

1969

In Re: George E. Bridwell, Disciplinary Proceeding : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *In Re: Bridwell*, No. 11546 (Utah Supreme Court, 1969).
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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:

GEORGE E. BRIDWELL,
Disciplinary Proceeding

} Case No.
11546

BRIEF OF APPELLANT

**Appeal by Appellant from Findings and Conclusions of
Disciplinary Committee, Utah State Bar and Recommendation
of Board of Commissioners, Utah State Bar**

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FILED

SEP 22 1969

Clark, Supreme Court, Utah

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IN RE:

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BRIEF OF APPELLANT

PRELIMINARY STATEMENT

All italics are ours.

STATEMENT OF THE KIND OF CASE

This is a disciplinary proceeding before the Board of Commissioners of the Utah State Bar.

DISPOSITION BY BOARD OF COMMISSIONERS

The Board of Commissioners of the Utah State Bar adopted the Findings and Conclusions of the Hearing Committee and recommended disbarment.

RELIEF SOUGHT ON APPEAL

Appellant, George E. Bridwell, seeks dismissal and vindication.

STATEMENT OF FACTS

The charges involved in this disciplinary proceeding arise from representation by George Bridwell of Precisa Calculating Machine Co., Inc., a Utah corporation and the complaining witness Eugene Wagner and his ex-wife Nellie Wagner from the Fall of 1957 to the Fall of 1961. Bridwell's representation of the above arose from an investigation by the Bureau of Internal Revenue which led to large tax assessments. The initial assessments at the time when Bridwell was hired amounted to the sum of \$90,000.00 for Precisa Calculating Machine Co. and \$94,015.12 for Eugene and Nellie Wagner for 1954, 1955 and 1956. Ultimately, pursuant to investigation, the following assessments were made:

Eugene and Nellie Wagner,

1954 taxes\$112,878.99

Penalty 73,732.66

Total\$186,611.65

1955 taxes\$169,050.89

Penalty 84,525.45

Total\$253,576.34

1956 taxes	\$ 85,549.09
Penalty	42,774.55
Total	<hr/> \$128,323.64
1957 taxes	\$ 34,004.54
Penalty	17,917.51
Total	<hr/> \$ 50,922.05

The total assessments for the above four years on the Wagners amounted to \$401,483.51 taxes plus penalty of \$218,950.17 for a total of \$620,533.68. The assessments made after investigation on Precisa Calculating Machine Co. were as follows:

1954	\$ 45,228.57
1955	32,112.58
1956	34,688.28
1957	11,750.69
Total	<hr/> \$123,780.12

At the conclusion of Bridwell's representation of the Wagners and Precisa Calculating Machine Co. in 1961, the *Wagner assessments were settled for \$18,572.31* and the *assessments of Precisa Calculating Machine Co. were settled for \$11,750.69*. Thus, total assessments amounting to \$744,213.80 were finally settled as a result of the services of George E. Bridwell for a total of \$30,323.00 (Ex. 35).

After Wagner was questioned by representatives of the Internal Revenue Service, he sought the services

of Bridwell and immediately went back to Switzerland taking with him approximately \$28,000.00 of the funds of Precisa Calculating Machine Co. (R. 32, 33, 34, 241). Bridwell had represented Wagner in a divorce action which had been concluded prior to the time of this representation. Bridwell was out of the office at the time that Wagner sought his services, and Wagner left word with David Bybee then sharing space with Bridwell. Bridwell, on his return, commenced representing Precisa Calculating Machine Co. and the Wagners.

In a letter dated October 30, 1957, Bridwell set forth the terms of the representation as far as fee was concerned (Ex. 1). In this letter, Bridwell notified Wagner of the preliminary assessments against both him and the company, and that a tax lien had been placed against all company assets as well as the assets of the Wagners. As far as the fee arrangement was concerned, Bridwell stated in part as follows:

“If you desire me to represent you in all these matters, I must have *carte-blanche authority* and *ample expenses* so that I may hire accountants of my own choosing to work with me.

My fee for handling the matter all the way *through the administrative process* of the Bureau of Internal Revenue will be \$14,000.00. Those processes include working with the Agents during their preparations of final reports, then to a conference hearing. And if we are not then satisfied we will go to the Appellate staff, and finally to the Tax Court.”

Bridwell also warned in this letter of the possibility of criminal prosecution. Bridwell further stated concerning the payment of the fee:

"I request, if you desire my services, to send \$8,000.00 now, as a fee and expense advance. The balance of my fee to be paid at the rate of \$2,000.00 per month, expenses to be paid when itemized."

Precisa Calculating Machine Co., during the time in question, was a corporation owned primarily by one Mr. Jost and a parent corporation in Switzerland known as Precisa A.G., with Wagner owning less than one-fifth of the stock (R. 219).

Bridwell obtained the services of Frank Nielson, a local C.P.A., to assist. Nielson is a man who was formerly an employee of the Internal Revenue Service and as such had a great deal of experience in tax fraud cases. As the case progressed, not only were additional years added, but the assessments went way up and in Bridwell's words (R. 330):

"* * * this claim turned into a real can of worms with indicia of fraud rampant throughout the whole thing. Of course, I use that for want of a better word. The classic example of fraud involving Swiss banks by American citizens. Of course, Mr. Wagner is a nationalized citizen of the United States and, oh, one of the things, for instance, that we had to contend with — by 'we,' I mean Mr. Nielson and with the special agents — were withdrawals from Utah deposits in the Swiss bank accounts and money coming back to a New York bank where it's received

by cashier's checks, checks are cashed, purchases of automobiles, property, that sort of thing."

In the Fall of 1958, during the course of the representation, it was decided that Bridwell and Nielson would go to Switzerland to personally go through all of the bank account records and to prepare an affidavit to be signed by the principal stockholders outlining the history of the Precisa Calculating Machine Co. and Wagner's part in this Company.

Wagner himself had suggested the trip in a letter to Bridwell, dated June 13, 1958 (Ex. I). Bridwell and Nielson took the trip to Switzerland in October 1958. They were there for approximately three weeks. During the time they were there, Bridwell orally discussed the fee arrangements with Wagner and the fact that the cases had turned out much larger than originally anticipated, and Wagner agreed that the fee would be adjusted (R. 331, 332). It had been agreed right from the start that Bridwell could pay himself from the corporate bank account periodically (R. 332).

The first two checks on Bridwell's fee were also signed by Mr. Grothe, who was the local ranking officer after Wagner's departure, but later on Grothe was removed from the company and Bridwell was the only one who could sign checks on the company bank account. However, the company office remained open for a period of time and the cancelled checks and bank statements would be sent to the company address at 375 West 4th South, Salt Lake City, Utah. Mrs. Newbold

handled the company correspondence and business and later, Mrs. Wagner, the ex-wife, continued handling the business until the building was sealed off on a seizure by the Internal Revenue Service, after which time, there were no more banking transactions (R. 333).

Exhibit F is an exhibit which shows the dates and amounts of the fees drawn by George Bridwell, showing draws through the year 1958 and a final payment in 1961 from money refunded by the Internal Revenue Service after the settlement of the tax cases. This exhibit shows a total amount of money collected for fee in the sum of \$28,653.36 plus \$2,000.00 in 1961 received from Wagner.

Nielson was present during the trip to Switzerland in 1958 at times when Bridwell and Wagner discussed fees. Nielson supported Bridwell's version of the fee discussion held in Switzerland whereby it was agreed that the fees would be revised, and stated at R. 274:

"A. — and Mr. Bridwell says, he says, 'Frank . . .'

And Mr. Wagner was there.

He says, 'You will remember this because it may be important some day that Mr. Wagner owes me substantial fees on this case, Mr. Wagner owes me substantial fees on this case and there's additional fees that will be charged in connection with the corporation.'

And I remember that individually because of the fact that George emphasized that to me as they came into the room.

Q. Now, what did Mr. Wagner say to this?

A. Mr. Wagner didn't say anything. He just — silent acknowledgment.

Q. Was he close enough so that he could have heard this easily enough?

A. Mr. Bridwell brought Mr. Wagner into the room specifically to say this in front of me. That's the only subject that was brought my attention to."

During the course of this stay in Switzerland, Nielson audited the corporation bank account, and he and Bridwell prepared a voluminous affidavit outlining the history of the company in the United States and its connection with Wagner, together with attachments of bank statements. The affidavit outlined that Wagner had embezzled certain monies from the corporation which he would pay back, which was the basis for a theory of minimizing tax liability for embezzled money. Bridwell represented to the I.R.S. agents that this affidavit would be signed by the principals involved. However, he and Nielson left on a weekend with the understanding that the affidavit would be signed and forwarded to be presented to I.R.S. However, this affidavit was never in fact signed (Ex. E).

The expenses for the trip were primarily obtained from \$4,000.00 paid back to the company from Metropolitan Finance as final payment on a loan which Precisa made to Metropolitan Finance.

Bridwell testified that not only was the \$4,000.00 used up for trip expenses for himself and Nielson, but some money in addition had been drawn while there for additional expenses (R. 331, 332). Also from this money, Bridwell hired a public stenographer to assist with their work (R. 371). Bridwell and Nielson believed that they had kept complete records as to all of the expenses in view of the fact that these trip expenses were ultimately approved by I.R.S. in the settlement of the tax cases (R. 319, 320, 321) (Ex. 35).

Shortly after the return from the trip to Switzerland in February 1958, Nielson mailed to Wagner a financial statement concerning Precisa Calculating Machine Co. as of December 31, 1957 (Ex. 34A). Following the trip, Bridwell and Nielson continued to work on these cases and Bridwell filed a Petition in the Tax Court which was tentatively set for trial in the Fall Term of 1959. The Government made a motion to continue the case and it was.

During this period of time Bridwell contacted a Washington attorney at his own expense for assistance in Washington (R. 354). Ultimately, the Tax Court convened in Salt Lake City and Bridwell appeared and argued against the Government's motion for a continuance. He also explored the possibilities of obtaining depositions and copies of records in Paris or Switzerland (R. 354).

Bridwell also conferred from time to time with a lawyer from the Regional Counsel's office in San Francisco.

In the meantime, because of lack of funds in the corporate bank account, the corporation was unable to continue making its monthly payments on the building and the contract went into default in June 1958 (Ex. 24). As a result, a lawsuit was filed on behalf of the owners of the building for the purpose of cancelling the contract. Bridwell prevailed upon counsel for the Plaintiffs in that case, Mr. Bernstein, to grant to Precisa an option to purchase back the building within one year. Prior to this time, Bridwell had made application to the District Director of Internal Revenue to discharge the Oren Romney property from the tax lien so that the Romneys could pay the balance off to Precisa Calculating Machine Co. and expressly stated in said Petition, that this was necessary so that Precisa could continue making the monthly payments on the property at 375 West 4th South, Salt Lake City, Utah. This petition was denied (Ex. K, R. 363).

