CASE NO. 94-1704

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

In the Matter of the
Verified Accusation of
Attorney GARY L. ZERMAN,

Petitioner,

Against

Attorneys
R. BROWNE GREENE
and
MELVIN M. BELLI,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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April 14, 1995

QUESTIONS PRESENTED

Has the **"RULE OF LAW"** collapsed in the State of California?

(1) Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct filed by petitioner - in total disregard of an explicit statutory scheme (<u>California Business & Professions Code</u>, §§ 6108-6117) - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

(2) Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct filed by petitioner - in total disregard of a clear <u>conflict of interest</u> confronting the California Supreme Court - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

LIST OF PARTIES

The parties in the proceeding below were Gary L. Zerman - a licensed California attorney and the CW-Complaining Witness, petitioner here; R. Browne Greene and Melvin M. Belli - the **"accused"** attorneys; and the State Bar of California - which repeatedly has acted **"arbitrarily"** and **"refused to take appropriate action"**.

OPINIONS BELOW

The California Supreme Court's summary denial of the instant Verified Accusation, S037066, is reproduced in the attached appendix, at A.91. The U.S.D.C., Central District of California, order of dismissal in Ornelas, et al., v. Lucas, et al., Case No. CV 92 7246 RG, is reproduced in the attached appendix, at A. 95. The California Supreme Court's summary denial of the petition of the underlying legal malpractice case Ornelas v. Greene and Belli, S026070, is reporduced in the attached appendix, at A.104.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES & RULES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITES

MISCELANEOUS

INVOLVED CONSTITUTIONAL, STATUTORY & RULE PROVISIONS

U.S. Const. amend V provides in pertinent part: "No person shall be ... deprived of life, liberty or property, without due process of law ...."

U.S. Const. amend XVI, § 1 provides in pertinent part: "... nor shall any state deprive any person of life, liberty or property, without due process of law ...."

Federal Judicial Code 28 U.S.C. § 455(a) (1974) provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned."

Cal. Bus. & Prof. Code § 19 (1937) provides: "**Shall**" is mandatory and "may" is permissive."

Cal. Bus. & Prof. Code § 6108 (1939) provides: "If the proceedings are upon the information of another, the accusation shall be in writing and shall state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true. The verification may be made upon information and belief when the accusation is presented by an organized bar association."

Cal. Bus. & Prof. Code § 6109 (1939) provides: "Upon receiving the accusation, the court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order."

Cal. Bus. & Prof. Code § 6110 (1939) provides, in pertinent part: "The court or judge may direct the service of a citation to the accused, requiring him to appear and answer the accusation, ... if it appears by affidavit to the satisfaction of the court or judge that the accused either: (a) Resides out of the State. (b) Has departed from the State. (c) Can not, after due diligence, be found within the State ...."

Cal. Bus. & Prof. Code § 6111 (1939) provides: "The accused shall appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence."

Cal. Bus. & Prof. Code § 6112 (1939) provides: "The accused may answer to the accusation either by objecting to its sufficiency or by denying it. If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection. If he denies the accustion, the denial may be oral and without oath, and shall be entered upon the minutes."

Cal. Bus. & Prof. Code § 6113 (1939) provides: "If an objection to the sufficiency of the accusation is not sustained, the accused shall answer within the time designated by the court."

Cal. Bus. & Prof. Code § 6114 (1939) provides: "If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment of disbarment or suspension. If he denies the matters charged, the court shall, at such time as it may appoint, proceed to try the accusation."

Cal. Bus. & Prof. Code § 6115 (1939) provides: "The court may, in its discretion, order a reference to a committee to take depositions in the matter."

Cal. Bus. & Prof. Code § 6116 (1939) provides: "When an attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be refered disbarring the attorney or suspending him from practice for a limited time, according to the gravity of the offense charged."

Cal. Bus. & Prof. Code §6117 (1939) provides: "During such disbarment or suspension, the attorney shall be precluded from practicing law. When disbarred, his name shall be stricken from the roll of attorneys."

Cal. Evidence Code § 451(c) - Matters Which Must Be Judicially Noticed - (1986) in pertinent part provides: **"Judicial notice shall be taken of the following"** (c) **Rules of Professional Conduct** for members of the bar adopted pursuant to Section 6076 of the Business and Professions Code and Rules of Practice and Procedure for the courts of this state adopted by the Judicial Council."

Cal. Rules of Professional Conduct, Rule 5-102 (1975) provides: "(a) A member of the State Bar **shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest**, if any, in the subject matter of the employment. A member of the State Bar who accepts employment under this Rule **shall first obtain the client's written consent** to such employment. (b) A member of the State Bar **shall not represent conflicting interests, except with the written consent of all parties concerned**." (The **Rules** were amended in 1988, opperative May 27, 1989, and Rule 5-102 was changed to Rule 3-310.)

Cal. Rule of Court, Rule 952(d) (1991) provides: "[Review of other decisions] A petition to the Supreme Court to review **any other decision** of the State Bar Court or action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, or of the chief executive officer of the State Bar . . . shall be filed within 60 days after written notice of the action complained of is mailed . . . . **Within 15 days after service of the petition, the State Bar may serve and file an answer and brief.** Within five days after service of the answer, the petitioner may serve and file a reply. If a review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after service of the brief, the petitioner may file a reply brief."

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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Petitioner Gary L. Zerman, as a licensed California attorney and as a **"private attorney general"**, requests that this Supreme Court issue a Writ of Certiorari, granting review of the January 18, 1995 summary denial by the California Supreme Court, Chief Justice Malcolm Lucas (A.91), of the verified accusation of attorney misconduct (A.2) filed pursuant to **Cal. Bus. & Prof. Code §§ 6108-6117**, by petitioner Gary L. Zerman, a California attorney, against attorneys R. Browne Greene and Melvin M. Belli, Cal. Supreme Court Case No. S037066.

GROUNDS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a) (1988) to review the January 18, 1995 summary denial by the California Supreme Court of the verified accusation of attorney misconduct filed by petitioner.

This Court also has jurisdiction under the preamble of the U.S. Constitution to **"establish Justice"** and under the 1st Amendment right of the people **"to petition the Government for a redress of grievances."**

PROLOGUE

In his introductory paragraph from Rule of Law - The ABA Has Fallen Down on the Job that appeared in the Wall Street Journal former Chief Justice Warren Burger wrote:

> **"The reputation of the legal profession is at its lowest ebb since I first started practicing law more than 60 years ago. With ever increasing frequency, the public is questioning the competence, integrity and honesty of lawyers. Indeed, over just the past few years, a number of judges and all too many lawyers have been guilty of self-dealing and other forms of professional misconduct in and out of the courtroom. These transgressions not only diminish the public's confidence in the profession, but they also subtly undermine the public's respect for the rule of law."** (August 10, 1994, page A11).

As will be shown below, unfortunately, both the California Supreme Court and the California State Bar have also - fallen down.

