



ON MOTION ...

Allan B. Ecker

THE PRACTICE OF LAW LEAVES ROOM FOR MANY SPECIALTIES. In the mid-20th century, while primarily a corporate lawyer, I developed what was a unique legal sub-specialty: getting famous men from out-of-state admitted to the New York bar without their taking the bar exam, under a procedure called “Admission On Motion and Without Examination” (abbreviated hereinafter as “On Motion ...”). Readers will no doubt recognize the names of my primary “clients”: Adlai E. Stevenson, Theodore C. Sorensen and Arthur J. Goldberg.

In different years, I helped all three of these very different men to complete and process bar applications, so that, on their admission, they would be eligible to become (as they all in fact did become) lateral partners of Paul, Weiss, Rifkind, Wharton & Garrison – then, as now, a major New York City law firm. (Paul, Weiss traces its genealogy back to Frank & Weiss, which opened its doors at 243 Broadway in 1875.)

In those days, before the advent of the Multi-State, New York required candidates for the bar to pass a two-day bar exam that was a humdinger, reputedly the hardest in the United States. The first day was devoted to substantive law, taught at law schools all around the country. The second day was devoted to the quirky procedural law of New York, taught only in law schools located in New York.

Allan B. Ecker was a Paul, Weiss associate and partner from 1953 to 1977.

Out-of-state candidates could take a cram course in procedural law, but it was not uncommon to pass the substantive part and flunk the procedural part, before taking a makeup on the failed part only.

Important out-of-state lawyers like Mr. Stevenson, Mr. Sorensen and Mr. Goldberg had neither the time nor the patience to take the bar exam, let alone prepare for it. For such candidates as these, the Appellate Division of the Supreme Court of the State of New York created the “On Motion ...” bypass mechanism. (In the procedure as revised and now in use, this is shortened to “On Motion”.) To qualify, the applicant needed to establish to the Court’s satisfaction that he or she had simultaneously practiced law and resided for five years in a foreign jurisdiction affording New Yorkers a reciprocal courtesy, and that the applicant was still in good standing.¹

In addition, applicants had to meet a strict morals standard administered by a body of senior lawyers known as the Committee on Character and Fitness. Question: Have you ever been charged with a felony or misdemeanor? Question: Have you ever been divorced?

Unlike the bar exam, there was no bypass mechanism as to the morals standard. Any “On Motion ...” applicant who had been charged with a crime was required to furnish certified documents showing disposition of the case. In those strait-laced days before New York adopted “no fault” divorce, a candidate who had been divorced was required to furnish certified formal documents, so the Committee on Character and Fitness could itself determine, *de novo*, whether the applicant had demonstrated “moral turpitude”; in turn, the result might affect the applicant’s eligibility for admission to the New York bar.

When I described the services I had rendered (as set forth below) to the three famous out-of-state candidates, an old friend of mine

¹ At a recent count, 33 states and the District of Columbia permitted admission “On Motion”, but with varying technical requirements. The number of years of coincident practice and residence is now usually five out of the last seven, as is the case with New York. At that time there were 17 states the rules of which made no provision for admission “On Motion”, notably Florida and California. Source: ABA website, Chart VIII, Admission on Motion. Updated at www.abanet.org/legaled/publications/compguide2005/chart8.pdf.

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who is a member of the clergy instantly characterized my role and responsibility as “pastoral.” My friend said that I had “shepherded the strays through the wadis [dry streambeds] of the Negev” (otherwise, the App. Div., First Dept.), “avoiding calamities, seeking safer pathways, anticipating cloudbursts, all as so well-evoked by the Psalmist.”²

ADLAI E. STEVENSON

My first “client” was Adlai E. Stevenson, who studied law at Northwestern University School of Law while serving as the assistant managing editor of *The Daily Pantagraph*, his family’s newspaper in Bloomington, Illinois. (Stevenson was the namesake of his grandfather, who had served as Vice President of the United States under Grover Cleveland from 1893 to 1897.) After passing the bar of the State of Illinois, Mr. Stevenson joined the conservative old law firm of Cutting Moore & Sidley (now Sidley Austin LLP), then entered upon a distinguished series of senior policy positions in the U.S. Government, ranging from the Agricultural Adjustment Administration to the Federal Alcohol Control Administration to the Office of the Secretary of the Navy.

