

2001

Kathleen G. Arnovick, Valerie L. Cox, and Wansker v. Petitioners : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Katherine A. Fox; Attorney for Respondent.

Carolyn Montgomery; Attorney for Petitioners.

Recommended Citation

Reply Brief, *Arnovick v. Petitioners*, No. 20010136.00 (Utah Supreme Court, 2001).
https://digitalcommons.law.byu.edu/byu_sc2/1774

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH SUPREME COURT

In re: KATHLEEN G. ARNOVICK,)
VALERIE L. COX, and)
HENRY B. WANSKER,)
) Supreme Court Case No. 20010136-SC
)
PETITIONERS.)
)

On Appeal from the Findings of Fact and Final Determination
of the Executive Committee of
the Utah State Bar

REPLY BRIEF OF PETITIONERS

KATHERINE A. FOX (5278)
General Counsel
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
(801) 297-7047
Attorney for Respondent
Utah State Bar

CAROLYN MONTGOMERY (2297)
1904 Longview Drive
Salt Lake City, Utah 84124
(801) 278-3301
Attorney for Petitioners
Kathleen G. Arnovick
Valerie L. Cox
Henry B. Wansker

FILED

CLERK SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

In re: KATHLEEN G. ARNOVICK,)
 VALERIE L. COX, and)
 HENRY B. WANSKER,)
)
 PETITIONERS.)
)

Supreme Court Case No. 20010136-SC

On Appeal from the Findings of Fact and Final Determination
of the Executive Committee of
the Utah State Bar

REPLY BRIEF OF PETITIONERS

KATHERINE A. FOX (5278)
General Counsel
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
(801) 297-7047
Attorney for Respondent
Utah State Bar

CAROLYN MONTGOMERY (2297)
1904 Longview Drive
Salt Lake City, Utah 84124
(801) 278-3301
Attorney for Petitioners
Kathleen G. Arnovick
Valerie L. Cox
Henry B. Wansker

TABLE OF CONTENTS

STANDARD OF APPELLATE REVIEW	1
QUESTIONS OF MOOTNESS	1
ARGUMENT	2
A. The Bar’s analysis and argument in this case are predicated upon a misapprehension of the law in at least four critical areas.	2
1. The Bar is an administrative agency bound by its own rules. ...	2
2. Retaking the Exam is not a remedy but an injury.	4
3. The Bar is legally bound to disclose relevant and material information necessary to a fair proceeding.	5
4. The Petitioners’ right to practice law is a substantial interest protected by Due Process and Equal Protection guaranties.	6
B. The Bar’s analysis and argument are further predicated upon a misapprehension of the facts or a misunderstanding of Petitioners’ arguments.	7
1. It is impossible to determine who did or did not pass the Exam. ...	7
2. The Exam was subjected to “curving” or “norming” thereby making the Exam a test for something other than competency.	8
3. A “rational” solution to a problem created by prior arbitrary and capricious conduct does not remedy the discriminatory consequences of that conduct.	9
C. The Bar tacitly concedes, through its lack of a response, the merits of many of the Petitioners’ arguments.	11
D. The Bar indicts its membership in order to justify its refusal to provide necessary discovery.	13
CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<u>Application of Peterson</u> , 459 P.2d 703 (Alaska 1969)	6
<u>Barnard v. Utah State Bar</u> , 804 P.2d 526 (Utah 1991)	3
<u>In re Dennis T. Reardon</u> , 378 A.2d 614 (Del. 1977)	9
<u>In re July 1986 Ohio Bar Examination Applicant No. 719</u> , 574 N.E.2d 1047 (Ohio 1991)	6
<u>In re Petition of John Randolph-Seng</u> , 669 P.2d 400 (Utah 1983)	4, 15
<u>In re Thorne</u> , 635 P.2d 22 (Utah 1981)	1
<u>Matthews v. Eldridge</u> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)	6
<u>Parrish v. Board of Commissioners of the Alabama State Bar</u> , 533 F. 2d 942 (5th Cir.1976)	5
<u>Pendleton v. Utah State Bar</u> , 16 P.3d 1230 (Utah 2000)	3
<u>Richardson v. McFadden</u> , 540 F.2d 744 (4th Cir. 1976)	2, 4, 9, 15
<u>Sewell v. Committee of Bar Examiners of the State Bar of California</u> , 154 Cal.App.3d 256; 201 Cal.Rptr. 140 (1984)	5, 6
<u>Supreme Court of New Hampshire v. Piper</u> , 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985)	6
<u>Vitarelli v. Seaton</u> , 359 U.S. 535 (1959)	3

STANDARD OF APPELLATE REVIEW

In its statement of the Standard of Appellate Review, the Bar has correctly recited the burden that Petitioners must meet in seeking a reversal of their assigned failing scores on the July 2000 Utah State Bar Examination (the “Exam”): Petitioners must show that they failed the examination because of a substantial irregularity in the administration of the examination which resulted in manifest unfairness or because of mathematical inaccuracy in the scoring process.

