the likely repercussions of his requested reinstatement. However, nothing we have said here should be construed as detracting one iota from the fact that in considering Hiss's petition we consider him to be guilty as charged. Our discussion relates only to the issue whether Hiss must admit his guilt as condition to reinstatement.

***In the Matter of Hiss*,** 368 Mass. 447, 456-59, 333 N.E.2d 429, ___ (1975).

Other decisions follow the same approach:

> In light of these circumstances, Hall's consistent refusal to retract his claims of innocence and make a showing of repentance appears to reinforce rather than undercut his showing of good character. Precisely because the Committee made clear that Hall's chances for admission would be

> improved if he demonstrated remorse,[fn18] we find his refusal to do so indicative of good character rather than the contrary: Hall refused, in effect, to become the fraudulent penitent for his own advantage.
>
> An individual's courageous adherence to his beliefs, in the face of a judicial or quasi-judicial decision attacking their soundness, may prove his fitness to practice law rather than the contrary. We therefore question the wisdom of denying an applicant admission to the bar if that denial rests on the applicant's choosing to assert his innocence regarding prior charges rather than to acquiesce in a pragmatic confession of guilt, and conclude that Hall should not be denied the opportunity to practice law because he is unwilling to perform an artificial act of contrition.

***Hall v. Committee of Bar Examiners*,** 25 Cal.3d 730, 744-45, 602 P.2d 768, 159 Cal.Rptr. 848 (1979).

Petitioner cannot – will not – make an admission to what did not occur. Petitioner was and remains responsible for the murders of the two men that day; he makes no attempt to hedge his guilt or ease his path or deny his responsibility. From the standpoint of the law, he and his co-defendant entered into a double plea agreement in which each pled guilty to the murder of the person who died as a direct result of bullets fired by each defendant. Petitioner served the sentence the law imposed upon him, focused all his time and energy on progressively accepting responsibility for his crime, worked to change himself as a person, and has spent the intervening thirty years attempting to atone for his actions.

It was not refusal to accept responsibility for his crime that Petitioner displayed when he declined to agree to the Committee's obvious preference for an admission of premeditation – it was character. The fact that the Committee could not or would not see that and that the Committee Response continues the same one-size-fits-all stereotype of murder is a matter beyond Petitioner's control or influence. What is within Petitioner's control is his acknowledgment of responsibility, his acceptance of a life-long duty to atone for his actions, his personal change in thinking and behavior, and his willingness to stand in the eye of public attention and scrutiny to serve the greater goal of encouraging others who cannot do so themselves.

Petitioner genuinely considers it an honor to have had his sentence commuted by the Governor, to have been granted a parole to the community, and to have been given an absolute discharge from his sentence. Petitioner was humbled to have been awarded bachelor's and *juris doctor* degrees from universities in this state, to serve a marginalized constituency with hundreds of hours of volunteer work, to lobby the Legislature for improvements in the criminal justice process, and to stand before this Court now on this application for admission. It would not be honorable to succumb to the intimidation of those more powerful and Petitioner has no intention of doing so, now or in the future. If that merits denial of his admission, then so be it.

The Committee Decision cited the categorization of the offense as "*a drug deal gone bad in an instant*" as a basis for recommending denial of Petitioner's application to practice law. Petitioner consistently has described the offense, however, as a drug-related homicide, not as a drug deal gone bad. Others – witnesses, not Petitioner – have

referred to the crime as "*a drug deal that went very sour*."[41] Petitioner has no control over the statements of witnesses. That this homicide was, in fact, drug-related is simply beyond question.

IX. "DRUG DEAL GONE BAD IN AN INSTANT"

With respect to the allegation that Petitioner mischaracterized his crime as "*a drug deal gone bad in an instant,*" the Committee Response continued the error of the Committee recommendation. The Response even devoted an entire section specifically to that subject. *See* Committee Response, at pages 21-23.

In that section, there is not a single citation to a location in the transcript of the hearing or in any document possessed by the Committee in which Petitioner referred to his crime as a drug deal gone bad in an instant. A Committee member, Tucson attorney Stephen Weiss, questioned one of Petitioner's witnesses about whether it was a "drug deal gone bad." *See* TR, at 161-62.

[41] As Petitioner pointed out in the Petition, the transcript of Petitioner's hearing reflects that one of Petitioner's witnesses, Tucson attorney Richard Parrish (**R.T. I, at pp. 141-177**), described the crime as a drug deal gone bad ("*the crime was part and parcel of a drug deal that went very sour . . . "* **at p. 161**). One Committee member questioned Mr. Parrish about his characterization (**at pp. 162-63**), and Mr. Parrish indicated that the entire matter had begun as a drug deal, turned into a robbery, and eventuated in murder, and that he thought that series of events legitimately could be characterized by him as a drug rip-off or drug deal gone bad. The use of such language by a witness cannot reasonably be considered to constitute a legitimate basis for concluding that Petitioner himself "*mischaracteriz[ed] . . . these murders as simply a drug deal gone bad at an instant*."

Subsequently, the Committee Decision then attributed a non-existent quote to Petitioner.

The Committee Response lists several locations in the transcript of the hearing before the Committee where the word "*drug*" is used in connection with the crime. Petitioner is criticized for using the phrase, "*drug-related*" in describing the offense, as though the offense did not involve drugs. There is a very important difference between calling the drug rip-off as *a drug deal gone bad in an instant* and stating that the offense was "drug-related."

Petitioner asserts that his crime ***was*** "*drug-related.*" Petitioner used drugs for at least two years prior to the offense. Petitioner was using drugs extensively for the six months immediately prior to the offense, in order to mask his mental problems and to avoid dealing with his own progressively deteriorating mental states. Petitioner used drugs the day before the offense, when the meeting was arranged with persons interested in purchasing drugs. Petitioner was under the influence of drugs at the time of the offense, and the offense itself involved a fraudulent drug sale. Finally, Petitioner had been selling drugs. (R.T., Page 15, lines 6-7); Page 16, lines 3-6; Page 32, lines 20-21; Page 58, line 9- Page 59, line 14).

Petitioner's witnesses were asked to come before the Committee and answer any questions Committee members might have with regard to Petitioner's character and with regard to their personal knowledge of and experience with Petitioner. No one ever suggested to Petitioner that each witness would be grilled with regard to the details of the murders and expected to possess a level of knowledge commensurate with having been at the scene of the crime during the commission of the crime itself. In discussing his

crime with others, Petitioner allows the other person to determine the level of detail and information. Some persons prefer a more abstract understanding, while others want greater specific detail.

The personal preferences of Committee members for phraseology that fits their own perceptions is an insufficient basis for accusing the applicant of "*mischaracterizing*" the crime, *especially where the "mischaracterization" of the offense was by others, not by Petitioner*.

X. ACCEPTANCE OF RESPONSIBILITY FOR THE MURDER OF ZANE STAPLES

The Committee Response presents an intense criticism of Petitioner with respect to responsibility for the death of Zane Staples. *See* Committee Response, from page 27, line 13, to page 28, line 5, which presents a picture wholly at odds with the testimony before the Committee, totally at odds with the written materials submitted to the Committee, and totally at odds with the information presented in the Petition for Review to the Arizona Supreme Court. That section of the Response mischaracterized Petitioner, his position, his statements, and his attitude, and thus paints a picture far more negative than the one originally assessed by the Committee.