STATEMENT OF THE CASE

On March 28, 1991 petitioner filed a formal complaint with the California State Bar (hereafter Bar) against attorneys Melvin M. Belli and R. Browne Greene, which set forth several charges of extremely serious misconduct and the indisputable proof.[1]

On March 10, 1993 the Bar sent petitioner a letter (see A.30) advising it had completed its investigation of the charges and had concluded that attorneys Greene and Belli had committed a violation of Rule 5-102.[2] For that violation the Bar disciplined Greene and Belli with - a mere private warning letter and told them not to do that again. The Bar also claimed, without explanation, that **"Given the circumstances in which the misconduct occurred"** this case was an **"exceptional circumstance"**. The other serious charges petitioner raised were simply ignored.[3] On March 25, 1993,

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[1]The acts of serious misconduct include: threats, repeated acts of fraud, disobeying trial subpoenas, undisclosed ex parte communications with the trial judge and acts of perjury. For a detailed list of these acts and the evidence, see A.8, A.41, A.71, ftnt. 5 and A.74, ftnt. 7.

[2]The "violation" was Greene and Belli, despite repeated express warnings (see A.42), representing conflicting interests not only <u>without</u> the clients' consent, but <u>without</u> ever disclosing the conflict to the clients - this was fraud! <u>Ball v. Posey</u>, 212 Cal.Rptr. 740, 749 (Cal.App.Ct. 1986); see also A.74, ftnt. 7. The Rules of Professional Conduct conclusively establish the standards governing the ethical duties of the attorney, which the court must take mandatory judicial notice of. <u>Day v. Rosenthal</u>, 217 Cal.Rptr. 89, 102 (Cal.App.Ct. 1985).

[3]Given the circumstances? Exceptional circumstance? The Bar provides no explanation for these arbitrary claims or its <u>sham</u> discipline of Greene and Belli - which flies in the face of the law. <u>Beery v. State Bar</u>, 739 P.2d 1289, 1296 (Cal. 1987) and <u>Codiga v. State Bar</u>, 575 P.2d 1186, 1187 (Cal. 1978); see also A.74 and A.10. Even more arbitrary is the Bar's inexplicable ignorance of the several other serious charges of misconduct. These arbitrary actions by the Bar have denied petitioner and the people of the State of

because of the Bar's sham discipline of Greene and Belli and its ignorance of the several other serious charges of misconduct, petitioner in a letter (A.32) appealed the matter to the Bar's Complainant Grievance Panel (hereafter CGP). Petitioner also made a request that the Bar/CGP explain its bald claim of **"exceptional circumstances."**[4]

On December 2, 1993 the CGP denied petitioner's appeal with a 1-page letter (A.61), which stated that **"the State Bar of California will take no further action. Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."**[5] The letter concluded

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California due process. Saleeby v. State Bar, 702 P.2d 525, 523 (Cal. 1985); see also A.69, ftnt. 3.

[4]Petitioner's letter-appeal was addressed jointly to the CGP and Ms. Wachter, who wrote the above March 10, 1993 Bar letter. Ms. Wachter never replied, much less explained her claims; neither has the CGP. Copies were also sent to then Bar President Harvey Saferstein, his successor Margaret Morrow and Bar Chief Trial Counsel Robert Heflin; a request was also made that a copy be given to the Bar Board of Governors Chairman. Not one ever replied to explain those claims either. This is a denial of due process. Saleeby v. State Bar, 702 P.2d 525, 533 (Cal. 1985). Maybe "exceptional circumstance" refers to Greene and Belli having privileged status as past presidents of powerful CTLA - California Trial Lawyers Association? See LA Times December 27, 1994 p. A3 article Preemptive Strike, by Dan Morain, referencing the earlier "Napkin Deal" that the Trial Lawyers swung. Also see A.5, ftnt. 3.

[5]No further action? What action? All charges, but one were ignored and the discipline imposed on Greene and Belli - a mere private warning letter - was a **joke** - contrary to the law. Beery v. State Bar, 739 P.2d 1289, 1296 (Cal. 1987) and Codiga v. State Bar, 575 P.2d 1186, 1187 (Cal. 1978). The Bar fails to state what its findings/ conclusions were based upon, clearly because these actions were arbitrary and fly in the face of the law. Now the CGP follows suit. Closed and confidential meeting? Can not provide any details? Clearly this entire course of conduct by the Bar is not only a denial of due process (Saleeby v. State Bar, 702 P.2d 525, 533), but is obstruction of justice. Petitioner even

advising that if **"further review of the State Bar's actions"** was desired, a verified accusation (hereafter **VA**) could be filed against the attorneys with the California Supreme Court (hereafter CSC).

Petitioner contacted the CSC about the **VA** procedure and was sent a December 6, 1993 letter advising that the authority for filing **VAs** was set forth in **"Bus. and Prof. Code 6108"** and **"In re Walker, 32 Cal. 2d 488, 490"**.

On December 30, 1993 petitioner filed the instant **VA** (A.2) against attorneys Greene and Belli in the CSC. The **VA** asserted that petitioner had brought the serious charges of misconduct committed by attorneys Greene and Belli to the Bar, had followed <u>all</u> Bar procedures, but the Bar had handled the complaint/charges in an **"arbitrary, incompetent, and unlawful manner by refusing to apply and follow the law, by refusing to take appropriate disciplinary action required thereunder, and by refusing to grant a hearing against attorneys GREENE and BELLI."** The **VA** also asserted that the Bar had a long history of neglect. (A.12).

On November 10, 1994 petitioner also filed in this matter document **"<u>FURTHER EVIDENCE OF FRAUD</u>"** - referring to the conduct of the Bar. (A.52; see also A.67, ftnt. 2).

On January 18, 1995, the CSC filed its one-page, two-word, order **"PETITION DENIED."**, signed by Chief Justice Lucas. (A.91). Neither Greene nor Belli, nor the Bar ever filed a single document in response; nor did the CSC ever order, per <u>Bus. & Prof. Code</u> §6109, Greene, Belli or the Bar to answer/respond to the **VA**.

Petitioner asserts that the CSC has ignored indisputable serious attorney misconduct committed by attorneys Greene and Belli and a

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wrote the Bar (then President Margaret Morrow) on October 22, 1993 demanding to attend the CGP's meeting; there was <u>no</u> reply from either Ms. Morrow or the CGP.

Bar cover-up of that misconduct and thereby the CSC is guilty of a wilful **"evasion"** of its statutory and fundamental duties and thus has denied petitioner and the people of the State of California their rights to due process of law under the United States Constitution.[6]

Petitioner asserts that the conduct of the CSC and Bar present **"exceptional circumstances"** that invoke the jurisdiction of this Court to recognize these rights, **"to establish Justice"** and to restore the **"RULE OF LAW"**, once <u>again</u> in California.