Petitioners do not dispute that they carry the burden of establishing irregularity or inaccuracy with respect to the Exam, but this statement of Petitioners’ burden of proof does not address the appropriate standard of appellate review. According to this Court’s opinion in the case of In re Thorne, 635 P.2d 22 (Utah 1981), the Court, in reviewing the conduct of the Executive Committee of the Utah State Bar, may indulge some deference to its findings. However, it is not bound to do so and in appropriate circumstances, may “exercise its judgment independent of that of the Bar Commission.” Id. at 23. This case presents the very type of circumstances that demand the exercise of this Court’s independent judgment.

QUESTIONS OF MOOTNESS

In its Statement of the Case, the Bar argues that the claims of Petitioner Arnovick ought to be considered moot because she chose to sit for the February 2001 Utah Bar Examination and was determined to have passed the same. This argument fails to take into account that Petitioner Arnovick was denied licensure and the opportunity to practice

law by the Bar for the period from October 2000 until May 2001. Moreover, she was compelled to expend time and resources in preparing for and retaking the Examination. That she was finally granted licensure after that ordeal merely underscores both her earlier entitlement to licensure (had the July 2000 Examination accorded her Due Process and Equal Protection) and the injury in fact which accompanied its delay.

“...a person is not required by any state to repeatedly demonstrate his competence to practice law. The rule is: once is enough. And the reason for the rule is that it takes work, effort and, nowadays, money to prepare for a bar examination. Moreover, the license is deemed of sufficient value that delay in getting it is an injury.” Richardson v. McFadden, 540 F.2d 744, 752 (4th Cir. 1976).

Contrary to the assertion of the Respondent, not only are Petitioner Arnovick’s claims not moot, she is, at a minimum, entitled to injunctive relief as to a deemed effective date of licensure.

ARGUMENT

A. The Bar’s analysis and argument in this case are predicated upon a misapprehension of the law in at least four critical areas.

1. The Bar is an administrative agency bound by its own rules.

The Bar suggests that it is not, for all purposes and intents, an administrative agency. The apparent rationale for this assertion is that if the Bar is not an administrative agency it may somehow be excused for knowing, intentional and deliberate violations of the rules it promulgated for its own governance.

The Utah Constitution grants exclusive power to this Court to “govern the practice of law, including admissions to practice law.” Utah Const. Art. VIII, § 4. This Court,

through Rules for Integration and Management of the Utah State Bar, has delegated some of those duties and responsibilities, including the promulgation of governing rules, to the Bar. “When the Bar acts to enforce these rules it is acting as an arm of the Supreme Court. Pendleton v. Utah State Bar, 16 P.3d 1230 (Utah 2000).

Respondent relies upon the case of Barnard v. Utah State Bar, 804 P.2d 526 (Utah 1991), for the proposition that the Bar is not an administrative agency. However, the holding of the Barnard case was very limited in scope: the Utah State Bar is not a state agency within the meaning of the Archives and Records Services and Information Practices Act and Public and Private Writings Act. Of course, it is well-settled that an administrative agency must strictly abide by the letter of the rules that it has promulgated. Vitarelli v. Seaton, 359 U.S. 535, 539-540 (1959).

However, even if the Bar is not acting as an administrative agency in connection with the construction, administration and grading of the Bar Exam, the various choices it made in ignoring its own rules constitute arbitrary and capricious conduct. The Bar takes the position that its own rules, as applied to the Bar itself, are advisory only.

By way of example, but not limitation, the Bar asserts the following: it is acceptable to have an essay exam composed of only 11 questions; it doesn't really matter whether each essay question is worth something less than 5 points; the qualifications required for drafters and graders are not important and need not be enforced. On the other hand, the Bar argues that because there is no specific rule requiring it to provide discovery requested by the Petitioners, it can pick and choose what information will be

accessible. In effect, the Bar contends that it may decide arbitrarily what rules will be enforced and which rules will be ignored. This is the very definition of “arbitrary and capricious” conduct for purposes of Constitutional analysis.

