Hate vs. Hypocrisy: Matt Hale and the New Politics of Bar Admissions

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When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get himself accepted in the competition of the market and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. . . . . . . Justice Holmes (1919). 1

Can you imagine, in America, being prevented from becoming a lawyer due to the free exercise of your speech, and good-conscience advocacy of your political beliefs? Matt Hale is the elected "Pontifex Maximus" of the White Supremacist organization World Church of the Creator. Three years ago, Hale passed the Illinois Bar examination. Soon thereafter, the Illinois Committee on Character and fitness denied Hale's petition for admittance to the Illinois Bar. As will be demonstrated, Hale's denial has been completely related to his unpopular views, and expression of them. After a lengthy legal battle, including a failed attempt to persuade the U.S. Supreme Court to hear his case, the decision not to admit Hale stands. At

present, Hale's case stands in line to be heard, finally, by the Illinois Supreme Court. However, the refusal to admit Matt Hale to the Bar in either Illinois or Montana represents a flagrant and egregious dismissal of bright-line rules of law, established by the Supreme Court, over thirty years ago.

The opinion of an inquiry panel for the Third Appellate District of the Supreme Court of Illinois remains the final disposition of the case currently available for public review. More recently, Hale has sought permission to take the Montana Bar. In February, 2001, a subcommittee of the Montana Commission on Character and Fitness recommended the denial of Hale's application to take the Montana Bar examination. On June 6, 2001, a separate five-member Committee on Character and Fitness, empowered with authority over Hale's petition, decided not to render a final disposition on Hale's case. The committee believed that "further investigation is warranted" before Hale's case could be resolved in Montana. To this day, no decision has been made as to whether Hale will be allowed to take the Montana Bar examination. While the Montana opinion is not yet available to the public, one must presume that the reasoning in Montana for denying Hale echoes the reasoning in Illinios. The arguments for allowing Hale to practice law, or not, hinge on the following two positions.

The forces opposing Hale's admission to the bar argue, in essence, that one such as Hale who has dedicated his life to inciting racial hatred, and who seeks a constitutional initiative to abolish the 14th Amendment right to Equal Protection, cannot "under any civilized standards of decency," possess the requisite moral character allowing him status as an officer of the court. Hale also seeks to overturn the Bill of Rights, though by constitutionally protected means, so that all non-whites may be deported from the United States by an all-white government.

6. See id. at 16.
7. See id. at 4.
He freely admits that his loyalty to his religion of white supremacy and separatism, including the crusade against equality, comes before all of his other loyalties, including his loyalty to the law. Hale unapologetically bandies about racial epithets. He has a history of public ordinance violations, including physical confrontations, which have resulted from the expression of his beliefs. Under these circumstances, without even knowing what the character and fitness standards are, it would seem that one such as Hale must fail to meet those standards, in Illinois, Montana, or anywhere else.

Yet the legality of the question is not so simple. The argument in Hale's favor is well-encapsulated by his lawyer's following assertion: "The Committee's denial violates Hale's constitutional equal protection and due process rights because it is arbitrary, capricious, unreasonable and invidiously discriminates against Hale in retaliation for the exercise of his First Amendment freedoms, and directly violates Hale's First Amendment rights of speech and association." While Hale's opponents concede that "he is certainly entitled to his own beliefs and the free expression thereof," they argue that "the issue is whether Mr. Hale possesses the requisite character and fitness for admission to the practice of law." Hale's lawyers respond that "The Illinois Bar's exclusion of Hale, based on nothing more than his beliefs and advocacy, is in direct conflict with nearly 50 years of constitutional precedent." They emphasize the latest line of cases, ending in 1971, which deal with the issue of the treatment of political speech in assessing applicants' admission to the bar. Hale's lawyers quote the 1971

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8. See id.
9. See id.
10. It is important to note, however, that Hale has never been convicted of a crime which has not been overturned on appeal.
11. See Decision of the Inquiry Panel, supra note 4, at 6; (note also that Character and Fitness Committees tend to look upon physical confrontation with particular disfavor).
12. ILL. SUP. CT. P.R. 4.1. According to this rule, applicants have the burden of proving their own good moral character to the committee. This is a uniform requirement for bar applicants in each state.
15. Petition, supra note 13, at 11.
case of Baird v. Board of Bar Examiners: "It is sufficient to say we hold that views and beliefs are immune from bar association inquisitions designed to lay a foundation barring an applicant from the practice of law."16

However distasteful Hale's speech may seem to the majority of Americans, the speech that has cost him his law license is political in nature. Therefore, according to the latest case law on the issue, Hale's speech is immune from the considerations of the character and fitness committees. And, since Hale's beliefs and expression of them are the overwhelming reason for his denial, when that speech is excised from consideration, what remains is an inadequate foundation for the denial of Hale's license on other grounds. This is the crux of both sides of the issue, the disposition of which depends on the consideration of a number of factors, now to be discussed.

FUNCTION OF THE CHARACTER AND FITNESS COMMITTEE

Each state bar maintains a character and fitness committee to regulate the admission of each state's lawyers. In Montana, the purposes of the committee are specifically defined "to assure the protection of the public and safeguard the justice system. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them."17 "Good Moral Character" in Montana "refers to the qualities of fairness, discreteness, honesty, reasonableness, (and) unquestionable integrity . . ."18 In one seminal character and fitness committee case, the U.S. Supreme Court determined that states can set their own high standards in defining good moral character and enforcing it as a requirement, because states have a substantial interest in protecting the public from unscrupulous lawyers and the like.19 In addition to meeting the burden of high moral character proposed by one's state bar, an applicant has the additional burden "of proving by clear and convincing evidence that he or she is possessed of good moral character."20

Character and fitness committees' powers are ultimately

16. Id.
18. Id. at 2.
governed by state Supreme Courts, on whose behalf they adjudicate. 21 But clearly, a great deal of power has been placed into the hands of character and fitness committees to grant or withhold the future professional life of a candidate to the bar. As one might expect, certain limits exist regarding the extent to which state bars can define and enforce their particular definitions of "good moral character."