REASONS COMPELLING GRANT OF WRIT

Attorneys Greene and Belli committed several acts of serious misconduct. Those acts have been compounded by the Bar, which ignored that misconduct and thereby its own duties and the law. Those acts were further compounded by the CSC, which ignored both the illicit conduct of those attorneys and that of the Bar, and thereby its own duties and the law. With such conduct there is no **"RULE OF LAW"** in California. This Court must grant this Writ to restore the collapsed **"RULE OF LAW"** in California, because history has shown that in many ways - this state sets the trend. (See the April 17, 1995 cover story in **NEWSWEEK**, <u>What A Mess - Disorder In The Court</u>, at p. 26 and <u>Money Talks, Clients Walk</u>, at p. 32, concering the Simpson murder trial).

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[6]As stated in <u>Williams v. Georgia</u>, 349 U.S. 375, 399, (1954) this charge upon the integrity of a state supreme court is - **"serious"**.

ISSUE I

Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct - in total disregard of an explicit statutory scheme (California Business & Professions Code, §§ 6108-6117) - a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

With Cal. Bus. & Prof. Code, §§ 6108-6117 the California Legislature established a clear statutory scheme governing **VAs**. As set forth above, § 19 states that **"'Shall' is mandatory"**. Section 6109 then directs: **"Upon receiving** the accusation, **the court shall make an order requiring the accused to appear and answer it** at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order."[7]

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[7] The "INTRODUCTORY STATEMENT", adopted effective January 1, 1992, to the California Rules of Court, states:

> "The Judicial Council is established under article VI, section 6, of the Constitution of California, and is given various powers and responsibilities to improve the administration of justice. [P] Unless other wise indicated, each rule in these California Rules of Court was adopted by the Judicial Council under its constitutional authority to 'adopt rules for court administration, practice and procedure not inconsistent with statute,' or under authority granted by the Legislature. [P] Throughout the rules, 'shall' is mandatory, 'may' is permissive . . ."

Bus. & Prof. Code sections 6108-6117 therefore govern over Rule 952(d) (see Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) re "minimum standards" and ftnt. 10, below at p. 10) and are mandatory upon the CSC. Moreover, although Rule 952(d) appears to be a catch all provision ("any other decision"), there is no reference to VAs.

Although §6108 specifically authorizes the filing of a **VA**, it is amazing that the <u>only</u> reported case citing §6108 is <u>In re Walker</u>, 196 P.2d 882 (Cal. 1948).[8] In pertinent part <u>Walker</u> states at pages 882-3: "We have concluded that this proceeding should be **dismissed without prejudice** and, as this appears to be the **first proceeding of this nature** which has been filed in this court or any other since the adoption of the State Bar Act (Stats. 1927, ch. 34; now Bus. & Prof. Code § 6000 et seq.), we deem it appropriate to state the reasons. [P] Prior to the adoption of the State Bar Act, proceedings seeking disciplinary action against members of the bar could be instituted only in the courts. . . . [P] Under the above-mentioned **sections 6100 to 6118**, this court obviously has the same powers which it previously possessed independently to entertain disciplinary proceedings despite possible duplication between such proceedings and others instituted before The State Bar, but we are of the view that as a matter of policy this court should not exercise those powers unless and until the accuser has followed the normal procedures by first invoking the disciplinary powers of The State Bar. (Bus. & Prof. Code, §§ 6075-6087). More specifically, **we believe it proper to dismiss an accusation filed in this court unless it appears form the accusation**: (1) that the accuser has set forth specific charges which, if proved, would constitute grounds for disciplinary action; (2) that the same specific charges have been previously presented in written form to the

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[8]It is amazing because the CSC in <u>Beery v. State Bar</u>, 739 P.2d 1289, 1296 (Cal. 1987) states:

> "'Our principal concern is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standard for attorneys.' (Citations)."

See reference to <u>Beery</u> and this quote in the VA at A.12 and A.63.

State Bar for the purpose of invoking its disciplinary powers; and (3) that following such presentation to The State Bar, it has arbitrarily failed or refused to grant a hearing on such specific charges or has arbitrarily failed or refused, after a hearing, to take appropriate action."[9]

A review of petitioner's **VA** (A.7-10), indisputably shows that the above three (3) elements, and much more, were in fact sufficiently plead. More importantly though, a review of the Bar's conduct shows that the Bar indisputably repeatedly acted **"arbitrarily"**, **"refused to grant a hearing"** and repeatedly has **"refused to take appropriate action"**. (A.10 and A.66). That misconduct is obstruction of justice and is what compelled the filing of the **instant VA**. (A.13, ftnt. 7).

Yet here, it is clear that the CSC did nothing **"upon receiving"** petitioner's **VA, as required by §6109**. (A.94). It is also clear that the CSC never ordered Greene, Belli or the Bar to either answer or appear, as required by § 6109 and § 19. Why has the CSC ignored this clear law?[10]

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[9]The CSC found Mrs. Walker failed to make "any attempt to follow the normal procedures", which require first filing a complaint with the Bar. After the CSC "dismiss[ed]ing without prejudice" her VA, Mrs. Walker immediately refiled it again in the CSC, which this time promptly "denied" it, the following month. The importance of Walker is that the CSC is affirming sec. 6108 et. seq., the statutory scheme governing VAs; the CSC is recognizing and stating this is good and valid law. Regrettably though, with its future conduct, the CSC has "evaded" its duty to "order" the accused attorneys to "appear and answer" the VAs, as the facts below show there are no reported cases and the CSC claims it "keeps no statistics" concerning VAs. See research "disclosures" directly below.

[10]Moreover, in Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) the CSC stated:

> ". . . The legislative standards are but minimum standards which must be applied; this court retains inherent power to require additional standards if it is not satisfied that the

Research discloses that the CSC for quite sometime (since Walker) has done nothing about **VAs**, never granting a **VA**; and because it **"keeps no statistics"** we will never know if it ever ordered an accused attorney to **"appear and answer"** a **VA**. First, Walker itself states that Mrs. Walker's accusation was the **"first proceeding of this nature"** filed in the CSC since passed of the 1927 Bar Act.[11] Second, there are **zero** cases cited in the annotations under §6109. Third, petitioner Sheppardized Walker and the research shows that there are only two (2) reported cases that even cite In re Walker. One is Environmental Law Fund Inc. Corte Medera, 122 Cal.Rprt. 282, 285 (Cal.App. Ct. 1975), which does not involve a **VA**. The other is Bollotin v. Cal. State Personnel Board, 280 P.2d 509 (Cal.App.Ct. 1955). There plaintiff brought a civil complaint for damages (against Bar officials and several others not connected with the Bar), the court affirmed an order sustaining a demurrer to the complaint, stating at p. 511: **"It does accord the individual the right to invoke disciplinary action against an attorney in the Supreme Court,** upon a proper showing that 'The State Bar' has **arbitrarily failed or refused** to grant a hearing on such specific charges, or has arbitrarily

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legislative qualifications are sufficient. (In re Lavin (1935) 2 Cal.2d 324, 328 [41 P.2d 161])."

The legislature has spoken. Sections 19 and 6109 are clear and unequivocal: the CSC has a mandatory duty to "order the accused to appear and answer" when Walker allegations are sufficiently plead. Petitioner did that here, and more. What is equally clear and unequivocal, is that the CSC has ignored this law and its duty, and thereby ignored the legislature and the people of the State of California; and also ignored its own dictates, that these "standards are but minimum standards which must be applied". Where is the "RULE OF LAW"? Has it collapsed?