The Bar has conceded that at least one violation of its rules constitutes a "substantial irregularity" in the July 2000 examination process. See, Respondent’s Brief at p.18. However, it attempts to excuse that conduct by asserting its putative good faith. This assertion fails to recognize that the purpose of the rules governing the Respondent's conduct and the mandate that those rules be followed to the letter is for the very purpose of preventing arbitrary and capricious conduct. Lack of a requirement of strict adherence to the letter of such rules is tantamount to having no Rules at all. It is also the *sine qua non* of arbitrariness and capriciousness.

2. Retaking the Exam is not a remedy but an injury.

The Bar repeatedly asserts that if there be some merit to the claims of the Petitioners their remedy is to again sit for the Utah Bar Examination. This contention fundamentally misstates the law. While there is a split of authority among other jurisdictions, the issue is not one of first impression for this Court. Where fundamental weaknesses or flaws in the examination process are evident, the remedy is to accord licensure rather than to insist that aggrieved applicants retake the examination. In effect, retaking the examination in the face of the Respondent's errors is not a remedy in Utah. In re Petition of John Randolph-Seng, 669 P.2d 400 (Utah 1983). In fact, it is an injury. Richardson v. McFadden, 540 F.2d 744, 752 (4th Cir. 1976).

**3. *The Bar is legally bound to disclose relevant and material
information necessary to a fair proceeding.***

The Respondent suggests that its refusal to provide discovery to the Petitioners of information which is vital to the proof of certain of their allegations and which information is solely and exclusively within the Respondent's control, is both insubstantial and permissible. In a situation analogous to that presented here, the Fifth Circuit determined it was impermissible to allow the erection of a barrier around those concealing relevant information necessary to fair litigation. Indeed, the Court expressly disapproved of the Bar's position that its bald denial of improper conduct should sustain its refusal to provide discovery. Parrish v. Board of Commissioners of the Alabama State Bar, 533 F. 2d 942, 947 (5th Cir.1976).

The Court of Appeal of California has addressed the identical issue in the case of Sewell v. Committee of Bar Examiners of the State Bar of California, 154 Cal.App.3d 256; 201 Cal.Rptr. 140 (1984). The petitioner in Sewell was seeking to discover evidence regarding the scoring of his examination in connection with his challenge to the Bar Examiners' determination that he had not successfully passed the California bar examination. The examiners provided very limited information to the petitioner and refused the remaining requests.

The Court reasoned that since the petitioner was seeking documentary evidence, an analogy should be made to the California Code of Civil Procedure. Under those rules, (as in Utah), documents are discoverable if they are "relevant to the subject matter of the

action, or are reasonably calculated to discover admissible evidence.” The court then held that even though the petitioner had not proceeded under the Code of Civil Procedure, the provisions of those rules should be available to him. Sewell v. Committee of Bar Examiners of the State Bar of California, 201 Cal.Rptr at 142. The Court was persuaded by the fact that the petitioner was saddled with the burden of establishing the examiners’ impropriety before the Supreme Court and stated:

In order to have the opportunity to meet this burden, an unsuccessful applicant should have relatively unrestrained access to relevant evidence. (Application of Peterson (Alaska 1969) 459 P.2d 703, 711). Id. at 142.

**4. *The Petitioners’ right to practice law is a substantial interest
protected by Due Process and Equal Protection guaranties.***

The Respondent incorrectly dismisses the Matthews test as inapplicable to the case at bar. Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), establishes the three-tier test for determining to what extent a particular judicial or administrative procedure affords Due Process. The three competing interests in such a situation must be weighed and balanced against each other. First, the private interest being affected, in this case, the right to practice law, has been determined to be a fundamental right protected by the United States Constitution. In re July 1986 Ohio Bar Examination Applicant No. 719, 574 N.E.2d 1047 (Ohio 1991), citing Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 281, 105 S.Ct. 1272, 1277, 84 L.Ed.2d 205, 211 (1985). An applicant’s risk of being erroneously deprived of this right must then be weighed against alternate or additional measures that could be implemented and the

governmental interest in minimizing monetary and administrative burdens that may occur with alternate or additional measures.