**SCHWARE V. BOARD OF BAR EXAMINERS**

During the 1950's and 1960's, interest in Marxist ideals and methods became fairly common in American academic and intellectual circles. Before that time, the role of political ideology in the assessment of potential bar candidates remained a virtually unaddressed issue. With the case of Schware, though, the Court had to answer several hitherto unanswered questions with respect to the constitutional limits placed upon state bar character and fitness committees. The issue presented in Schware dealt with the extent to which a character and fitness committee may infer lack of moral character on the part of a candidate who refused to answer questions about his or her own political advocacy. 22 But the Court is Schware also addressed the question of the extent to which character and fitness committees' enforcement of their "good moral character" standards may impinge upon the constitutional rights of bar applicants.

First, they cited a series of cases, which held that "a state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." 23 Naturally, character and fitness committees cannot do their jobs if prospective lawyers' rights to free speech are to be interpreted as literally absolute. So to strike a balance between the absolute reign of free speech and the absolute power of character and fitness committees' enforcement of their particular "good moral character" standard, the Court in Schware codified an important rule: "A state can require high

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21. Id. at 12.
22. Schware, 353 U.S. at 246, 77 S.Ct. at 760. The Court in Schware concluded that state bar character and fitness committees cannot infer a lack of moral character on the part of a candidate simply due to a candidate's refusal to answer questions about their own political leanings and/or dealings. But since this issue is tangential to the case at hand, all discussion of Schware shall be limited to the relevant dicta.
standards of qualification, such as good moral character... before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

While the court in Schware made no attempt to define what this "rational connection" might mean, later courts would. No cases exist to help determine whether a racist's politics relate to the Court's vision of the "rational connection" to the fitness and ability to practice law. But for purposes of comparison, the last time the court tried to draw this elusive line was in the case of Law Students Research Council v. Wadmond. There, the Court determined that a state could deny an applicant's admission to the bar for advocating the violent overthrow of the United States government, but only if that advocacy were coupled with the specific intent to achieve that end. Precious few cases have attempted to define the rational connection standard set forth in Schware. The last time it was defined, the Court ruled that actively advocating the violent overthrow of the United States government could not be defined as a lack of good moral character sufficient to justify a character and fitness committee's rejection of a bar application.

Put another way, in cases where the Court has interpreted the extent of the permissible curtailment of bar applicant's constitutional rights by character and fitness committees, the court has chosen to severely restrict the right to reject bar applicants based on their political ideologies. Right or wrong, racists have never been denied their law licenses for espousing their views, so case law does not exist on this issue for the purpose of direct comparison. However, if actively advocating the violent overthrow of the United States government cannot be defined as a lack of moral character, the presumption clearly lies with the applicant, not the committee. I argue that distasteful, though non-violent racial bigotry cannot be defined, by the given parameters of the court system, as a lack of moral character. Until the Supreme Court changes the above definition from Law Students Research Council, character and fitness committees are obliged to try and operate from within that definition. I contend that Matt Hale's conduct and beliefs do not exceed that definition. As a result, he should not be

24. Id. at 239, 77 S.Ct. at 756.
denied bar admission on character and fitness grounds in Illinois, Montana, or anywhere else.

MATT HALE'S RECORD

Of course, neither the Illinois nor the Montana Committees on Character and Fitness are limited to considering Hale's political and racial beliefs in an attempt to deny his admission to the bar. All applicants' records of general conduct are open to scrutiny. In Montana, "evidence of any of the following will be treated by the Commission as cause for further inquiry before the Commission decides whether the applicant possesses the character and fitness to practice law: unlawful conduct, academic misconduct," false or misleading statements in the bar application process, "misconduct in employment, acts involving dishonesty, fraud, deceit, or misrepresentation, abuse of legal process," and neglect of financial or professional responsibilities, court order violations, current mental illness, drug or alcohol dependency, "denial of admission to the bar in another jurisdiction on character and fitness grounds, and disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction, or any other conduct which reflects adversely upon the character and fitness of the applicant."26 In assessing these criteria, committees also consider the following: the applicant's age at the time of the conduct, the conduct's recency, reliability of information about the conduct, the conduct's seriousness, factors underlying it, the cumulative effect of the conduct or information, evidence of rehabilitation, applicant's positive social contributions since the conduct, candor in the admissions process, and the materiality of any omissions or misrepresentations.27 The above criteria for Montana are the substantive equivalent to those in Illinois.28

As previously stated, Hale heads The World Church of the Creator, one of the largest racist organizations in America. In addition to his role as a racist leader, the Illinois committee considered a series of public ordinance violations originating with Hale's beliefs. In 1990, police arrested Hale for violating a city ordinance by publicly burning the Israeli flag and in another

27. See id. at 6.
instance, he was found guilty of distributing handbills. Hale failed to mention the latter incident in his bar application, claiming to be under the impression that the application sought only "criminal" activity, while his conviction, a city ordinance violation, was merely "illegal" conduct. In 1991, while disseminating racist literature, a group of black men brandished a baseball bat, threatening Hale and his brother. Hale's brother took out a gun, and the men disbursed. Police later found Hale who, after a half-hour of driving around in the squad car as the police searched for his brother, claimed not to have known who the man (his brother) was.