Returning to Illinois, Mr. Stevenson was elected Governor of the state in a landslide. Twice nominated by the Democratic party as its candidate for President of the United States (1952 and 1956), he lost both elections resoundingly to the war-hero who was the Republican candidate, General Dwight D. Eisenhower, Supreme Commander of the Allied Expeditionary Forces in Europe in World War II. Nevertheless, as what he called (in the title of one of his books) a “voice of conscience”, Governor Stevenson touched many hearts and minds (including mine) with his charismatic personality, gentle humanity and distinctive speaking style.

In 1957, Lloyd K. Garrison, a senior Paul, Weiss partner and also a longtime friend of Adlai E. Stevenson, asked him whether he and his partners would be interested in joining the Paul, Weiss firm. (Governor Stevenson was practicing in Chicago with W. Willard

² Psalms 124 and 126, Holy Bible, New King James Version.

Wirtz, William McC. Blair, Jr. and Newton N. Minow.) As an inducement, Mr. Garrison hinted, the Firm name might be changed, to mutual benefit.³ But in order for that to come about, Governor Stevenson (inevitably the courtesy title would travel with him from Chicago to New York) would first have to be admitted to the New York bar “On Motion ...” The special application form was long, varied and detailed, calling for the candidate’s responses as to education, former employments, bar admissions, law firm affiliations, memberships, publications, public service and so on. There were rigid rules for completion: size of paper, page limits, number of attachments, number of copies.

Governor Stevenson and I camped out in a vacant Firm office for several hours a day over the course of two or three days, dredging up the facts from what had been a singularly busy life to answer the form’s questions. There were a few gaps in his recollection. It was my task to fill them in. One specific was proof of good standing at the Illinois bar. Another open matter was Governor Stevenson’s divorce.

I found out that Governor Stevenson had been dropped from the Illinois bar for failure to pay annual dues to the bar association. (The state had a “unified” bar: every practitioner was obligated to belong to the bar association.) We put him back in good standing when he paid the past-due amount (\$200). He was reinstated *nunc pro tunc*.

Governor Stevenson told me that he had been married only once and that the divorce took place in Las Vegas, Nevada. I retained a Las Vegas attorney to procure a certified copy, but he reported that he could not find any Stevenson divorce on record. Frustrated, I mentioned my problem to my wife. She said that nowadays it is fashionable to get a divorce in Las Vegas where good hotels, entertainers and casinos help petitioners pass the time until they have met the six-week “residence” establishing the jurisdiction of Nevada. But

³ As it worked out, the Firm name was not changed in New York, but the office in Washington, D.C. was called Stevenson, Paul, Rifkind, Wharton & Garrison as long as Governor Stevenson was a partner (1957-1961). Governor Stevenson resigned from the Firm when President Kennedy appointed him United States Ambassador to the United Nations.

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my wife conjectured that, in the early 1940s, Mr. Stevenson would probably have obtained a divorce in the original divorce mill, Reno, Nevada. Bingo! A Reno attorney I engaged readily found the file. The Committee on Character and Fitness pronounced itself well satisfied: no moral turpitude.

In due course, Mr. Murphy, deputy clerk in charge of admissions, confirmed that Governor Stevenson would be formally admitted at the Appellate Division Courthouse on a certain date at 10 a.m. The candidate could (and did) invite up to 50 guests to the swearing-in. After the ceremony, a Certificate of Admission – the precious parchment for which we had both been striving – would be presented to Governor Stevenson by a Supreme Court justice. On the appointed day, between 8 and 9 a.m., I received an agitated call at home from Mr. Murphy. He said he had a problem: on a final review, he had belatedly realized that Mr. Stevenson had been dropped from the Illinois bar for what he gravely called a “financial delinquency.” There was a \$50 charge for the Certificate of Admission; if Mr. Stevenson did not pay, then the (formidable) Chief Clerk would hold Mr. Murphy personally responsible. Therefore, Mr. Murphy warned, unless I delivered Governor Stevenson’s check to the Courthouse by 10 a.m., he would reluctantly inform the Chief Clerk that the file was “not in order”, with what would be a scandalous consequence – and 50 stood-up guests.

