APPENDIX C — FINDINGS AND CONCLUSIONS OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF ILLINOIS FOR THE THIRD JUDICIAL DISTRICT DATED APRIL 10, 1999

BEFORE THE COMMITTEE ON CHARACTER AND FITNESS SUPREME COURT OF ILLINOIS THIRD JUDICIAL DISTRICT

In Re:	Application of Matthew F. Hale
Commissioners present:	Gordon L. Lustfeldt Thomas Dunn Clark Erickson Charles Marshall L. Lee Perrington
Hearing date:	April 10, 1999
Counsel for Applicant:	Robert Herman
Counsel adverse to Applicant:	George Murtaugh
Decision:	Not recommended for certification
Vote:	5 no; 0 yes

FINDINGS AND CONCLUSIONS

A hearing was held April 10, 1999 at the Will County Courthouse. All the above listed persons were present, pursuant to prior notice. The hearing was open to the public,

at the applicant's request. Due to the illness of Committee member Louis Bertani, L. Lee Perrington, a member of the Second District Character and Fitness Committee, was substituted, without objection.

The commissioners (hereinafter referred to as the panel), heard the evidence and arguments of counsel. At the conclusion of the April 10 hearing, counsel for the applicant requested an opportunity to file briefs, which was allowed without objection. The panel has considered the briefs submitted by both sides. The panel also granted the motion of the American Civil Liberties Union of Illinois to file an amicus curiae brief, and has considered same.

Because counsel were allowed a total of 20 days after the hearing to submit briefs, there was no way the panel could vote within 21 days of the hearing. Therefore, after allowing the filing of briefs, the panel decided to defer their vote for an additional 21 days, pursuant to Rule 5.3(e) of the Rules of Procedure for Character and Fitness Committees. This was known by the parties at the conclusion of the April 10 hearing. The members of the panel later conferred within the period set by the Rules, and voted prior to the end of the extended voting period.

This case is not about Mr. Hale's First Amendment rights. He is certainly entitled to his own beliefs, and the free expression thereof. The issue here is whether Mr. Hale possesses the requisite character and fitness for admission to the practice of law. The applicant has the burden of proving by clear and convincing evidence that he has the requisite

character and fitness to be admitted to the practice of law. (Rule 4.1, Rules of Procedure; *In Re Loss* 119 Ill. 2d 186 (1987)).

Having considered all the evidence, and having observed the witness' testimony, including that of the applicant, it is the unanimous decision of this panel that the applicant has not met his burden of proof, and that he should not be recommended for certification. While relying on the entire record in support of its decision, the panel specifically notes the following:

1. The applicant expressed no difficulty in taking the necessary oath to become an attorney. However, a willingness to take the oath does not end our inquiry. Attorneys are also required to comply with the Illinois Rules of Professional Conduct (Article VIII, Supreme Court Rules). It is axiomatic that an applicant who will not or cannot abide by the Rules of Professional Conduct, should not be admitted to the bar. Such a person will quickly run afoul of these rules, often leaving a victim in his wake. Having considered the evidence, and having observed Mr. Hale's testimony, the panel finds that he has failed to show that he will abide by the Rules of Professional Conduct.

In the first instance, Mr. Hale has an incorrect view as to the application of the Rules to his behavior. The substance of his testimony was that he believed these rules only applied to him when he was actually working as a lawyer, and not at any other time. This view is, of course, incorrect. The Rules of Professional Conduct govern the conduct of lawyers in all their actions. Many attorneys have been disciplined over

the years for actions outside of traditional legal activities. Even more troubling to the panel is Mr. Hale's belief that he alone will decide when the rules applied to him, and when they didn't.

Mr. Hale also made the statement (Hearing Transcript, p.269-270) that the Rules of Professional Conduct (specifically Rule 8.4(a)5 which forbids adverse discriminatory treatment of others) did not apply to his "private behavior in the exercise of his religion". In other words, if Mr. Hale believed that what he was doing was in the exercise of his religion (as determined by himself) then the Rules of Professional Conduct would not apply to him. Mr. Hale's own words lead to the conclusion that he intends to follow the Rules only when he feels like it, and feels free to disregard them at any time, as he deems necessary.