Hale was convicted of felony obstruction of justice, but the conviction was later overturned by the Illinois Supreme Court on Miranda grounds. In 1992, police arrested Hale for assault and battery on a mall security guard, after he allegedly pushed and attempted to punch the guard in an incident stemming from a disagreement concerning Hale's beliefs. The charges were later dropped. Soon thereafter, however, Hale was nearly placed on academic probation by Bradley University for calling a fellow student a "Jew Boy." In 1998, Hale was cited for littering as he threw his organization's newspapers from his automobile. In addition to these instances, the Illinois Character and Fitness Committee considered a series of disparaging comments publicly made by Hale against people who disagree with his views. A final incident occurred during a prayer breakfast against racism at Bradley University. Hale attended the breakfast, and he may have given a Nazi salute there.

Regardless of the above incidents, Hale has never been convicted of a crime in excess of a public ordinance violation. At a glance, these incidents may appear adequate as "proof" that

30. Hale's Brief at 6, Before the Committee on Character and Fitness for the Supreme Court of Illinois, In re the Application of Matthew F. Hale (1999).
31. See id. at 4-5.
32. See id. at 5.
33. See id. at 5.
35. See id. at 7.
36. See id. at 3.
Hale's racism equates to a lack of good moral character. To the contrary, the inquiry panel's recitation of these incidents serve Hale's defense. A footnote in the inquiry panel's own written decision undermines their reasoning, and the entire case against Hale. The most serious incidents enumerated by the panel were two convictions of city ordinance violations. The inquiry panel's decision states quite plainly that

Mr. Hale was convicted of two city ordinance violations related to the advocacy of his beliefs. The Inquiry Panel attaches no significance to these convictions because countless individuals have been admitted to the Bar with more serious criminal violations. Additionally, the Inquiry Panel has doubt as to the legality or at least the appropriateness of these convictions because they relate to the exercise of constitutionally protected activity and Mr. Hale may have been selectively prosecuted on account of his views. 37

In spite of the inquiry panel's displeasure at what likely amounted to the selective prosecution of Hale due to his beliefs, the panel chose to continue the inquisition by rejecting his admission to the bar for reasons based exclusively on his beliefs and his free expression of those beliefs. Every single item of "misconduct" enumerated against Hale by the inquiry panel falls into this category. The panel correctly refuses to consider actual convictions against Hale based on activities related to his beliefs. Yet they chose to consider all of the other listed "misconduct," which amounted to no convictions or even criminal charges. We know this because every thought word and deed discussed in the panel's decision originates with Hale's beliefs and his expression. Absent these lesser incidents, the panel would have been left with nothing upon which to base their rejection of Hale's application.

In spite of the inconsistency of 1) questioning the legitimacy of considering public ordinance violations convictions related to Hale's beliefs, then 2) refusing not to consider lesser incidents, equally related to his beliefs, the inquiry panel, perhaps due to this inconsistency, still attempted to "prove" Hale's lack of moral character. The forces seeking to deny Hale admission to the Illinois Bar have used, in addition to the cataloguing of his record (as previously discussed) five essential arguments in an attempt to defeat him. One line of argumentation has been an attempt to "prove," by various definitions, that Hale lacks good moral character, and that he must therefore be denied Bar

admission. This argument has depended primarily upon the notion that Hale's leadership in his racist organization violates certain "fundamental truths" about equality. Ergo, Hale will inevitably be disbarred for misconduct, so better to deny him now. Another, related attack on Hale has relied on a strict interpretation of international law, and the idea of the right to freedom from bigotry, and therefore, freedom from Hale.

The third and fourth lines of reasoning against Hale are also related. The first of these maintains that Hale's devotion to his religion of racism trumps his devotion to upholding the law, and that in turn renders him unable to represent blacks and other minorities. As a result, Hale's inability to represent everyone equally makes him an unfit applicant to the Bar. This relates to the fifth line of argumentation against Hale, according to which Hale cannot in good conscience take the required oath to give equal protection to all, as an officer of the court, according to the 14th Amendment. This is because Hale continues to publicly proclaim his desire to overturn the 14th Amendment, though by legal means, in order to have all non-Whites and Jews deported from the United States.

HALE REJECTED FOR DENYING "FUNDAMENTAL TRUTHS"

The essence of the general disbelief in Mr. Hale's good moral character is well captured by the following statement of the inquiry panel, in their decision to reject his application; "if the lack of good moral character and general fitness to practice law may be judged on the basis of active advocacy that attempts to incite hatred of members of various groups by vilifying and portraying them as inferior and robbing them of human dignity, Mr. Hale has not established good moral character or general fitness to practice law."38 To the inquiry panel that denied Hale, at the "heart of their analysis" were the "fundamental truths" of the Constitution, Emancipation Proclamation, and the Fourteenth Amendment.39 So "to the extent its decision limits the First Amendment activities of lawyers, the fundamental truths identified above are so basic to the legal profession that, in the context of this case, they must be preferred over the values found in the First Amendment (of the Constitution)."40

The inquiry panel also concluded that "the constitutional

39. Id. at 14.
40. Id.
issues involving a case precisely like this one are open, and that
the Illinois requirement for moral character . . . to practice law
precludes the applicant from being certified."41 As proof of this,
the panel cites their own analysis of the issue from earlier in the
opinion.42 This analysis lacked a single legal citation to
authority of any kind, stating, in sum, that "Under any civilized
standards of decency, the incitement of racial hatred for the
ultimate purpose of depriving selected groups of their legal
rights shows a gross deficiency in moral character."43 Lacking
any legal authority with which to equate Mr. Hale's lack of
moral character, the inquiry panel's choice to cite its own
opprobrium for Hale is an understandable desperate means of
denying someone they do not like. However, opprobrium should
never substitute for a valid legal solution. Character and fitness
committees have had to strike a bargain in order to curtail
certain (like 1st and 14th Amendment) rights otherwise held by
aspiring attorneys. They must deny admission only upon an
adequate showing that their denial follows a reasonable
precedent established by the profession. Clearly, character and
fitness committees cannot follow precedence if they choose not to
follow their own rules, and prior case law.

