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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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BISHOP, J., dissenting. While I agree with the observation of my colleagues that a candidate for the bar has no property interest in a license to practice law, an applicant does, nevertheless, have a liberty interest in realizing his reasonable expectations. Moreover, this liberty interest cannot be denied an applicant without according him due process. Because I believe that the undertakings by the Connecticut bar examining committee (committee) denied the petitioner due process and did not constitute a fundamentally fair investigation of the petitioner's present moral fitness for practice, I respectfully dissent.

I am concerned that the trial court, while properly deferring to the fact-finding function of the committee, did not adequately scrutinize the fairness of the committee's process. As a consequence, the court, in the name of deference to fact-finding, incorrectly yielded its responsibility to oversee the fairness of the admissions application process to the committee. In affirming the judgment of the trial court, I believe that we have completely ceded to the committee the uniquely judicial function of determining whether the petitioner should be admitted to practice.

Although a bar applicant does not have a property right to a law license, it is nonetheless a right accorded significant protections. As stated by the United States Supreme Court in 1971, ''[t]he practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character.'' *Baird* v. *State Bar of Arizona*, 401 U.S. 1, 8, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971). Eight years later, Justice Stevens opined that ''[i]n a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed. . . . Although the boundaries of the 'liberty' protected by the Fourteenth Amendment have never been conclusively surveyed, it is clear that they encompass, not merely [the] freedom from bodily restraint and the rights conferred by specific provisions of the Constitution . . . but also the privileges long recognized at common law as essential to the orderly pursuit of happiness. . . . Among those privileges is the right to hold specific private employment and to follow a chosen profession . . . including the practice of law.'' (Citations omitted; internal quotations marks omitted.) *Leis* v. *Flynt*, 439 U.S. 438, 452 n.17, 99 S. Ct. 698, 58 L. Ed. 2d 717 (1979) (Stevens, J., dissenting). Shortly thereafter, the court held that the opportunity to practice law is a ''fundamental'' right within the meaning of the privileges and immunities clause of the United States constitution. *Supreme Court of New Hampshire* v. *Piper*, 470 U.S. 274, 283, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985). Consistent with these expressions of

the constitutional footing of the right to practice one's chosen profession, the court also has held that ''[a] State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238–39, [77 S. Ct. 752, 1 L. Ed. 2d 796 (1957)].'' *Willner* v. *Committee on Character & Fitness*, 373 U.S. 96, 102, 83 S. Ct. 1175, 10 L. Ed. 2d 224 (1963).

To state that an applicant for a license to practice law is entitled to due process, however, does not complete the discussion. ''[D]ue process. . . is not a technical conception with a fixed content unrelated to time, place and circumstances. . . . [D]ue process is flexible and calls for such procedural protections as the particular situation demands.'' (Internal quotation marks omitted.) *Kostrzewski* v. *Commissioner of Motor Vehicles*, 52 Conn. App. 326, 336, 727 A.2d 233, cert. denied, 249 Conn. 910, 733 A.2d 227 (1999). As a guide to the level of procedural process necessary, the United States Supreme Court has identified three factors for consideration: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedure used and the probable value, if any, of additional substitute procedural safeguards; and (3) the state's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); see also *Kostrzewski* v. *Commissioner of Motor Vehicles*, supra, 336–37.

At a minimum, it is basic that the decision of the state to grant or deny a license is subject to a hearing requirement. *Arnett* v. *Kennedy*, 416 U.S. 134, 94 S. Ct. 1633, 40 L. Ed. 2d 15 (1974). ''[T]he absence of a hearing would allow the State to be arbitrary in its grant or denial, and to make judgments on grounds other than the fitness of a particular person to pursue his chosen profession.'' Id., 179 (White, J., dissenting in part). At such a hearing, an applicant is entitled to procedural process that includes, as essential to due process, ''[the right] to confront and cross-examine witnesses and to call witnesses in one's own behalf . . . . *State* v. *Mastropetre*, 175 Conn. 512, 520, 400 A.2d 276 (1978), quoting *Chambers* v. *Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).'' (Internal quotation marks omitted.) *State* v. *Askew*, 53 Conn. App. 236, 238, 729 A.2d 238 (1999).