Rule 8.4(a)5 of the Rules of Professional Conduct states as follows:

> (a) A lawyer shall not:
>
> (5) engage in conduct that is prejudicial to the administration of justice. In relation thereto, a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin. This subsection does not preclude legitimate advocacy when these or similar factors are issues in the proceeding;

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Mr. Hale is the leader of an organization called the Worldwide Church of the Creator. In this capacity he maintains and supports an Internet website which details his views. Mr. Hale's publicly displayed views are diametrically opposed to the letter and spirit of Rule 8.4(a)5. One document that Mr. Hale believes in is entitled "The Sixteen Commandments of Creativity". This document is part of the record herein. Commandment 4 states: "The guiding principle of all your actions shall be: What is best for the White Race?". Commandment 6 states: "Your first loyalty belongs to the White Race." Commandment 7 states: "Show preferential treatment in business dealings with members of your own race. Phase out all dealings with Jews as soon as possible. Do not employ niggers or other coloreds.". In another document on his website entitled "The Essence of the one and only true White Racial Religion – Creativity" he states: "What is good for the White race is the highest virtue; What is bad for the White Race is the ultimate sin".

Mr. Hale's long standing and strongly held beliefs are in absolute contradiction to the letter and spirit of Rule 8.4(a)5. He is absolutely entitled to hold these beliefs, but at the same time the public and the bar are entitled to be treated fairly and decently by attorneys. The question before this panel is whether Mr. Hale can put aside his beliefs and comply with the Rules of Professional Conduct.

Mr. Hale's statement that he can comply with the Rules, cannot be the end of the inquiry. If it is, then there is no need for a Character and Fitness hearing; the applicant's statement is conclusive. This panel believes that where there is evidence of other character and fitness problems that an

inquiry into whether the applicant can comply with the Rules of Professional Conduct is justified. The panel is aware of the United States Supreme Court cases cited by the applicant on this issue, but in all of them there was no evidence of bad character of the applicant; there is such evidence in this case (eg. academic probation, an Order of Protection, the Roberson letter). Under such circumstances, Mr. Hale cannot wrap himself in the First Amendment and avoid any inquiry into his character and fitness. Mr. Hale's beliefs do not exempt him from obeying the same rules as every other attorney.

Having considered the evidence, and after observing Mr. Hale's testimony, the panel finds insufficient evidence that he will uphold the Rules of Professional Conduct.

2. The panel is also concerned about a letter that Mr. Hale sent to a Ms. Roberson on July 22, 1995. At that time, Mr. Hale was a 24 year old college graduate, about to enter law school that fall. The letter was in response to Ms. Roberson's published comments in support of Affirmative Action programs. The actual letter is part of the record herein. To say that the letter is insulting and totally inappropriate, is to put it mildly. To suggest, as the applicant did in his brief, that the letter does not contain "fighting words" and is therefore protected from our scrutiny by the First Amendment is simply erroneous.

Mr. Hale was questioned about the letter by the panel. He had the chance to clearly and positively repudiate it, to attribute it to youth, or poor judgment — he did not do so. In fact, he stated that this letter, referring to Ms. Roberson's

rape or murder at the hands of a "nigger beast" was not beyond the pale of a letter a lawyer would write. (This statement is contained on p. 243 of the transcript at lines 21 and 22. The word "payoff" on line 22 is incorrect, it should be "pale of"). Mr. Hale also testified that he did not feel that the reference to a rape or murder by a "nigger beast" was insulting. (Transcript p. 217).

This statement shows a monumental lack of sound judgment. This lack of judgment will surely set the applicant, if admitted to the bar, on a collision course with the Rules of Professional Conduct. Is there any doubt that a lawyer who wrote such a letter would find himself before the Attorney Registration and Disciplinary Commission? Yet, based on the evidence, and his own statements it is clear to the panel that Mr. Hale would do this kind of thing again if admitted to the bar.