[11] As shown below, Walker not only was the "first"VA case considered by the CSC, but it was the last. See ftnt. 13.

failed or refused, after hearing, to take appropriate action.' [Citing Walker]. Plaintiff chose not to pursue that remedy."[12]

Third, as that research disclosed no further reported cases concerning **VAs**, petitioner wrote to the CSC seeking further information about **VAs**. Several CSC clerks advised petitioner that the CSC **"kept no statistics"** on **VAs and told petitioner to check with the Bar and Judicial Council.** Petitioner did, and those entities advised they also did not have information or statistics on **VAs** either.[13] (A.93).

Fourth, petitioner then spoke with Mr. Philip Carrizosa, who has reported on the CSC for the LA Daily Journal for 15-years, and he stated that he had seen and reviewed **"hundreds"** of **VAs** filed in the CSC over that time, but had **"never"** seen the CSC grant **"even one"**, yet **"many"** appeared **"to have merit"**. Petitioner asked Mr. Carrizosa (twice) to provide a declaration to support this petition; he

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[12]The interest here is paramount: the integrity of our legal system and government, and democracy itself. See Beery at ftnt. 8 above, re "Our principal concern" and Emslie at ftnt. 16 below, re "Government largely depends". Moreover, the Bollotin courts states the interest involved in bringing a VA is "right". Clearly the highest "due process" concerns are at issue here, as set forth in Saleeby at 533.

[13]In Beery, above, the CSC states "'Our principal concern is protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible standard for attorneys", yet the CSC, the Bar and the Judicial Council all "keep no statistics" on **VAs**. That appears more like no concern. That is no accountability. See Saleeby, at 535, and see petitioner's June 6, 1994 letter to CSC Chief Clerk, Mr. Wandruff, accusing that office and the CSC of obstructing justice (**"evasion"**)regarding their handling of **VAs**. (A.96). Neither Mr. Wandruff, nor anyone else from the CSC, ever replied.

declined stating **"my editor won't let me"**.[14]

Finally, on March 13, 1995 after receiving a copy of the CSC's **"docket sheet"** on this matter, petitioner called the CSC clerk's office and spoke with Mr. Charles Rossi, who advised he had been in that office for 17-years, and like Mr. Carrizosa had no knowledge of the CSC **"ever"** granting a **VA**.

It is indisputable that here, the Bar ignored the law and the serious misconduct committed by attorneys Greene and Belli. But why has the CSC ignored the above clear law and its clear duty to address and condemn that attorney misconduct, as well as the subsequent Bar cover-up? A brief look a the history of the Bar tells why.

In Saleeby v. State Bar, 702 P.2d 525, 529 (Cal. 1985) the CSC, Chief Justice Lucas wrote[15]:

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[14]Mr. Carrizosa made the same statement to attorney John DeRonde, regarding VA, S037043, that he filed against attorney Thomas Pfalzer in the CSC, which also was summarily denied despite indisputable serious attorney misconduct. Also see VA S042880 against attorneys Donna Peizer and Sandra McNabb, which was filed on in October 1994; there CSC has not acted yet, as required by sec. 6109. See Attorney discipline and the California Supreme Court: Transfer of Direct Review to the Courts of Appeal, (1984) 72 C.L.R.252, 258, ftnt. 47, which references a 1983 article by Mr. Carrizosa on the CSC.

[15]Saleeby involved the CSC considering what due process the Bar was required to provide applicants (wronged clients) making claims to the Bar's Client Security Fund (hereafter CSF). At page 533, ftnts. 4 and 5, Chief Justice Lucas wrote:

> "4. The confusion under which the bar appears to labor is demonstrated by its concession that some review is appropriate and its simultaneous assertion that its payments are a matter of grace. In other words, the bar can do whatever is wishes, but that decisions is in some manner 'reviewable'. If the bar has complete discretion and that discretion is limitless, what is there for this or any court to review? Moreover, what, if anything, can be reviewed if there is no record upon which to base review?"

"In 1927, the Legislature adopted the State Bar Act (Bus. & Prof. Code §6000 et seq.) establishing "'what is known as an "integrated" bar, i.e., an organization of members of the legal profession of the state with **a large measure of self-government**. . . We have described the bar as 'a **public corporation** created as an **administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys**.' (Citation)."[16]

"5. Note, too, that ordinarily review by administrative mandate is based only on the administrative record. (Citations). Here, there is no 'administrative record' from which a meaningful review could be made."

Chief Justice Lucas later wrote at page 535:

"We will conclude that the procedures followed by the bar are insufficient because they fail to provide a record upon which judicial review may be had and deny due process and that the bar therefore must formulate new rules. We will also conclude that decisions relating to applications for reimbursement for the CSF are reviewable by a writ of mandamus heard in the first instance in the superior court. . . ."

Contrary to the above it is clear that the Bar provides even less of a record and its discretion is even more "limitless"with complaints of misconduct and appeals to the CGP. The Bar still does "whatever it wishes". Ironically, like Saleeby, the denial of petitioner's verified accusation was done by the same Chief Justice Lucas. Also ironic is that petitioner also filed an application with the Bar's CSF regarding this same misconduct committed by Greene and Belli, which was denied (twice) because the CSF (the Bar) wrongly claimed (twice) that Greene and Belli were not disciplined! Not only is this another example of the Bar doing "whatever it wishes", it also is absolutely false that Greene and Belli were not disciplined. (See A.80).

[16]Again as stated above in Walker, prior to the passage of the 1927 Bar Act, disciplinary proceedings against attorneys could only be filed in the courts. Then in Emslie v. State Bar, 520 P.2d 991, 999 (Cal. 1974) the CSC stated:

"'The State Bar Act is designed to provide a procedure whereby those attorneys at law who prove recreant to their trust may be removed from the ranks of the profession. The public, as well as the legal profession and the courts must be protected from those who do not measure up to their responsibilities.

The Bar may be an **"administrative arm"** of the CSC, but the last decade has clearly shown it to be an arm seldom extended to protect the people of the State of California, and in fact, an arm that is broken. For example, see the inexplicable improper favored treatment attorney Marvin Mitchelson received from both the Bar and CSC, referenced in the instant **VA at A.17, ftnt. 9**. Another example is the August 27, 1994 Report of the Discipline Evaluation Committed to the Board of Governors, State Bar of California (commonly knows as the ALARCON REPORT) which states a page 16 (see also A.84), under the heading **"THE DISCIPLINE CRISIS: THE WAY WE WERE"**: "In the ten-year period ending in 1983, California's attorney population doubled, increasing form approximately 39,000 to more than 89,000. (ftnt. omtd). This soaring number of the practicing lawyers and the corresponding doubling of misconduct complaints and inquiries quickly outstripped the State Bar Discipline system's ability to deal with them in a timely and effective way. The general public and the California Legislature did not become aware of the dimensions of the problem until the San Francisco Examiner newspaper published a series of articles in **1985** that criticized the system as '**secretive, slow and lenient**,' (ftnt. omtd.) **and questioned whether a professional association of lawyers could police itself.** [P] After examining more than 20,000 pages of records, conducting more than 1,000 interviews and surveying nearly 400 lawyers and appellate judges over an eight-month period, the San Francisco Examiner revealed the following facts