Finally, the due process rights mandated by the federal constitution include a notice provision so that ''in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be ade-

quately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut [that] evidence.'' *Willner* v. *Committee on Character & Fitness*, supra, 373 U.S. 107 (Goldberg, J., concurring).

A bar applicant's right to due process is illusory unless it is safeguarded by the judiciary. It is my impression, however, that in furtherance of our tradition of deference to the committee's fact-finding responsibility, we have, over time, ceded the entire process, and have, as a practical matter, abdicated our gatekeeping role in determining admission to the bar in favor of the committee, which is comprised, for the most part, of nonjudges.[1] I start with the proposition, found in *Heiberger* v. *Clark*, 148 Conn. 177, 185, 169 A.2d 652 (1961), that ''[f]ixing the qualifications for, as well as admitting persons to, the practice of law in this state has ever been an exercise of judicial power.''

More recently, our Supreme Court, in *Scott* v. *State Bar Examining Committee*, 220 Conn. 812, 817, 601 A.2d 1021 (1992), affirmed that fixing qualifications and admitting persons to the bar is an exercise of judicial power, commenting, however, that ''[t]his power has been exercised with the assistance of committees of the bar appointed and acting under rules of court.'' (Internal quotation marks omitted.) The court continued, stating that ''[a]lthough these committees have a broad power of discretion, they act under the court's supervision. . . . It is the court, and not the bar, or a committee, which takes the final and decisive action.'' (Citations omitted; internal quotation marks omitted.) Id.

The idea that the decision to admit or deny admission to the bar is a uniquely judicial function is a notion not deeply rooted in history. At an earlier time, it appears that courts viewed the bar application process as one of collaboration with the bar in which the bar played a significant role in shaping the process and determining an applicant's fitness to practice law. My research indicates that the tradition of broad deference to the court's bar committee finds its roots in the case of *O'Brien's Petition*, 79 Conn. 46, 63 A. 777 (1906). I believe, respectfully, that close examination of *O'Brien's Petition* reveals that much of its reasoning has been made unreliable by superseding United States Supreme Court decisions. The court has held that an applicant does, in fact, have a fundamental right to practice in his or her chosen field, including the practice of law. *O'Brien's Petition* has been undermined additionally by the changed relationship between the bench and the bar as it concerns the bar admissions process.

In *O'Brien's Petition*, the petitioner had sought a court hearing on his qualifications in the face of a recommendation from the Fairfield County bar that his application for admission be denied. The record reveals that, at the time, the rules of practice provided that the

court could admit to practice only candidates who had received favorable recommendations from the admission committee of their county bars. On that basis, the trial court declined to hear evidence of the petitioner's character, ruling that it had no power to determine his qualifications in light of the county bar's negative recommendation.

In upholding the trial court's decision, our Supreme Court relied on two notions that no longer have legal or practical vitality. First, the court observed that a bar candidate has no liberty interest in practicing law, "[n]or did the refusal to admit the petitioner to an examination take from him, by authority of the State, either liberty or property. The inalienable right of every American citizen to follow any of the common industrial occupations of life does not extend to the pursuit of professions or vocations of such a nature as to require peculiar skill or supervision for the public welfare. . . . To disbar an attorney is to deprive him of what, within the meaning of our constitutions of government, may fairly be regarded as property. . . . But one who asks the privilege of admission to the bar is simply seeking to obtain a right of property which he has not got.

"The Superior Court, therefore, rightly declined to hear evidence as to questions the decision of which was entrusted to the State bar examining committee, and given to them only in case of those coming before them with the approval of the county bar." (Citations omitted.) Id., 55. Finding that the applicant had no constitutionally protected right to practice law, the court concluded, therefore, that a bar applicant has no due process rights to a fair application process. Id.

As noted, the reasoning of *O'Brien's Petition* as it relates to an applicant's rights in the bar admission process was later explicitly rejected by the United States Supreme Court, which affirmed that an applicant does, in fact, have a fundamental right to work in the occupation of his or her choosing and that a bar admission candidate is entitled, by the fourteenth amendment, to due process in the application procedure. Cf. *Leis* v. *Flynt*, supra, 439 U.S. 438; *Willner* v. *Committee on Character & Fitness*, supra, 373 U.S. 96; *Schware* v. *Board of Bar Examiners*, supra, 353 U.S. 232.