Here, the Bar has attempted to downplay the Petitioners' rights with respect to the practice of law as compared to a welfare recipient or a disability benefits recipient. However, the correct comparison is among the right to practice law and the available alternate measures that could have been utilized by the Bar to reduce or eliminate the prospect of an erroneous outcome and the potential cost of the alternatives. The Bar has failed to articulate any reason why it could not implement some or all of the alternatives suggested by Petitioners and, in fact, utilized by other states. Under the Matthews analysis, the Bar's conduct is arbitrary and capricious.

B. The Bar's analysis and argument are further predicated upon a misapprehension of the facts or a misunderstanding of Petitioners' arguments.

1. It is impossible to determine who did or did not pass the Exam.

The Bar fundamentally mischaracterizes one of the Petitioners' argument as follows: if the July 2000 Examination been properly constructed, administered and scored, the Petitioners would have been determined to have passed. In fact, the Petitioners' argument is simply that the Bar cannot determine who did or did not pass an examination so fundamentally and fatally constructed, administered and graded. To use such an examination to determine qualification for licensure fails to comport with the requirements of Due Process. To award licenses to some, but not all applicants who

endured such an examination violates the mandates of Equal Protection.

2. *The Exam was subjected to “curving” or “norming” thereby making the Exam a test for something other than competency.*

The Bar insists that the grades upon the July 2000 Examination were not subject to “curving” or “norming” as asserted by the Petitioners and established by their expert. In its Brief, the Bar focuses on the Ethics Grading Committee’s tally sheet, explaining that the “curving” information set forth therein was created after the completion of the grading process and as a result, there was no “bell curve” utilized in the grading process. The time at which this tally sheet was created is irrelevant and the Bar’s reliance on the tally sheet misses the point.

The Bar’s grading regimen, as applied to each essay question, is totally meaningless absent reference to the test-taking group as a whole. The Bar’s Grading Handbook (Section V.F.) and its Rules (Rule 7-4) both provide for the assignment of grades by reference to the performance of the group as a whole. As explained by Petitioners’ expert, the curving process, or “norm referenced” testing, assumes that a certain percentage of applicants will fail. In adopting this system, the Bar disregarded the “criterion referenced” grading system recommended by the National Conference of Bar Examiners. See, Grading Handbook Section IV. “Criterion referenced” testing is based upon a minimum competency benchmark that must be met by each candidate. Under the “criterion referenced” method, there may be wide fluctuations in the pass rate from year to year, but the competency standard remains constant.

In this regard, it is noteworthy that the Respondent points to the uniformity of its passing rates from examination to examination as evidence of its fairness in the construct, administration and grading of each examination and in particular, of the July 2000 Examination. In fact such uniformity merely evidences that the Bar does indeed “curve” or “norm” grades, it having, by its own admission, chosen regularly to ration licenses to not more than approximately 87.85 percent of those who seek them. It also lets one know, in advance of any future examination, the expected percentage and therefore, the number of future applicants the Bar will be willing to admit to practice, regardless of individual levels of competence or incompetence.

Those courts which have considered cases involving curving of scores have uniformly disapproved of the practice and have done so stridently. In re Dennis T. Reardon, 378 A.2d 614 (Del. 1977); Richardson v. McFadden, 540 F.2d 744 (4th Cir. 1976). This Court should do no less.

3. *A “rational” solution to a problem created by prior arbitrary and capricious conduct does not remedy the discriminatory consequences of that conduct.*

The Bar suggests that if the defects in its Examination constituted "substantial irregularities," those irregularities did not result in manifest unfairness to the Petitioners in that all applicants had to suffer through the same examination. This assertion begs the question of whether or not the Bar has the primary duty to examine Bar applicants in accordance with its own Rules, if not also in a manner consistent with Due Process.

The Bar makes much of its “acceptable and least problematic” response (deleting the Torts question from the Exam) to “the real world problem” of a “defective question.” See, Brief of Respondent at p.19. The Bar states that “[I]t was during the initial calibration grading process that the graders discovered that the torts question was not fairly assessing the knowledge of the applicants.” See, Brief of Respondent at p.18. However, determining the validity of a particular question does not fall within the province of the grading committee. It is clear that the Grading Committee is not invested with the power to review a question for validity, nor to make a decision that the question was defective, with or without input from the National Conference of Bar Examiners, the Admission Administrator or the Bar’s General Counsel. See, Grading Handbook, Section V. The Grading Committee is authorized:

1. To arrive at a consensus analysis of the question.
2. To calibrate to consistent grading standards.
3. To grade the examination books.