This option was exercised by Robert Schubach, a friend and client of Bridwell, who to September 1961, had put his own money into the building to the extent of \$11,370.30. In order to satisfy the Internal Revenue that this was a bona fide transaction and not a sham, Bridwell had to obtain an affidavit from Schubach to this effect (Ex. J).

At the time of Bridwell's second trip to Switzerland in the first part of September 1961, during his conversations with Wagner, he informed Wagner pursuant to what Schubach had told him prior to the trip, that at that time Schubach was willing to merely receive his investment back together with interest. During the conversation, Bridwell gave Wagner a complete breakdown as:

"Initial Payment	\$ 7,277.10
1960 Taxes	873.55
Keys	5.64
Insurance	214.08
September 1960 to July 1961	
at \$250.00/month	2,750.00
August 1961	250.00
TOTAL	\$11,370.30"

As of that time, neither Wagner nor any of the principals of Precisa were willing to take Schubach up on this offer. However, as will be discussed later, there was language in the corporate minutes to the effect that the company urged Schubach to give it, Jost or Wagner the right to purchase the property back at the market price (R. 368).

During the summer of 1961, Bridwell determined that it was essential for him to travel to Switzerland again for the purpose of getting the voluminous affidavit signed or that failing, at least some sort of a statement from the Company to substantiate the financial transactions and the loss of the building in order to

solidify the settlements then agreed and the 1957 settlement which was still pending.

The three cases in the Tax Court were settled as follows:

Case No. 72273, May 29, 1961

Case No. 72274, May 26, 1961

Case No. 73521, May 26, 1961 (R. 435)

However, these settlements did not cover the assessments for 1957. The settlement notices for the 1957 settlement were mailed on October 9, 1961 (R. 436).

Bridwell corresponded with Wagner both by letter and by telegram and urged Wagner to send him \$2,000 for expenses for the trip to Switzerland which Bridwell felt was essential for the final settlement and termination of the tax matters. Bridwell explained his reasons as follows (R. 360, 361):

"A. Oh, in my own mind I determined that it was necessary for protection of everybody concerned that we get this thing finalized, as I say, because I'd started having some indications that I'd probably be successful in getting these things resolved without going to the Tax Court in this last case, these last two cases.

Q. They were about at the stage where you felt they could be —

A. Yeah. Well, my — my conversations with these varied people in the Internal Revenue Service, I was pretty confident we could get them settled. The precise amounts were still disputed,

but — also the items that they disallowed. Now, I thought I could resolve it provided we had something to back it up that couldn't subsequently be upset in the — the later cases as well as the ones that had been settled in the Tax Court couldn't be upset upon the basis of misrepresentations.

Q. Did you feel that there was any jeopardy of the settlements that had already been made being upset?

A. Well, Mr. Black, I have to go back in point of time now and I hope I can make myself clear on this. You've got to re-orient yourself. The circumstances that existed at the time were this was a mysterious fraud case and you just never knew. As I said in the beginning, I had an idea there was an informant. I was never able to substantiate it. I wanted things tied up for the benefit of Mr. Wagner, people at the factory and myself."

Bridwell arrived in Switzerland and immediately turned over the accountings and settlements to Wagner (Exs. 33, 35). At a later date, after Wagner had been able to go through the accountings and study them, Wagner and Bridwell had what was described by both as a heated discussion at Bridwell's hotel room. Wagner testifying from his notes concerning the dates, having reconstructed same from his diary, stated that the conversation which lasted some seven hours took place on September 6, 1961 (R. 66). At this heated discussion, Wagner made various accusations and the entire series of events was discussed, and Bridwell brought Wagner

completely up-to-date on the building transaction. Eventually, the two of them made their peace and Bridwell prepared in his own handwriting corporate minutes to be submitted to the corporation and a general power of attorney. Wagner then typed up the minutes and power of attorney for presentation to the Board of Directors. Wagner not only typed these documents but also hired a local lawyer, Dr. Alfred Weierz, to help explain to the members of the Board why it was advisable to sign them (R. 83, 84) (Exs. 18, 18A, 19, 19A, 19B).

Exhibit 19A is the original signed minutes of the Stockholders' Meeting at Zurich, Switzerland on September 8, 1961, and Exhibit 19B is a copy of the power of attorney which was signed and executed at the same meeting.

A study of the minutes of this meeting reveals a full and complete disclosure of all that Bridwell had done in these cases concerning payment of fees and costs to himself and Nielson and the building transaction with Schubach, and contains a complete ratification by Precisa A.G., Ernst Jost and Eugene Wagner. In addition, Precisa A.G., Jost and Wagner signed the general power of attorney giving Bridwell power to wind up the tax cases. The general power of attorney further contained language ratifying and confirming everything that Bridwell had done to date and shall do by virtue of these presents.

The minutes specifically ratified and consented to all travel expenses, accounting fees and legal fees, as reflected by the accountings prepared by Frank Nielson and approved of the \$2,000 which Wagner had sent to Bridwell prior to his trip to Switzerland. The minutes further stated:

"It is understood there are further substantial fees, validly and avowedly due as a corporate obligation for legal and accounting services rendered and to be rendered, to George E. Bridwell and Frank Nielson, and George E. Bridwell shall be and he hereby is authorized to make and authorize such corporate obligation and payment therefor as he may deem fit, in accord herewith and in accord with the General Power of Attorney to be given him as is hereinafter set forth in this Resolution."

In addition, the minutes outlined the details as to the loss of the building and stated that the contract with Mr. and Mrs. Hines went delinquent and that the corporation had no funds to pay thereon, and further, that requests for loans of the corporation to save the contract were unfulfilled and none of us were willing to risk further investment and money in the Company at that time because of the large outstanding tax assessment and uncertainty as to outcome. Furthermore, it was stated in regard to the building that at the time set to exercise the option the Company had no money and none of us would have loaned money to exercise it. And that under possessed authority counsel exercised the option for the Company, then for the Company

he conveyed the right to Robert M. Schubach which we ratify; "It didn't harm us as we had no funds available." The minutes further stated that Schubach is a close friend of Bridwell and that Bridwell is his attorney and that they commended Schubach for his courage in advancing such sums at great risk. The minutes further acknowledged that the building is and would be lost to the Company and that the Company acknowledges it and affirms it. In addition, the minutes requested counsel to ask Schubach to give the Company, Jost or Wagner first right of refusal to purchase or lease the building at the same terms as any bona fide offer he may receive and desires to take.

After returning from the trip to Switzerland, Bridwell completed the settlement of the tax cases and notified Wagner that he could return to this country without fear of prosecution. (Ex. 17 Letter Bridwell to Wagner, dated October 27, 1961)

Prior to the trip in September 1961, on May 19, 1961, Bridwell wrote a letter to Wagner informing him in detail as to what had happened to the building and of the fact that Schubach at that time would be willing to get his money back together with a profit for the risk he had undertaken. Bridwell in the same letter asked Wagner to find out what Jost and Precisa A.G. would desire to do with the building. (Ex. 5)

After the final settlement of the cases on October 9, 1961, Bridwell received a refund from the Govern-

ment in the amount of \$15,520.70 which he disbursed as follows:

Property Taxes for Eugene Wagner property	\$1,392.34
Nielson, Psarras and Nilson, C.P.A.s.....	\$6,700.00
George E. Bridwell, balance of attorney fee	\$7,428.36

Bridwell testified that he informed Wagner orally of the disbursement of this refund shortly after Wagner came back (R. 376).

After returning, Wagner, through a process of negotiation with Schubach, purchased the building from Schubach for the total sum of \$35,000.00. Wagner paid Schubach cash except for a promissory note of \$2,657.19, dated December 11, 1961 (Ex. 23). Schubach made a profit of better than \$10,000.00 on this transaction. Bridwell received nothing from this transaction (R. 379).

Schubach supported Bridwell's testimony that he had at a prior time offered the property back to Wagner for what he had invested plus some interest (R. 145). Schubach further testified that Bridwell made nothing from the property transaction (R. 125).

In support of the blanket charge made by Wagner that Bridwell had failed to account for monies collected by Dunn & Bradstreet for Presica and Otto Bock, Wagner went to Dunn & Bradstreet on November 20, 1961 and examined their records concerning collections

made for Precisa. Although he was ready to accuse Bridwell of failing to account for large sums he came up with three checks which were deposited in Bridwell's account. One dated 12-16-58 for \$225.50, one dated 7-21-59 for \$79.00 and one dated 8-7-59 for \$78.44, totalling \$382.94. Bridwell had no memory of these checks when he was confronted with them for the first time at the hearing of this matter. Wagner, instead of taking the checks and confronting Bridwell with them at the time he discovered them, withheld the checks for use in the hearing.

Bridwell's contention is that had he been confronted with these checks while his memory was clear, that he would have had a satisfactory explanation. His contention further is that there must have been a satisfactory explanation because Bridwell does not steal money from clients.

Further, Bridwell testified that there were many items which have never been accounted with Wagner concerning money which Bridwell advanced and was never repaid. Bridwell testified that he loaned \$650 to Wagner's ex-wife, Nellie, for which he had never been repaid, and further, that he had expended sums of money for telephone calls and cablegrams, not only on this matter but in regard to the Otto Bock franchise. He made many telephone calls to an attorney in Minneapolis concerning the Otto Bock franchise for which he had never been repaid (R. 382). Further, he hired an attorney in Washington, D.C. to make an

appearance for which he had never been repaid (R. 381, 382, 404). Also, Bridwell paid with his own money, a wage claim with the Industrial Commission for an employee by the name of Richard Lieber of \$60 to \$70 which was not repaid (R. 406, 407).

Wagner admitted that he never confronted Bridwell with these checks and that he saved them for the hearing in the Bar matter. *It may be noted that Wagner had the checks for almost a year before he made his complaint to the Bar* (R. 249).

It may also be noted that Wagner accused Bridwell of selling a calculating machine and pocketing the money which on further investigation turned out to be a false charge and was accordingly dropped (R. 250).

As far as the charge that Bridwell had converted money loaned to Metroplitan Finance is concerned, Wagner's own accounting attached to Exhibit 4 shows a sum of \$300 paid which was apparently interest paid by Metropolitan Finance Co. on the loan. This money is entirely accounted for with the \$4,000 check which Bridwell cashed at American Express Co. for travel expenses for the first trip to Switzerland (Ex. C) (R. 140).