Since the inquiry panel could not find a single rule or case
to enforce their assertion, it goes without saying that their
unsupported opinion cannot substitute for the rule of law.
Ultimately, this hollow position led to skewed anecdotes in the
footnotes as the panel grasped at straws to justify its position.
"Bigotry, as well as evil generally, is bottomed on irrationality.
By contrast, our legal system is designed to produce rational
results."44 The inquiry panel seems content to drive their mack
truck of faulty reasoning through the gaping hole where a valid
legal position should stand. Irrespective of the law, since they
cannot conceive of how someone who so offends them could
possess good moral character, they have grasped at straws for a
means of denying Hale. But of themselves, Hale's language and
advocacy, the only factors considered in denying him, are not
relevant to the hearings. Offensive language cannot be
penalized consistent with the First Amendment.45

41. Id.
42. Id. at 6-7.
44. Id. at 7.
1103 (1972); Rosenfeld v. New Jersey, 92 S.Ct. 2483 (1972); Lewis v. City of New Orleans,
While the panel conceded "that the State cannot penalize petitioner solely because he espouses illegal aims," though they saw fit to penalize him for being offensive) the panel even failed to show where Hale had even espoused illegal aims. In its conclusion, the panel argues that "while Matthew Hale has not yet threatened to exterminate anyone, history tells us that extermination is sometimes not far behind when governmental power is held by persons of his racial views." That is, in absence of legal authority, speculation about Matt Hale's future goals of extermination substituted for evidence of his lack of moral character, and that speculation served as the key, as admitted by the inquiry panel, in its decision to deny Hale. The attempt to prognosticate future bad acts from past advocacy, and hence to punish a public official based on that prediction is a tactic specifically rejected by the U.S. Supreme Court in Bond v. Floyd.

Upon denial of Hale's petition for a hearing by the Supreme Court of Illinois, justice Heiple, dissenting, stated "I believe this court should address whether it is appropriate for the Committee to base its assessment of an applicant's character and fitness on speculative future actionable misconduct." Heiple found novel the panel's use of their "fundamental truths" to trump Hale's constitutional rights, and so found "that the constitutional question deserves explicit, reasoned resolution by this court. Instead, the court silently accepts the conclusion of the Committee." Indeed, the majority gave no reasoning to their decision. Regarding Hale's case, Heiple's dissent remains the sole written opinion issued by that court.

HALE'S LOYALTY TO HIS RELIGION

By focusing on Hale's loyalty to his "religion," the committee sought to undermine any notion of his good moral character by casting doubt on his ability to obey the law and serve the court. Hale acknowledges that the "Sixth Commandment" of Creativity

47. Id.
requires him to put his "own race above every other loyalty."51 The "Seventh Commandment" of Hale's religion requires him to give preferential treatment to whites in business dealings.52 The inquiry panel stated that "a reasonable question for the applicant is what happens when that loyalty (to race) conflicts with his oath to support the United States and Illinois Constitutions?"53 It seems a fair question, but is not a relevant one in a legal sense.

First, Hale's reputation for dealings with minorities in a legal atmosphere has been surprisingly respectable. While working for a respected Illinois lawyer of over 25 years, Brian McPheeters, Hale worked with McPheeters' secretary, who was married to an African-American, and who had a biracial child. Though Hale and his church view such relationships with strong disapproval, his views were never interjected into the workplace.54 McPheeters testified at Hale's hearing that Hale is able to separate his personal convictions from his professional responsibilities.55

The inquiry panel confirmed that when Hale had dealt with black clients, he engaged in no acts of racism toward them.56 Additionally, Hale testified that regardless of what his religion may represent, he could swear to protect and defend the U.S. and Illinois Constitutions.57 And in the dissenting opinion of the inquiry panel, Lawrence W. Baxter, panel member, made a vital point about this. Hale plausibly asserts he can hold racist views and practice laws in accordance with his oath as an attorney and there's no evidence of any conduct otherwise. Until there is such conduct, (we cannot deny) certification to an applicant who will subscribe to the oath. . . (Heightened) scrutiny is not a requirement. It is replaced by the applicant's promise to subscribe to the oath and to comply with the Code of Professional Responsibility.58

In sum, the law requires that if Hale claims that he can uphold the law, his claim must be taken seriously. The fallback position for the state is their right to disbar an applicant if his oath proves to be insincere, not to deny him on a hunch that the oath

51. Response in Opposition, supra note 34, at 6.
52. Id. at 12.
54. Petition, supra note 13, at 5.
55. Id. at 6.
56. Decision of the Inquiry Panel, supra note 4, at 5.
57. Response in Opposition, supra note 34, at 11.
will be broken.

**HALE VIOLATES "FUNDAMENTAL TRUTHS" OF UN'S UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Lacking any specific case or statutory law in which to anchor its argument that Hale's racist beliefs should preclude his membership in the Illinois bar, the committee refers to the Universal Declaration of Human Rights (1948) to buttress its assertion. "Let it be said that the Bar and our courts stand committed to these fundamental truths: All persons are possessed of individual dignity . . . every person is to be judged on the basis of his or her own individuality and conduct, not by reference to skin color, race, ethnicity, religion, or national origin," and that "the enforcement of these timeless values to specific cases have by history and constitutional development been entrusted to our courts and its officers - the lawyers - a trust that lies at the heart of our legal system." Only with difficulty can one argue against the sentiment behind these values.