There is a very detailed and specific procedure to be followed by the Bar Examiners Committee and the Bar Examiner Review Committee, well in advance of the administration of the Exam, to insure that the questions included on the essay portion of the Exam are fairly assessing the knowledge of the applicants. See, Grading Handbook, Section III. Because Petitioners have been denied their discovery requests, they have no way of knowing whether the requisite procedures were followed. Apparently some part of that process was omitted or performed improperly because the Bar has conceded that

the question was defective. The Bar suggests that a “rational” proposal to delete the torts question, made after the fact, should somehow absolve the Bar from the consequences of its arbitrary and capricious conduct. This is not the appropriate legal standard to be applied in this or any other case.

C. The Bar tacitly concedes, through its lack of a response, the merits of many of the Petitioners’ arguments.

The Respondent refers to the Petitioners' Brief as evidencing a "shotgun approach" to establishing impropriety in the actions of the Bar. In fact, there are simply a plethora of fatal flaws in the construct, administration and grading of the July 2000 Bar Examination. The more appropriate analogy would be to that of the Respondent as having too few "fingers with which to plug holes in the dike", any one of which, if left unattended, is sufficient to spell disaster.

Moreover, instead of directly challenging each allegation upon its merits, the Respondent has selectively responded only to those for which it can muster some form of counter argument and as to the rest, it has discharged a "blunderbust" of marginalization through ridicule. While this "talk-radio approach" to argument may be an entertaining way in which to deal with points too prickly to address upon their merits, that protocol ill-serves the Respondent in this context. It cannot too often be reiterated that the Petitioners need not prevail upon each and every allegation of prejudicial error in order to prevail in their case-in-chief (though they earnestly believe they should). They need only prevail upon one. At the same time, the Respondent must refute each and all of the

Petitioners' allegations, establishing in that process that it accorded the Petitioners Due Process and Equal Protection in all respects, else its defense must fail.

At the close of the hearing on January 8, 2001, Counsel for the Petitioners sought to have the record held open for receipt of a psychometric report to deal with various issues presented. See, Grievants' Letter with Request to Submit Psychometrician Expert Report (Tab P). The Respondent, while agreeing to receive the Petitioners' psychometric report, elected to render a decision in the Petitioners' cases without benefit of this report and without obtaining one of its own. Subsequently, and as a part of their Opening Brief the Petitioners submitted a psychometric report documenting various fatal deficiencies with respect to the July 2000 Examination.

There is no record evidence of any consultation by the Bar with any competent source, much less any documentation which challenges the expert opinion of Mr. Gustafson that: the grades assigned to July 2000 Bar applicants were "normed;" that the grading formula changed once the defective Torts question was deleted; that the remaining eleven questions were impermissibly overweighted upon deletion of the defective Torts question; that there was insufficient time available within which to fairly and consistently grade all essay questions, and that the standard deviation formula to be applied to the grading of all applicants changed once the Examinations of those applicants originally deemed to have failed the Examination were reappraised.

In this case, the Bar has failed to respond to the merits of Petitioners' allegations of fatal denials of Due Process and Equal Protection in the following respects:

1. The July 2000 Bar Examination was subjected to grade compression (curving) or "norming" which rendered it a test for something other than minimal competence of the law. As such, the Examination ceased to have a rational relationship to the determination of applicants' fitness or capacity to engage in the practice of law and its use to determine the award of licensure was arbitrary and capricious.

2. The deletion of the Torts question from the July 2000 Examination fundamentally changed the character of that Examination by compelling an impermissible overweighting of those questions remaining.

3. The standard deviation formula utilized to assign grades to applicants was fundamentally altered when the grades of five applicants were reassessed.

4. Insufficient time was allotted by which the process of grading could be accomplished in other than an inconsistent, arbitrary and capricious manner.

5. Not all of those who composed and scored the July 2000 Examination possessed the requisite qualifications to do so.

6. The anonymity of those who sat for the July 2000 Examination was not preserved from disclosure.

7. Essay questions were not graded within the required confines of the 0 to 5 standard set forth in the Grading Handbook.