Wagner charged Bridwell with representing conflicting interests in regard to Bridwell's purchase of a chandelier at the auction which the Government held on the property of Wagner and Precisa. Wagner offered no evidence of any kind concerning communica-

tion with Bridwell prior to the auction and his letters contained no mention whatsoever of the chandelier although there was mention made of some books called *The Journal of Discourses*. Wagner accuses Bridwell of some type of misconduct in purchasing this chandelier. *Bridwell's testimony stands undisputed* to the effect *that his only function* in this regard *benefitted Wagner*. Bridwell testified that at the auction he was informed that a man from Salt Lake Light & Fixture Co. had approached Mr. Doxie who was handling the auction and had indicated that he would probably be willing to pay a good price but needed more time to check with his company. Mr. Doxie approached Bridwell and asked if a continuance as to this item was agreeable with him. Bridwell agreed. At that time, Doxie announced to everyone present that the auction on the chandelier would be held the following day or possibly at a date more than one day later. At the time set for the resumption of the auction, the lighting fixture man informed Doxie that the sale did not materialize and the auction was carried on. A lady from the Utah Historical Society bid a high of \$145.00 and Bridwell bid \$150.00 for the high bid. Accordingly, Bridwell received the chandelier, paying for it with his own funds, and later gave it to a friend (R. 388, 389). *This was the only evidence as to this charge.*

The only evidence concerning the charge of using company bricks in constructing a bar came from recross-examination by the Bar Prosecutor. Bridwell testified

that he had rented the building to one Joe Looser and that Looser did not pay the rental. Looser volunteered to do some work and Bridwell accepted work done by him in constructing a bar in his basement with some used company brick. Bridwell testified that in addition to the amount owed to the Company he also paid Looser \$200 or \$300. Bridwell has at all times been willing to account to the Company for this but an accounting was made rather difficult in the face of outright charges of embezzlement made by Wagner (R. 408, 409).

After the building transaction had been completed, Wagner came to Bridwell's office and made accusations of embezzlement. Bridwell told him to get out. This was the last time that Bridwell saw Wagner. This conversation occurred shortly after the building transaction was completed on December 11, 1961 (R. 383, 384). After this, Bridwell corresponded with Mr. F. Bieler, one of the principals of the Precisa A.G. parent corporation, and in reply, received a letter from Mr. Bieler dated March 7, 1962. This letter stated in part as follows:

"I was rather surprised about the differences between you and Mr. Wagner. Unfortunately, Mr. Ernst Jost is still away.

I have had the pleasure of meeting you several times here in Zurich, and during our discussions I got the best impression of yourself and I esteemed very much your frank way of dealing matters. Now I would like to submit you a personal question. Mr. Wagner wants Mr. Jost to

give him full power regarding all the shares made out to Mr. Jost and to Precisa Ltd. *Would you be interested in getting full power from Mr. Jost with regard to the shares in question?* Mr. Jost being not informed about this letter, I should appreciate it if you would kindly address to me some personal lines by letting me know your viewpoint in this matter.

Looking forward to hearing from you at your convenience, I remain meanwhile with best personal regards."

It can be seen from the above letter that Wagner's testimony indicating that the Precisa people were unhappy with Bridwell has no foundation. The pleasant, friendly relationship which Bridwell had with these people is conclusively shown by the above letter where Bieler is offering to help Bridwell by obtaining a proxy from Mr. Jost as to his shares.

At the time of oral argument on this matter the Bar Prosecutor admitted that the Bar had failed to produce evidence supporting Paragraph III (e) of the Complaint, inasmuch as the Bar had failed to prove that there were funds then available at the time that the contract for the purchase of the property at 375 West 4th South came into default. The prosecutor then moved to amend the Complaint to conform to the evidence so as to charge Bridwell with a conflict of interest in regard to the building transaction. We objected to this amendment in view of the fact that *Wagner's* complaint had been on file for six years.

The Hearing Committee denied the objection and allowed the amendment.

After hearing and argument and after Bridwell had submitted a memorandum of authorities in support of the legal contentions made both in his motion to dismiss and in argument after hearing, the Disciplinary Committee made Findings of Fact and Conclusions of Law sustaining the allegations of the complaint made in Paragraph III, sub-paragraphs (a), (b), (c), (e) as amended, (g) and (h), and concluded that Bridwell had violated the Rules of the Utah State Bar governing professional conduct (R. 17).

The Board of Commissioners of the Utah State Bar approved the Findings and Conclusions and has recommended an Order by the Supreme Court of the State of Utah disbaring George E. Bridwell from the practice of law.

Bridwell filed an answer to the complaint on April 14, 1967 (R. 4). In said answer, Bridwell prayed for an immediate hearing on the charges. On July 14, 1967, Bridwell filed a motion to dismiss the charges for the reason that he had been denied an immediate hearing and the Committee had been unable to provide such (R. 6).

An Order fixing time and place for hearing was issued on May 27, 1968 setting hearing on the matter at 9:00 A.M. on September 9, 1968. At that time, Bridwell filed an Affidavit in support of the Motion

to Dismiss and counsel for the Bar filed an Affidavit in opposition to the Motion to Dismiss and said Motion was argued before the Disciplinary Committee and denied. Hearing was then held on October 10 and October 11, 1968, and oral arguments were held on October 23, 1968. The Findings and Conclusions were rendered by the Hearing Committee on February 17, 1969.

The affidavit filed by Bridwell in support of the motion to dismiss revealed the following as the time schedule of events in this matter:

1. The facts in this case occurred between the Fall of 1957 and the Fall of 1961.

2. Wagner filed his letter of complaint to the Bar on October 1, 1962.

3. On May 6, 1963, H. Wayne Wadsworth, appointed as investigator by the Bar, asked Bridwell for a written explanation.

4. On May 16, 1963, Bridwell responded to the charges with an eight page letter.

5. On August 2, 1963, Wadsworth wrote to Bridwell for further clarification.

6. On October 1, 1963, Bridwell submitted a further letter of clarification.

7. On January 31, 1966, the Board of Commissioners of the Utah State Bar ordered that a complaint be filed against affiant.

8. On April 15, 1966, Bridwell received a letter from Clifford L. Ashton, Prosecutor, enclosing a copy of the complaint and stating in part:

“I have not filed any copy with the Bar Commission and intend at the present to keep the matter strictly confidential.”

9. On July 5, 1966, Mr. Ashton, by letter, informed Bridwell that he was no longer prosecuting and informed him that the case was now on file.

10. Bridwell filed his Answer on April 13, 1967 requesting an immediate hearing.

11. In the Affidavit filed by Marvin J. Bertoch, it appeared that the complaining witness, Eugene Wagner, returned to Switzerland in early 1966 and remained until January 1968, and that counsel for the Bar could not arrange a hearing in January of 1968. *We were not notified of this.*

12. It appears from the affidavit of Bridwell, that Wagner was out of the country during the time mentioned in Mr. Bertoch's affidavit for the reason that he was under Federal Charge. He apparently resolved this matter by January 1968.

From the aforesaid time schedule as to the events that occurred in this case, we have the following conclusions.

1. From October 1, 1962, the date of the letter of complaint, to January 31, 1966, the date that com-

plaint was ordered by the Bar, we have a lapse of time of *three years and four months*.

2. From January 31, 1966, the date when the complaint was ordered, to April 15, 1966, the date that the Bar complaint was filed, there is a lapse of two and one-half months.

3. From April 15, 1966, the date that formal complaint was filed, to September 9, 1968, the date of hearing, there is a lapse of time of *two years, four months and twenty-four days*.

4. From the date of April 13, 1967, the date when formal demand for an immediate hearing was made, to September 9, 1968, the date of hearing, there is a lapse of time in the amount of *one year, four months and twenty-four days*.

5. From the date of Wagner's letter of complaint, October 1, 1962, to the hearing date, September 9, 1968, there is a lapse of time of slightly less than *six years*.

In support of the credibility of George Bridwell as a witness, affidavits were submitted from six of the seven Judges of the Third Judicial District Court attesting to Bridwell's good reputation for truth and veracity from more than 15 years' acquaintance.

In addition to this, similar testimony attesting to Bridwell's good reputation in the community for truth and veracity was elicited from Sam Bernstein (R. 341) and Sumner Hatch (R. 350).

As far as Wagner was concerned, Hatch testified that he had represented Wagner, and, there being no objection as to the privilege, the Committee allowed Hatch to testify as to Wagner's reputation for truth and veracity in the community which he testified was *poor* (R. 349).

In addition to this, Wagner had also threatened to make a complaint to the bar on Hatch which Hatch immediately forwarded to the bar, this resulting from a collection matter which Hatch had handled for Wagner (R. 260). Wagner also accused his ex-wife, Nellie Wagner, of embezzling money (R. 259). Wagner accused the agents from the I.R.S. who interviewed him of being dishonest (R. 220). Wagner also complained that the Government was blackmailing him (R. 324).

ARGUMENT

PRELIMINARY STATEMENT

In presenting the argument on the facts and the law in this case, we urge the Court to review the facts in the light of the law concerning the burden of proof which the bar has. The charges should be "*clearly sustained by convincing proof.*" See *In re McCullough* (1939) 97 Utah 533, 95 P.2d 13; *In re Hanson* (1916) 48 Utah 163, 158 P. 778; and *In re Evans and Rogers*, 22 Utah 366, 62 P. 913, where the Court stated:

“The summary proceeding of disbarment is civil, and not criminal. In that proceeding, however, more than a preponderance of the evidence is required. The guilt of the attorney must be *thoroughly established*.”

In the case of *In re Reily* (1919) 75 Okl. 192, 183 P. 728, the Court stated at p. 730:

“The serious consequences of disbarment should follow only where there is a clear preponderance of the evidence against the respondent. In such proceeding the attorney sought to be disbarred is *presumed to be innocent* of the charges preferred, and to have performed his duty as an officer of the Court in accordance with his oath, and the evidence in support of the charges *must satisfy the court to a reasonable certainty* that the charges are true and warrant a judgment of disbarment.”

The Court further stated:

“The law does not demand that every technical infraction of the law by an attorney shall require his disbarment, although an attorney should endeavor to observe literally the law; but it is those infractions of duty by an attorney that involve moral turpitude and evince a depraved character, rendering such attorney untrustworthy and a reflection upon the bar and the Court, as an officer thereof, that demand his disbarment.”