While this prong of the *O'Brien's Petition* opinion has not survived,[2] the second prong regarding the level of deference to accord a bar examining committee continues to enjoy judicial approbation notwithstanding substantial changes in the legal community and the changed nature of the bar's relationship to the judiciary. When *O'Brien's Petition* was decided, there existed a rule of practice that the state bar examining committee could recommend for admission only those candidates who had received favorable recommendations of the county bar. The court traced at length the pedigree of that rule back to the Inns of Court in England and

updated it to accommodate the circumstances at hand. The court stated that "[t]he power of the courts over the admission of attorneys thus given or confirmed by the General Assembly, was exercised from the first in each county largely by the aid of the county bar. It was by this bar that the whole business of the civil courts was, until the closing quarter of the nineteenth century, mainly arranged and made ready for disposition. Assignments of cases for trial were made by the bar at meetings presided over by one of their own number, and standing rules were adopted at such meetings in regard, among other things, to the qualifications, examinations, and mode of admission of attorneys. . . . Being framed by the bar, these rules were known in each county as the 'rules of the bar,' although deriving their real authority from the sanction, expressed or implied, of the court in that county." (Citation omitted.) *O'Brien's Petition*, supra, 79 Conn. 50–51.

"The fundamental idea underlying this system of things was that the court could best ascertain the qualifications of one desiring to practice before it from the judgment of those under, or in association with, whom he had sought to prepare himself for that work, and who were already engaged in it themselves." Id., 53. The court continued, stating that "Connecticut, in her early days, was without any recognized centers of legal education like the ancient Inns of Court, but she had in each county the material for shaping a barrier, not dissimilar in kind, against the entrance of unworthy persons to engage in practice before her courts. It was found in the local bar, and the colonial usage of employing them for this purpose has been continued without a break to the present day. It is a reasonable usage. A court is but indifferently adapted to the task of passing upon the qualifications for engaging in legal practice of those who appear before it as strangers, which are personal to themselves and independent of educational attainments. These can be easily determined by a bar, to some at least of whom they will not be strangers." Id.

To be sure, we have reshaped the application process and amended the rules of court so that a county bar's recommendation is no longer binding on the committee or the court and we have clearly made substantial improvements in the admissions process. Nevertheless, we have continued to import the reasoning of *O'Brien's Petition* concerning deference to the bar even though, I believe, it is no longer legally or factually persuasive as it relates to the reasonable contours of the bar admissions hearing process employed by the committee to determine fitness.[3]

Factually, I note that in 1907 there were fewer than 200 members of the Connecticut bar association.[4] Today, there are more than 11,000.[5] It is a reasonable inference from these numbers that, typically, the county

bar no longer has any particular knowledge of a candidate's qualifications by reason of personal familiarity. Thus, the notion of entrusting the task to the bar on account of its members' more intimate familiarity of the candidate no longer pertains.

Despite the changed legal climate and an alteration in its factual underpinnings, the reasoning of *O'Brien's Petition* still permeates our decisions. Thus, as recently as 1999, we held that "[t]he standard of review in cases involving readmission to the bar was announced in *O'Brien's Petition*, [supra, 79 Conn. 55–56]. The court merely inquires whether readmission was denied after a fair investigation of the facts. Because the trial court exercises no discretion, but rather is confined to a review of the record before the [committee], we are not limited to the deferential standard of 'manifest abuse' or 'injustice' when reviewing its legal conclusions about the adequacy of the evidence before the [committee]. *Scott* v. *State Bar Examining Committee*, supra, 220 Conn. 823." (Internal quotation marks omitted.) *In re Application of Presnick*, 53 Conn. App. 174, 177, 728 A.2d 1159 (1999).

I believe that the changed legal climate, which now posits that an applicant has due process rights in the application process and that the determination of one's suitability is a judicial function, together with the changed factual climate that the bar, as a practical matter, has no special familiarity with an applicant, are good reasons to take a fresh look at the extent to which we, as a court, should defer to the bar regarding the admissions process.