D. The Bar indicts its membership in order to justify its refusal to provide necessary discovery.

Perhaps most troubling of all of the assertions, contentions and positions made or

taken by the Respondent in this matter is that regarding disclosure of the identity and qualification of those it employed to design, administer and grade the July 2000 Bar Examination. As the Court is aware, the Respondent has repeatedly refused Petitioners' discovery requests.

In defense of its refusal to comply with the discovery requests of the Petitioners, the Respondent has suggested a rationale which more than strains credulity. To suggest that it is or would be difficult to find Bar members willing to serve the public through assisting with the construction, administration and grading of Bar examinations indicts, hopefully unfairly, their professionalism. To suggest that any or all of them would flinch if called upon to defend their roles in that endeavor challenges their character and integrity. To refuse to disclose even the identity or qualifications of those called upon to participate in the examination process once again raises substantial questions about the legitimacy of the Respondent's own intent, as well as its conduct. See, Petitioners' Opening Brief at p.14, footnote 1.

CONCLUSION

The Respondent, throughout its Brief; chafes at the thought that it must abide by Rules it has promulgated to prevent arbitrary and capricious misconduct. It musters all of its resources to urge that whatever Due Process and Equal Protection must be wrenched from its fingers and accorded the Petitioners be as minimal as allowable, a curious position for those trained in the law and putatively in step with its spirit. The Bar confesses irregularities, but avoids an honest appraisal of their consequences, not only for

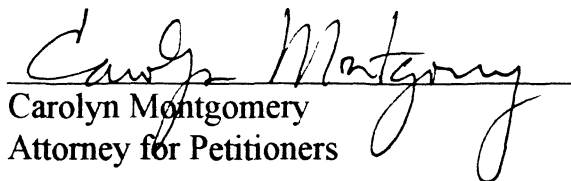
the Petitioners, but for the manner in which it must henceforth conduct its affairs. And finally, it looks to this Court to uphold its actions and to grant absolution, either because it believes that this Court hungers to do so, regardless of merit, or that it lacks the fortitude to do otherwise.

The primary concern of this Court is not the possibility that applicants putatively unqualified may be admitted under exceptional circumstances in order to prevent patent injustice, but instead that weaknesses or flaws in the administration of a bar examination not exclude such persons in contravention of due process and equal protection considerations. In re Petition of John Randolph-Seng, 669 P.2d 400, 401 (Utah 1983). Where such weaknesses or flaws are evident, the remedy is to accord licensure, rather than to insist that aggrieved applicants retake the examination. Id. at 402; Richardson v. McFadden, 540 F. 2d 744 (4th Cir. 1976). In effect, the charge of the Utah Supreme Court in its review of this matter is not, as the Respondent would assert, merely vigorously to scrutinize the claims of the Petitioners. Rather, and as this Court has stated, that charge is primarily to assure fundamental fairness to the Petitioners, else grant them licensure.

The relief the Petitioners seek is indeed, extraordinary. The substantial irregularities in the construction, administration and grading of the Examination which, individually and in combination, manifestly and unjustly accorded the Petitioners treatment disparate from others who sat for that Examination, compel no less. To grant Due Process and Equal Protection has never been easy for any judicial body. Although there would only be three individuals who would qualify for the relief requested herein,

the granting of that relief will still be noteworthy. Such is the case with momentous constitutional decisions. The question becomes whether the decision this Court must enter and explicate is to be remembered and cited, as it most certainly will be, as the modern day equivalent to Gideon v. Wainwright or, as the Respondent's position would dictate, another Dred Scott decision.

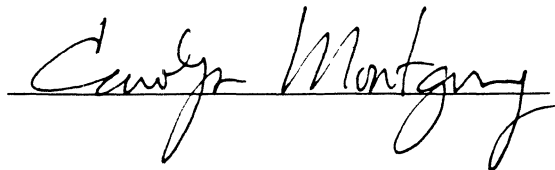
DATED this 12th day of September, 2001.


Carolyn Montgomery
Attorney for Petitioners

CERTIFICATE OF SERVICE

The undersigned certifies that on the 12th day of September, 2001, I served two copies of the attached REPLY BRIEF OF PETITIONERS upon Katherine A. Fox, counsel for the Utah State Bar, by personally hand delivering it to her at the following address:

Katherine A. Fox
General Counsel
Utah State Bar
645 South 200 East
Salt Lake City, UT 84111

A handwritten signature in cursive script, reading "Carolyn Montgomery", is written over a horizontal line.