I told Mr. Murphy (a) that I didn’t know Mr. Stevenson’s whereabouts at that hour, (b) that I doubted that he even had a checkbook in New York, and (c) that the deadline was a logistical impossibility. A long stubborn silence from Mr. Murphy. I grasped at a straw: would Mr. Murphy accept my personal assurance that he would receive my own \$50 check, payable to the App. Div., First Dept., early in the afternoon? Oh, said Mr. Murphy, that would solve the problem. (Breathing a sigh of relief, I phoned my father to tell him my credit rating was better than Governor Stevenson’s.)

The next day, I debated whether to tell Governor Stevenson about the episode, but decided not to, and never asked for reimbursement. Governor Stevenson was not, in the words from the Broadway musical “Sweet Charity”, a Big Spender. (His frugality

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became the stuff of legend when, in a TV interview during his first Presidential campaign, Governor Stevenson crossed one leg over the other, exposing a hole in the sole of his shoe. It made front pages and talk shows everywhere. Later, Stevenson staff members sported silver lapel pins commemorating the celebrated hole.) Governor Stevenson asked me to draft a brief for his first New York client. After reading my draft, the Governor invited me to lunch with him and his sons Adlai III and Borden, so he could save time by outlining the changes he wanted in the brief while we walked to and from the restaurant. His sons were cordial; lunch was pleasant, tasty and not exorbitant. When the bill arrived, the Governor asked Adlai III and Borden to remind him what each of them had ordered, and split the bill accordingly. (But I think he sprang for the tip.)

Governor Stevenson thanked me for my efforts by giving me a framed Karsh photograph, autographed as follows:

“For Allan Ecker, with the gratitude and admiration of a new member of the New York Bar! Adlai E. Stevenson 1962”

It still hangs on my wall.

THEODORE C. SORENSEN

My second “client” was Theodore C. Sorensen, invited to join Paul, Weiss in 1966. As an energetic, able and ambitious younger lawyer (38), with a well-earned reputation as President Kennedy’s amanuensis (“And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country”), and as *de facto* (but not *de jure*) co-author of JFK’s Pulitzer Prize winner, *Profiles in Courage*, Mr. Sorensen would have had his pick of major New York City firms. He elected to join Paul, Weiss because of its Democratic and liberal reputation, because he astutely perceived that the Firm lacked an international law practice at that time (an area he had staked out for himself while the Kennedy and Sorensen names still reverberated abroad) and because – as he told me when I was appointed by the Firm as his escort on a guided tour to meet the partners – he “liked the feel of the place.”

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After I showed him the admission form and rules, and gave him the Stevenson submission to use as a model, Mr. Sorensen easily completed most of the paperwork himself. But when he asked me to look over the near-final application, it suddenly struck me that there was one big, unanswered question: Had Mr. Sorensen met the basic requirement of five years of legal practice and five years of residence in the same jurisdiction?

After being admitted in his native Nebraska in 1951, Mr. Sorensen served as Assistant to Senator Kennedy from 1953 to 1961, and then as Special Counsel to President Kennedy from 1961 to 1964. In the conventional sense that the Appellate Division's rules contemplated on their face ("Specify jurisdiction of practice"), Mr. Sorensen had never practiced law at all.

On the other hand, Mr. Sorensen had undeniably been a lawyer for 11 years, albeit for a single client, JFK. There was a second, more technical difficulty: Mr. Sorensen's government office was in Washington, D.C., but his residence was outside the District.

We discussed the matter at length. Ultimately Mr. Sorensen filed his application as-is, and at the same time, as a member of the New York bar on his behalf, I submitted a brief to the App. Div. arguing (a) that public policy in favor of government service should incline the Court to recognize Mr. Sorensen's work for JFK (aggregating more than double the requisite five years) as constituting the practice of law,⁴ and (b) that the Court should take judicial notice that Maryland and Virginia were, in practice, what I had felicitously denominated "suburban bedrooms" of Washington, D.C., so that the residential requirement should be deemed met. In his usual fashion, Mr. Sorensen meticulously reviewed my brief, satisfying himself that it correctly set forth the underlying facts, and making sure that his family name (often misspelled) had been correctly rendered throughout – an understandable source of concern.