I believe that a broad level of deference concerning the fairness of the process is not dictated either by the holdings of *Doe* v. *Connecticut Bar Examining Committee*, 263 Conn. 39, 818 A.2d 14 (2003), or *Scott* v. *State Bar Examining Committee*, supra, 220 Conn. 812. In *Doe*, the Supreme Court was confronted with a situation in which a trial judge clearly substituted his view of the facts for the committee's, thus according the committee no deference whatsoever. *Doe* v. *State Bar Examining Committee*, supra, 50–51. Similarly, in *Scott*, the Supreme Court, in reversing the judgment of the trial court, held that the trial court should not have substituted its assessment of the applicant's credibility and candor before the committee for that of the committee. *Scott* v. *State Bar Examining Committee*, supra, 825–26. I note, as well, that in *Scott*, the Supreme Court, in an exercise of its judicial responsibilities, ordered the trial court to remand the petitioner's application to the committee "for a new hearing to review any additional relevant evidence submitted by the petitioner concerning his present fitness to practice law." Id., 829.

Having posited as a foundation that the determination of whether to grant or deny an application for admission to the bar is uniquely a judicial function does not, of

course, suggest that no portion of this responsibility can be performed by a committee appointed by the court. And, indeed, our jurisprudence teaches us that, in confronting an appeal from a decision of the committee, the trial court should not conduct a hearing *de novo* or substitute its judgment for that of the committee, including its judgment concerning fitness, as long as there is adequate evidence in the record to support the committee's decision. Id., 825–26; see also *In re Application of Warren*, 149 Conn. 266, 178 A.2d 528 (1962).

While past cases have consistently adhered to a deferential standard of review of facts found by the committee, I have not found any appellate instruction applicable to the present situation concerning the level of scrutiny due from the court concerning the fairness of the committee's process and, specifically, what the standard of review should be when it is apparent that the committee, in determining an applicant's qualifications, has relied on materials outside of the hearing record. If we accord such latitude of deference to the findings of a committee that we render irrelevant the due process violations that take place in the process, then, by our passivity we have defaulted in our judicial responsibility and have reduced an applicant's liberty interest in practicing law to hollow verbiage. At the least, we should accord the term ''evidence'' a specific connotation, excluding unsworn statements, and testimony and written statements from witnesses not subject to cross-examination or confrontation, as well as evidence on issues not properly made the subject of notice in advance of the hearing.

In a somewhat analogous situation, we entrust to attorney trial referees the responsibility to make factual findings and recommendations in certain civil cases. Our standard of review in such cases requires us to determine whether the attorney trial referee's finding is clearly erroneous. On that basis, even if a finding is supported by some evidence, it will be held to be clearly erroneous if the reviewing court, on the basis of all the evidence, is left with the definite and firm conviction that a mistake has been committed by the fact finder. *Kallas* v. *Harnen*, 48 Conn. App. 253, 256, 709 A.2d 586, cert. denied, 244 Conn. 935, 717 A.2d 232 (1998). If in the context of civil litigation we accord the parties sufficient judicial oversight to ensure that the fact finder's conclusions are not clearly erroneous even if supported by some evidence in the resolution of their civil disputes, I believe we should accord at least as much review to applicants for the bar, who have, perforce, spent hours of study and expended substantial sums, often at great hardship, in anticipation of practicing their chosen profession. If we intend to be true to our jurisprudence that it is solely the judiciary's responsibility to be gatekeeper to the legal profession, then we cannot entirely abdicate our sentinel responsibilities.

My review of the record suggests that the petitioner was not afforded due process at several junctures in his application process. Since I believe that the majority has set forth fully the petitioner's procedural path, I will not recite it here. I will, however, cite certain intersections that trouble me. As a factual precursor, the record discloses that, at the law school hearing, none of the witnesses testified under oath. That has no significance to me as to the fairness of the law school hearing itself, but the unsworn nature of the testimony at the law school hearing does bear on its reliability as evidence before the committee. A review of the committee's findings leaves no doubt that the committee utilized and relied on the law school proceedings in the formulation of its conclusions and recommendation. In its memorandum of decision, the committee stated: "The panel has also reviewed the application for admission filed by [the petitioner] and related documentation in the staff file, the record of proceedings relating to these questions at the Quinnipiac College School of Law, and a report and recommendation by the standing committee on recommendations for admission to the bar for Fairfield County."[6]