In the case of *Browne v. State Bar of California* (1955) 45 Cal.2d 165, 287 P.2d 745, the Court held that in a disciplinary proceeding against an attorney *any reasonable doubt must be resolved in favor of the attor-*

ney; citing *Golden v. State Bar*, 213 Cal. 237, 2 P.2d 325, and also quoting from *Hildebrand v. State Bar*, 18 Cal.2d 816, 117 P.2d 860:

“In proceedings of this character where the evidence is conflicting, as is shown to be the fact herein, the findings of the local administrative committee and of the Board of Bar Governors are not necessarily binding on this Court.”

In considering whether or not the Bar has sustained its burden of proof as outlined above, we wish to remind the Court that George E. Bridwell has been a lawyer in good standing in the State of Utah since the year 1949. We are sure that the Court is aware of the serious nature of these proceedings and the drastic results that the findings of the Board of Commissioners has inflicted on the life and career of George E. Bridwell.

We submit, as will be pointed out in the argument, that the prosecution has not even come close to sustaining its burden of proof, and that many of the charges are petty, nit-picking charges resulting from a shotgun approach by the complaining witness.

POINT I. THE UNCONSCIONABLE DELAY FROM ORIGINAL COMPLAINT BY WAGNER TO HEARING REQUIRES DISMISSAL OF ALL CHARGES.

(A) BRIDWELL WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.

The file in this case shows that there was a lapse of *three years and four months from initial complaint by Wagner to the date when a complaint was ordered* by the Bar Commission. The file shows that there was less than one month short of *six years from initial complaint to the hearing on this matter*. The evidence at the hearing in this matter involved intricate transactions, records, letters and conversations which occurred from the Fall of 1957 to the Fall of 1961. The *facts* in this case were from *seven to eleven years old* at the time of the hearing.

The Supreme Court of the United States has recently held that lawyers are entitled to the same Fourteenth Amendment rights as any other person. The Supreme Court has specifically held that speedy trial is a Constitutional right included in the Fourteenth Amendment.

The case of *Spevack v. Klein* (1967) 385 U.S. 511, 87 S.Ct. 625, held that lawyers in disbarment proceedings were entitled to Fourteenth Amendment rights. In that case the basis for disbarment involved the refusal of the attorney to produce demanded financial records and to testify at the judicial inquiry on the basis that the production of records and testimony would tend to incriminate him. The Court held that the Fifth Amendment protection against self-incrimination applies to lawyers in state disbarment proceedings pursuant to the Fourteenth Amendment which incorporates the Fifth Amendment. The Court stated in part as follows:

“* * * lawyers also enjoy first class citizenship.”

and again at p. 627:

“We conclude that *Cohen v. Hurley* should be overruled, that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.”

Also, see *In re Ruffalo* (1968) 390 U.S. 544, 88 S.Ct. 1222, and *In re Schlesinger* (1961) 404 Pa. 584, 172 A.2d 835, where it was stated:

“The right to practice law is Constitutionally protected as a property right and no attorney can lawfully be deprived of such right except by due process of law and upon competent and relevant proofs sufficiently credible to support a just order of disbarment.”

In the case of *Klopfer v. State of North Carolina* (1967) 386 U.S. 213, 87 St.Ct. 988, the Supreme Court of the United States held that the right to a speedy trial is guaranteed to defendants in state courts pursuant to the Sixth Amendment which is held to be included within the Fourteenth Amendment protections. The Court stated in part at p. 993:

“We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage.”

There can be no question if the Court holds that Bridwell in this proceeding was entitled, the same as any person under criminal charge, to a speedy trial, that that right was violated in this case. Six years from original complaint by complaining witness to hearing must surely violate the right to a speedy trial. We can further point out that as soon as Bridwell's answer was filed in this matter on April 13, 1967, we specifically demanded an immediate hearing and were not given one for one year, four months and 24 days. There can be no question that Bridwell was greatly prejudiced by this unconscionable delay.

It is obvious that the facts were six years older at the time of hearing than they were at the time of complaint. Throughout the record when specifics were asked Bridwell concerning the existence or absence of letters, Bridwell had to answer many times that he remembered some letters but could not find all of his files. He went through two changes of law partnership during this time. Mr. Doxie, who conducted the auction, is deceased. The three checks which Wagner obtained from Dunn & Bradstreet and withheld to the time of hearing, were shown to Bridwell for the very first time at the hearing, approximately seven years after Wagner had first obtained them. They were nearly ten years old at the time of the hearing.

The entire responsibility for providing a speedy trial to an accused lawyer rests on the shoulders of the Bar Commission. This responsibility cannot be avoided

or delegated. Bridwell has no duty with respect to it. As stated at 21 Am.Jur.2d 279:

“No court has any discretionary power to deny an accused person a right so important. Both the court and the prosecution are under a positive duty to prevent unreasonable delay, and the granting of a speedy trial is not a matter to be determined by the trial judge in the exercise of an uncontrolled personal discretion.”

Further speaking of the basis for this right, it is further stated at 21 Am.Jur.2d 279:

“* * * it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, like statutes of limitation, it prevents him from being exposed to the hazard of a trial after the lapse of so great a time that the means of proving his innocence may have been lost.”

Although it is obvious that Bridwell has been greatly prejudiced by being deprived of a speedy trial, we contend that when a person is deprived of a fundamental constitutional right, prejudice is presumed.

On this basis alone all charges should be dismissed.

(B) THE DOCTRINE OF LACHES DEMANDS DISMISSAL.

Courts have accepted the doctrine of laches as applicable to disciplinary proceedings against an attorney (see 7 Am.Jur.2d, Attorneys at Law, Paragraph 62). The reason for applying the doctrine of laches

are the same as those involved in giving an attorney the constitutional right to a speedy trial. An attorney is greatly prejudiced in his ability to defend because of the loss of records and other evidence, and the staleness of the evidence cannot help but prejudice an attorney called to answer charges. This is especially true where we have an unscrupulous complaining witness preparing and constructing the evidence in minute detail as appears here.

The Utah Supreme Court has at least recognized that the doctrine of laches may be applicable in a disciplinary proceedings. See *In re Steffensen* (1938) 94 Utah 436, 78 P.2d 531.

In the instant case, because of the intricacy of the transactions associated with the charges, their complexity and the loss of records and evidence, the concept of laches is readily applicable.

Cases from other jurisdictions based on similar contentions lend support to the conclusion that the doctrine should be recognized by the Court in this case. Proceedings instituted a long time after the commission of an alleged act of misconduct by an attorney "are regarded with disfavor." The Court in *State v. Haggerty* (1942) 241 Wisc. 486, 6 N.W.2d 203, stated in part as follows:

"However, proceedings instituted after a great lapse of time from the commission of the act complained of are regarded with disfavor, and the Court may refuse to hear an application

to disbar that has been unreasonably delayed.' 5 Am.Jur. p. 434, par. 288; see also 2 Thornton on Attorneys at Law, Sec. 880."

The court in *Columbus Bar Association v. Teaford* (1966) 6 Ohio St.2d 253, 35 Ohio Opin.2d 318, 117 N.E.2d 872, recognized the reason for not favoring old claims, stating:

"Records may be destroyed and recollections may be hazy. It is for this reason that the prosecution of old claims is not favored. See 7 Am. Jur.2d 86, Attorneys at Law, Sec. 62."

The case of *Murrell v. Florida Bar* (Fla. 1960) 122 So.2d 169, dismissed a disciplinary action against an attorney where the investigation had been pending for five years. This is a shorter period of time than is involved at the case at bar. The court stated:

"(1) We are confronted here with a disciplinary proceeding that has been under investigation for five years or longer. The disciplinary rule requires that all investigations and hearings of disciplinary cases shall be begun, prosecuted, and completed as promptly as the ends of justice will permit. 'All investigations and hearings shall be informal but thorough, with the object of ascertaining the truth.' This is a most essential requirement, the reason being that the minute such a proceeding is instituted the lawyer's professional reputation is shadowed and in danger of being permanently impaired. Such charges should not be suspended in limbo. They should be dispatched and if found to be without merit, the lawyer charged should be exonerated. * * * *

(2) This record, partly narrated in this opinion, convinces every member of this Court that these proceedings have gone far enough. To continue would amount to no more than harassment and would constitute an abuse of the powers given this Court and its commissions under Section 23 of Article V of the Constitution, F.S.A.”

Also see *In re Ratner* (1965) 194 Kan. 362, 399 P.2d 865; and *The Florida Bar v. King* (Fla. 1965) 174 So. 2d 398. The Court in the *King* case made some observations which appear to be pertinent in the case at bar as follows:

“We are now confronted with the question of whether or not we should further damage respondent by taking away from him his profession of thirty-nine years’ standing. He has suffered degradation and humiliation, the loss of re-election to the senate, as well as the presidency of the senate, the loss of \$10,000.00 and the torment of being under criminal prosecution for a number of years. In spite of this, according to all of the evidence presented, he has at all times since that episode nine years ago conducted himself in an exemplary manner as a man and as a lawyer. The testimony reflects that since this occasion, he has given his clients ‘gold-plated’ service in his legal representation of them. He has the support of every circuit judge of his circuit, as well as the bar of that area. In addition, other prominent and substantial non-lawyer citizens appeared in his behalf.

(3) In spite of the respondent’s gross misconduct of nine years ago, we believe that by his subsequent exemplary conduct he has earned the

right to continue to serve his profession. We believe that he will at all times in the future conduct himself in such manner as to rectify, insofar as he can, the blemish that he has placed upon his record. If we did not think so, we would agree with the Board of Governors and sustain the order of disbarment. Under the circumstances heretofore related, however, we consider disbarment or suspension at this late date to be excessive."

The above Courts have recognized that unconscionable delay in invoking disciplinary proceedings warrants dismissal of the proceeding. The proceedings are not intended to punish the attorney but merely to insure that the public will be provided with the quality of legal service the Bar has traditionally provided. We think that Bridwell has been punished enough by having these proceedings hanging over his head for seven years. Bridwell has the support of lawyers and judges in this area and has at all times, before, during and since his period of representing Wagner, conducted himself in an exemplary manner. This must not be lost sight of.

(C) THIS PROCEEDING VIOLATES THE STATUTE OF LIMITATIONS.