⁴ Since the Appellate Division, First Department, of the Supreme Court of the State of New York carved out the "Sorensen exception" for government service, courts around the country have modified the "On Motion" rules so that they now generally recognize government service, law teaching, work at a corporate legal department and military service with JAG as constituting the practice of law.

In time, Mr. Sorensen became a significant Paul, Weiss partner, representing both United States and multinational corporations in business transactions in many countries, and also advising foreign governments as to American law and business. He is still “of counsel” to the Firm, still pretty good with words.

ARTHUR J. GOLDBERG

My third “client” was Arthur J. Goldberg. Simon H. Rifkind, a former federal judge who was a senior Paul, Weiss partner, sponsored Justice Goldberg for partnership in 1968.⁵ Judge Rifkind had met Justice Goldberg a number of times at annual Judicial Conferences, but did not know him well. As an ex-judge himself who had developed a very substantial practice after leaving the bench, Judge Rifkind – always keen to swell the Firm coffers – thought that Justice Goldberg was likely to do the same thing. When I told the justice that the Firm had asked me to help him prepare his papers for admission “On Motion ...”, he looked puzzled. Was it really necessary to apply? Perhaps thinking me not well-enough informed as to his reputation and accomplishments, my reluctant “client” explained that he was the former Secretary of Labor, the former Supreme Court Justice, and the former United States Ambassador to the United Nations. In view of this record, Justice Goldberg was sure that the Appellate Division would “waive me in.” I told him that it did not work that way: the “On Motion ...” bypass was itself a form of waiver, but it was available only by complying with the Court rules. The proper approach was to assume that the Court knew absolutely nothing about the applicant, but was receptive. Thus challenged, Justice Goldberg rolled up his sleeves and rapidly proceeded to demonstrate his effectiveness as an advocate – in this case, for Arthur J. Goldberg.

⁵ During Justice Goldberg’s partnership (1968-1971), the Firm name was changed to Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison. In 1970, while still a partner, Justice Goldberg ran as the Democratic candidate for Governor of New York. The Republican incumbent, Governor Nelson Rockefeller, defeated him decisively.

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A native of Chicago (Justice Goldberg said), he had graduated from Northwestern University School of Law, like Governor Stevenson. He edited the law review. While still a law student, Mr. Goldberg assisted Dean John Henry Wigmore in editing a new edition of *Wigmore on Evidence*. At 19 years of age, the youngest person ever, he was admitted to the Illinois bar. After serving as an associate with several Chicago firms, Mr. Goldberg formed his own firm, specializing in labor law. In 1948 he became General Counsel to the Congress of Industrial Organizations (CIO); in 1955 he was a principal negotiator of the CIO's merger with the rival labor group, the American Federation of Labor (AFL). Then in 1961 President Kennedy appointed him Secretary of Labor.

Upon Justice Felix Frankfurter's retirement in 1962, President Kennedy appointed Justice Goldberg to the Court. A rabbi's son, the new justice took the oath on the family's Old Testament. Justice Goldberg invited President Kennedy to the swearing-in, and the President accepted. But when Chief Justice Earl Warren made no mention of the President's attendance (Justice Goldberg told me), President Kennedy appeared to be "nonplussed", until the justice privately explained that this was the Chief's way of emphasizing that the Court is an independent third branch of government.

Justice Goldberg was confident that two of his opinions, during his brief tenure on the bench, would stand the test of time. The first opinion was his concurrence in *Griswold v. Connecticut*.⁶ The second opinion was his dissent in *Rudolph v. Alabama*.⁷

⁶ 381 US 479 (1965). *Griswold* involved a state law criminalizing contraceptive use by a married couple in their own bedroom. The opinion of the Court was by Justice Douglas. In his concurrence, in which both the Chief Justice and Justice Brennan joined, Justice Goldberg looked to the Ninth Amendment of the Constitution, which provides: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." In the facts of *Griswold*, Justice Goldberg found an unenumerated right of privacy. *Griswold* was, in turn, a cornerstone for *Roe v. Wade*, 410 US 113 (1973).