My concern is not merely formalistic. In the factual findings portion of its initial memorandum of decision, the committee stated: "The record also contains statements consistent with [Susan] Fiore's testimony, in the form of the testimony of Matthew Goldzweig. Mr. Goldzweig was also a witness before the student discipline committee proceedings, and his testimony corroborated [Fiore's testimony] in all material details." While it is not clear from the committee's file whether the statements in its records from Goldzweig consisted only of his testimony at the law school hearing or included additional statements taken from him, two facts are clear from that revelation: (1) as part of its hearing process, the committee incorporated his unsworn testimony from the law school hearing; and (2) its recital after the hearing of its reliance on that statement did not afford the petitioner either the opportunity to cross-examine Goldzweig or to confront him in the course of the hearing.[7] In addition to Goldzweig, the committee also heard from another "witness" who did not testify before the committee and who, therefore, was not available for cross-examination or confrontation.

On June 25, 1999, Fiore testified that she heard a conversation immediately before the law school examination between the petitioner and another student in the constitutional law class. Her testimony included the contents of the other student's statements to the petitioner. As to the comments by the other student to the petitioner, Fiore stated: "It was something to the effect of—it was either, why are you so nervous, everyone does it and doesn't admit it. Or what are you so nervous about, everyone does it, no one admits it."

Referring to that testimony in its findings of facts, the committee, in its January 14, 2000 memorandum, stated: ''[Fiore] testified that she had clearly seen the crib sheet in question in [the petitioner's] possession and being placed under his examination booklet, and also as to a conversation between him and another student from which an intent to cheat could be inferred.'' Thus, that hearsay testimony was admitted substantively and, significantly, it played a role in the committee's determination of the petitioner's fitness.[8]

In affirming the committee's decision, the court, in repeating Fiore's testimony concerning the purported conversation between the petitioner and the other student, commented: ''It is improper for the court to substitute its own assessment of the respective witnesses' credibility and candor for that of the [committee]. *Scott* v. *State Bar Examining Committee*, supra, 220 Conn. 825. The [committee's] decision to believe Fiore and to disbelieve [the petitioner] was a credibility decision that the [committee] was plainly entitled to make.'' Thus, it is apparent that not only the committee but the court, as well, credited that portion of Fiore's testimony consisting of statements made by an individual whose direct sworn testimony was not heard by any decision maker in this chain of events. In doing so, the court incorrectly accepted as evidence those facts impermissibly found by the committee in violation of the petitioner's due process rights to a fair hearing.

In addition to the due process violations attending the actual hearing, I believe the committee denied the petitioner due process by conducting a hearing and making findings on issues about which it failed to give him reasonable notice. At the outset, I acknowledge that the petitioner did not raise that issue at trial and he has not raised it properly on appeal.[9] Normally, an appellant's failure to raise a claim before the trial court or his failure to brief it on appeal forecloses appellate consideration of it. However, under the unusual circumstances of this case and in the exercise of our supervisory responsibility, I believe we should examine the question of whether the petitioner was given fair notice by the committee of the issue it intended to address with him at a hearing.

Here, our supervisory responsibility has two sources: Our obligation to ensure the proper administration of justice and our role as an overseer of the judiciary. ''In certain instances, dictated by the interests of justice, we may, sua sponte, exercise our inherent supervisory power to review an unpreserved claim that has not been raised appropriately under the [*State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989)] or plain error doctrines.'' (Emphasis added.) *State* v. *Ramos*, 261 Conn. 156, 172 n.16, 801 A.2d 788 (2002). ''Appellate courts possess an inherent supervisory authority over the administration of justice. . . . The standards that [are]

set under this supervisory authority are not satisfied by observance of those minimal historic safeguards for securing trial by reasons which are summarized as due process of law . . . . Rather, the standards are flexible and are to be determined in the interests of justice. . . . [O]ur supervisory authority [however] is not a form of free-floating justice, untethered to legal principle. . . . Rather, the integrity of the judicial system serves as a unifying principle behind the seemingly disparate use of our supervisory powers. . . . [O]ur supervisory powers are invoked only in the rare circumstance where [the] traditional protections are inadequate to ensure the fair and just administration of the courts . . . .'' (Internal quotation marks omitted.) *State* v. *Gentile,* 75 Conn. App. 839, 848, 818 A.2d 88, cert. denied, 263 Conn. 926, A.2d (2003). I believe this is such a case.