The Committee Response asserts that Petitioner feels that he is morally responsible only for the death of Willard Morley, Jr. and that he rejects personal responsibility for the death of Zane Staples. The Response goes on to state that there was no separate assignment of responsibility by the sentencing court, at page 27, line 17. See, however, Committee Response Appendix to Record/Exhibits, Copy of

Petitioner's plea agreement which clearly assigns responsibility to Petitioner only for the death of Willard Morley.

Petitioner was sentenced to a 25-year-to-life term for the death of Willard Morley[42] and Garland Wells was sentenced to a 25-year-to-life term for the death of Zane Staples. The basis for this separation of victims and defendants lies in the very material that petitioner presented to the Committee, namely, that Petitioner was directly and physically responsible for the death of Willard Morley and Garland Wells was directly and physically responsible for the death of Zane Staples.

There is no doubt that formal legal responsibility could have been applied by the State to both defendants for both victims, but the State elected to separate the plea agreements in the manner described before the Committee and in these pleadings. Morally, Petitioner fully accepts moral responsibility for the deaths of both victims, and clearly stated so to the Committee and has so stated for decades in treatment, presentations, and conversations; legally, however, pursuant to the plea agreement, the distinction is unquestionable.

XI. THE UNAUTHORIZED PRACTICE OF LAW ISSUE

The Committee Response discussed the Unauthorized Practice of Law (UPL) issue, and noted that the Committee did not use the UPL issue as a basis for its negative recommendation. Nonetheless, the Committee's discussion

[42] In 1989, Governor Mofford granted executive clemency to Petitioner and reduced his sentence to 16.5 years to Life, making him parole eligible after the service of 16.5 years.

and decision left no doubt that it considered the matter "serious."

A. PETITIONER'S USE OF "J.D."

The Committee Response misstates the Supreme Court Rule with regard to the use of "J.D." and unqualifiedly asserts a violation of the rule, where no violation exists.[43] The rule does not prohibit a person from using "J.D.," so long as the use does not reasonably lead to the belief that the person is authorized to practice law. In this case, there is an asterisk directly following the "J.D." notation, with a footnote readily available within just a few lines of the use of the "J.D." notation clearly stating that the user is not admitted to the practice of law. This clearly is sufficient.

Literate persons will be able to surmise that the user is not a licensed attorney. In the biography section of the same web site, Petitioner's biography clearly states that an application for admission is pending, and this, too, prevents any literate person from a misunderstanding about the person's current status.

B. "THE HAMM'S WEB SITE"

Contrary to the Committee Response assertion at page 29, line 8, the Hamm's do not have a web site at any location on the world wide web; instead, Middle Ground Prison Reform, Inc., has a web site. Middle Ground Prison Reform, Inc. is a bona fide non-profit corporation,

[43] Committee Response, at page 29, ¶ 8-11.

registered with the Arizona Corporation Commission since 1989.

C. "COMPLAINTS ABOUT EITHER MRS. HAMM OR BOTH MR. AND MRS. HAMM ATTEMPTING TO PRACTICE LAW"

The response falsely claims that "*There were several exhibits in the Committee's file (Exhibit 1) involving complaints about either Mrs. Hamm or both Mr. and Mrs. Hamm attempting to practice law without becoming admitted to the bar.*" Committee Response, at Page 29, lines 12-14.[44] Donna Hamm is the President/Executive Director of Middle Ground Prison Reform, Inc.

Donna Leone Hamm has not applied for admission to the practice of law and Petitioner suggests that any concerns regarding her activities or work should property be undertaken by the Supreme Court under its adopted rules or by the State Bar pursuant to its formal procedures. This would provide her with a due process opportunity to respond.

As noted in the Petition, no unauthorized practice of law complaints ever have been filed against Donna Leone

[44] With respect to the alleged "complaints" for UPL against Petitioner, it is necessary to repeat information provided in the Petition. The state bar has a formal procedure and form for response when a complaint is properly filed by any person against another person alleging UPL. Due process mandates that any person against whom a complaint is filed have an opportunity to (1) know what the charges consist of; (2) respond to the allegations; (3) be made aware of the findings; and (4) appeal the findings to the proper tribunal and in a timely fashion if the person disagrees with the findings. Here, there was no complaint, no notification, no opportunity to respond, no findings, etc.

Hamm, and the Committee's persistence in (1) including her name in its references to some alleged complaint against Petitioner is highly inappropriate as well as an attempt to smear the name of Petitioner's spouse, and borders on slander and defamation.[45]

The Committee Response ignored the content of the Petition to which it allegedly was responding.[46] Specifically, no UPL complaints were filed against Petitioner or against his wife (irrelevant though any such complaints would be). There was one letter in the file that mentioned the possibility of unauthorized practice, and the State Bar took no action. Petitioner never was informed of the Bar's receipt of the letter, and the characterization of the incident was inaccurate and demonstrably in error, in that Petitioner did not sign the Notice of Claim "on behalf of" the person.

In fact, Mr. Mark Anzivino, a mentally-ill Arizona state prisoner signed the notice on his own behalf. Mr.

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[45] Petitioner's spouse clearly testified that she once received a complaint from the Consumer Division of the Attorney General's office, that the complaint dealt with a fee refund dispute, and that, after providing Mrs. Hamm with a due process opportunity to respond, the Attorney General dismissed the complaint. Contrary to the false assertions of the Committee Response, no complaint ever was filed against Donna Leone Hamm by the state bar for any reason.

[46] The Committee Response asserts that the UPL issue was discussed in: *a general and rambling manner*" during the Committee hearing, when, in fact, the discussion proceeds through a review of every one of the items conceivably included in the subject. The Committee Response ignores the content of the Petition, which addresses the issue more succinctly than the discussion in the transcript of the hearing, and which pointed out that *no UPL complaints were filed against Petitioner*. The entire subject was discussed in detail in the Petition from page 66 to page 72.

Anzivino was unable to afford the assistance of an attorney, unable to complete the Notice completely on his own, suffering psychological difficulties, and under the belief that the Department of Corrections was tampering with and potentially destroying his mail. Under those circumstances – and only those circumstances – Petitioner signed the Notice, along with Mr. Anzivino, and provided an alternative address to which any response might be sent. Petitioner testified that he never signed any other document for or on behalf of a litigant.

The Committee was informed that, at the same time that Petitioner was going to law school, lobbying at the Legislature, performing vast amounts of *pro bono* work assisting prisoners and their families, providing presentations for which public defender attendees were granted Continuing Legal Education credits by the State Bar, and maintaining gainful self-employment, the State Bar was, at the same time, referring persons who called for assistance to Middle Ground Prison Reform and providing an unsolicited listing for that organization in its Bar Directory as a "legal organization." So long as Petitioner's work served the purposes of the Bar, there was no complaint about his activities; once he submitted an application, however, the official position appeared to change.

D. THE ISSUE OF A CLARIFYING RULE

The issue of a clarifying rule and subsequent conformity with the dictates of that rule also were ignored by the Committee Response, but it is an important issue. In reviewing an unauthorized practice of law case, another court ruled as follows:

> The briefs in this case are full of dispute about whether applicant's activities constituted unauthorized practice of the law. The extent of the argument clearly demonstrates that the matter has been so disputed that at the time of his activities applicant had no clear guideline on the subject. The absence of a clear ruling on the matter and the presence of great dispute coupled with the action of the Unauthorized Practice Committee completely negative any suggestion that applicant's activities as an estate planner show he is wanting in good moral character even if the ultimate determination of the dispute resolves the issue on the side of unauthorized practice.