The last incident mentioned in the testimony concerning conduct of Bridwell from which charges were made occurred in December of 1961 when Bridwell prepared the promissory note. The complaint was filed against Bridwell by the Bar on April 15, 1966, more

than four years later. We contend that the complaint violates the Statute of Limitations having to do with "special proceedings." Section 78-12-25 U.C.A. 1953, sub-par. 2 provides for a four year Statute of Limitations where an action (special proceedings) is not otherwise specifically provided for in the article. Section 78-12-33 U.C.A. 1953, provides that the Statute of Limitations prescribed in the Judicial Code is applicable in instances where the action is brought in the name of or "for the benefit of the state." The Utah State Bar Association is an integrated bar and is an arm of the State of Utah. Actions brought by it are therefore actions for the benefit of the State. Section 78-12-46 U.C.A. 1953, provides " 'action' includes special proceeding. — The word 'action', as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature."

In *Crystal Car Line v. State Tax Commission*, 110 Utah 426, 174 P.2d 984, the Utah Supreme Court stated that a special proceeding under the quoted section applied to proceedings of quasi-judicial bodies where the rights of parties are determined, including those actions which were unknown at common law. Disciplinary proceedings are special proceedings. *In re Stice*, 184 Kan. 589, 339 P.2d 29; *In re Burnette* (1906) 73 Kan. 609, 95 P. 575; *In re Sherman* (Wash.) 363 P.2d 390; and *Spriggs v. The Bar*, 61 Wyo. 70, 155 P.2d 285.

In *Brotsky v. State Bar of California* (1962) 57

Cal.2d 287, 368 P.2d 697, the California Supreme Court ruled that provisions and statutory principles relating to civil actions were applicable in disbarment proceedings. The Court, although not specifically concerned with a Statute of Limitations problem, stated a rule which would require the application of a limitations statute in disciplinary cases.

“Since the State bar acts as an arm of the court, its activity should be governed by those statutory principles which have been enacted as rules of procedure for all courts. By whatever name a disciplinary proceeding is called, whether an action or special proceeding, it is in essence the initial stage of an action in court.”

The instant action arises out of the statutory authority granted to the Utah State Bar under Section 78-51-12 U.C.A. 1953. Consequently, the action is a special proceeding, civil in nature, to which normal limitation provisions should apply. The policy reasons, precluding stale actions in civil proceedings, are equally as applicable to disciplinary proceedings as to other civil cases. Accordingly, we submit that the Statute of Limitations above cited requires dismissal of all charges.

POINT II. THE EVIDENCE DOES NOT SUPPORT THE FINDINGS.

(A) CREDIBILITY

It is submitted that the Bar has not sustained its burden of proof in respect to any of the findings of

unprofessional conduct. This is especially true in view of the evidence in the record reflecting on the lack of credibility of the complaining witness Wagner and the evidence in the record which supports the credibility of George E. Bridwell.

Sumner Hatch testified that in his opinion Wagner's reputation for truth and veracity in this area is *poor*. Wagner's performance on the witness stand lent credence to Hatch's testimony.

On the other hand there was testimony of lawyers and of all the District Judges in Salt Lake County, except one who was out of the area, that Bridwell's reputation for truth and veracity in this area is *good*. This basic fact cannot be overlooked in reviewing the evidence in this file.

Wagner is a man of extremely meticulous habits in preparing and recalling facts. As a matter of fact, he had gone to the trouble of completely reviewing a diary and listing all of the dates in chronological order which he thought important in this matter to refresh his recollection while testifying. Also Wagner testified expansively as to his qualifications as a bookkeeper. Yet, this meticulous bookkeeper would have the Court believe that he did not even know that Bridwell was paying himself attorney fees from the Company bank account when the statements were sent monthly to the Company address in Salt Lake City and presumably forwarded to Wagner. This same man would have

the Court believe that he had no knowledge of what Bridwell did with the refund from the Government when the matter of the refund was discussed in the letter of October 12, 1961, when part of the refund was used to pay property taxes on property belonging to Wagner, and when Wagner, on coming back to this country from Switzerland, talked to Bridwell on numerous occasions. Bridwell testified that he told Wagner specifically about what was done with the refund and how he had paid himself, the accountant and Wagner's property taxes. Yet Wagner would have us believe that he never even discussed this matter with Bridwell during the conversations prior to the time that he and Bridwell had their split.

This same meticulous man testified in great detail concerning his meeting with Bridwell when Bridwell came to Switzerland for the second time, the first part of September, 1961. Wagner, using his notes to refresh his memory, was certain that when Bridwell first arrived he merely gave the records to Wagner. Wagner then studied the records for some days and then, on *September 6*, 1961, had the "heated discussion" with Bridwell in Bridwell's hotel room taking seven hours. He stated that after they had made their peace, he assisted Bridwell in typing the minutes and the general power of attorney. Then, on September 8, Wagner assisted Bridwell in convincing the Board of Directors of Precisa A.G. that these minutes and general power of attorney should be

signed. Yet, in an entirely self-serving letter, written in the Swiss language, admitted over objection (Ex. 21), Wagner complained to his attorney friend in Switzerland as to what Bridwell was doing to him and the Company. At the bottom of the letter he stated that *enclosed was the power of attorney and minutes*. Also, there was some handwriting along the border mentioning some further suspicions which Wagner had of the reason why Bridwell needed these documents.

The importance of this document can readily be seen from the fact that Wagner needed some type of an explanation as to why he had not only agreed to sign the minutes and the general power of attorney but actually typed them up and obtained the assistance of a local lawyer to help persuade the Board of Directors to sign the same. However, it appears that this self-serving letter was dated September 2, 1961. No satisfactory explanation was given for this basic inconsistency in Wagner's testimony. It stands to reason that Wagner could not have had the minutes and general power of attorney typed up on September 2 when he specifically recalled, having reconstructed the dates from his diary, that his heated discussion was held with Bridwell on September 6, and that *it was following this that the minutes and power of attorney were typed*.

In addition to this, Wagner presented another self-serving letter (Ex. 41) which he allegedly wrote to Bridwell on December 25, 1961, outlining the entire

series of events from his point of view and expressing them to his own advantage. Wagner testified that this lengthy letter was a *handwritten letter*. Bridwell denied ever having received such a letter from Wagner and from all that appears in the record, *every other letter written by Wagner was a typewritten letter*. Yet, the copy of this voluminous, *handwritten* letter which Wagner allegedly made on December 25, 1961, was a *typewritten copy*. It certainly appears to us strange that Wagner would go to the trouble of writing such a letter in his own handwriting and then type a copy of the letter for his own files. It is interesting to note that even in this self-serving letter of December 25, 1961, Wagner affirmed that fees to the time of the second trip to Switzerland had been agreed upon but that he did not feel that Bridwell should receive any further fees. Also, he expresses the desire to have Bridwell's signature on company checks in the future, and this at a time when according to Wagner, he felt that Bridwell had cheated him and the corporation and had engaged in all sorts of unprofessional conduct.

In addition to this, Wagner testified that the members of the Board of Directors in Switzerland were reluctant to sign the minutes and inferred that they had the same view of Bridwell as he did. This testimony was rendered unreliable by Exhibit L, which was a letter to Bridwell from one of the Board members, Mr. Bieler, dated March 7, 1962, which expressed great trust in Bridwell and a willingness to help Bridwell by attempting to get him the power to vote the shares

of Mr. Jost, the majority shareholder. This letter paints a completely different picture of Bridwell's relationship with the Company than Wagner would like the Bar to have.

The above inconsistencies in Wagner's testimony plus direct evidence of unreliability as a witness, militates in favor of Bridwell and against Wagner. In view of this, it is utterly incomprehensible that the Hearing Committee in this action could have resolved *every dispute* between Bridwell and Wagner in Wagner's favor (and in one case even against the only evidence in the record—chandelier incident), especially in view of the fact that Bridwell had independent witnesses, Frank Nielson and Robert Schubach, who supported his testimony.

(B) USING THREATS TO EXTRACT ADDITIONAL FEES.

The Hearing Committee made a finding that Bridwell used threats and coercion to extract an additional fee of \$2,000.00 with no emergency circumstances existing. In making this finding, the Committee found against the evidence, logic and legal common sense.

The true fact of the matter was that Bridwell, who represented Wagner and the corporation throughout this rather involved proceeding, felt that it was necessary to make the second trip to Switzerland in order to complete the settlement of these cases which had

already been agreed upon and to settle the 1957 case which was still open.

Bridwell testified that in his opinion this trip was necessary in order to attempt to get the voluminous affidavit signed or that failing, to obtain something in writing from the corporation to substantiate the representations which had been made to the I.R.S. Bridwell testified that until the matter was completely finished it could have been upset at any time if the people in I.R.S. had any doubts as to any representations which had been made. He was especially concerned with the building transaction, that the I.R.S. may get suspicious as to whether or not the Schubach arrangement was legitimate and that Schubach was a true purchaser of the building.

In the face of this direct testimony by Bridwell, we have Wagner's testimony that he knew of no reason why Bridwell needed to make the trip. The Hearing Committee resolved the dispute in favor of Wagner and against Bridwell in spite of the fact that Bridwell testified as a respected attorney and "with the presumption of innocence", as to the need for this trip.

As far as using threats and coercion is concerned, the telegrams and letters sent to Wagner were merely an attempt to impress upon Wagner the importance of the trip. In the course of this correspondence, Bridwell threatened to withdraw from the case and allow Wagner to obtain other counsel. Certainly, there can be nothing wrong with this. We assume that any lawyer has the

right at any time to withdraw from a case if his client does not cooperate with him. We certainly have to stretch the imagination and warp common sense to arrive at any kind of a conclusion that Bridwell from Salt Lake City could coerce and force Wagner in Switzerland to do anything against his will. Wagner testified that he had independent legal advice in Switzerland and certainly the advice of the Board of Directors of Precisa, and for the Hearing Committee to hold that Bridwell could completely overwhelm and coerce all of these people against their will to send money for him to come to Switzerland is ridiculous.

We are sure that all lawyers have had experience with clients who were reluctant to follow our advice. On many occasions a lawyer must use forceful language in order to persuade a client to take advice which he knows is for the client's own best interest. Certainly, no one in this proceeding has made any argument against the success that Bridwell achieved in his representation of Wagner and Precisa. Even Wagner does not quarrel with the success of settling tax liability in excess of \$700,000 for a little over \$30,000, which was achieved in this case.

Bridwell felt that the trip was necessary in order to successfully complete the tax cases. He informed Wagner in strong language that the trip was necessary. Wagner did send the \$2,000 which incidentally was not an additional fee but was for Bridwell's costs of going to Switzerland and back and living in Switzer-

land while there. We feel that it is incomprehensible that anybody, judicial, quasi-judicial or otherwise, can find any improper conduct in regard to this charge. Wagner, a man who is schooled in business and with much experience in bookkeeping and business matters, certainly did not have to send the \$2,000 if he did not want to. Certainly, if Bridwell chose to withdraw from this case he had the right to do so and Wagner could have been perfectly free to hire new counsel. However, Wagner chose to stay with Bridwell, a wise decision in this matter, and Bridwell successfully completed the case.