Finally, the panel believes that Mr. Hale was not candid and open with the panel during the hearing. The panel heard his testimony, but more importantly observed his demeanor while testifying. There are many occasions in the record when he answered a question with a question, or answered with a speech or narrative which was not responsive to the question. A good example of this lies in his testimony about his alleged disruption of a prayer breakfast at Bradley University (Transcript pp. 226-232; 245-247).

In the preamble to the Rules of Professional Conduct it is stated: "The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves, punish and deter crime, and determine

their relative rights and responsibilities toward each other and their government." Because of the power and influence that lawyers have over others, and because of their vital position in our system of justice, there is a high standard for admission to the bar, and the burden is on the applicant to prove he should be admitted.

The panel has reviewed the entire record, and based on that record, and in light of the foregoing finds that Mr. Hale has not met his burden of proof and therefore has voted that he not be recommended for certification.

APPENDIX D — DECISION OF INQUIRY PANEL OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF ILLINOIS FOR THE THIRD APPELLATE DISTRICT DATED DECEMBER 16, 1998

BEFORE THE COMMITTEE ON
CHARACTER AND FITNESS
FOR THE THIRD APPELLATE DISTRICT OF THE
SUPREME COURT OF ILLINOIS

IN THE MATTER OF:

THE APPLICATION FOR ADMISSION TO THE BAR
OF MATTHEW F. HALE

DECISION OF INQUIRY PANEL

Introduction

Matthew F. Hale has applied for admission to the Bar of Illinois after having passed its examination conducted in the summer of 1998. Pursuant to Rule 5.1a of the Rules of Procedure for the Committees on Character and Fitness his application was referred to a member of the Third District Committee for consideration. After reviewing the application that member was not prepared to recommend the certification of Mr. Hale to the Illinois Board of Admissions.

Accordingly, pursuant to Rule 5.2a, the Chairperson of the Third District Committee assigned the application to this Inquiry Panel for further review and examination. Because a majority of the members of the Inquiry Panel have voted to withhold the certification of the applicant, the matter will

now be referred to a Hearing Panel pursuant to Rule 5.3a. In declining to certify the applicant and thereby causing the matter to be referred to a Hearing Panel, we are setting forth our reasons for this decision in some detail.

Rule 4.1 of the Rules of Procedure places the burden on the applicant to prove by clear and convincing evidence that he has the requisite character and fitness for admission to the practice of law. Nonetheless, the denial of a request for admission results in serious adverse consequences for the applicant, as noted by the United States Supreme Court in *Konigsberg v. State Bar of California*, 353 U.S. 252, 257-258, 1 L Ed. 2d 810, 816, 77 S.Ct. 722 (1957):

> The Committee's action prevents him from earning a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer.

Additionally, as discussion will demonstrate, the reasons for our decision relate to the applicant's active advocacy of his core beliefs. When an issue of that type is injected into the reasons for denial of certification, "a heavy burden lies" upon the State to demonstrate that "a legitimate state interest" is sought to be protected. *Baird v. Arizona*, 401 U.S. 1, 6-7, 27 L.Ed. 2d 639, 647, 91 S.Ct. 702 (1971). Under these circumstances, the reasons for voting to deny certification should be carefully explained.

There is an additional reason for carefully explaining the Inquiry Panel's decision in advance of an opinion to be

issued by the Hearing Panel. While the Hearing Panel may well develop in greater detail the evidence which will inform its decision, based upon a review of the applicant's record to date, our expectation is that the evidence will be largely undisputed, and that the ultimate decision will rest primarily upon an analysis of constitutional principles, as well as the role of courts and the Bar in American society and our system of government. Therefore, an early start at a discussion of these overarching issues is appropriate.

The Facts

Matthew F. Hale is 27 years old, attended undergraduate school at Bradley University in Peoria and received a J.D. degree in 1998 from Southern Illinois University School of Law at Carbondale. By his frank admission he is an avowed racist who, since his teenage days, has been actively involved in promoting white supremacy through organizations and by the distribution of literature. This literature portrays blacks, Jews, and other minorities in an extreme negative light. Attached to this decision is a short autobiography of Mr. Hale.