Application of Guberman, *supra*, 90 Ariz. at 31, 363 P.2d at ___.

XII. THE CHILD SUPPORT ISSUE

A. AN ALLEGED "LACK OF CANDOR" ABOUT AN UNSERVED CHILD SUPPORT ORDER

The issue of character and rehabilitation is larger than the issue of admission to the practice of law. Where children and grandchildren are concerned, a long-term view also must be taken into account. Practical realities must be taken into account. A letter from a private investigator stating that Petitioner's son had been adopted was a very significant matter. At that time, Petitioner had no dealings with paralegal, attorneys, or "jailhouse lawyers" within the prison. The suggestion that Petitioner should have taken additional steps to determine whether the private investigator was telling the truth is a smokescreen for an invalid attack. On what basis should Petitioner have taken such steps? During the hearing and in his

Petition, he stated that he knew of others whose parental rights had been severed without notice (by publication), and he would not have sought to object to such steps if he had been notified.

The Committee Response citing the waiver of service for the divorce action is not dispositive of the child support order. No one can be held to account for failure to comply with an order not served upon him. What Petitioner did was to not object to or oppose a divorce. If the divorce had required him to sell property, split a bank account, pay a debt or a portion of a debt, etc., he would have had a duty to comply once he was served with such orders. The address for service was provided (which the Committee Response failed to acknowledge).

The Committee Response's decision to characterize the situation as a "*reprehensible*" "*failure to obey a court order*" – at page 20 and again at page 21 – implies that a court order was served upon Petitioner, when, in fact, the Committee was aware that Petitioner never had been served with any order for permanent child support.[47]

Petitioner's son was better off with a family that could care for him and there would have been no rational reason

[47] Even the temporary child support order had not been served. The application for such an order expressly stated that Petitioner resided in Potter County, Texas and could be served there with the order if issued by the court. In fact, Petitioner's spouse knew that Petitioner did not reside in Potter County, but rather in Dallas County (where Petitioner and his spouse resided at the time of their separation). Petitioner learned of the order when he was arrested for non-payment of the order that never had been served upon him. Despite the fact that Petitioner provided the Court (and therefore, his spouse) with a relative's address for service of any ultimate order, no such order ever was served.

for Petitioner to seek to prevent that family from knitting together as tightly and as well as possible, especially since – at the time of receipt of the letter from the private investigator – Petitioner was still serving a sentence of 25 years to Life. Petitioner's prison wages began at less than ten cents per hour; and Petitioner was coping with severe psychological difficulties. Many years later, Petitioner's prison wages were significantly higher (eventually reaching up to $100.00 per month before dropping again to less than $30.00 per month) – but by that time, he had been informed by a private investigator that his son had been adopted.

B. THE "DOUBTFUL ADOPTION THEORY"

The Committee Response totally ignored the content of the Petition to which it supposedly was responding. *See* **Licensed private Investigator Letter (Harry Minnick),** dated January 22, 1988, provided to the Committee as part of Petitioner's **Application;** a copy of this three-page letter accompanied the Petition as **Item 5** of **Appendix Three.** The letter expressly stated that Petitioner's son has been adopted. There is no "doubtful adoption theory."

With regard to the ultimate resolution of the child support issue and the payments that were undertaken immediately upon learning that an adoption had not taken place, it is important to place the issue in perspective within the context of Petitioner's life:

> 'Rehabilitation . . . is a "*state of mind*" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "*reformation and regeneration.*" [citations omitted] In the present case, Pacheco appears to have met

> the rehabilitation requirements. His record as a licensed private investigator, his involvement in community projects, and the letters and testimony on his behalf provide a clearer, more accurate picture of his present moral character and rehabilitation than do his offenses from a decade ago upon which the State Bar so heavily relies. Pacheco's conduct since 1977 stands in marked contrast to his earlier misdeeds. He has established himself as an esteemed member of his community and of his profession. His perseverance during his seven-year quest to gain certification merits commendation.
>
> The sole blemish on Pacheco's record since graduating from law school in 1978 appears to be his ill-advised involvement in the technically legal, but ethically suspect child custody incident. In our view, Pacheco's involvement in that incident is simply insufficient to demonstrate a lack of rehabilitation.

***Pacheco v. State Bar*,** 741 P.2d 1138, ___, 43 Cal.3d 1041, at 1058, 239 Cal.Rptr. 897 ___ (1987).

XIII. THE LETTERS OF SUPPORT

The Committee Response ignores the pointed references to the quality and content of the letters of support submitted to the Court on Petitioner's behalf. The quality and content of support letters, however, is one of the most important factors to be taken into account, particularly if they come from persons who are well acquainted with Petitioner over more than a short period of time and who recognize and understand the role and importance of an attorney's work on behalf of the justice system and his clients.

> Although the number of letters is not unduly large, they are from persons whose position indicate that they possess a real sense of responsibility for the integrity of the legal profession, and who, therefore, would not be induced by reasons of friendship, or any reason other than a sincere belief in his honesty and integrity, to recommend him for admission to our bar. The letters attest petitioner's ability, his wide experience and the worth of his character. We believe that the writers thereof were giving an honest estimate of his character and that we may unqualifiedly accept that estimate."

***In re Stepsay*,** 15 Cal.2d 71, 76, 98 P.2d 489, ___ (1940).

> . . . his sacrifice of financial advantages or bodily comforts of himself or family, but also by his attitude toward the subject as evidenced by a spirit of willingness, earnestness and sincerity. * * * **. . . if reformation may be 'proved' by testimonies of meritorious conduct, the conclusion must be that petitioner has fully established his right to an order of reinstatement in the practice of the law."**

***In re Gaffney*,** 28 Cal.2d 761, 765, 171 P.2d 873 (1946) (emphasis by bold print added).

> **We cannot ignore the extraordinary quality of the recommendations written on petitioner's behalf by an unusual number of attorneys. Although such evidence is not conclusive (*Feinstein v. State Bar* (1952) 39 Cal.2d 541 [248 P.2d 3]) it is entitled to great weight (*Hallinan v. Committee of Bar Examiners*, *supra*, 65 Cal.2d 447, 454) particularly where, as here, the writers have known petitioner for many years and several of them**

> **were aware of his misconduct and addressed their remarks specifically to petitioner's moral fitness in the light of those events. The record is bare of any evidence to contradict the sincerity of petitioner's assertion that his study of the law has brought a realization that there are more ethical means of achieving goals than those he had adopted in the past. His persuasive testimony regarding his views on the moral obligations of an attorney confirms this change in outlook. Rehabilitation, we have held, is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*In re Gaffney* (1946) 28 Cal.2d 761, 764 [171 P.2d 873]; *In re Andreani* (1939) 14 Cal.2d 736, 749 [97 P.2d 456].) In our view, petitioner has demonstrated convincingly that he has the moral character warranting certification to this court for the practice of law.**

***March v. Committee of Bar Examiners*,** 67 Cal.2d 718, 732, 433 P.2d 191, ___, 63 Cal.Rptr. 399 ___ (1967) ((emphasis by bold print added).

Contrast these cases, which are similar to the letters in Petitioner's case, with those of an applicant named Hippard, whose support letters and witnesses were quite different from Petitioner's. Hippard's therapist recommended continued therapy; his witnesses disagreed with his decision to not make any restitution despite financial ability; and some witnesses suggested a condition of Hippard taking additional ethics tests. ***Hippard v. State Bar*,** 49 Cal.3d 1084, 782 P.2d 1140, 264 Cal.Rptr. 684 (1989).