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Government largely depends upon the stability of the courts and, to a considerable extent, upon the integrity of the members of the legal profession . . . [P] The State Bar is empowered by the Legislature to act in place and stead of the board of governors in the determination of disciplinary proceedings . . ."

about the State Bar discipline system: There was a backlog of more than 4,000 unresolved complaints. It found that **only 11 lawyers were disbarred in a year when more than 9,000 complaints were received**. It disclosed that dozens of lawyers who were **convicted felons, or who were accused of egregious, unethical conduct were allowed to continue to practice law**. The reporters asserted that the bulk of complaints from aggrieved clients were **rejected with little or no investigation and were never made public**.(ftnt. omtd.) In a letter to the editor of the San Francisco Examiner, dated **March 18, 1985**, the communications director of the State Bar **did not refute the general findings** of the investigative reporters. **Instead, he alleged that the State Bar had actually pinpointed the problems and was working on solutions**.(ftnt. omtd.) In **1987**, however, newly-appointed State Bar Discipline Monitor Robert C. Fellmeth described the State Bar's discipline system as still **'a disaster'**. (ftnt. omtd.)"

The ALARCON REPORT then goes on to list numerous serious problems that Prof. Fellmeth documented his **"disaster"** conclusion with **"in his June 1, 1987 initial assessment report"**. Disaster - this is the condition the Bar was in right after Chief Justice Lucas wrote Saleeby. (See also A.12, **"HISTORY OF NEGLECT BY THE BAR"** and A.52, **"THE BAR'S CONDUCT"**).

More alarming is that 4-years later when his term as **"Discipline Monitor"** terminated, Prof. Fellemth had the same complaints, and more, about the condition of the Bar, stating that attorney misconduct in California was in a **"state of crisis"** and that **"The level of attorney dishonesty in representations to the court, in promises to clients [and in] dealings with adverse counsel . . . is embarrassing."** (September 21, 1991 LA Times, p. A25 article State Bar Steps Up Disciplining of Lawyers, by Philip Hager; see A.18, ftnt. 10). In fact, in his September 20, 1991 Final Report of the State

Bar Discipline Monitor (condensed edition) Prof. Fellmeth came to the **same conclusion** that the San Francisco Examiner reporters came to, above: **that the Bar could not police itself.** (See A.13, ftnt. 8). There Prof. Fellmeth stated: "We have some doubt that these kinds of reforms can be accomplished given the **regrettable structure of the Bar governance**; that is, a system where the state agency regulating the profession in the interests of the larger body politic consists largely of members of the profession selected by the profession. **Political reality makes it difficult** for the Bar's governors or its electorate (here, attorneys electing the Board of Governors) to **burden themselves substantially for the benefit of a larger population or purpose. . . . The State Bar is a long way from assuring acceptable attorneys for the public, particularly in terms of everyday personal honesty (short of financial theft) and competence. . . .** Many of the measures needed to address these problems do not rest within the jurisdiction of the discipline system itself-but they burden that system, and undermine its purpose." (p. 19).
"The State Bar must understand that the disrepute of what should be a proud profession **is not the product of media bias, and is not curable through public relations campaigns**-such as the Bar periodically suggests. . . . [P] **The State Bar, despite its acknowledged progress and new sensitivity, has yet to face up to the magnitude of its problem.**" (p. 22).

Even more alarming, is that the ALARCON REPORT itself is nothing more than a self-serving public relations campaign, demonstrated by its misleading **"MISSION STATEMENT"**, which reads: "The mission of the Discipline Evaluation Committee [Alarcon Committee] is to report to the Board of Governors **on the cost-effectiveness of the current operations and provide recommendations regarding budgets for these operations in the future.** It is also the mission of the Discipline Evaluation Committee to review the fairness of the system and to make recommendations to ensure consumer protection and fair process for attorneys." (p. 3).

By placing **"cost-effectiveness"** and **"budgets"** in the 1st sentence of its **"<u>MISSION STATEMENT</u>"**, it is clear that neither this committee, nor its report, take the issue of attorney misconduct and discipline serious. Clearly it has not even identified attorney misconduct and discipline as the **"disaster"** and **"crisis"** they indisputably are.

Moreover, the 2nd sentence makes it clear that the committee actually, was not asked to inves-tigate the problems of misconduct/discipline. Those two (2) words are conspicuously <u>absent</u>. This conclusion is further borne out by the following facts. First, is the misleading heading mentioned above entitled **"THE DISCIPLINE CRISIS: THE WAY WE WERE"** (p. 16). <u>Were</u>? Clearly this heading and the statements set forth under it, are intended to mislead one to the false conclusion that attorney misconduct/discipline problems have largely been solved - just like the misleading March 18, 1985 letter from the Bar's communication director, above. Second, the report fails to mention Prof. Fellmeth's <u>final</u> report, except a single reference, which is tucked away in a footnote (no. 10, p. 17), that misleadingly appears among a long list of **"problems"** attributed to his **"initial assessment report released June 1, 1987"**. Again, Prof. Fellmeth stated in connection with the release of his 1991 **"Final Report"** that attorney misconduct in California was in a **"state of crisis"**. Third, the report incredibly states **"We have found no evidence that clients are treated unfairly"** (at 10); but then directly makes the following amazing statements: "The present system, however, has **the appearance of being biased in favor of attorneys** in the eyes of persons who complain about unprofessional conduct. **Persons who seek review before the Complainant's Grievance Panel** of a determination that formal disciplinary proceedings should not be initiated **are doomed to disappointment in approximately 99% of their appeals.**"

That statistic is shocking. **99% of appeals doomed?** (See A.85). This is not a system that affords an appeal, affords provides due process. **Appearance of being biased?** Clearly this system is stacked, a closed shop and a lock out of the complaining party - clients - the people of the State of California. And recall above, how the standard CGP denial letter (A.61) concludes:

> **"Because the Panel considers all cases in a closed and confidential meeting we cannot provide you with any details concerning its decision."**

99% of appeals **doomed** to failure! Yet the Alarcon Commission/ Report **"found no evidence that clients are treated unfairly."** The <u>Alarcon Commission/Report</u>, simply is not credibile. (See A.86, ftnt.15). But there is more. At page 54-55 the <u>ALARCON REPORT</u> states:

"Under the present system, disbarment is relatively rare, and it is meted out only for the most egregious misconduct . . . Yet under the current system, **a disbarred attorney can apply for reinstatement after three (3) years**, and resources must then be expended considering such applications. When a successful, **disbarred attorneys are given another chance to victimize unsuspecting clients. If the public were aware of the fact that disbarment does not really mean disbarment, it would question the seriousness of the State Bar's resolve to cleanse the legal profession** of the relatively few attorneys whose misconduct casts all attorneys in a bad light. * * * [P] . . . an attorney should be eligible for permanent disbarment where he has engaged in particularly reprehensible misconduct, <u>e.g.</u>, embezzlement of client funds, **perjury**, suborning perjury, **knowingly making false statement to the court with intent to deceive**, and **using his**

position as a lawyer to commit fraud on his clients or the public."