Mr. Hale is currently the head of an organization called the World Church of the Creator which is claimed to be a religious organization. His title as head of this church is Pontifex Maximus (Supreme Leader). In the attached autobiography, Mr. Hale has stated that "he would dedicate his life to Creativity," referring to the World Church of the Creator. This religion, according to its founder, Ben Klassen, has as one of its major tenets the hatred of Jews, blacks and other colored people.

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Mr. Hale's church admires Adolph Hitler and the National Socialism movement as practiced in Germany, except that it holds Hitler was mistaken in promoting only German nationalism. Instead, his church believes that Hitler's ideas relating to racial superiority should have been applied for the benefit of the entire "white race as opposed to just Germans.

Mr. Hale and his church disavow violence and an intention to seek the forcible overthrow of the United States Government. However, Mr. Hale stated in his interview with us that if his organization would gain power by peaceable means it would call for the deportation of Jews, blacks and others whom his church refers to as "mud races." The United States would then become a country for members of the "white race" only.

The Inquiry Panel's interview with Mr. Hale occurred November 25, 1998. At that time, Mr. Hale was extremely polite and answered all questions quite candidly. He is intelligent and articulate. He stated that after becoming a lawyer he would continue his activities as leader of his church, including his distribution of racist literature. He also plans to be active on the Internet to promote his church's racist views. (See p. 11, *infra.*)

On the issue of moral character, he argued that his frank and open admission of the advocacy of racism shows greater moral character than do lawyers and others who are in fact racist but who utter such thoughts only in privacy.

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Mr. Hale was asked whether or not he could take the oath to support the United States Constitution and the Constitution of the State of Illinois in good conscience. See 705 ILCS 205/4. He unhesitatingly answered that he would have no difficulty even though, based on his beliefs, he obviously would be in substantial disagreement with current interpretations of the constitutions. He likened his situation to that of a judge or jury whose duty it is to follow the law even though they may disagree with it.

In connection with the oath, he was shown Article 1, § 20 of the Constitution of the State of Illinois which condemns "communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation." In response, Mr. Hale said that to the extent this Illinois constitutional provision limited "communications," it would run afoul of the First Amendment to the Constitution of the United States and therefore would not be binding on him.[1]

Additionally, Rule 8.4(a)(5) of the Rules of Professional Conduct for lawyers was brought to his attention. Mr. Hale was asked if he could abide by that rule if admitted to the Bar. The rule, in part, states that a lawyer shall not

> engage in conduct that is prejudicial to the administration of justice. In relation thereto, a

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1. This Illinois constitutional provision appears to be advisory only and not susceptible of being violated.

> lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, or national origin.

Again, Mr. Hale stated that he would have no problem with following this rule, reaffirming his statements that he would follow the law until such time as he could have it changed by peaceful means. He also said that in a recent employment in Champaign where he worked as a law clerk for a few months, he dealt with black clients and engaged in no acts of racism toward them. The accuracy of this statement was confirmed by independent inquiry.

Analysis Of Moral Character

As noted, the applicant must establish his "good moral character and general fitness to practice law" "by clear and convincing evidence." (Supreme Court Rules 708(b), 709(b) and Rule 4.1 of Rules of Procedure of Committees on Character and Fitness.) If these requisites may be established by simply showing an absence of criminal conduct in the past and having one or more persons vouch for one's character, Mr. Hale has established these requisites by clear and convincing evidence.[2]

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2. 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 doubts as to the legality or at least the appropriateness of these convictions because they related to the exercise of constitutionally protected activity and Mr. Hale may have been selectively prosecuted on account of his views.

On the other hand, 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. As indicated, Mr. Hale's life mission is to bring about peaceable change in the United States in order to deny the equal protection of the laws to all Americans except perhaps those that his church determines to be of the "white race." Under any civilized standards of decency,[3] the incitement of racial hatred for the ultimate purpose of depriving selected groups of their legal rights shows a gross deficiency in moral character, particularly for lawyers who have a special responsibility to uphold the rule of law for all persons.[4]

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3. See references in the United Nations Charter and the UN's Universal Declaration of Human Rights at notes 8 & 9 on p. 13, *infra*.