In addition, in the minutes which Wagner and the corporation signed, they all specifically ratified the trip and the \$2,000 which was sent to Bridwell. In addition to this, in the self-serving letter of December 25, 1961 (Ex. 14), Wagner stated that he agreed and accepted all fees and costs which had been paid to the date of the minutes.

We submit that this finding by the Hearing Committee is without merit, is not supported by the evidence in this case, and does not comport with logic and common sense. We ask again what could possibly be wrong or what could possibly violate the ethics of the Bar in regard to this charge? The charge is unfounded and ridiculous in the extreme.

(C) FAILING TO ACCOUNT FOR FUNDS RECEIVED.

This charge involves the placing of three checks by Bridwell, received from Dunn & Bradstreet, into his own account.

At the outset we wish to remind the Court that Bridwell was not shown these checks until the day of the hearing, although Wagner had these checks in his possession from 1961. Indeed, Wagner had these checks in his possession for nearly a year before he made his complaint to the Bar. Wagner did not choose to show these checks to Bridwell and to ask for an explanation. Our contentoin is that had he done so while the facts were fresh, Bridwell's explanation would have been good.

Bridwell testified that there were many times when he advanced money out of his own pocket for Wagner's benefit. Bridwell testified that there never was a complete accounting with Wagner for monies which he had advanced. Bridwell loaned Wagner's ex-wife, Nellie, the sum of \$650.00 for which he was not repaid. He advanced sums of money for telephone calls and cablegrams for which he was not repaid. He hired a Washington lawyer to make an appearance in Washington for which he was not repaid. He paid a wage claim against Precisa for which he was not repaid. Yet, the Hearing Committee has found that Bridwell did not properly account for these monies received, in

spite of the fact that there was never any accounting made between Wagner and Bridwell for the various things discussed above. Certainly Wagner's secretion of these checks make his motives questionable to say the least.

We submit that Bridwell's explanation is good. Why would a person of Bridwell's standing in this community jeopardize his entire career for such a pittance? This does not comport with logic, reason and justice. *Bridwell is not a thief and he is presumed innocent.* Indeed, it can be pointed out here that Wagner in his initial complaint and in the complaint filed by the Bar, merely made a blanket charge that Bridwell had failed to account for monies received from Dunn & Bradstreet and then, after Wagner had combed the files thoroughly, and had charged that Bridwell had received a much greater amount, came up with only these three checks. Wagner would have the Hearing Committee believe that Bridwell diverted a large sum of money to his own account—an unfounded and unproved accusation.

The Committee completely lost sight of the fact that during the time of these checks Bridwell and Wagner were enjoying a friendly relationship. An accounting most certainly would have shown that Bridwell was owed, not Wagner.

Bridwell testified that as money would be received, he would forward it to the company office, which was

still in operation. Why these three checks were deposited in his account, he cannot remember at this time. These transactions happened from ten to eleven years prior to the hearing in this matter. Is it any wonder he cannot remember?

(D) FAILING TO ACCOUNT FOR TRIP EXPENSES.

The Hearing Committee, in its finding as to this charge, has found that although Bridwell had authority to incur trip expenses for the first trip to Switzerland, when both he and Nielson went, that he thereafter failed to make any accounting to the client itemizing the expenditure of the \$4,000.

As to the money used for the first trip to Europe, it is admitted by the Hearing Committee that this trip was authorized. Certainly Wagner and the corporation both knew that substantial trip expenses were involved. In addition to this, both Wagner and the Board of Directors of Precisa specifically ratified the expenses in the corporate minutes of September 8, 1961. These minutes specifically reviewed the trip expenses for this trip. What the Hearing Committee is complaining of is that at this late date, Bridwell and Nielson did not come to the hearing with receipts showing how much was spent for every meal and for every last item dealing with this trip. Both Bridwell and Nielson did testify that they are sure they did make such an accounting because *the Federal Government in the settlement of*

these tax cases accepted these trip expenses. If the Federal Government accepted their accounting and if Precisa and Wagner accepted their accounting, why can't the Hearing Committee accept it?

We also point out to the Court that Bridwell was not charged in the complaint filed by the Bar Association with failing to properly account for trip expenses. The charge in the complaint was merely a general charge that he had failed to properly account for monies received from Metropolitan Finance Company. In the hearing, Bridwell proved that he had properly accounted for this money in view of the fact that the final \$4,000 received from Metropolitan Finance Co. was used for the first trip to Switzerland. In view of the fact that Bridwell was not charged in the complaint for failing to make a detailed accounting itemizing all of the expenditures of the trip, the Hearing Committee cannot now find Bridwell guilty of a charge not even contained in the complaint. This is the grossest form of an injustice and under the same principles involved in the argument pertaining to the adding of a new charge by amendment, this is likewise a deprivation of procedural due process.

(E) FAILING TO ACCOUNT FOR REFUND FROM THE GOVERNMENT.

The Hearing Committee found that Bridwell failed to account for the refund of \$15,520.00 until October 29, 1962, when Nielson mailed an accounting to

Wagner showing that the money had been used principally to pay Bridwell and Nielson additional fees plus payment of real property taxes for Wagner's benefit.

Bridwell specifically referred to the fact that there would be a refund and that the I.R.S. people were interested in knowing whether any of this money refunded would go to Switzerland for Wagner's benefit or anyone else in the letter of October 12, 1961 (Ex. 16). Bridwell further testified that as soon as Wagner returned to this country he informed him how the refund had been distributed, the attorney fee for himself, the fee for Nielson, and the payment of the real property taxes for Wagner.

In the corporate minutes Wagner and the corporation both acknowledged that further substantial fees were due and owing to Bridwell, and in the general power of attorney Bridwell was given authority to dispose of this refund.

Wagner, of course, has denied that Bridwell informed him of this and claims that the first knowledge he had of the disposition of the refund was in October of 1962 when he received the letter from Nielson. Naturally he would contend this to build up his case. It appears inconceivable to us that the Hearing Committee could resolve this dispute against Bridwell and in favor of Wagner.

Throughout the record, it appears that Wagner

is a man well-schooled in business with a great deal of bookkeeping experience, and a man who knows where every penny goes. This man who knew that a refund would be coming would have us believe that he could come back to this country and have conferences with Bridwell about the many matters involved in the winding up of this case and complete the building transaction with Schubach and not once have even mentioned the subject of the refund and what was done with it. If he suspected Bridwell of withholding information, I assume a man of Wagner's business acuity would have made a direct inquiry to I.R.S.

In addition to this, Wagner had to know that his real property tax was paid and he certainly knew that he didn't pay it. So, how can Wagner at this date, come to this Court and urge the Court to believe him when he says he knew absolutely nothing as to what was done with his refund until he received the letter from Nielson? Obviously, after the open breach with Bridwell, Wagner's only purpose in pressing Nielson for this letter was so that he could come in at a later date and complain that Bridwell had not accounted to him for this money.

In any event, the money did not belong to Wagner but it belonged to Precisa A.G. (R. 231) (Ex. 35), and there is not one jot of evidence in this record to the effect that Precisa at any time was displeased with Bridwell and was not completely satisfied with the disposition of this money. Indeed, the letter from

Bieler in February of 1962 shows that throughout the entire proceeding Precisa was completely satisfied and happy with the representation of Bridwell.

It may be stated in passing that the only money that Wagner ever paid out of his own pocket was the \$2,000.00 which he sent Bridwell for the purpose of the September 1961 trip to Switzerland. Everything else, both expenses and fees, was paid by Precisa.

(F) THE CHANDELIER INCIDENT.

The Hearing Committee found as a fact that Bridwell requested a government auctioneer to withhold a chandelier from the public sale, and that his purchase of the chandelier on the following day when no other competitive bidders were expected to be present was a representation of conflicting interests.

This finding is typical of the unbiased blanket charges made by the complaining witness in this case and *is contrary to the evidence in the record.*

To begin with, the only evidence concerning the chandelier incident is Bridwell's testimony. Wagner was not present at the auction and had no knowledge except that a chandelier was purchased by Bridwell at the auction and later given by Bridwell to a friend.

There is no evidence in the record that the auction was continued at Bridwell's request. Bridwell testified that Mr. Doxie, the Government representative who was conducting the auction, asked him if it was all right

for the auction to be continued. *Bridwell did not ask for the continuance, Doxie did.* The reason why Doxie asked for the continuance was that there was an indication from a representative of Salt Lake Light and Fixture Co. that this company could probably pay substantially more money for the chandelier than had been indicated. Bridwell's only purpose in agreeing with Doxie to the continuance was for the benefit of Wagner. There is no evidence to the contrary. At any rate, according to Bridwell's testimony, the auction was continued and all persons present notified as to the exact date that the auction would continue. Bridwell testified that at the time the auction was resumed he was present as well as others, and the possibility of a substantial bid from Salt Lake Light & Fixture Co. did not materialize. Bridwell further testified that the highest bid that could be obtained was \$145.00 and that he upped the bid to \$150.00, which was the high bid.

Certainly, Bridwell topping the bid could be nothing but a benefit to Wagner. There is no way in the world to believe that anything Bridwell did in regard to this incident was done for any other reason than to benefit Wagner. *How the Hearing Committee could have made the finding it did in the face of the evidence in this record is beyond comprehension.*

This charge is utterly unfounded and ridiculous in the extreme.

(G) CONFLICTING INTERESTS RE BUILDING SALE.

The complaint filed by the Bar against Bridwell charged him with *“allowing the foreclosure of a contract of sale in the name of the client’s corporation for a building located at 375 West Fourth South, Salt Lake City, Utah, through failure to make proper payments with client’s funds then available.”* At the time of argument, counsel for the Bar admitted that the evidence did not sustain the charge as originally made and moved that the complaint be amended to conform to the evidence to the effect that there was a conflict of interest to the detriment of Wagner and Precisa, evidenced by the manner in which Bridwell handled the transactions involving the building (R. 463, 464).

We objected to this amendment, especially in view of the fact that the Bar had two and a half years in which to make the amendment and five years to obtain the evidence. Also we objected for the reason that this was a new charge (R. 464, 465). However, the Committee allowed the amendment and in its Findings of Fact held that Bridwell was guilty of a conflict of interest in representing Schubach, Wagner and Precisa in the building transaction (R. 463, 464).