However, sentimental appeals in a legal context often signal a lack of legal foundation. Unless International Law has been violated, good lawyers seldom if ever rely on the International Declaration of Human Rights for a winning argument. While noble, documents such as the Declaration of Human Rights provide at best a murky legal framework, precisely because they are so vague. Invariably, the rules from American case and statutory law provide a better framework for comparing and adjudicating new cases. One can only speculate why the "fundamental truths" of the Declaration of Human Rights, quoted above, should take precedence over some of the document's other positions, such as Article 19, providing that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference" (such as would be denial to a Bar based on political beliefs).

The committee's justification, based on provisions of the UN charter, and in ignorance of its other parts, should set off red flags concerning the legitimacy of its legal standing. As stated in the petition for review of Hale's case, "The Illinois Bar's

59. Id. at 13.
attempt to define and regulate so-called 'fundamental truths' by excluding non-believers from the practice of law represents a dangerous precedent. It assumes that any of us can know the truth with a high enough degree of certainty so as to justify deprivation of a man's livelihood."^61

**HALE'S RELIGION OF RACISM VS. THE CONSTITUTION**

The argument that Hale's racism renders him unfit for lawyering becomes more sound when rooted in the United States Constitution, rather than in the UN Charter. The committee posits this problem: "Hale testified that he could swear to protect and defend the United States Constitution, the Illinois Constitution, and the laws of the State of Illinois. Hale, however, acknowledged that the 'Sixth Commandment' of his 'religion' requires him to put his 'own race above every other loyalty.'^62 They also point out that the 'Seventh Commandment' of Hale's religion requires preferential treatment in business dealings with whites."^63 To this effect, Hale has stated to the committee that "I probably would never have a black client personally."^64 Hence, the committee has taken the position that "Mr. Hale's publicly displayed views are diametrically opposed to the letter and spirit of Rule 8.5(a)(5) (of the Rules of Professional Conduct) 'which forbids adverse discriminatory treatment of others.'^65 For the committee, the essence of the issue is that "Mr. Hale's beliefs do not exempt him from obeying the same rules as every other attorney."^66

Once again, the moral argument against Hale is much stronger than the legal argument. It seems axiomatic that Hale will violate, at the very least, Rule 8.5a of the Rules of Professional Conduct by "adversely discriminating against others" based on race. However, speculation that future violations of these rules will occur has never been a viable method for the Character and Fitness Committee to reject an applicant. The best source for the rule on this matter is found in the last of the line of cases dealing with the issue of bar

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^63. *Id.* at 12.
^64. *Id.* at 13.
^65. Findings and Conclusions, Before the Committee on Character and Fitness, Supreme Court of Illinois, Third Judicial District at 3 (Ill. Sup. Ct. 1999) (No. M.R. 16075) [hereinafter Findings and Conclusions of the Committee].
^66. *Id.* at 4.
applicant rejections based on political beliefs. In *Law Students Research Council*, the Court advocated the "least restrictive" means of protecting the public from inchoate violations of the Professional Rules by aspiring lawyers.67 This "least restrictive" method did not include speculation about an applicant's future conduct based on political beliefs. Rather, the Court advocated the wisdom of using the deterrent and punitive effects of post-admission sanctions as the principal means of policing the conduct of prospective attorneys.68

As pointed out by the ACLU of Illinois on Hale's behalf, "[d]isciplinary rules, contempt sanctions, civil suits and the threat of criminal prosecution are all tools at the disposal of courts and citizens who are disaffected in their interactions with attorneys in Illinois."69 As pointed out in Lawrence Baxter's dissent from the decision of the inquiry panel, "The Rules of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court are the profession's and the public's protection against any abuse. That such abuse may occur is only speculation at this time."70 And such speculation, particularly in Hale's case, is egregious because it is based strictly on his beliefs and expression of those beliefs, not upon his conduct. While a legal intern, Hale's secretary was married to an African American, and they shared a biracial child, a matter which Hale and his church view with disapproval. However, Hale did not interject his views on the matter into the workplace, and he treated his secretary in a professional and courteous manner.71 Hale also told the committee that during his legal clerkship, he dealt with black clients and engaged in no acts of racism toward them. The accuracy of this statement was confirmed by independent inquiry.72 Hale testified that he would work toward repeal of the anti-discrimination laws of Illinois, but that in the meantime, he would comply with those laws.73 Finally, Brian McPheeters, the lawyer supervising Hale's internship, testified that Hale could comply with the

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68. See Id.
70. Decision of the Inquiry Panel, supra note 4, at 19.
71. Petition, supra note 13, at 5.
72. Decision of the Inquiry Panel, supra note 4, at 5.
73. Petition, supra note 13, at 20.
professional requirements with respect to the provision of legal services to racial minorities. In terms of policy considerations, as pointed out by the ACLU, "the danger is clear, no future applicant to the bar in Illinois may hold and express unpopular views no matter how sincere their intent may be to adhere to the oath and ethical code for Illinois attorneys." 

"PROOF" OF HALE'S LACK OF GOOD MORAL CHARACTER

At this point in the discussion, the reader may find the defense of Hale interesting on a point-by-point basis, but ultimately a losing battle. After all, Hale is undeniably racist bigot. The reader may suspect that exposure to any of Hale's hate-speech or literature would make the stomach churn, and render the prospect that the man possesses good moral character inconceivable. That would make sense. But any one of us would admit that however justifiable our emotional responses, the law must remain more sober and neutral than any one of us individually can. Even Hale's opponents have recognized this, and attempted to "prove" a lack of moral character on a point where the law is, for them, stiflingly unhelpful.