4. In the recent case of *In re A.L.*, No. 3-98-96 (3rd Dist. 11/13/98), the Appellate Court cited bigotry as evidence of depravity which has been defined as the opposite of good moral character. See *In re Abdullah*, 85 Ill.2d 300, 53 Ill.Dec. 246, 248, 423 N.E.2d 915, 917 (1991), which held that "depravity is 'an inherent deficiency of moral sense and rectitude.' "

Bigotry, as well as evil generally, is bottomed on irrationality. By contrast, our legal system is designed to produce rational results. Individual rights are at the cornerstone of law and justice. These rights are extolled in the Declaration of Independence, the Bill of Rights and other documents cited in this opinion. In our courts, facts

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However, even if the Illinois standards for considering moral character and general fitness to practice law allows the Committee to make a determination in this manner, the question remains as to whether or not denying certification for admission to the Bar is constitutional on that basis.

The Constitutional Analysis

At an earlier time the Committee on Character and Fitness might have desired to disqualify Mr. Hale on the ground that, despite his statements to the contrary, his views make it impossible for him to take the required oath "in good conscience." See, e.g., *In Re Anastaplo*, 3 Ill.2d 471, 476, 121 N.E.2d 826 (1954) and *In Re Latimer*, 11 Ill.2d 327, 336, 143 N.E.2d 20 (1957). Also see *In Re Anastaplo*, 18 Ill.2d 182, 163 N.E.2d 429 & 928 (1959), aff'd 366 U.S. 82, 6 L.Ed.2d, 135, 81 S.Ct. 978 (1961).

Moreover, the Membership Manual for his church, which is on the Internet, describes 15 attributes of a church member under a heading entitled, "The Essence of a Creator," The

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matter so that each individual is entitled to be rationally judged on the particular circumstances of his or her case, with an impartial application of the law to the facts.

But the applicant regards these considerations as irrelevant. All that matters to him is whether someone is or is not a member of the "white race," as defined by his church. Such an irrational worship of race for the ultimate purpose of determining legal rights is not only depraved and immoral, but a rejection of all that law, lawyering and judging is meant to accomplish.

number I essence listed is that "A CREATOR puts loyalty towards his own race above every other loyalty." (http://www.rahowa.com/manual.htm.) A reasonable question for the applicant is what happens when that loyalty conflicts with his oath to support the United States and Illinois Constitutions?

Additionally, even though Mr. Hale claimed to be able to abide by the Rules of Professional Conduct relating to non-discriminatory treatment, his activities in this regard arguably cast doubt on these representations. For example, in 1995, only a few weeks before he started law school, he wrote a letter to a woman who apparently had made comments in the Peoria Journal Star on racial issues that were contrary to his. In this letter he referred to "the nigger race" as "*inferior* in intellectual capacity" and condemned the "misbegotten equality myth" as "garbage" that was "destroying" "our whole country." (Emphasis in original.) He also suggested that this woman's rape or murder by a "nigger beast" might enlighten her.

With the applicant capable of such outrageous and intemperate conduct, one might have concluded that he was insincere when he said he could comply with the Rules of Professional Conduct and conscientiously take the oath. However, later cases of the United States Supreme Court suggest that these very real questions about the applicant might be a frail reed upon which to deny certification. See, e.g., *Bond v. Floyd*, 385 U.S. 116, 132, 17 L.Ed.2d 235, 245, 87 S.Ct. 339 (1966) and *Law Students Research Counsel v. Wadmond*, 401 U.S. 154, 163-164, 27 L.Ed.2d 749, 759, 91 S.Ct. 720 (1971), which appear to hold that once an oath to

support the Constitution is taken, others cannot urge that it was not taken sincerely.

Finally, an applicant cannot be denied admission to the Bar on a ground formerly announced by the Illinois Supreme Court — "that the practice of law is a privilege, not a right." *In Re Anastaplo*, 3 Ill.2d 471, 482 (1954). On the contrary, the United States Supreme Court later stated that "the practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character." *Baird v. Arizona*, *supra*, 401 U.S. 1 at 8, 27 L.Ed.2d 639 at 648.