It is our contention that the evidence did not show any conflict of interest on the part of Bridwell to the detriment of anyone and that further, there could be no conflict of interest in any event inasmuch as full

disclosure had been made to Precisa and Wagner and they had ratified the entire matter.

Our argument that the Committee allowing the amendment has denied Bridwell procedural due process of law will be dealt with later.

Bridwell testified, and his letter to Wagner of May 19, 1961 (Ex. 5) bears him out, that he informed Wagner of the fact that the building had gone into default and that he had obtained an option which was exercised by his friend Schubach. The wording of Bridwell's letter to Wagner indicates that this matter had been discussed at a prior time when he stated in part as follows:

*"Also, as you undoubtedly are aware, Mr. Hines foreclosed the contract on the Precisa building approximately 2 years ago. At that time, anticipating that our tax problems would be resolved I obtained an option to repurchase the building on behalf of Precisa at a sum that would bring the contract current at an increased interest rate and at a sum that would reimburse Mr. Hines for expenses of his attorney. * * ** At that time, the company had absolutely no money, of course, so one of my clients advanced the money, which was very risky, because as you will recall there was a great deficiency determined against the corporation. However, that has been resolved and the corporation is no longer in jeopardy as pertains to any property it might own. But my present problem is that my client now wants title to the building or else a repayment of the funds advanced by him to

secure the building together with a profit for the risk he undertook. His actual expenditures to date are in excess of the sum of \$10,000.00.

Please let me know what Mr. Jost and Precisa A.G., the principal stockholders in Precisa desire to be done with that building. My client would like an answer as pertains to that as rapidly as may be possible."

Bridwell and Schubach both testified that as of that time and later, Schubach had been willing to merely receive his money back plus some interest in order to turn the building back to Precisa. However, Bridwell testified that Precisa and Wagner as of that time were unwilling to put more money into the building due to the fact that the tax cases had not been completely settled and that there was still some risk that the money could be lost.

At any rate, when Bridwell went to Switzerland in the first part of September, 1961, this entire matter was discussed with Wagner and with the corporation, and the minutes of the corporation contained a complete recital as to everything that had happened in regard to the building. Wagner and the principals of Precisa all signed the minutes approving of everything that Bridwell had done in regard to the building transaction. The minutes further stated:

"(g) Under possessed authority, counsel exercised the option for the company, then for the company he conveyed that right to Robert M. Schubach, which we ratify; it didn't harm us as we had no funds available.

(h) Mr. Schubach is a close personal friend of George E. Bridwell, who is also his personal attorney. We commend Mr. Schubach on his confidence and courage in advancing such sums at that time upon little understanding of issues and great risk of law suits, attachments and loss.

(i) The building is and would be lost to this company and we acknowledge and affirm it, and being fully informed and apprised of all such matters, it was upon unanimous vote,

RESOLVED:

1. To ratify, consent to and affirm the act of counsel in exercising said option for the company and thereafter giving it to Robert M. Schubach, the building then lost to the company in any event, and

2. To ratify, consent to and affirm all actions of counsel in the Hines lawsuit, and all other matters pertaining to the building and allied therewith, and

* * *

4. To expressly authorize counsel, under his general power of attorney and the powers herein given to do such things as may be necessary, desirable or useful to perfect title in Robert M. Schubach or his designees, and

5. To request counsel to ask Robert M. Schubach, not oblige him, that he give to the Company or Ernst Jost or to Eugene Wagner, the first right of refusal to purchase or lease that building at the same terms as any bona fide offer he may receive and desires to take and accord to us 30 days from the date of such offer that right, we among us to decide which if any of us, would so act."

After Wagner returned to this country, he negotiated with Schubach for the purchase of this building. Bridwell testified that Schubach and Wagner did their own negotiating exclusively and there is no evidence rebutting this. Both parties arrived at the figure of \$35,000.00 as a fair sale price and, accordingly, Schubach sold the property to Wagner for the sum of \$35,000.00. Bridwell's sole participation in this matter was in preparing the promissory note which Wagner signed for a balance of a little over \$2,000.

As stated, the evidence showed that at the time the building contract went into default there was no money in the corporate account and the principals of Precisa and Wagner were unwilling to send more money to keep the contract alive. Accordingly, Bridwell's act was done solely for the benefit of the company in keeping the building contract alive and enabling a friendly person to purchase the same.

The sale of the building to Wagner was entirely within the spirit of the minutes which requested that Schubach give the Company, Jost or Wagner the first opportunity to repurchase the building. Wagner was not harmed in any manner in this transaction inasmuch as he was able to purchase the building at a fair price and obtain it in his own name. Prior to that time the corporation owned the building, Wagner being a minority stockholder with less than one-fifth of the stock of the corporation.

Bridwell and Schubach were not disputed in their

testimony that up to the time of Bridwell's trip to Switzerland in the first part of September 1961, Schubach would have been willing to have received his money back plus some interest for the building. Schubach testified that his offer involved no profit but merely interest for the time his money was tied up (R. 137). However, it can be appreciated that after the threat of Government intervention was removed by the total settlement of the tax cases, a different situation existed. At that time, there was no further jeopardy to Schubach of having the Government upset his purchase of this building and, therefore, he could deal with it as a full owner. Certainly the fact that Schubach made a \$10,000.00 profit should not be used against Bridwell in this matter. Bridwell's function was merely to attempt in some way to save the building so that it could at a later date be repurchased and this he did. Inaction on Bridwell's part very likely would have resulted in a complete loss of the building to the company and Wagner.

The evidence is undisputed that Bridwell received nothing from this transaction and had no participation at all in regard to the negotiations between Wagner and Schubach. Accordingly, there could have been no conflict of interest on Bridwell's part and there could be no prejudice to Wagner on account of anything done by Bridwell. *Precisa, the owner, has made no complaint whatsoever, and, indeed, ratified everything that Bridwell did.*

(H) WITHDRAWAL OF ADDITIONAL FEES WITHOUT AUTHORIZATION

In paragraph (g) of its Findings, the Hearing Committee found that Bridwell's withdrawal of sums of money over the original \$14,000 was without the authorization or knowledge of the client. The Committee further held that the action of Bridwell in preparing and securing the adoption of the minutes of the stockholders' meeting in Switzerland were for his own protection in order to exonerate himself from any wrong-doing or excuse any previous conduct for which he felt he might ultimately have some responsibility to his client. This finding is without any basis in the record.

To begin with, in Bridwell's first letter concerning fee arrangements, he made it clear that he was to have carte blanche authority to hire any accounting services which he felt necessary and, further, that he was to make periodic withdrawals of fees. Bridwell made no secret of any withdrawals which he made on fees inasmuch as he drew checks on the company's account, and the cancelled checks were sent to the company's place of business and presumably forwarded to Wagner and the company in Switzerland. Certainly Bridwell was not responsible to see that employees of the company forwarded bank accountings to the owners.

At the time of the first trip to Switzerland, Bridwell had drawn in excess of the original \$14,000 and

had used the \$4,000 from Metropolitan Finance to pay for the trip. These matters were discussed with Wagner at the time of that trip. Nielson supported Bridwell's testimony that Wagner agreed that the fee would be greater than the original \$14,000.00.

During the later trip in September of 1961 when all of the accountings and records were turned over to Wagner, Wagner and the company both agreed to all of the fees that had been paid to Bridwell in the past and substantial additional fees in the future. Even in Wagner's self-serving letter of December 25, 1961, some two or three months after returning to the United States, Wagner referred to the meetings in Switzerland in September and to the minutes and general power of attorney and stated in part:

"Eventually, after a lengthy discussion of seven hours, it was understood, that the fee situation as presented that day would be accepted and you promised not to draw one more dime, except paying a few thousand dollars to Frank, which money would come out of the amount due under the liabilities."

Certainly this letter of Wagner's in which he presented the matter in a light most favorable to himself, substantiated the fact that both he and the company had accepted all of the accountings which Bridwell had presented in September 1961.

It appears to be inconceivable that Wagner could complain that all of the fees taken over and above

\$14,000 by Bridwell were without authorization when both he and the company ratified all fees to the time of September 1961 and agreed that further substantial fees were due and owing to Bridwell. Wagner's later statement in his letter of December 25, 1961 is proof positive that he and the company fully agreed to these fees as stated in the minutes.

It may be noted that *at no time has anyone contended that Bridwell's fee was not reasonable for the services rendered.* It may further be noted that Precisa paid all but \$2,000 of Bridwell's fees and expenses and there is not one iota of evidence that Precisa was and is not completely satisfied with everything.

(I) ACCEPTING LABOR AND MATERIALS WITHOUT PROPERLY ACCOUNTING FOR SAME.

Bridwell's contention in regard to this charge is that this should have been a proper matter for an accounting between the parties. He frankly admits that he accepted labor and materials for the construction of a basement bar. Bridwell testified that he had rented the building to one Joe Looser, who fell behind in the payment of rent. Looser volunteered to do some work and Bridwell accepted this work and paid Looser some money in addition to what Looser owed the company. Bridwell has at all times been willing to account for this as well as for the sums which he has advanced out of his own pocket. However, he has not been given an

opportunity to do this in view of the fact that Wagner chose more drastic means to try to settle this account. Again we say that this charge is typical of the shotgun approach which was used in this case and is a trivial, nit-picking charge.

POINT III. THE CORPORATE MINUTES AND GENERAL POWER OF ATTORNEY CONSTITUTE A COMPLETE DISCLOSURE AND RATIFICATION OF BRIDWELL'S REPRESENTATION OF WAGNER AND PRECISA.

In its findings, the Hearing Committee has completely ignored the minutes of the stockholders' meeting held in Switzerland on September 8, 1961. These minutes were signed by Precisa A.G., Ernst Jost and Eugene Wagner. The Hearing Committee disposes peremptorily of these minutes by simply saying that Bridwell secured them for his own protection. Certainly Bridwell's motives can have no bearing and the fact remains that this large corporation, its majority shareholder and Eugene Wagner all willingly signed these minutes. As a matter of fact, Wagner not only signed the minutes but typed them up and hired his own independent Swiss counsel to assist in persuading the Board of Directors of Precisa A.G. to accept and to sign them. Apparently the Hearing Committee believed that Bridwell as a stranger coming into the country of Switzerland and not even speaking

the language could completely dominate and overcome all of these people and force them to do something against their will.

There was not one jot of evidence to show that Precisa and Jost did not intend to agree to these minutes or thereafter desired to repudiate them. As a matter of fact, the Bieler letter in February of 1962, indicates a friendly relationship and a complete satisfaction on the part of Precisa to the representation of Bridwell.