Finally, the most incredible statements from the Alarcon Committee/Report: **"There is a troubling lack of consensus among bar discipline staff as to who is in charge of the discipline system** as a whole. Interviews held with management staff in the State Bar Court and others revealed that there were many answers to the **question, "Who is in charge of the State Bar discipline system?"** , the most prevailing answer being **"no one."** (Recommendation No. 2; Discussion, point 6, at p. 53).[17] ". . . **It**

[17]This same conclusion was reached by Mr. David Guay, Special Investigator in the Office of Investigation of the State Bar of California, in his article The Undisciplined System - State Bar 'Reforms' Need Reforming, which appeared in the December 28, 1994 LA Daily Journal at p. 2. There Mr. Guay states:

> "Yet again, the State Bar attorney discipline system is slated for major reform and organization. In 1986, after many years of criticism by just about everyone who dealt with the State Bar regarding complaints about attorney misconduct, the system was completely overhauled by the Legislature. The finished product . . . greatly increased the State Bar's revenue. There also was a massive increase in the number of complaints about attorneys and a corresponding increase in . . . discipline staff and equipment. Despite improvements in many areas, the results of the 1987 reform failed to meet expectations. Once again there was an outcry of complaints by consumers, attorneys and the legal profession in general. In December 1993, the president of the State Bar responded. She established a blue-ribbon panel to take an in-depth look at the current discipline system. . . . designated the Discipline Evaluation Committee [the Alarcon Committee/Report, who's] . . . mission was to evaluate the structure, efficiency, fairness and cost of the State Bar's discipline operation. After an exhaustive study, . . . [P] Unfortunately, there was one area the committee did not investigate and report on. That was the effectiveness, performance and leadership of the senior executives in charge of the State Bar discipline system. Except for the person holding the position of chief trial counsel, the

is unconscionable that the discipline system has gotten so far out of control with too much staff, lack of fiscal oversight--the most glaring examples being in the area of travel--and no expectation that the system operate efficiently or cooperatively. . . ." (Further discussion under point 6, p. 53).

Clearly the State Bar is not only a broken, but a twisted and deformed arm, a **"disaster"**, in a **"state of crisis"**, **"out of control"**, with **"no one"** in charge.[18] A disgrace to the **"RULE OF LAW"**. Equally clear is that the this Bar has gotten that way - only because the CSC has allowed it to. The CSC's failure here, to comply with Bus. & Prof. Code §§ 6109 et. seq., and its own dictates in Saleeby, is not only a denial of due process, but it is clear that it is, and has been for quite sometime - no process at all. Recall that there are no reported cases that the CSC has ever ordered an accused attorney to appear, no reported cases where the CSC granted a **VA**, and the CSC claims it **"keeps no statistics"** on **VAs**. Simply put, this is obstruction of justice of the highest order.

Our founding fathers wrote the Constitution to limit the power of government; to prevent the

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same people have been in charge for over 10 years--some considerably longer. They are directly accountable to no one. . . . [P] As a State Bar investigator for over six years, I have had the opportunity to observe and assess the leadership skills of the discipline system's senior executives. It is **my impression** that **they couldn't lead a 3-year-oldto the toilet**. Had the current discipline system's senior executives been in charge of the Titanic when it struck the iceberg, they would have immediately informed the Board of Governors by radio that the ship was going to be delayed because it had stopped to take on ice. Then, as it began to sink they would have asked each other, '**Where in the hell is all this water comingfrom**?'"

[18]This is another way of stating - the "RULE OF LAW" has collapsed in the State of California. See ftnt. 16, above.

government from taking arbitrary action depriving the people of their rights. The founding fathers also created this Court to remedy violations of those rights by the government. This Court must grant this petition if our Constitution and the law is to have any meaning.

ISSUE II

Was the California Supreme Court's January 18, 1995 summary denial of the verified accusation of attorney misconduct - in total disregard of a clear conflict of interest confronting the California Supreme Court -a denial of petitioner's and the people of the State of California's right to due process under the 5th and 14th Amendments of the United States Constitution?

Petitioner's **VA** pointed out to the CSC that it must recuse itself from presiding over the **VA** because it faced a substantial conflict of interest. (A.19). That conflict concerned: the CSC ignoring its duty to take mandatory judicial notice pursuant to Cal. Evidence Code §451(c) of the violation of Rule 5-102[19], when the underlying legal malpractice case of Ornelas v. Greene, Belli et al., was petitioned to the CSC (this is the same **"violation"** that the Bar concluded Greene and Belli committed, see A.30); and the CSC ignoring extreme misconduct committed by the trial judge and appellate

[19] As set forth above, Cal. Evidence Code sec. 451(c) provides "Judicial notice **shall** be taken of . . . [the] Rules of Professional Conduct . . ." Day v. Rosenthal, 217 P.2d 89, 102 (Cal.App.Ct. 1985) affirms the above and states that the Rules of Professional Conduct are "conclusive" regarding the duties of the attorney.

court.[20] That conflict further concerned: petitioner then writing the CSC on September 9, 1992 a letter entitled **"BLACK ROBE CRIME - A COVER-UP"** (A.104 and A.90, ftnt. 18), informing the CSC that it had shown contempt for the law by not granting the civil malpractice petition to it and that if the CSC did not rectify the matter, petitioner would bring suit against the CSC justices in federal court; petitioner then brought that suit.[21] The CSC though, just like

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[20]See A.105, ISSUE I on the civil malpractice case Ornelas V. Greene/Belli, S026070 petition to the CSC. The trial judge's misconduct was so great that it supplanted the issues of Greene and Belli failing to disclose the conflict of interest, and became ISSUE I on appeal. (See A.9 ftnt. 4, A.19, ftnt 11 and A.77, ftnts. 10 and 11). Those issues were ignored by the appellate court. (See A.106 and A.20, ftnt. 12). Petitioner also filed a complaint against the trial judge with the Cal. Commission on Judicial Performance, which eventually set a disciplinary hearing; but rather than face it the judge resigned from the bench. Because his misconduct was so egregious and his record was so bad, petitioner filed a Bar complaint against now attorney and ex-judge Henry P. Nelson. Like the instant matter, the Bar repeatedly ignored the judge's misconduct and arbitrarily refused to take appropriate action. Petitioner thus was compelled to file on September 13, 1994 a **VA**against attorney and ex-judge Henry P. Nelson, S042217. Like here though, the CSC ignored Bus. & Prof. Code sec. 6109 and the matter remains pending. See ftnt. 14, below.