Absolute First Amendment Rights vs. A Balancing Test

The easiest resolution of Mr. Hale's application would be to certify him. This would be in accord with the view that the First Amendment is virtually absolute. By adhering to such a view, line drawing problems and degree questions are avoided, and as the dissenting opinion makes clear, the analysis for reaching a decision can be simple and direct.

Certainly statements found in some Supreme Court opinions, taken in isolation and without regard to the specific facts of the cases, might support this view. For example, in the bar admission case of *Re Stolar*, 401 U.S. 23, 28-29, 27 L.Ed. 2d 657, 663, 91 S.Ct. 713 (1971), it was stated that the State cannot "penalize petitioner solely because he personally . . . 'espouses illegal aims.' "

Nonetheless, on balance, a majority of the Inquiry Panel has concluded that the constitutional issues involving a case

precisely like this one are open,[5] and that the Illinois requirement for moral character and general fitness to practice law precludes the applicant from being certified, (See ***Analysis of Moral Character***, pp. 6-7, *supra.*)

The latest United States Supreme Court decisions relating to bar admissions located by the Inquiry Panel are over 25 years old. In 1971, the year of its most recent cases on this subject, the Court characterized its earlier opinions as containing "confusing formulas, refined reasonings, and puzzling holdings." *Baird v. Arizona*, 401 U.S. 1, 4, 27 L.Ed.2d 639, 645, 91 S.Ct. 702 (1971).

In that case, the Court, in a 5 to 4 split decision, held that "a State may not inquire about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes." 401 US. 1 at 7, 27 L.Ed.2d 639 at 647. The Court also said in that case:

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5. While First Amendment issues in this case are difficult and troublesome, we don't include "the free exercise" of "religion" among them. Our decision would be the same if Mr. Hale professed no religion, and his autobiography shows that his racist views evolved long before he discovered the World Church of the Creator. For an extensive discussion of the case law on the regulation of conduct stemming from religious beliefs, see *Employment Division v. Smith*, 494 U.S. 872, 108 L.Ed.2d 876, 110 S.Ct. 1595 (1990). "*Smith* held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest." *City of Boerne v. Flores*, 521 U.S. 507, __, 138 L.Ed.2d 624, 635, 117 S.Ct. 2157 (1997). The latter case invalidated the Religious Freedom Restoration Act of 1993 (42 U.S.C. §§ 2000bb, *et seq.*) which had been enacted for the purpose of overturning *Smith*.

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> 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. (Emphasis added.) 401 U.S. 1, at 6, 27 L.Ed.2d 639 at 646-647.

A similar result in another 5 to 4 decision was reached on the same day in 1971 in the case of *Re Stolar*, 401 U.S. 23, 31, 27 L.Ed.2d 657, 665, 91 S.Ct. 713 (1971).

Neither of those decisions involved individuals who were actively involved in inciting racial hatred and who had dedicated their lives to destroying equal rights under law that all Americans currently enjoy. On the contrary, the applicants in those cases refused to reveal their views.

But in this case Matthew Hale has no interest in keeping his views a secret. In a 1997 interview that appears on the Internet, he said that "we have several websites going now. . . . We are . . . hoping to expand all these operations . . . to give people full knowledge of Creativity . . . ." (http://hatewatch.org/wcotc/haleinterview.html.) And his attached autobiography proclaims "that he looks forward to leading Creativity to worldwide White Victory!"

The case of *Elrod v. Burns*, 427 U.S. 347, 362, 49 L.Ed. 547, 559, 96 S.Ct. 2673 (1976), laid down the following formula for evaluating whether or not a public employee may have his First Amendment rights curtailed:

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> It is firmly established that a significant impairment of First Amendment rights must survive exacting scrutiny . . . . The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.

Assuming that the courts would apply the stringent *Elrod* formula for public employees to bar admission cases,[6] we believe that the impairment of First Amendment rights that the Panel's decision affects does survive exacting scrutiny and that the interest advanced with respect to the role of the legal profession, hereafter to be explained, is paramount. The Supreme Court has also utilized a balancing test in public employment cases.[7] In *Pickering v. Board of Education*, 391 U.S. 563, 568, 20 L.Ed.2d 811, 817, 88 S.Ct. 1731 (1968), the Court said:

> . . . it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a *balance*

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6. This formula appears to be in accord with the Supreme Court's statement in the bar admission case of *Baird v. Arizona*, quoted at p. 2, *supra*.