The only person who has attempted to repudiate these minutes is Wagner and even Wagner in December 1961 indicates his complete agreement with the minutes except for the matter of additional fees.

The minutes state as follows:

“1. To ratify, consent to, affirm and approve all settlements and offers of settlement to this date, and

2. To ratify, consent, acknowledge and affirm that all travel expenses, accounting fees and legal fees, as reflected by the above mentioned accountings, prepared by Frank Nielson, C.P.A., of Nielson, Psarras and Nilson, C.P.A.'s, Salt Lake City, Utah, be, and they hereby are accepted and acknowledged as being a valid and reasonable and just obligation of the Corporation, no part of which is, has been, or will inure for payment of fees for Eugene Wagner in his personal tax cases, he being indebted to George E. Bridwell for fees for personal representation

in a substantial sum, \$2,000 of which has been paid to this date, and

3. That the expenses of George E. Bridwell's 1961 trip to Switzerland be assumed, paid and discharged by Mr. Wagner, since the company paid such expenses for both Mr. Nielsen and Mr. Bridwell in 1958, and

4. It being fully understood that as a result and consequence of the protracted and continuing and exacting technical and mechanical and academic nature of professional services rendered to date and to be rendered in the future to time of full conclusion, coupled with the realized and acknowledged superior results achieved to date it is understood there are further substantial fees, validly and avowedly due as a corporate obligation for legal and accounting services rendered and to be rendered, to George E. Bridwell and Frank Nielsen, and George E. Bridwell shall be and he is hereby authorized to make and authorize such corporate obligations and payment therefor as he may deem fit, in accord herewith and in accord with the General Power of Attorney to be given him as hereinafter set forth in this Resolution, and

5. It being understood and realized that full and total designation of all corporate powers be delegated as to all matters now known and that may become known for such independent and immediate action as may be necessary, useful or desirable for the furtherance, winding up or continuance of the affairs of the company, a broad and General Power of Attorney shall be executed by us, for and on behalf of the Company and by the Company to George E. Bridwell,

which power, we direct, after proper executing be delivered to George E. Bridwell."

The minutes then continued to outline in detail the history of the building transaction and the fact that the option had been exercised by Schubach, and ratified all of the acts stated, and requested that the Company, Jost or Wagner be given the first right of refusal to repurchase the building at the market price.

These corporate minutes and the general power of attorney which were signed by Wagner, Jost and the corporation contain a complete disclosure of everything done in this case and a ratification on the part of these parties of everything done by Bridwell. The corporation has not complained and it is inconceivable to us that Wagner should now come to the Bar Association of the State of Utah and be heard to complain about Bridwell's representation. It is no answer to say that Bridwell wanted these corporate minutes signed for his own protection. Wagner and the Precisa people did not have to sign the minutes. They had independent legal advice and signed these minutes in calm deliberation.

If Bridwell's representation had been as stated by Wagner, then certainly they would have fired Bridwell and obtained new counsel. However, they chose to continue with Bridwell and were pleased with his work. Wagner, as a minority stockholder and as a freeloader who only paid \$2,000 of the total, should not now be allowed to complain to the Bar and this Court about

Bridwell after he received most of the benefits and assumed little of the burdens.

POINT IV. NO CONFLICT OF INTEREST WAS SHOWN.

Conflict of interest is defined as when on behalf of one client it is the lawyer's duty to contend for that which duty to another client requires him to oppose. See Canons of Professional Ethics, Section 6, and *Zimmer v. Gudmundsen*, 5 N.W.2d 707, 715, 142 Neb. 260. The evidence in this case fails to show any conflict of interest on the part of Bridwell. The findings found a conflict of interest both in regard to the chandelier incident and the building transaction. In neither case was there any evidence that Bridwell was representing conflicting interests within the above definition. The evidence showed that *the continuance of the auction was requested not by Bridwell but by the auctioneer* and Bridwell merely consented in the interest of attempting to obtain more money for Wagner for the chandelier. The fact that Bridwell later outbid the highest bidder shows a further effort to benefit Wagner. There was and could be no conflict of interest in that situation.

As far as the building incident was concerned, the only possible purpose that Bridwell could have in obtaining the option and persuading Schubach to invest his own money, was to keep the building from getting into unfriendly, strange hands. Of course the Government had to be satisfied and it was the true fact

that Schubach's purchase of the building was a bona fide transaction. At a later date, after the Government was out of the case, Schubach merely acted like any other seller of land, bargaining with Wagner for a fair sale price. There was no evidence that Bridwell had anything to do with these negotiations. The only thing that Bridwell did was to prepare a promissory note in accordance with the agreement which had been reached by Wagner and Schubach. There could be no conflict of interest in this transaction.

POINT V. THERE CAN BE NO CONFLICT OF INTEREST WHERE COMPLETE DISCLOSURE IS MADE.

It is settled that disclosure and consent is a complete defense to any charge of improper conduct on account of representing conflicting interests. It is stated at 17 A.L.R.3d, 839, "It has been held that an attorney at law has a duty not to represent clients with conflicting interests *without making a full disclosure to them of the facts concerning such conflict and obtaining their consent to such representation.*" See Canons of Professional Ethics, Section 6.

We submit that a complete disclosure was made and consent obtained in this case as shown by the undisputed evidence. Prior to the time of the September 1961 trip to Switzerland, Bridwell had informed Wagner of what had been done in regard to the building. At the time of the meetings in September 1961,

further discussion was held, and, ultimately, the minutes were prepared by Bridwell and Wagner and were signed by the corporation, Jost and Wagner. These minutes show full disclosure, consent and ratification as to what was done with the building and what was to be done in the future. There can be no conflict of interest in such a case.

At a subsequent time, in accordance with the request in the minutes, Schubach gave Wagner an opportunity to purchase the property at a fair market price and he and Wagner both agreed on the price. No one twisted Wagner's arm. He did not have to buy the building. The evidence is undisputed that Bridwell had no participation in these negotiations.

Accordingly, for this reason alone, the conflict of interest charge must be dismissed.

POINT VI. BRIDWELL WAS DEPRIVED OF PROCEDURAL DUE PROCESS WHEN THE BAR WAS ALLOWED TO ADD A NEW CHARGE BY AMENDMENT IN THE HEARING BEFORE THE COMMITTEE.

The ruling in the recent case of *In the Matter of Ruffalo*, supra, requires that the added charge of representing conflicting interests in regard to the building transaction, be dismissed for the reason that Bridwell was deprived of procedural due process. The Ruffalo case dealt with a disbarment proceeding in the State of Ohio, where the petitioner was

charged with various acts of misconduct. Among other things, he was charged with soliciting business in F.E.L.A. cases through an agent. In the hearing of this matter, both petitioner and the agent testified to the effect that Ruffalo had hired the agent merely to investigate F.E.L.A. cases. Their testimony showed that the agent was a railroader employed by a railroad which was sometimes involved in cases investigated by the agent. Immediately after the hearing, the Board added a charge by amendment against petitioner based on his hiring an agent to investigate his own employer. This disbarment was affirmed by the Supreme Court of Ohio and Petition for Certiorari was denied. In a Federal Court Order to Show Cause proceeding, the petitioner complained that he had been denied procedural due process by not being notified of the new charge and tried on said charge without an adequate opportunity to defend. The Supreme Court of the United States held that the petitioner was deprived of procedural due process which includes fair notice of the charge, and, accordingly, reversed the decision of the Federal District Court. The Court stated at p. 1226:

“Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. citing cases * * * *He is accordingly entitled to procedural due process, which includes fair notice of the charge.* See *In re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed. 682. It was said in *Randall v. Brigham*, 7 Wall. 523, 540, 19 L.Ed. 285, that when proceedings for disbarment are ‘not taken for matters occurring

in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense.' Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.'

* * * The charge must be known before the proceedings commence. They become a trap when, after they are under way, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh. * * * This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived the petitioner of procedural due process."

It is submitted that the case at Bar falls squarely within the holding of the *Ruffalo* case. In the case at Bar, Bridwell was charged with failing to use money then available to maintain the contract. After the Bar had failed to prove the charge in the complaint and Bridwell had testified, the prosecutor moved to amend by adding the new charge that Bridwell represented conflicting interest in regard to the building transaction. The amendment was allowed and the Hearing Committee found against Bridwell on it. This is squarely against the holding of the *Ruffalo* case which holds that in order for Bridwell to be afforded the guarantee of procedural due process he must be given fair notice of the charge.

The original complaint by the complaining witness in this matter was made on October 1, 1962, and the hearing was not held until nearly six years later. Certainly during that period of time the Bar had ample opportunity to investigate the matter and to make a correct charge. To allow the Bar to amend after accused has fully testified on the matter and then find accused guilty is the worst sort of an injustice and squarely violates the right of procedural due process as provided by the Fourteenth Amendment. For this reason alone, this charge must be dismissed.

CONCLUSION

The Commission has failed to recognize and discharge one of its most fundamental responsibilities, that of protecting a respected member of the Utah Bar from an unwarranted attack by a malcontented ex-client. It has ignored the fact that the accused is clothed with the presumption of innocence, is an officer of the court, and has a good reputation for truthfulness and veracity in this community. It has ignored the fact that the accuser, on the other hand, is a man of shoddy character and reputation.

A number of questions remain unanswered.

1. Why did the Hearing Committee and the Commission ignore the corporate minutes and the general power of attorney which constitute a complete vindication of Bridwell?

2. Why did the Hearing Committee and the Commission ignore the unprecedented lapse of time between charge and hearing?

3. Why did the Hearing Committee and the Commission allow the amendment?

4. Why did the Hearing Committee and the Commission take the word of Wagner over Bridwell?

5. Why did the Hearing Committee and the Commission find a violation of ethics with regard to such trivial matters as the chandelier incident and the used brick incident?

6. How could Bridwell by letter and telegram completely overwhelm a shrewd businessman and a giant corporation 5,000 miles away and by duress and undue influence force them to give him an undeserved fee?

7. Why did Wagner secrete the three checks and flash them on Bridwell for the first time nearly seven years later?

8. If the Government, Precisa, and Wagner were satisfied with the accountings rendered by Bridwell and Nielson why not the Commission? Should they in all fairness actually expect receipts for meals and hotel bills after ten years?

9. How can Wagner complain about the building transaction when he derived a substantial benefit from

it and entered into it voluntarily and with his eyes wide open?

It is clear that George Bridwell was denied his right to a speedy trial and that he is innocent. For these reasons we urge his vindication.

Respectfully submitted,

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