XIV. MISCHARACTERIZATION OF PETITIONER'S MENTAL/ PSYCHOLOGICAL PROBLEMS

Petitioner's testimony was that he concealed the extent of his problems because sharing that knowledge would have endangered his safety and even his life, given the realities of the prison setting with which Petitioner was compelled to cope. Further, a professional would have been able to detect the extent of Petitioner's problems, given the opportunity to interact with him on a more than occasional basis.

The Committee Response mischaracterizes the situation and the testimony with respect to Petitioner's psychological problems ("*He now claims that he was then suffering from serious psychological problems but he also acknowledges that he would not then have admitted that to be true nor would other persons have been able to detect such conditions*"). Committee Response at pages 10-11.

Petitioner's statements have not changed over the years, and he has shared his experiences with numerous treatment professionals across many years within the prison setting as well as since his release.

XV. CRITICISM OF PETITIONER'S INTRODUCTION TO HIS PETITION

The Committee Response criticized the Introduction to the Petition and then asked the question, *why would Hamm fashion his arguments so closely upon Konigsberg without attributing the arguments to that authority?*

Prior to the Introduction, Petitioner already had identified his arguments: due process and equal protection, which form the foundation of the challenge to the

Committee decision. The Introduction placed before the Court the perspective of social trajectory, the idea of a debt of honor and personal atonement, and the goal of spiritual fulfillment. None of these time-honored and easily-understood ideas and concepts originated with Petitioner, and many sources could have been presented. Sources were not presented in the Introduction because Petitioner believed that sources were not needed.

From Petitioner's perspective, any eloquence that might be found in the Petition does not derive from any prior case decided in any jurisdiction, but rather from the gradual development of his own potential through study, reflection, and devotion to the duty created by his commission of murder. ***Konigsberg v. State Bar of California***, 353 U.S. 252 (1957) was cited in the body of the Petition (at page 30) at the point where a legal principle was being argued, and an additional footnote was used at that point.

CONCLUSION

For nearly all who come before Character Committees seeking admission to practice law, I believe that practicing law is a end in itself, the outcome of a long period of study, sacrifice, and often debt. For me, admission to practice is a means to an end rather than an end in itself. While I think I will be a good attorney and that the population I seek to serve are in desperate need, I nonetheless have a separate goal that transcends the mere practice of law, and that goal has to do with criminal justice, rehabilitation, reintegration into society, personal atonement, and fulfillment of a personal commitment to my victim.

Crime is a fact of life and of social existence. A vibrant society's formal procedures for resolving criminal acts

must also allow for formal acceptance of returnees who, rather than resisting self-correction, invite and adopt it as a central feature of their self-image(s). Is the task of reintegration to be one of perpetual denial?

> **"It's ludicrous to imagine that allowing Hamm to practice will open the floodgates to anarchy. That murderers will begin storming ASU Law School for a higher education. That before too long the professional credentials of Arizona attorneys will include featured profiles on America's Most Wanted (Television Show).**
>
> **Hamm is unique, and must be treated so."**
>
> *** * * "I'm as guilty as the next person in resisting the idea of a convicted murderer getting the breaks his victim will never have. But let's think about the purpose of our criminal justice system and what we propose to do with criminals once the system has released them into our midst again.**
>
> **"And we have to decide if we intend to keep Hamm and rehabilitated ex-cons such as him in Sisyphian labor, endlessly pushing a stone up a hill, or if we'll allow them to finally reach the top."**

Commentary by Tamara Dietrich, October 15, 1999, *The Tribune*, "*Hamm's pursuit to practice law stirs unforgiving feelings*:"

Based upon the entire record of this application for admission and the briefs filed in this Court, Petitioner requests a full hearing before this Court, or, in the alternative, requests the Court reject the recommendation of the Committee and grant admission to the practice of law.

Respectfully Submitted this 7th day of April, 2005.

_____
James J. Hamm

STATEMENT OF SERVICE

AN ORIGINAL AND/OR COPIES of the foregoing served as noted below this 7th day of April, 2005:

Noel Dessaint, Clerk
Arizona Supreme Court
(Original and Six Copies hand delivered)

Lawrence McDonough
Monroe & McDonough, P.C.
6280 East Pima, Suite 105
Tucson, Arizona 85712
(Attorney for the Committee on
Character & Fitness of the
Supreme Court of Arizona)
(Copy sent by U.S. Postal Service,
First Class Postage affixed)

Mr. Juan Perez-Medrano, Chair, &
Ms. Carolyn De Looper, Secretary,
Committee on Character & Fitness
of the Supreme Court of Arizona
1500 West Washington, Suite 104
Phoenix, Arizona 85007-3231
(Two Copies sent by U.S. Postal Service,
First Class Postage affixed)

by _____
James J. Hamm

EXCERPTS

APPENDIX H

EXCERPTS

J. Russell Skelton

September 21, 1998

Character and Fitness Committee
SUPREME COURT OF ARIZONA
111 W. Monroe – Suite 1800
Phoenix, Arizona 85007-3329

Re: Application of Hamm

To Whom It May Concern:

The newspaper reports that Mr. Hamm, a convicted murderer, recently sat for the Bar examination. Presuming that to be true, I trust that someone on the Committee is currently reviewing his file.

As a member of the Bar, and as a former member of the Character and Fitness Committee, I am very much opposed to Mr. Hamm's application. While a Committee member, I believe I voted on one or two occasions to admit individuals with prior felony convictions; however, none of those individuals were convicted of murder.

I believe a murder conviction should disqualify anyone from ever being admitted to practice law in the State of Arizona, or anywhere else for that matter. I believe that certain acts, including murder, should forever disqualify individuals from practicing law, notwithstanding any subsequent rehabilitation.

The reputation of the legal profession has certainly suffered during my years of practice. I do not believe it should suffer further because of Mr. Hamm or any other

convicted murderer, and I frankly do not believe the general public believes he should be admitted.

Sincerely,

/s/

J. Russell Skelton, Esq.

JRS:db

COMMITTEE ON CHARACTER AND FITNESS
OF THE SUPREME COURT OF ARIZONA

[Names And Address Omitted In Printing]

24 MAY 04

Juan Perez-Medrano, Presiding Chair
Committee on Character & Fitness
SUPREME COURT OF ARIZONA
1501 West Washington, Suite 104
Phoenix, Arizona 85007-3231

Dear Mr. Perez-Medrano & Committee Members:

This is to advise you and members of the AZ Supreme Court's Committee on Character & Fitness, that I will recuse myself from any further proceedings with James Joseph Hamm.

I remain steadfast in the belief that individuals with any felony conviction cannot serve the Arizona citizens as a sworn Police Officer, and the citizenry does hold them to a higher standard. I adamantly feel the same higher standard should apply to individuals who want to practice law in the State of Arizona.

Sincerely,

/s/
Henry C. Manuelito, Committee Member
Committee on Character & Fitness

STATE BAR
***of* ARIZONA**

Committee on Character and Fitness
Arizona Supreme Court
1501 W. Washington Street
Phoenix, AZ 85007

May 17, 2004

Members of the Committee:

As President of the State Bar of Arizona, I am writing on behalf of the Board of Governors regarding James Hamm's application for admission to the State Bar of Arizona. The Board respectfully submits this comment for consideration by the Arizona Supreme Court's Committee on Character and Fitness.