⁷ 375 US 889 (1963). In *Rudolph*, the Court denied a petition for *cert.* to the Supreme Court of Alabama, which had upheld the death penalty for rape. Justice Goldberg dissented, saying that the Eighth Amendment of the Constitution ("Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel

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On July 15, 1965, Adlai E. Stevenson, the former Paul, Weiss partner who was then serving as United States Ambassador to the U.N., died in London. President Lyndon B. Johnson summoned Justice Goldberg to the Oval Office (he told me) and insisted that he needed him, the nation needed him, to succeed Ambassador Stevenson. LBJ said the war in Vietnam was escalating. As Ambassador to the U.N., Mr. Goldberg, who (as President Johnson knew) favored a negotiated settlement, could help contain the war or even help bring it to an end.

After only two years, nine months and 24 days on the bench, Justice Goldberg resigned his lifetime appointment to the Supreme Court and went to the U.N.⁸

(It was an impressive presentation by an impressive man.)

Thus guided, I assembled the motion papers, not without some periodic prodding from Justice Goldberg to be sure that I had not

and unusual punishments inflicted”) prohibited the imposition of the death penalty. He noted that only four other countries, cited in a U.N. survey, allowed the death penalty for rape, and that 33 states in the United States had outlawed the practice. Justices Douglas and Brennan joined in his dissent. Justice Goldberg expressed hope that his *Rudolph* dissent would send a signal to the defense bar to challenge the death penalty generally. In *Furman v. Georgia*, 408 US 238 (1972), the Court put a moratorium on death penalties until legislatures could provide objective and rational sentencing criteria. (Justice Stewart wrote that the death penalty jurisprudence was as cruel and unusual as being “struck by lightning.”) Concurring in *Furman*, Justice Marshall cited Justice Goldberg’s dissent in *Rudolph*. In *Coker v. Georgia*, 433 US 584 (1977), the death penalty for rape was struck down. In *Gregg v. Georgia*, 428 US 153 (1976), and companion cases, the Court allowed reinstatement of the death penalty in murder cases where newly enacted state laws provided objective criteria limiting sentencing discretion, and where the sentencing authority was required to take into account the individual defendant’s character and record.

⁸ Thus did the President replace a retired Paul, Weiss partner (Stevenson) with a future Paul, Weiss partner (Goldberg) at the U.N. To fill the Supreme Court vacancy created by Justice Goldberg’s departure, the President selected a well-known Washington, D.C. lawyer, Abe Fortas. At the time, some observers conjectured that President Johnson had asked for the Goldberg resignation not so much to end the escalating war in Vietnam as to make room for Mr. Fortas, who was an LBJ intimate and close adviser.

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neglected this or missed that, and with helpful suggestions as to what newspaper articles, editorials, position papers, briefs, judicial opinions, testimonials, honorary degrees, publications and photographs should be annexed as exhibits. Vainly did I remind the justice of the Court rules limiting the dimensions of the submission. From his starting position as a “waive me in” minimalist, Justice Goldberg had become a maximalist. Eventually we compromised: I would take the draft down to the redoubtable Mr. Murphy and see if he would agree to file the bulky submission. (If not, then we would revise the application.) My old acquaintance with Mr. Murphy paid off. He agreed to the scope of the submission. Justice Goldberg was admitted on his own terms.

GB

THREE WISE MEN

As Americans we are accustomed to political bad manners and billingsgate. After a century and a half we have developed some immunity to vilification, abuse and misrepresentation in our domestic public dialogue. If not an ornament to the American tradition it is at least a part of it, and we have learned somehow to give it a rough evaluation and get along surprisingly well in spite of deceit, demagoguery and verbal violence. While rough-and-tumble American political manners have been an interesting curiosity to foreigners for generations, they have had little effect on the rest of the world.

Adlai E. Stevenson (1954)

Successful [school] integration should not be expected to be an immediate panacea to the ills of a dual system. Geographical segregation of Negroes in the community may retard extensive integration. Prejudice against Negro students will not automatically vanish either within or without school walls. Some Negro teachers may lose their jobs. Some Negro students will fall behind as the result of "separate but unequal" education. And some Negro and white students will suffer emotional shocks from hostile situations. ... But ... there is no need to wait another 100 years to desegregate successfully and peacefully throughout the South. As a representative of the New Jersey Department of Education said: "The best way to integrate is to do it."

Theodore C. Sorensen (1952)

No system worth preserving should have to *fear* that if an accused is permitted to consult a lawyer, he will become aware of, and exercise [constitutional] rights.

Arthur J. Goldberg (1964)