Again, regardless of how one interprets the importance of Hale's racial views, he and all applicants must make a forceful showing of their own good moral character. Among the first in the line of cases to discuss this issue, the U.S. Supreme Court in Konigsberg stated that a definition of good moral character would include "whether on the whole record a reasonable man could fairly find that there were substantial doubts about (applicant's) honesty, fairness, and respect for the rights of others and for the laws of the state and the nation." Naturally, the bar of Illinois, in denying Hale, chose as their preferred definition of good moral character this "reasonableness" standard from Konigsberg. Accordingly, in the final line of their decision, it is only reasonable that "The Bar of Illinois cannot certify someone as having good moral character and general fitness to practice law who has dedicated his life to inciting racial hatred for the purpose of implementing those

74. Id.
75. Amicus Brief of the ACLU, supra note 69, at 7.
76. 353 U.S. at 252.
77. Brief of the Committee, supra note 28, at 7.
views."\textsuperscript{78} If the *Konigsberg* reasonableness standard still governed who should and should not be admitted to the bar based on good moral character, then Hale's denial should stand. After all, "a reasonable man (or woman)" in this nation generally will find Hale lacking in moral character, to say the least. But *Konigsberg* was admitted to the bar in 1960, partly because he was a "vigorous supporter of civil rights," and "indicated open-mindedness."\textsuperscript{79}

By the end of the 60's, the inadequacies of such narrow notions of good moral character factored into the Court's thinking. The 60's bore witness to the reality that honest people could, in good conscience, possess vastly different ideas about right and wrong. As previously stated, by the time of *Baird* in 1971, mere membership in an organization actively dedicated to the violent overthrow of the U.S. government was not, by itself, sufficient to brand an applicant to the bar as one lacking in moral character. Though most "reasonable" people would probably have agreed, even in 1971, that one actively advocating the violent overthrow of the government lacked moral character, the *Konigsberg* standard had been replaced by a much more liberal standard. And this liberal standard, reinforced later in 1971 by *Law Students Research Council*, remains the standard to which we must adhere today.

The Illinois Court's decision to refer to the "good moral character" standard from *Konigsberg* (1960), rather than to the more nuanced definitions of *Law Students Research Council* and *Baird* (both 1971), reflects a return to a more willfully narrow-minded outlook on what constitutes political speech. To adjudicate the way it did, the court in Hale's case had to circumvent the development in the law in this area, culminating in the U.S. Supreme Court's proclamation in *Baird* that: "The First Amendment's protection of association prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs."\textsuperscript{80}

Indeed, Hale does hold certain beliefs, and as the Bar of Illinois has stood in judgment of those beliefs, so has Hale been left off the Bar. As stated in Hale's petition for writ of certiori, "when petitioner's views and rhetoric are redacted, the only

\textsuperscript{78} Decision of the Inquiry Panel, *supra* note 4, at 18.

\textsuperscript{79} *Konigsberg*, 353 U.S. at 264.

\textsuperscript{80} 401 U.S. 1, 6 (1971).
remaining charges are incidental arrests for ordinance violations, and allegations related to Petitioner's exercise of his constitutional rights. So, by the Committee's own admission, all that remains is the de facto violation of the above decree from Baird. What makes the Committee's willful violation of the most recent and relevant case law on the subject: Baird, Law Students Research Council, and In re Stolar, all 1971 cases, even more egregious is that all these cases are in essential agreement with one another in making a clear attempt to extend protections to prospective lawyers from Bar denial based on political beliefs. No cases have come down since 1971 to challenge the principles founded by these cases.

In absence of precedence to aid in the denial of Hale on grounds of prejudice against his politics, the Illinois Bar has sought to circumvent precedence by making a special case of Hale. This has required special measures. The response in opposition to Hale's petition for a writ of certiori contends that "Hale's doctrines and conduct are potentially lethal." In none of the other aforementioned cases on this topic have the doctrines of the applicants been so categorized. The Illinois Bar also contended "the First Amendment would not be violated under the present circumstances (because) Illinois' legitimate interest in preventing racial discrimination outweighs Hale's interest in spewing racial venom." The Inquiry Panel found that their "fundamental truths" must be "preferred over the values found in the First Amendment."

Once again, while these arguments have great emotional appeal, they are riddled with inherent legal flaws. First, the forces opposing Hale cannot even decide whether his First Amendment rights are being violated. If they are not, it is because (absent any legal citation) the rights of the state come

82. Decision of the Inquiry Panel, supra note 4, at 6.
83. Response in Opposition, supra note 34, at 18.
before one such as Hale. If his rights are being violated, it is justifiable because the "fundamental truths" of the United Nations trump Hale's rights. Either way, he shall be left off the Illinois Bar. In addition, even at the time of Konigsberg, the Court recognized that "A bar composed of lawyers of good character is a worthy objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal." 85 In other words, Hale is indeed entitled to his freedom of speech, "and it is also important to society and the bar itself that lawyers be unintimidated—free to think, speak and act as members of an Independent Bar." 86

In recognition of Substantive Due Process, the 1971 case of In re Stolar determined that a prospective lawyer's rights to belief and association could not be impinged upon absent a legitimate government interest. 87 Preventing the "spewing of racial venom," and its equivalent, has never been recognized by the Supreme Court as a legitimate government interest sufficient to curtail free speech, even for lawyers. However, the Illinois Bar's argument is irrelevant in any case. Keeping Hale off of the Bar will not prevent him from "spewing venom," and in no way serves the purpose to which Hale's denial is ostensibly directed.