[21]See A.104 and A.98, the order of dismissal of the federal complaint. There the CSC justices, as well as the three (3) involved appellate justices, were represented by separate units of the Cal. attorney general's office. Petitioner raised, both in opposition papers and at a hearing, on the motion to dismiss, that the attorney general had a "conflict of interest", as that office is counsel for the California Commission on Judicial Performance, when a judge is prosecuted for misconduct. Both the attorney general and the federal judge ignored that conflict, despite that at that stage of the proceedings all allegations are deemed "true" (see "Facts", at A.99), thus the attorney general should have been investigating, and possibly prosecuting, those judges, instead of representing them. At first blush this might for some seem incredible that the "RULE OF LAW" could so easily be disregarded. However if one reads the articles shocking articles Judges Can't Judge Themselves - Council on Judicial Performance is Rigged to Protect Judiciary, by Peter G. Keane (Chief attorney of San Francisco pubic defender's office, member State Bar Board of Governors

with the **VA** itself, simply ignored the conflict and denied the petition.[22] As shown below, the

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and adjunct professor at Hastings College of LAw and Golden Gate University Law School) that appeared in the December 17, 1993 LA Daily Journal at p.6 (see A.24,15) and Judges Flout Law on Closed Disciplinary Hearings, Lungren Says, by Henry Weinstein that appeared in the June 9, 1994 LA Times at p.A3, one clearly sees that this problem actually is quite pervasive. The later article reports that Attorney General Lungren wrote a June 7, 1994 letter to the Cal. State Senate stating that judges charged with misconduct have avoided public hearings after they "sought and received some form of secret writ relief from other courts of this state" and "This complete frustration " of the constitutional provisions for open hearings raises "troubling questions regarding the functioning of California's judicial disciplinary procedures."

How pervasive? Petitioner wrote Attorney General Lungren certified letters on June 13, 1993, July 9, 1993, June 16 & 24, 1994, July8, 1994, November 28, 1994, december 14 & 28, 1994, January 4, 13 & 20, 1995 providing him the information in this VA, and much much more and requesting that his office investigate the Bar and Commission for incompetence and obstruction of justice. The only letter he replied to was the July 9, 1993, with his pitiful July 16, 1993 (see A.5, ftnt. 3); there has been no investigation of the Bar or Commission. Petitioner had to become a "private attorney general". The "RULE OF LAW" has collapsed in California.

[22]Because the CSC ignored Bus. & Prof. Code sec. 6109 by not ordering the accused to answer and appear "upon receiving" the accusation and would not answer petitioner's questions (see A.92), petitioner was forced to file a complaint against Chief Justice Lucas with the Cal. Commission on Judicial Performance. Petitioner also raised two other unrelated matters: 1-Lucas participating in the case Amwest Surety Ins. Co. v. Wilson, S037405 (hearing granted 2-24-94, waitng date for argument; and 2-Lucas' "trips". Both of those matter received substantial unfavorable comment against the chief justice. See A.23, ftnt. 14. and further articles concerning the Amwest conflict: Deukmejian to Represent Insurer Before High Court - Five of Seven Justices to Hear Case Were Appointed by Ex-Governor, by Thomas Mulligan, front page February 1, 1994 LA Times; Appearances Count, by Thomas Dressler, February 2, 1994 LA Daily Journal p. 3; Deukmejian Cashes In - Appearance Before Own Appointees Looks Improper, by Thomas Elias, April 20, 1994 p. 6; and Retired Justice Kaus Asks Court: Reject Deukmejian Amicus Brief, by Philip Carrizosa, April 22, 1993 p. 9. Petitioner pointed out to the Comm. that its 5-member judge majority, could not preside over this complaint because, they were not only appointed to the Comm. by the CSC (Chief Justice Lucas was thus their boss), but regarding

CSC's failure to address that conflict was another clear **"evasion"** of its duty to follow the law and thus another denial of the due process. It also is further clear evidence that the **"RULE OF LAW"** has collapsed in California.

Again, the CSC had a duty under Evidence Code §451(c) to take mandatory judicial notice of attorneys Greene's and Belli's **"violation"** of Rule 5-102, representing conflicting interests. The CSC also had that duty as the final arbitrator of attorney misconduct matters. Furthermore, the California Code of Judicial Conduct (1990), Canon 1, provides: **"A judge should uphold the integrity and independence of the judiciary"**; and Canon 3 provides: **"A judge should perform the duties of judicial office impartially and diligently"**; and more, particularly Canon 3 D - Disciplinary Responsibilities, states:

> **"A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."**[23]

Amwest, ex-governor Deukmajian had appointed them to the bench. Petitioner's complaint not only then presented them with a conflict situation, but an incestuous conflict situation. The Comm. simply ignored its conflict, as well as the conflicts of Chief Justice Lucas presented in petitioner's complaint.

[23]The CSC was clearly "aware" of the misconduct committed by Greene and Belli. It not only twice (1-legal malpractice petition to it; and 2-the instant VA it summarily denied) failed to take or initiate appropriate measures on its own, but ignored the misconduct when brought to it. This case however is not unique. See G. Dennis Adams, Judge of Superior Court v. Commission on Judicial Performance, S037475, P.2d (Cal. 1994), where the CSC finally took action against the miscreant Judge Adams for receiving bribes/pay-offs from attorneys that had cases before the judge. Beyond stating in extreme detail the facts of those pay-offs and the names of the involved influential attorneys, the CSC says nothing about condemning those attorneys or ordering the Bar to investigate the matter. (See also Marvin Mitchelson, A.17, ftnt. 9). Petitioner had to report those attorneys to Bar President Donald Fischbach; that matter is

The law is clear that by not recusing itself, the CSC and Chief Justice Lucas in particular, denied petitioner and the people of the State of California their constitutional right to due process of law. In Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986)[24] Chief Justice Burger wrote the opinion of the Court, which begins: "The question presented **is whether the Due Process Clause of the Fourteenth Amendment was violated when a justice of the Alabama Supreme Court declined to recuse himself** from participation in that court's consideration of this case. (page 815).

Chief Justice Burger continued at page 821: "The record in this case presents more than mere allegations of bias and prejudice, however. Appellant also presses a claim that Justice Embry had a more direct stake in the outcome of this case. In Tumey, while recognizing that the Constitution does not reach every issue of judicial qualification, the court concluded that **'it certainly violates the Fourteenth Amendment. . . to subject [a person's] liberty or property**

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currently pending. See also ftnts. 21 and 22, above.

[24] Aetna concerned Alabama Supreme Court Justice Embry casting the deciding vote in a bad faith insurance case opinion that **he wrote** which made "new law" and affirmed a $3.5 million punitive damage judgment against Aetna. Later learning that Embry himself had earlier filed two bad faith cases seeking punitive damages against insurance companies (pending when he wrote his Lavoie opinion), Aetna filed an application for rehearing and two motions in the Alabama Supreme Court; one motion challenged Embry's participation in the case, the other his participation in the rehearing. The Court unanimously denied both recusal motions and with a 5/4 decision a rehearing. Aetna filed a 2nd application for rehearing, after obtaining a copy of a transcript of Embry's deposition taken in one of the his bad faith cases, which demonstrated his predisposition against insurance companies; that application was also denied. Aetna then petitioned the U.S. Supreme Court; while pending Embry settled one of his cases for $30,000and the other settled earlier for an undisclosed amount.

to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in the case.' 273 U.S. at 523, 47 S.Ct., at 441. [P] More than 30 years ago Justice Black, speaking for the Court, reached a similar conclusion and recognized that under the Due Process Clause no judge 'can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome.' In re Murchinson, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). He went on to acknowledge that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Ibid. . . . [P] We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but whether sitting on the case then before the Supreme Court of Alabama '"would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance, nice, clear and true."' Ward, 409 U.S., at 60, 93 S.Ct., at 83 (quoting Tumey v. Ohio, supra, 273 U.S., at 532, 47 S.Ct., at 444). The Due Process Clause, 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice."' (Citations). (at 825).