Additionally, this case justifies the invocation of our supervisory powers as overseer of the judiciary. Cf. *State* v. *Miller*, 29 Conn. App. 207, 614 A.2d 1229 (1992), aff'd, 227 Conn. 363, 630 A.2d 1315 (1993). I come to that view because here, the committee acted not as an administrative agency, but as a committee of the judiciary itself. Thus, what the committee did, we do. In that sense, we are more than an impartial reviewer; rather, we stand in review of our own comportment. I believe that heightened responsibility justifies the unusual step of a sua sponte review of whether the notice given to the applicant by the committee accorded him sufficient due process. I write on the notice issue separately also because that same issue could arise again in the event that the petitioner is given another hearing opportunity.

The record reveals that the content of the notice given to the petitioner by the committee does not correlate to the focus of its hearing or its factual findings. Pursuant to the authority given to the committee by the judges of the Superior Court to adopt regulations; see Practice Book § 2-4; the committee has adopted regulations to guide its process. Those regulations consist of nine articles. Article VI, entitled ''Guidelines for Assessment of Character and Fitness,'' sets forth the procedure for conducting that part of the admissions investigation. It provides in relevant part: ''a) The applicant shall be given the opportunity to demonstrate present good moral character despite particular past conduct. b) When the Committee has information weighing against a determination of good moral character: i) The applicant shall be notified of the information, and, ii) the applicant shall be provided the opportunity to submit such material as the applicant deems appropriate.'' It would appear that this regulation comports, facially, with a due process requirement of notice and an opportunity to be heard.

The notice issued to the petitioner states as follows:

''To: David Alan Friedman

"The Connecticut Bar Examining Committee will hold a hearing on your application for admission to the practice of law in Connecticut on Thursday, January 7, 1999, at 1:00 pm, at the Office of the Administrative Director, 70 Washington Street, Hartford, CT 06106 (tel: 860-756-7901).

"The following matters will be discussed:

"Q#16: Applicant was charged with cheating on a law school exam and found, by the Student Discipline Committee, to have violated Student Conduct Code Section A. 2) and Section D, which decision was subsequently reversed by Dean [Neil H.] Cogan.

"Applicant's candor and credibility during the application process."

I believe that the invocation of "Q#16" in the committee notice was a reference to question sixteen on the bar admissions application completed by the petitioner as follows:

"Have you ever been expelled, suspended, placed on probation or been the subject of discipline by any college, university or law school? If so, explain."

Next to that question there were two boxes, one marked "Yes" and the other marked "No." The applicant completed the "Yes" box. In explanation, he stated: "I was charged once with using or attempting to use an unauthorized material during one of my first year exams. However, I was not convicted. In addition, absolutely no disciplinary sanctions were imposed."

From the content of the notice, I believe an applicant reasonably would assume that the committee hearing would consist of an examination into whether the applicant had candidly and credibly answered that question.[10] The candor of his response to question sixteen was not, however, the subject of the hearing. Nor was it the basis of the committee's recommendation that he not be admitted to practice. Rather, it is plain from the hearing transcript that the intent of the committee, notwithstanding the content of the notice, was to conduct a de novo examination of whether the applicant had cheated on the constitutional law examination, and not whether he had candidly and credibly responded to the question concerning the disposition of the charge, to wit, his statement that he had not been convicted and that no disciplinary sanctions had been imposed. Thus, although initially notified that the committee intended to examine him concerning whether he had been candid in answering question sixteen, the applicant found himself, at the hearing, confronted with a committee determined to investigate whether he had, in fact, cheated on an examination three and one-half years earlier.