HALE CANNOT PRACTICE THE LAW, IF HE WISHES TO DESTROY IT

The last, and perhaps most compelling of the arguments against Hale is that one who wishes to deport all non-whites from the United States, and who openly admits his desire to work for a change in the law to allow this end, cannot possibly be deemed fit as an officer of the Court. Specifically, the deportation of non-whites requires suspension of all such people's 14th Amendment Right to Due Process. 88 In fact, Hale admits that his life's mission entails bringing about peaceable change in the United States in order to deny the equal protection of the law to all non-white Americans. 89 None of the forces against Hale advocate curtailing Hale's right to express his desire to limit constitutional rights to whites. Specifically, the inquiry panel suggests that a "balance" has already been

86. Id.
87. 353 U.S. at 265.
89. See id.
struck, by which Hale is permitted to speak of such sweeping changes to the law as he sees fit, and even to incite racial hatred, but that he cannot do this as an officer of the court. The crux of the argument is that rights such as the 14th Amendment are so fundamental as to comprise the very rule of law. "Mr. Hale's life mission, the destruction of the Bill of Rights, is inherently incompatible with service as a lawyer or judge who is charged with safeguarding those rights." The prospect of allowing one such as Hale to take the oath to become an officer of the court, while advocating the overturn of the very rule of law, represents a patent absurdity.

The position seems relevant, but once again, no legal precedence exists to give the argument substance. The line has never been drawn to demarcate which laws a prospective lawyer may permissibly advocate overturning, and which laws must remain forever off-limits to the scrutiny of lawyers-to-be. Hale testified that while working to peaceably to change the law as he sees fit, he had "no reservation or hesitation in subscribing to the oath required of him." That oath requires attorneys to swear that they "will support the Constitution of the United States and the Constitution of the state of Illinois," and to "faithfully discharge the duties of the office of attorney and counselor at law to the best of their ability."

The Committee challenges Hale's sincerity in taking the oath, and claims the right to deny him based on their finding of lack of sincerity "lest it be said that the Committee has no obligation to protect the public from unsavory individuals."

Yet the Committee is not so empowered to challenge the sincerity of the oath taker. This issue had been resolved, again, back in 1971, with the case of Law Students Research Council. Then, the Court held no more is required of a bar applicant than "a willingness to take the constitutional oath and ability to do so in good faith." How do we know if the oath is taken in good faith? That issue had been resolved in Bond (1966), where the Supreme Court held "the oath taker's willingness to accept the oath creates an irrebuttable presumption of the oath taker's

90. See id. at 14-15.
91. Id. at 16.
92. Brief for Mr. Hale, supra note 28, at 3.
93. Id.
94. Response in Opposition, supra note 34, at 19-20.
sincerity."96 Ergo, if Hale swears that as a lawyer, he shall uphold the law, the character and fitness committee is bound to honor that pledge, not to second-guess it. Manifold measures, including disbarment, remain open for imposition by the bar in the event that a lawyer chooses not to uphold the law. And what of Hale's desire to overturn the 14th Amendment? As stated by Mr. Baxter's dissent from the decision of the Inquiry Panel; "the holding and even active advocacy of beliefs, no matter how repugnant to current law, cannot be the basis for denial of certification to an applicant who will subscribe to the oath. All lawyers disagree with some laws."97 Again, the forces opposing Hale at no point cite precedence to demonstrate how his desire to overturn the 14th Amendment should create a special case.

The committee periodically digresses from its own positions, perhaps in realization of its weak legal legitimacy. This underscores the ultimate reason why Hale should be admitted. The inquiry panel articulated the following summation of its own position: "The Inquiry Panel did not base its decision to deny admission to Applicant solely upon his beliefs or upon his membership in the World Church of the Creator. There is ample evidence of actions taken by Applicant that he is not of good moral character."98 According to this reasoning, Hale's beliefs are not at the heart of the Panel's reason for denying him. Rather, Hale's "actions," specifically, criminal charges (dismissed) and public ordinance violations are the cause of condemnation for Hale's application. Yet this same panel had previously "attached no significance to these convictions."99 Rather, the panel "doubted the appropriateness of these convictions because they related to the exercise of constitutionally protected activity" and had resulted in Hale's "selective prosecution."100 Put another way, the forces opposing Hale find in his distasteful speech inappropriate grounds upon which to condemn his application. The committee and the panel have also voiced their opinion that Hale's actions cannot fairly be used against him for the purpose of dismissing his bar application. And though neither Hale's speech nor his actions present fair grounds to condemn Hale, taken together, they

98. In the Matter of the Application for Admission to the Bar of Hale at 9-10.
100. Id.
somehow can be used against him. \(0 + 0 = 1\). The illogic, and lack of legal precedence for the case of bar denial for Matthew F. Hale should, by now, be clear.

Precisely for this reason, Montana should allow Hale to take the Bar here. At the present moment, the public is not privy to any information regarding Hale's case, save the mere fact that the Montana subcommittee on Character and Fitness has recommended denying him, and the regular committee has tabled Hale's case pending further inquiry.\(^{101}\) The Montana Supreme Court will likely hear Hale's case on appeal.\(^{102}\) If and when they do, they should exercise their right to reverse the committee's decision.

First, the Bar of the state of Montana has not been notoriously stringent in its character and fitness standards. In fact, not since cases from the early nineties, \textit{In re Pederson},\(^{103}\) \textit{In re Matt},\(^{104}\) and \textit{In re Steele}\(^ {105}\) have cases of character and fitness refusals gone to the Supreme Court only to have the rejections affirmed.\(^{106}\) In Pederson's case, the committee and the Supreme Court based their denial on a number of debt collection actions against the defendant (traditional grounds for denial), and one such action involved a lawsuit.\(^ {107}\) Additionally, several complaints had been filed with the Attorney Registration and Disciplinary Commission against Pederson during his tenure as a lawyer in Illinois, where Pederson was, at the time of the

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101. I have contacted the Montana Committee on Character and Fitness in search of any information possible. No information of any kind was made available, in spite of assurances of the importance of such information to this Law Review article.