7. Public employment cases, unlike bar admission cases, usually arise where the party seeking relief already holds a governmental position and is not applying for one. See, e.g., *Perry v. Sindermann*, 408 U.S. 593, 33 L.Ed.2d 570, 92 S.Ct. 2694 (1972).

> between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (Emphasis added.)

The Commitment Of The Bar To Fundamental Truths

The balance that the majority chooses requires that a lawyer cannot, as his life's mission, do all in his power to incite racial and religious hatred among the populace so that it will peaceably abolish the rule of law for all persons save those of the "white race." Instead, and by rejecting Matthew Hale's application, let it be said that the Bar and our courts stand committed to these fundamental truths:

- All persons are possessed of individual dignity.[8]

- As a result, 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.[9]

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8. In condemning communications that incite racial hatred, the Illinois Constitution, Article I, § 20, commences with the phrase, "To promote individual dignity, ..." Similarly, the United Nation's Charter refers to "the dignity and worth of the human person" and the UN's Universal Declaration of Human Rights, which was 50 years old this month, recognizes "the inherent dignity . . . of all members of the human family."

9. The documents cited in the preceding footnote condemn discrimination in all forms and in general echo our Declaration of Independence which holds that "all men" have "certain unalienable Rights," like "Life, Liberty and the pursuit of Happiness."

• The enforcement and application 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 system of government.[10]

• Therefore, the guardians of that trust — the judges and lawyers, or one or more of them — cannot have as their mission in life the incitement of racial hatred in order to destroy those values.

Commencing with Jefferson's ringing declaration that all men are created equal, and continuing with the adoption of our Constitution, the Emancipation Proclamation and the Fourteenth Amendment, the moral, ethical and legal struggle for the precious values contained in those writings has been costly, difficult and long. The Bar and our courts, charged with the duty of preserving those values, cannot allow Mr. Hale or any other applicant the use of a law license to attempt their destruction.

Finally, and this is the heart of our analysis, the majority's judgment is that to the extent its decision limits the First Amendment activities of lawyers, the fundamental truths identified above are so basic to the legal profession

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10. The Preamble to the Illinois Rules of Professional Conduct states that "The practice of law is a public trust." The Preamble later refers to lawyers "as officers of the court." Both of these concepts appear in Illinois Supreme Court cases throughout this century. See, e.g., *The People v. Payson*, 215 Ill. 476, 486-487, 74 N.E. 383 (1905) and *In re Both*, 376 Ill. 177, 182, 33 N.E.2d 213 (1941). Also see Justice Frankfurter's statement above.

that, in the context of this case, they must be preferred over the values found in the First Amendment. The relationship of the profession to those truths was eloquently described in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 246, 1 L.Ed.2d 796, 806, 77 S.Ct. 752, 64 A.L.R.2d 288, 299 (1957), by the late Justice Felix Frankfurter in a concurring opinion:

> . . . all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers.

The balance of values that we strike leaves Matthew Hale free, as the First Amendment allows, to incite as much racial hatred as he desires and to attempt to carry out his life's mission of depriving those he dislikes of their legal rights.[11] But in our view he cannot do this as an officer of the court.

A preference for antidiscriminatory values over the First Amendment would not be new to Supreme Court decision making. Only five years ago the Court unanimously rejected First Amendment claims that "hate crimes" penalty enhancement statutes were invalid. The Court described Wisconsin's statute:

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11. Under the First Amendment, a state may not criminalize Mr. Hale's actions in preaching racial hatred "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447, 23 L.Ed.2d 430, 434, 89 S.Ct. 1827 (1969).

> Thus, although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. *Wisconsin v. Mitchell*, 508 U.S. 476, 485, 124 L.Ed.2d 436, 445, 113 S.Ct. 2194 (1993).