The resulting unfairness is palpable. It is undisputed that the examination in question took place in May,

1995, at the end of the applicant's second semester in his first year of law school. He was notified by the law school of the charges against him in September, 1995. The school disciplinary hearing, first scheduled for April, 1996, actually began in August, 1996, and continued on three intermittent days, concluding on September 6, 1996. Ten days later, approximately fourteen months after the alleged incident, the disciplinary committee issued its decision. On January 24, 1997, however, (former) Dean Cogan reversed the committee's decision in response to an appeal by the petitioner. As the reason for reversing the committee's decision, Cogan wrote: ''I have decided to reverse the decision of the Student Discipline Committee on the grounds that the delay in notifying [the petitioner] of the charges and the delay in bringing the charges to a hearing were excessive and may have prejudiced [the petitioner's] defense against those charges.''

By conducting a hearing on the substance of the complaint against the petitioner, the committee did in 1999 what Cogan thought it had been unfair to do in 1996 on the basis of timeliness. While I understand that the committee is not bound by the dean's sense of procedural propriety, a fair investigation consistent with the notice furnished to the petitioner should have developed information from the dean concerning the circumstances of his decision to reverse the determination of the student disciplinary committee, and the hearing should have focused on whether the applicant had candidly and credibly reported the outcome of the charges against him at the law school.

Since I believe that in this instance, the petitioner was not accorded due process by the committee and because the court failed to scrutinize adequately the fairness of the committee's investigation and hearing, I would reverse the judgment of the trial court with direction that the applicant be admitted to practice, or, as an alternative, that the applicant be afforded another hearing by the committee. At that hearing, however, the evidence should be confined to the subject about which the applicant has been given fair notice.

For the reasons stated, I respectfully dissent.

[1] That comment is intended, by no means, to be a criticism of the nonjudge members of the committee who are, as a group, lawyers of great learning, integrity and generosity. They are, nevertheless, not judges.

[2] The portion of *O'Brien's Petition* holding that an applicant is not entitled to due process was expressly overruled in *In re Application of Dinan,* 157 Conn. 67, 72, 244 A.2d 608 (1968).

[3] See footnote 2.

[4] ''A History of the First One Hundred Years of the Connecticut Bar Association: 1875-1975,'' 49 Conn. B.J. 201, 228 (V. Gordon ed. 1975).

[5] See the Connecticut bar association website at http://www.ctbar.org/public/resources.shtml.

[6] The reference in that statement to ''related documentation in the staff file'' also reveals that the committee utilized materials that were not part of its hearing record. In my review of that file, I found numerous statements from individuals not called as witnesses at the hearing. It is difficult to ascertain how, under that circumstance, the petitioner had the opportunity to confront or to cross-examine witnesses who made the statements con-

tained in the committee staff file and apparently utilized by the committee, in part, as a basis for its recommendation to deny the petitioner admission to the bar.

[7] The law school hearing record reveals the following exchange between a professor, who conducted the hearing, and Goldzweig at the commencement of his ''testimony:''

''[Professor]: We don't swear the witness, but, Mr. Goldzweig, you realize that the matters before the committee are important to both the people involved and the institution. We are going to be relying on what you say. Will you be honest and completely truthful in your answers?

''[The Witness]: Yes.''

[8] I am aware that the petitioner, who was represented by counsel before the committee, did not specifically object to that testimony, although he had earlier, and that he subsequently attempted to object to testimony from Fiore concerning her recollection of overhearing a conversation between the petitioner and a third party, much to no avail. I am mindful, too, that in the eyes of any reasonable applicant, the committee serves the multiple purposes of investigator, inquirer, fact finder and, apparently, adjudicator. One must challenge the king ever so lightly if one cannot afford to kill him.

[9] The petitioner, however, did make note of the inaccurate notice. ''The conclusion by the [committee] that [the petitioner] cheated does not appear to comport with the 'Notice of Hearing,' which states that what will be investigated is [the petitioner's] 'candor and credibility during the application process.' ''

[10] From a review of the committee hearing transcript, it is clear that, in his opening statement, the petitioner's counsel dwelt on the appropriateness of the applicant's answer to question sixteen in light of the fact that the dean of the law school had reversed the student disciplinary committee's decision. It was not until the chairperson of the committee panel introduced the subject of whether the petitioner had, in fact, cheated on the examination that the real purpose of the committee hearing became evident.