102. Rules of Procedure of the Commission on Character and Fitness of the Supreme Court of Montana, effective November 17, 1998. These codified Montana Rules make abundantly clear, throughout, that the Character and Fitness Committee adjudicates only at the pleasure of the Supreme Court of Montana, and that any decision rendered by the Character and Fitness Committee in this state is subject to review by the Supreme Court.


106. Unfortunately, these cases must serve as the context for the bar admission/denial in Montana, because cases where the Supreme Court has overturned the ruling of the Committee on Character and Fitness are not available for public review. The reason is that if a petitioner is found, after review by the Supreme Court, to possess the requisite character, their reputation should not be tarnished by public scrutiny of their less than ideal histories, simply because those histories had been question by the Character and Fitness Committee.

hearing in Montana, also the defendant in a malpractice action. Pederson had failed to disclose his attorney-client difficulties to the Montana character and fitness committee.\textsuperscript{108}

In the case of Matt, another former bar member, this time from Nebraska, the committee and ultimately the Supreme Court denied the applicant for his failure to consistently and truthfully answer questions about possible drug dealing.\textsuperscript{109} During the hearings against him, Matt both admitted to the use of drugs, and claimed that he "hadn't ever used drugs."\textsuperscript{110} Matt also misled the committee about charges for dealing cocaine, ten years previous, which were dropped only after Matt's agreement to perform 100 hours of community service.\textsuperscript{111} In spite of the evidence against Matt, and his lack of forthrightness in the application process, both justices Gray and Trieweiler dissented. Trieweiler voted for Matt's admission to the bar, while Gray argued for remanding the case for further proceedings.\textsuperscript{112} In the case of Steele, following a history of tax evasion (prime traditional grounds for bar denial), criminal investigations into such conduct, and a litany of lies about such evasion on the bar application,\textsuperscript{113} the Supreme Court affirmed denial, again with Trieweiler dissenting.\textsuperscript{114}

The point is that in all of these cases, rare as they are in Montana, the applicants had willfully and egregiously evaded the committee's inquiries into matters of obvious relevance. In all cases, the conduct in question was more serious, so far as its legal relevance is concerned, than anything Hale has ever been accused of, let alone convicted of. Also, the pattern of evasion in these cases was far more systematic, and ill-explained. And yet these cases were marginal enough that the Supreme Court granted them a hearing. One can only speculate how many denials, only slightly less marginal in legitimacy, were overturned by the Supreme Court, allowing applicants with questionable histories to become lawyers in this state.

\begin{itemize}
\item \textsuperscript{108} See id.
\item \textsuperscript{109} Matt, 252 Mont. at 355, 829 P.2d at 630.
\item \textsuperscript{110} Id. at 352, 829 P.2d at 629.
\item \textsuperscript{111} Id.
\item \textsuperscript{112} Id. at 366-68, 829 P.2d at 637-39.
\item \textsuperscript{113} Steele, 262 Mont. at 489, 865 P.2d at 290.
\item \textsuperscript{114} Id. at 495, 865 P.2d at 294.
\end{itemize}
"Throughout its history, the moral fitness requirement has functioned primarily as a cultural showpiece. In that role, it has excommunicated ... variously, women, minorities, adulterers, radicals, and bankrupts ... and in so doing often debased the ideals it seeks to sustain." The trilogy of Konisberg, Schware, and Baird served to progressively remedy the capricious application of fashionable standards in character and fitness meetings, once and for all. Since the 1971 trilogy of Baird, In re Stolar, and Law Students Research Council, the determination not to consider political speech in bar admission proceedings has seemed well settled. A year later, in 1972, Montana drafted a new Constitution, the tenor of which echoes the open-minded decisions rendered in the 1971 trilogy. The 1972 Montana Constitution provides that "neither the state nor any person, firm ... or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or civil rights." The Montana Constitution institutes language for the protection of minorities in a state where minorities of many stripes have historically been marginalized by a monolithic, dominant mainstream culture. The Constitution leaves no room for the toleration of people's rights to be enforced capriciously. Who but the Matt Hale's of the world could the words of this Constitution have been meant to protect?

Of course, Hale's imperfect record, and imperfect recitation of that record can be used against him by the Character and Fitness Board, irrespective of his political beliefs. But Hale's imperfect record, standing alone, does not meet the cumulative standard by which applicants have traditionally been denied. Illinois committee members blended Hale's imperfect record with their personal repugnance at his political views to conjure up a formula worthy of their dismissal. Yet their repugnance should have played no role in the decision. Partly as a result of this, Hale continues to gain members, purportedly at record pace, as he touts himself on his hate-site as the "First Amendment Martyr." By the letter of the law, he appears to be right. Bar committees everywhere are in a uniquely difficult

position so long as the Matt Hales of the world wish to practice law. But institutions have been so challenged ever since vocal minorities, with unpopular views, have sought the enforcement of their rights according to the words of the Constitution.

According to Justice Black, from Konigsberg, "It is neither natural nor unavoidable in this country for the fundamental rights of people to be dependent upon the different emphasis different judges put upon different values at different times." Precisely those value systems which seem most ill-founded to the majority must be allowed, regardless of their seeming stupidity or evil, to make their way into the marketplace of ideas and assume their rightful place as failures. This free-flow of ideas cannot materialize if the legal profession lives up to its reputation for loopholes and politicization, and marginalizes those holding unpopular views. The legal profession should feel strong enough to withstand such characters as Hale, or question: How free is the marketplace of ideas upon which we depend in our search for justice in the law? These policy considerations deserve full consideration by a Montana Supreme Court governed by a progressive Montana Constitution. Equal Protection requires that Montana allow Matt Hale to take the Montana bar examination, and if he passes it, to practice in this state.