The State Bar of Arizona's Board of Governors very strongly believes that Mr. Hamm should not be admitted to practice law in Arizona under any circumstances. Mr. Hamm is a convicted murderer. In 1974, at the age of 26, Mr. Hamm took Willard J. Morley, Jr. into the desert and fatally shot him in the back of the head.

The publicly known facts of Mr. Hamm's case are incompatible with the professional standards we require of all lawyers. The Bar would seek to disbar any lawyer who committed such acts, and the Bar would actively oppose the reinstatement of any attorney involved in such conduct.

The ability to practice law is a privilege. The Board believes Mr. Hamm permanently relinquished the privilege to be an officer of the court the moment he murdered another person.

The State Bar Board of Governors urges the Committee to reject James Hamm's application for admission to the State Bar of Arizona.

Respectfully,

/s/ Pamela Treadwell-Rubin
Pamela Treadwell-Rubin
State Bar President

Robert B. Buchanan
Judge of the Superior Court (Retired)
Pima County, Arizona

January 5, 1997

Hon. Ed Levya, Chairman
Arizona Board of Executive Clemency
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Dear Mr. Levya and Members of the Board:

Re: James Hamm

I am the judge who sentenced James J. Hamm in CR-26408 (Pima County) in December, 1974. Although this sentencing took place twenty-three years ago, I can still remember feeling at the time that this defendant was someone who would still be able to make something of himself, and that he would do his prison time well.

Due to many reports about him in the media, I've had the opportunity over recent years to follow Mr. Hamm's progress. I have been impressed with the way in which he has demonstrated maturity, a sense of personal responsibility for his actions, and the way he has used his skills to work on behalf of others. I believe he is sincere in these efforts, and that he should be encouraged by society to continue his progress.

Mr. Hamm, along with his co-defendant, committed the most serious of crimes. But in a just and balanced society, we permit him to redeem himself and atone for his crime. Mr. Hamm has chosen the study of law and has succeeded admirably.

Mr. Hamm was released from prison in 1992. Since that time I have been advised that he has followed to the letter

each and every provision of his conditions of parole supervision, including refraining from alcohol and drug use, performance of many hours of community service work, payment of supervision fees, and participation in re-entry counseling. I suggest that the timing is ripe for him to be discharged from parole, and permitted to pursue the formal requirements of entry into the legal profession. He is clearly responsible and self-regulating. There is no reason I can think of why he would require continued criminal justice supervision. Instead, he has earned his rightful place in our society as a restored, contributing member. His progress through the criminal justice system is something we should attempt to replicate much more often.

In 1974, I felt Mr. Hamm was deserving of the sentence I imposed. I now believe he is deserving of an absolute discharge from parole.

Sincerely,

/s/ Robert B. Buchanan
Robert B. Buchanan,
Judge (Retired)
Pima County Superior Court

cc: James Hamm, 139 East Encanto Drive,
Tempe, 85281

Robert B. Buchanan
Judge of the Superior Court (Retired)
Pima County, Arizona

November 1, 1999

Honorable Ed Leyva, Chairman
Arizona Board of Executive Clemency
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Dear Mr. Leyva and Members of the Board:

I am the judge who sentenced James Hamm in Pima County case number CR-26408 in December of 1974. I write now – twenty five years later – to support his application for an absolute discharge from parole.

As a member of the judiciary, it was my responsibility to send Mr. Hamm to prison with a life sentence that nonetheless contemplated the possibility of commutation, parole, and absolute discharge, based upon his own conduct and the review of members of this Board. At the time I imposed sentence upon him, I remember believing that he had the potential to make something of himself, and I sincerely hoped he would do so.

I did not stay in touch with Mr. Hamm during his incarceration, but after his release on parole, I followed his progress through the media. I was impressed with Mr. Hamm's mild answers and reasonable responses to the many critics who opposed virtually every step he took in reintegrating himself into our society. It was obvious that he approached each new opportunity with voluntary disclosure of his background and, when confronted with anger, irrationality, and personal attacks, he responded by using reason and temperate language. He demonstrated commitment to the ideals that he apparently developed during his own rehabilitative process, and he paid his own

way at every stage. I thought then, and continue to believe today, that he is a role model for how we all hope that ex-prisoners would conduct themselves.

Sometime after his graduation from the Arizona State University College of Law, Mr. Hamm became acquainted with and worked with an attorney who is a lifelong friend of mine. Through this mutual acquaintance, I learned more about the person behind the name, and eventually came to meet Mr. Hamm under informal circumstances. I found him to be bright, personable, and, above all, sincere. It is my opinion that he is a responsible, self-regulating individual who needs no continued supervision.

Mr. Hamm's progress through our criminal justice system is an example of a rare and commendable success. His formal study of the law has been completed, and he recently passed the Arizona bar exam, setting the stage for an application for admission to practice – an application which I also will support.

On balance, I do not believe that it lessens the seriousness of his crime to grant Mr. Hamm an absolute discharge from parole, thus completing his sentence. In fact, I believe Mr. Hamm has fulfilled his obligations in an admirable and forthright manner deserving of discharge from parole. I recommend without reservation an absolute discharge for Mr. Hamm.

Sincerely,

/s/ Robert B. Buchanan

Robert B. Buchanan,
Judge (Retired)

cc: James J. Hamm, 139 East Encanto Drive, Tempe, Arizona 85281

Robert B. Buchanan
Judge of the Superior Court (Retired)
Tucson, Arizona

November 16, 2001

Honorable Edith Richardson, Chairman
Arizona Board of Executive Clemency
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Dear Ms. Richardson and Members of the Board:

I am the judge who sentenced James Hamm in Pima County Case No. CR-26408, in December 1974. I write now – twenty-seven years later – to fully support his application for absolute discharge from parole supervision.

At the time I imposed sentence on Mr. Hamm, I remember believing that he had the potential to make something of himself and I sincerely hoped at the time that he would do so. As a member of the judiciary, I accepted my responsibility to sentence James Hamm to prison, but nonetheless knew that the sentence also legally contemplated commutation, parole and absolute discharge as long as Mr. Hamm's own conduct merited him such consideration. I strongly believe that his conduct both during his prison sentence, and during the subsequent nine-plus years since his release, has earned him the opportunity to fully regain his rights as a citizen and his status as a fully rehabilitated person no longer in need of criminal justice supervision.

Sometime after Mr. Hamm's graduation from law school at ASU in 1997, he became acquainted with and worked for an attorney who is a lifelong friend of mine. Through this mutual acquaintance, I met Mr. Hamm and his wife, Donna, under informal circumstances. I found

James Hamm to be very personable, sincere and, most importantly, profoundly reasonable in all his thoughts and actions. I was impressed with the way he handled the many challenges of reintegration after almost two decades in prison, especially in the glare of some of the publicity which came about as a result of attending law school and, later, lecturing at ASU. It is my personal opinion that Mr. Hamm is a responsible, self-regulating individual who needs no supervision.

Mr. Hamm's progress through our criminal justice system is an example of a rare and commendable success. I believe he is a role model for how we all hope that ex-offenders would conduct themselves upon release into the community. I am aware of the many accomplishments he has made since his release, including passing the Arizona bar exam. If he applies for admission to the bar, I intend to fully support his application at that time as well.