Nonetheless, the Supreme Court had no difficulty in finding the statute constitutional because "hate crimes" are "thought to inflict greater individual and societal harm." 508 U.S. 476 at 488, 124 L.Ed.2d 436 at 447. Arguably, the rationale in this case for preventing the applicant from becoming an officer of the Court is stronger than it was in the "hate crimes" case.

CONCLUSION

The late Supreme Court Justice Robert Jackson, America's chief war crimes prosecutor at Nuremberg, wrote during World War II in *West Virginia Board of Education v, Barnette*, 319 U.S. 624, 638, 87 L.Ed. 1628, 1638 (1943);

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Appendix D

Jackson's statement that the immutable principles of the Bill of Rights are to be "applied by the courts" has significance because "[t]here . . . comes from the [legal] profession the judiciary." *In re Anastaplo*, 3 Ill.2d 471, 479, 121 N.E.2d 826 (1954). 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 quotation from *Barnette* is important for another reason. Justice Jackson concluded that "fundamental rights may not be submitted to vote." But Mr. Hale wants to do exactly that, and it is a chilling thought indeed, considering that he and his church are admirers of Adolph Hitler, who acquired his absolute power peacefully, "quite legally" and "in a perfectly constitutional manner."[12]

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12. *The Rise and Fall of the Third Reich, A History of Nazi Germany*, by William L. Shirer, Simon and Schuster, New York 1960, pp. 199 and 187.

For purposes of our discussion, we find no meaningful difference between a destruction of the Bill of Rights that would accompany an election, as opposed to one that would follow a forcible overthrow of the government. As noted, Nazi Germany was created legally, but the Soviet Union arose out of revolution.

Regardless, merely holding private theoretical beliefs favoring either form of change is not a legal basis for disqualifying a bar applicant. Again, see *Baird v. Arizona*, *supra*, and *Re Stolar*, *supra*. Also see *Keyishian v. Board of Regents of New York*, 385 U.S. 589, 599-600, 17 L.Ed.2d 629, 638-639, 87 S.Ct. 675 (1967). However, as Mr. Hale candidly admits, he has crossed a threshold from merely

(Cont'd)

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If the civilized world had no experience with Hitler, Matthew Hale might be dismissed as a harmless "crackpot." However, history teaches a different lesson. In his defining study of Nazi Germany, William L. Shirer concluded his discussion of Hitler's death camps with the following passage:

> There were some ten million Jews living in 1939 in the territories occupied by Hitler's forces. By any estimate it is certain that nearly half of them were exterminated by the Germans. This was the final consequence and the shattering cost of the aberration which came over the Nazi dictator in his youthful gutter days in Vienna and which he imparted to — or shared with — so many of his German followers.[13]

(Cont'd)
believing to actively inciting racial hatred for the avowed purpose of abolishing the Bill of Rights except for those of the "white race," and he plans to continue to do this as a lawyer.

Therefore, contrary to the dissent's statement, the majority decision does not require that future applications be scoured to determine each applicant's beliefs and opinions. Clearly, and as discussed, the foregoing Supreme Court cases preclude such an activity by a bar committee. Similarly, the majority concludes, contrary to the dissent, that there is a significant qualitative difference between a bar applicant who may disagree with some of our laws, like the Dram Shop Act for example, and one whose life mission is the incitement of racial hatred for the purpose of abolishing equal justice under law — the very principle that the Bar and our courts are charged with preserving.

13. *Id.*, pp. 978-979.

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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. 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 views.

Respectfully submitted this
16th day of December, 1998.

Judge Gregory McClintock,
Chairperson of Inquiry Panel

Stuart Lefstein,
Member of Inquiry Panel

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Dissenting Opinion

Matthew Hale, in his application and interview, plausibly asserts he can hold racist views and practice law in accordance with his oath as an attorney and there's no evidence of any conduct otherwise.

Until there is such conduct, 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. Otherwise, character and fitness evaluations will have to review the beliefs and scrutinize the papers, speeches and opinions of every applicant to the bar. This type of 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.

Time will tell if Matthew Hale can in fact practice law in accordance with his oath while holding extremist views. 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. Matthew Hale clearly understands the distinction.

Respectfully submitted this
16th day of December, 1998.

Lawrence W. Baxter,
Member of Inquiry Panel