Like Alabama Supreme Court Justice Embry in Aetna, above, Chief Justice Lucas here has **"an interest in the outcome"**. Here, when he had a mandatory statutory duty, and further duties on several other levels, to condemn the blatant and egregious misconduct committed by attorneys Greene and Belli - he did nothing - but he then was proven wrong, by the Bar concluding Greene and Belli **"violated"** Rule 5-102. Again, that

"violation" was the gravamen of the legal malpractice case against Greene and Belli! (See A.105, A.77, ftnt. 11, and A.71, ftnt. 5). But Chief Justice Lucas ignored that misconduct, as well as the misconduct of the trial judge and appellate court. And when given the opportunity to correct his mistake, he only compounded it - first, by failing to recuse himself, and second, by summarily denying the **VA** in violation of Bus. & Prof. Code § 6109.

Clearly, here Chief Justice Lucas has twice given in to temptation, which has **"lead him** [twice] **not to hold the balance, nice clear and true"**, otherwise he would have recused himself or filed an answer to that request, and he would have followed Bus. & Prof Code §6109 and **"upon receiving"** the instant **VA** he would have ordered Greene and Belli **"to appear and answer it."**

What has occurred here in no way has done justice or **"satisfies the appearance of justice."** It has done just the opposite. The opposite of what the law and duties compelled the CSC to do. Here the CSC has denied both petitioner and the people of the State of California due process of law and shown contempt for the **"RULE OF LAW"**.

In Liljeberg v. Health Services Corp., 486 U.S. 847, 861 (1988)[25] Justice Stevens wrote in

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[25]Liljiberg involved Federal District Court Judge Collins failing to inform the parties in a case before him, that he was on the board of a university involved in a land deal that would be affected that litigation; he further failed to recuse himself from presiding over that case, as required by the Federal Judicial Code, 28 U.S.C. section 455(a). The Supreme Court affirmed that Judge Collins in fact had a conflict of interest, that he should have recused himself, and the court of appeal decision vacating Judge Collins'judgement, that had favored the side connected with the university. Stating that the very purpose of section 455(a) was to promote confidence in the judiciary by avoiding even the appearance of impropriety and therefore it was "criticallyimportant" to identify the facts an objective observer might question Judge Collins' impartiality, Justice Stevens wrote: "First,it is remarkable that the judge, who had regularly attended the meetings of the Board of Trustees since 1977,completely forgot about the

a majority opinion Justice Stevens wrote: "In this case both the District Court [remanded to another trial judge after a first appeal] and the Courts of Appeal [second appeal] found an ample basis in the record for concluding that **an objective observer would have questioned Judge Collins' impartiality**. Accordingly, even though his failure to disqualify himself was the product of a temporary lapse of memory, it was nonetheless a plain violation of the terms of the statute. . . .

* * *

"We conclude that in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate **to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process**. We must continuously bear in mind that '**to perform its high function in the best way "justice must satisfy the appearance of justice."**' In re Murchison, 349 U.S. 133 (1955) (citation omitted)." (page 866). . . . The problem, however, is that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.12 (864).

> "12. As we held in Aetna Life Ins. Co. Lavoie, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823 (1986), **this concern has constitutional dimensions**. . . ."

Well § 455(a) governs California appellate justices. Kaufman v. Court of Appeal, 647 P.2d

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University's interest in having a hospital constructed on it property in Kenner. . . ." (865). Here it is "remarkable" that the CSC ignored the misconduct of Greene and Belli on the first occasion of the civil malpractice case (see A.105; it is criminal when it ignored it the second time in this VA.

1081 (Cal.App.Ct. 1982).[26] Section § 455(a) governed the CSC and Chief Justice Lucas here regarding petitioner's request that they recuse themselves. But just like Bus. & Prof. Code § 6109, above, the CSC ignored has ignored this law also. The CSC can not claim that its recusal was prevented by the judicially created **"rule of necessity"**, because it does not exist in California. Mosk v. Superior Court, 601 P.2d 1030 (Cal. 1979).

It is indisputable that **"an objective observer would question [the] impartiality"** of the CSC here, and in particular Chief Justice Lucas. If not question much more. The issue of the denial of petitioner's and the people's due process here - is clear. The risk of injustice here, is no longer a risk - injustice has occurred, repeatedly, and it has been compounded several times. The public's confidence in the judicial process, as stated above by former Chief Justice Burger is already down, with this matter the CSC has kicked it down even lower. (See A.23, ftnt. 14 and A.53, ftnt. 9). The judicial misconduct here has denied petitioner and the people of the State of California due process of law in - **"constitutional dimensions."**

This Court must grant this petition and state so. This Court must restore the **"RULE OF LAW"** in Califronia.

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[26] After holding that sec. 455(a) was "the California accepted rule" and then reaffirming it, the Kaufman Court stated at 1085:

> "Further, in this court the sole question would be: 'Because of his bias, did the appellate proceeding wherein a justice participated become illegally and prejudicially unfair?'"

That is the question here also. The answer is an unequivocal "yes";and grossly illegal and prejudicially unfair here, by - "constitutional dimensions".

CONCLUSION

As established above it is clear that the California State Bar and the California Supreme Court have **"fallen down."** They have forsaken and trashed, precisely the ethics, rules and law, they purport to stand for and are supposed to embody. They have demonstrated a course of conduct antithetical to their purpose and duty.

The **"RULE OF LAW"** has collapsed in the State of California. This case shows the dark side of the legal profession - greed and self-dealing. What has occurred here is criminal. Attorney-author Sol Linowitz has called it THE BETRAYED PROFESSION: Lawyering At The End of the Twentieth Century, (1994).

But as former Chief Justice Burger stated above, this is occurring across our nation, as judges and lawyers in every state betray the profession and institution of the law. This Court must put a stop to the demise of the **"RULE OF LAW"**, or it surely will bring America itself down. Justice Brandies stated in Olmstead v. United States, 277 U.S. 438 (1928):

> **"Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."**

This petition provides this Court the opportunity and vehicle to stop the demise and to once again establish honesty and integrity to the legal profession and establish once again the real **"RULE OF LAW."** Otherwise, the writing is on the wall.

Dated: April 14, 1995

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Petitioner, Pro se

Petition to U.S. Supreme Court
94-1704
re Verified Accusation,
Cal. Supreme Court, S037066