As a jurist, I have the deepest sympathy and respect for the victims of crime and for the enormity of their loss. On balance, I do not believe that an absolute discharge for Mr. Hamm lessens in any way the seriousness of the crime nor the magnitude of the punishment imposed. Instead, I believe Mr. Hamm has come full-circle within a just and balanced system which included rehabilitation as one of its goals in 1974. I believe that it is important from a societal standpoint to recognize his rehabilitation in a formal way and permit him to fully reintegrate into his community.

2 I strongly recommend without reservation an absolute discharge for James Hamm.

Sincerely,
/s/ Robert B. Buchanan

Robert B. Buchanan,
Judge (Retired)

cc: James Hamm, 139 East Encanto Drive, Tempe, Arizona 85281

ARGOSY
UNIVERSITY

[Address Omitted In Printing]

November 24, 2001

Arizona Board of Executive Clemency
1645 West Jefferson
Suite 326
Phoenix, Arizona 85007

Dear Arizona Board of Executive Clemency:

I am writing to ask the Arizona Board of Executive Clemency to vote in favor of the application for Absolute Discharge submitted by James Hamm. I will be unable to attend his discharge hearing on December 4, 2001. I wish that I could be there to offer additional diagnostic and treatment information to support his application for Absolute Discharge.

As your records will substantiate, I was Mr. Hamm's psychologist for approximately two years. I currently serve as the President of the Arizona Psychological Association. Mr. Hamm voluntarily entered psychotherapy to work on his own person and relationship issues. The content of our sessions was documented in detail in my letters to his parole officer. We only occasionally addressed his correctional experiences, so my clinical observations should not be regarded as a formal forensic assessment.

I am presently employed as a Professor in the doctoral program in Clinical Psychology at Argosy University/Phoenix. The last time that I met with Mr. Hamm was when he did an outstanding presentation on offender

rehabilitation to the students in our graduate programs. He spoke about the importance of inner change in the rehabilitation process, and gave beginning doctoral students practical advice about working with different types of offender populations. He explained that real rehabilitation requires years of self-examination and hard work, and he shared his own long and painful process. He still carries a great deal of guilt for taking someone's life, and he should. He uses that guilt as a catalyst for his continuing rehabilitation.

I support his Absolute Discharge from parole because Mr. Hamm does not present any reasonable threat to the welfare of the community. During our psychotherapy sessions, it was evident to me that Mr. Hamm was not in therapy just to impress or manipulate others. To the contrary, I was very impressed by his capacity for genuine insight. Mr. Hamm demonstrated remorse, empathy, and responsibility. Of all the hundreds of clients who I worked with since becoming a psychologist, I know of none that worked harder in therapy to really understand himself. He actively applied what he learned in our psychotherapy sessions to his everyday life. He used psychotherapy to change himself.

There is no such thing as a total guarantee that anyone will not become a threat to the community in some way in the future. The best that we can do is apply offense history, rehabilitation history, character, and psychological health into a subjective equation to make our best prediction. Based on those criteria, Mr. Hamm posses an extremely low risk to the citizens of Arizona. I believe that self-awareness and empathy increase one's psychological

resiliency and act as deterrents to criminal behavior. If that is true, then he is at very low risk for reoffense. Mr. Hamm did more than rehabilitate. He has become a person of compassion and integrity.

Cordially,

/s/ Andy Hogg

Andy Hogg, Ph.D., A.B.P.P.
President, Arizona
Psychological Association

AMBROSE LAW FIRM, P.C.
A PROFESSIONAL CORPORATION PROVIDING LEGAL SERVICES

[Name And Address Omitted In Printing]

January 22, 2004

Committee on Character and Fitness
Supreme Court of Arizona
1501 West Washington
Suite 104
Phoenix, Arizona 85007-3231

RE: James Joseph Hamm

I am responding to and supporting the application of James Hamm for admission to the Arizona Bar. First, let me briefly introduce myself. I have been an attorney in active practice since 1989. I do my best to serve my clients and the State Bar in an ethical manner. I have served on the Rules Committee, and have been very active with the Membership Assistance Committee. I have been a member of the MAC Committee for approximately six years, two of which I was the Chairman of said Committee. I am proud of my service to the Bar and the fact that I have not had any Bar complaints in my fourteen years of practice.

In responding to Question #1 of the enclosed Form, I have known James Hamm since 1994 when he was in law school. My experience with James has been professional and stems from him providing me with law clerk assistance and consulting on prison issues. He is highly intelligent and professional and I have enjoyed working with him over the years.

In responding to Question #2 of the enclosed Form, I consider James Hamm to be one of the most ethical, forthright and sincere individuals I have ever known.

When it comes to ethical considerations James is actually hyper-righteous. His dedication to live an ethical, lawful life, and to provide assistance to those in need permeates his being. I realize this sounds exaggerated, but if you knew James Hamm as a person (as opposed to a media figure) you would realize that I am not embellishing one bit.

My experience with the MAC Committee has introduced me to lawyers whose character defects have caused them to stray from sound principles of ethics and integrity. Accordingly, I have some experience in the rehabilitation of lawyers with ethical and personal problems. As for James Hamm, I will say this: I truly believe that James Hamm, as the man that he is today, and since I have known him, is incapable [of] ethical or legal transgressions. His dedication to upholding high moral and ethical principals is, without question, the most significant I have ever seen of any lawyer admitted to this Bar.

Obviously, I am aware of James' prior incarceration. To [this] fact please realize that James' rehabilitation has been nothing less than extraordinary. His transformation into the honorable man that I now has come through many years of hard work, deep soul searching, study, sacrifice and education. His amazing rehabilitation shows a strength and moral fortitude beyond most individuals. I congratulate and admire James Hamm for overcoming such significant obstacles.

I proudly recommend James Hamm for admission to the Arizona Bar. Please allow me to make one final comment. James Hamm accepted and completed his punishment as properly set forth by State law. If there is a higher power judging us all, I know that James continues to serve that power by giving assistance to those who are less fortunate. Accordingly, it is not our place to, nor can

we legally, continue to administer punishment upon James Hamm. And quite frankly James is not worthy of ongoing punishment. At issue before this Committee is whether James Hamm is an ethical and moral person; again, I have known no person to be more ethical than this man. Please allow James to be an example to all of those in need of hope, that we *can* improve ourselves, we *can* overcome our defects and we *can* bring goodness to the lives of others.

Sincerely,

AMBROSE LAW FIRM, P.C.

/s/
Scott A. Ambrose

SAA:so
Encl.

ASU ARIZONA STATE UNIVERSITY [Address Omitted In Printing]

Sunday, February 1, 2004

Committee on Character and Fitness
State of Arizona Supreme Court
1501 W. Washington, Suite 104
Phoenix, AZ 85007-3231

RE: Letter of Support & Recommendation for Mr. James J. Hamm

I am 62, and I have been a Professor at ASU for 32 years. I first met James Hamm in 1981 when I helped teach a course at the prison in Florence as part of the degree program offered by NAU. I have maintained a regular and continuous contact with Mr. Hamm ever since that eventful meeting in January, 1981, and I would have to say that Mr. Hamm is one of the most remarkable and honorable individuals I have ever met in my life. I visited him many times while he was in prison, and I was active in his various commutation, parole, and sentence release hearings. I was in regular contact with him during his 1992-1996 attendance at the ASU College of Law, and I also supervised his employment between 1/99 and 5/99 at the ASU School of Justice Studies, when he was employed for the purposes of developing a major scholarly statement about the nature of rehabilitation in contemporary prisons. I worked with Mr. Hamm in the development of this statement, and I helped organize a public conference where he presented his ideas to an audience of about 120-140 people. Mr. Hamm was conscientious, serious, scrupulous, hard-working, diligent, and principled in his completion of this particular project, and indeed these are the very qualities I have seen in his conduct and demeanor for the last 23 years.

Mr. James Hamm is an extraordinary individual. He is not only very intelligent, but he is superior in the development of his character as well. He accepted responsibility for his crime long ago, and since that day he has committed himself to living a moral and ethical life which honors the memory of his victim. I have witnessed his dedication to this purpose on a continuous basis over the course of many, many years now. Since coming out of prison in 1992, he has faced a number of difficult challenges in being cast into a number of situations with high mass media exposure, in part because of his association with the oft controversial organization Middle Ground Prison Reform. Under great challenge and stress, Mr. Hamm has always conducted himself with great calm and composure, often distinct from the public officials on the other side of the conflict (such as State of Arizona Senate Leader John Green who claimed in public that the ASU Law School would never again receive public financial support if it allowed James Hamm to attend the ASU Law School). Mr. Hamm did not choose the easiest road upon his release from prison, and the fact that he has handled these challenges with great principle and aplomb is a testament to his calm character.

Arizona now has about 31,000 individuals in prison, and most of these individuals will return to society after relatively short sentences, but faced with unrelenting stigma. This stigma is an important factor in why so many return, being unable to succeed in the face of it. State of Arizona officials could use James Hamm's achievements to work for our common purposes, he could be publicized as a "poster boy" for the potential of our institutions, and the possibilities of human growth, development, and potential. But this hasn't happened in 23 years, and at every stage

State officials have opted for the easy path of pandering to the public resentments; Hamm has been opposed and vilified by the ADOC officials, the politically-appointed commutation committees, the Arizona legislators, ASU officials, and now most likely this Supreme Court Character and Fitness Committee.

As an ASU Professor for 32 years, I know literally *hundreds* of lawyers in Arizona; I have former students sitting as justices on the State of Arizona Supreme Court, at the highest levels of the Attorney General's office, and all at other institutional and private levels. Take my word for it; admitting James Hamm to the Arizona State Bar would *significantly raise* the moral and ethical quotient of the Bar. For the Higher Good, you should support his application, and ignore the shrill political denunciations of this fine man.

Very respectfully,

Dr. John M. Johnson
Professor Justice Studies

FERRAGUT & ASSOCIATES
ATTORNEYS AT LAW, P.C.

[Address Omitted In Printing]

January 30, 2004

Committee on Character and Fitness
Supreme Court of Arizona
1501 W. Washington, Suite 104
Phoenix, AZ 85007-3231

Re: James Joseph Hamm

Dear Sir or Madam:

It is with great honor and pleasure that I submit this recommendation in support of the admission of James Joseph Hamm to practice law in Arizona. I have known James Hamm for approximately 3 years. James has worked with my law firm as a paralegal for approximately 2 years. I can tell you with great confidence and admiration that James Hamm is an exceptionally caring, compassionate, morally and ethically sound individual. His genuine desire and determination to seek atonement and overcome adversity, is a shining tribute to the rehabilitative drive of the human spirit, and a beacon of hope and inspiration for many.

Throughout the time that I have known James Hamm I have been genuinely impressed and moved by his commitment to serve our community and the legal profession. James often works on several projects simultaneously. He handles all his duties and assignments with great diligence and professionalism. Whether he is addressing members of the legislature on pertinent issues or lending a gentle hand to a homeless person, James treats all persons with kindness, respect, and dignity.

I enthusiastically recommend James Hamm for admission to practice law in Arizona. His integrity, maturity, and unique perspective enhance the diversity of the bar and are in keeping with the finest qualities and values of the legal profession.

Respectfully,

/s/

Ulises A. Ferragut Jr.

PARRISH & BERRY
RICHARD PARRISH Attorneys at Law BOBBI BERRY

January 25, 2004

It is not possible in a single paragraph succinctly and incisively to describe the odyssey of James Hamm from the homeless, drug addicted drifter, who 30 years ago committed murder in a drug deal gone bad, pled guilty to first degree murder, and wound up today a graduate of Northern Arizona University (while an inmate at Arizona State Prison), had his sentence commuted by the Governor of Arizona after spending 17 years in prison, was graduated from Arizona State University in 1997 with a J.D. degree, passed the bar examination in 1999, and now applies for admission to the practice of law.

In March 1997, while I was of counsel to the Phoenix law firm of Kimerer & LaVelle, I was employed to defend one of the three prisoners indicted for the murder of a correctional officer at Perryville Prison in Buckeye. It was the first murder of a correctional officer in Arizona in over 25 years. Several attorneys recommended that I engage Donna Hamm as my paralegal for the case and utilize the expert witness services of her husband, James Hamm, if appropriate. My professional association with the Hamms lasted over two years, and during that time James became one of my closest friends. The friendship has continued unabated.

Why does a former Jewish Chaplain and erstwhile chief prosecutor in the Pima County Attorney's Office speak so warmly of a confessed killer? Because deep in the heart of 3000 years of Judeo/Christian civilization there resides the conviction that mere mortal man, a sinner

from his birth, is capable of redemption. Not merely redemption by the grace of a loving God, but self-redemption, the passionate assertion of every Pentecostal evangelist and Baptist preacher and Jewish Rabbi and Catholic Priest that man can himself change his life and cleanse his own soul. In Christian terms, a man can choose the path of goodness and be "saved." In Jewish terms, a *schmuck* can become a *mensch.*

We all know what transgression James Hamm committed three decades ago, and we know that in those decades he literally became the poster boy for rehabilitation. The question that faces us – whether he should be admitted to the practice of law – is therefore not a question of intellectual capacity or steadfast determination to achieve a goal. He has proven himself in these matters. The issue we now debate is whether it looks good for a bar association to admit to practice someone who once committed murder, no matter what his subsequent proof of self-redemption. In simplest terms, are we willing to face down the chortling public and the impugning media when they say, "See, we always knew that lawyers were just a bunch of crooks." Jay Leno will have a field day. The Regents Professor of Philosophy at ASU will go on talk shows and rail about the difference between rehabilitation and forgiveness, and he will tell us what Immanuel Kant thought.

But withal, we must be willing to endure these hits. Because to deny James Hamm admission to practice would be a serious a transgression.

President George W. Bush, neither a notorious liberal nor a bleeding heart has just recommended in his State of the Union address that the federal government provide

three hundred million dollars to the States to develop "re-entry" and job training programs for the thousands of prisoners released each year. Now they come out of prison without training, without assistance, and 80% of them are soon returned to prison, at least in part because they have no introduction back into society and no way to create a new life for themselves. This, says our President, is a terrible squandering of human talent. Is a man who survives his prison sentence only permitted by society to be a short order cook, a diesel mechanic, an upholsterer, a moving van driver, or a country club grass mower? Is there some law or instruction handed down to us from on high that counsels us that there are certain employments that such a man can never have, because no matter what his proof of rehabilitation, of his self-redemption, he nonetheless is forever tainted? Where does the taint end, once a man has "paid his debt to society?" Are some debts never fully paid or ever payable? And who makes this decision? Who draws the line at what employments a man may aspire to and achieve?

The answer is very clear: you will make this decision. But on what precedents? There are virtually none. James Hamm has achieved a level of rehabilitation and self-redemption unique in the history of the United States. So on what grounds can a fitness committee find him unfit for admission to practice? The grounds are quite easy to detect: they are found in the jerk of the knee. To some of the gentry of the Bar and the public, they cannot fathom that a man who has once killed can possibly be permitted into the august, hallowed and pristine halls of the practicing lawyer. To some others, and I am one, my experience proves to me that there are too many celebrated members of the Bar, with whom I have rubbed shoulders over my 32

years of practice, who are the opposite of august, hallowed, and pristine.

Whom are we kidding? The law is a human creation, the practice of the law an all too human vocation. The Bar is composed of bandits as well as honorable men and women, and there are no saints among us.

James Hamm should be admitted to practice. There simply exists no justifiable reason to exclude him. He has proven beyond cavil that there really are no limits to human aspiration and endeavor when a man spends 30 years – over half his life – to achieve a very high goal against monstrous obstacles. Let us not be the ones who say to every prisoner in every prison, "No matter what you achieve and how you bootstrap yourself up from this purgatory, you will never be good enough to sit at our table."

Very sincerely yours,

Richard Parrish

Rex Herron
14195 South Highway 79
P.O. Box 74
Florence, Arizona 85232

(602) 622-6856

November 17, 1999

The Honorable Ed Leyva, Chairman
Arizona Board of Executive Clemency
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Dear Chairman Leyva and Members of the Board:

Mr. James Hamm has informed me that he is scheduled for a December Board hearing to consider his application for Absolute Discharge. He has requested my assistance in this effort for which I am pleased to submit this letter of support.

My comments and observations in reference to Mr. Hamm's character and his readiness for freedom from State supervision will be based on my position as a career employee of the Arizona Department of Corrections from which I am very recently retired. From this perspective I take pride in the fact that the Department has stood up to its mission of "correction" and has contributed to Mr. Hamm's rehabilitation.

I first met James in 1976 when he enrolled in a psychology course I was teaching in the evening college program. He was an apt student – inquisitive, determined, and devoted to not only learning the subject matter, but to how this knowledge could add to his understanding about himself and how his past behaviors led him to the disasterous act he committed. He took several more courses from me over

the years he was involved in the college program and I have maintained intermitent contact with him since.

Beginning with his first days in prison James became genuine in his quest to truly understand what he had done and what directions were open to him for the future. He definitely did not choose the easy path. But he did choose the right one. His first decision was to "go it alone." He avoided any association with the inmate groups in power at the time and very consciously set out to do his time in prison by the rules and to better himself by taking advantage of every program opportunity presented to him. His efforts were recognized by many and over time he became liked and respected by both staff and inmates.

If James' sincerity in his commitment to personal improvement was ever doubted it dissolved with the test of time when he continued year after year after year unwavered by the negative influences of prison life and without any tangible hope of release from prison.

The Department of Corrections sets out its expectations for all inmate behavior through its stringent rules, volumes of policies and hundreds of programatic offerings. James Hamm, through more than 16 years of prison has not only met all expectations, but has far exceeded them. James has demonstrated personal strength, he has demonstrated faith in himself and even in the system that was charged with keeping him locked away.

James' actions and achievements since leaving prison on parole have been no less significant. For the last seven years he has managed to be a wage earner, a full time student, and a husband. He has graduated from law school, has recently passed the bar exam, and has successfully completed seven years of supervision on parole. And

he has accomplished all this under conditions in many ways more watchful and critical than even prison.

Now he wants to be admitted to the bar as a full fledged lawyer and continue his schooling through the Ph.D. degree. He wants to devote his future to serving an under-served and under-privileged constinuency. He wants to do this as a kind of atonement for the crime he committed.

I would ask you, Mr. Leyva, do you or any Board member, or any person who knows James Hamm well, think for even one second that he will not do these things, that he will not accomplish his goals?

I realize there are many factors that must be considered in a decision to grant absolute discharge. I can only offer my insight from the perspective of my education and experience in the criminal justice field, from the position of knowing James Hamm for 24 years under some of the most adverse conditions imaginable, and from the basis of an admitted bias on my part in wanting to see Mr. Hamm be all that he can become.

For the past 26 years James Hamm has exhibited the strength of character and lived by a code of morals we would celebrate in any man or woman. That Mr. Hamm was an inmate in prison during this time does not detract from this essence even a little.

Mr. Hamm committed a terrible crime. It is my firm belief that Mr. Hamm has accepted full responsibility for his actions and has felt more remorse for that final act than we can possibly imagine. I also believe that Mr. Hamm has spent the past 26 years devoting nearly all his time to understanding his actions and to determining ways to atone for what he has done.

Considering all he has accomplished, both in prison and while on parole, I feel there is *every* reason to believe that he will continue to pursue his humanitarian goals and will otherwise succeed in all things as a free citizen of our State and as an important and contributing member of our society.

I want to thank you and each Board member for your positive consideration of James Hamm's request for discharge from parole.

Sincerely,

/s/ Rex Herron
Rex Herron

RH/s

Harry R. Minnick
Post Office Box 399
Del Valle, Texas 78617
January 22nd, 1988

Donna Leone Hamm
139 East Encanto Drive
Tempe, Arizona 85281

Re: James Joseph [Hamm] aka
James Joseph Valdez

Dear Donna:

Reference to our recent telephone conversation. Please be advised of the following:

1. Karen LaRue Mansfield, remarried one Albert Valdez, subsequently, adopting James Joseph [Hamm].

2. The family moved to Route 2, Box 13, Bostic, North Carolina 28018. The residence has an unlisted telephone number.

3. It appears that North Carolina's Open Records Act, prohibit local school district from disclosing any information. The only method would be a court order, or a release from James himself.

SUMMARY AND CONCLUSIONS:

When any adoption is finally legalized, the adopting parents and children bear the same relationship as natural parents, excepting certain inheritance rights.

It is with this premise, that I would approach the son on behalf of his father, and you.

Any contact with the son, should be discreet. Certainly, third parties would be most practical. It would be unwise for formalized contact, as their is the liability to the adopted parent (Albert Valdez).

The character, tempernament, physical and mental health and social standards should be given to any decision to contact James Joseph Valdez.

The legal procedures are complicated, and "Adoption" is protected by new laws; Freedom Information Act; Privacy Act; Texas Open Records Act; and North Carolina's Information Act.

However, I fully realized the importance of father-son relationships. They are lasting, and form the basis for all future relationships.

Whatever your decision's to proceed would be supported with all my resources and abilities. I admire your spirit, and tenacity to find the right answer. . . . . .

Respectfully,

/s/ Harry R. Minnick
Harry R. Minnick

STATEMENT

Donna Leone Hamm

December 9th, 1987

Telephone Conversation regarding: James Joseph Hamm. Confirming letter received.

December 14th

Telephone conversations with Amarillo High School Principal, Amarillo School District Offices, Chamber of Commerce, and county offices (Potter). School District

Offices had fire, all records destroyed. Will have reconstructed files in about one (1) month.

December 15th

Check with Social Security Offices, no number match? No Texas Driver's License, or registration of driver training in "High School Level." Arrangements with associate to check Potter County, general index, birth records, death records, divorce proceedings, adoptions, e.g..

January 20th, 1988

Information received from associate regarding, adoption, change of address, and location of requested person investigated. Info sent.

Total Hours: 12 including phone time.
Estimated phone expenses: $100.00

Received $500.00 Balance due. . . . None