

1957

## In Re: Dwight L. King : Brief of Respondent

Utah Supreme Court

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Llewellyn O. Thomas; Allan E. Mecham;

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In the  
**Supreme Court of the State of Utah**

**FILED**

DEC 16 1957

IN RE DWIGHT L. KING

Case No.

Utah

~~F-39~~

8652

**BRIEF OF RESPONDENT**

(UTAH STATE BAR)

UNIVERSITY UTAH

JAN 10 1958

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LLEWELLYN O. THOMAS,

ALLAN E. MECHAM,

*Prosecuting Committee,*

*Utah State Bar.*

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# In the Supreme Court of the State of Utah

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IN RE DWIGHT L. KING

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{ Case No.  
F-39

## BRIEF OF RESPONDENT (UTAH STATE BAR)

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### STATEMENT OF FACTS

While respondent agrees that the statement of facts submitted by petitioner in the Brief of Petitioner on pages 1 to 8 inclusive are substantially correct, it would appear advisable to call the court's attention to some typographical errors which appear therein. On page 3 of Petitioner's Brief reference is made to an informal hearing held by the Investigating Committee of the Utah State Bar on November 4, 1954. This meeting was held on December 4, 1954 (Exhibit P-3). On said page 3 reference is made in two places to Exhibit T-3, the correct designation of said exhibit being P-3. Also, on page 7 of said brief reference is made to Exhibits T-1 through T-6 whereas the correct designation of said exhibits is P-1 through P-7 (R. 0002).

In addition to Findings numbered 3 through 6 of the Disciplinary Committee set out by petitioner on pages 7

and 8 of their brief, respondent calls attention to Finding No. 2 of the said Committee which is as follows:

2. That during the period from June 10, 1954, until June 21, 1954, and for some time prior and subsequent thereto, the said Dwight L. King was one of counsel for Harsh Utah, a corporation, in a case entitled Pacific States Cast Iron Pipe Company, a corporation, et al., plaintiffs, vs. Harsh Utah, a Corporation, et al., defendants, Civil No. 5096, brought in the District Court of Davis County, State of Utah, (R. 0280).

Also, the Waiver of Notice of the Directors of Harsh Utah Corporation and the Minutes of Special Meeting of Harsh Utah Corporation are as follows:

**WAIVER OF NOTICE OF DIRECTORS  
OF  
HARSH UTAH CORPORATION**

We, the undersigned, being all of the duly elected directors of Harsh Utah Corporation, hereby do waive notice of the time and place and purpose of a special meeting of the directors of said corporation and hereby fix the First day of April, 1953, as the time and at the office of the Harsh Utah Corporation in Portland, Oregon, as the place for the holding of said special meeting of directors, for the purpose of considering the return of a contribution to the capital surplus of said corporation.

Dated this 1st day of April, 1953.

**HAROLD SCHNITZER  
WALTER E. HUTCHINSON**

**MINUTES OF SPECIAL MEETING OF  
DIRECTORS OF  
HARSH UTAH CORPORATION**

A special meeting of the Board of Directors of Harsh Utah Corporation was held at the offices of

the corporation in Portland, Oregon, on April 1, 1953, at 3:00 o'clock P. M. The meeting was called to order by the President, Mr. Harold J. Schnitzer, and minutes of such meeting were recorded by the Secretary, Mr. Walter E. Hutchinson.

The President stated that all directors had in writing waived notice of said meeting and directed that said waiver be attached to the minutes of the meeting.

Mr. Schnitzer then stated that the purpose of the meeting was to discuss the return of \$624,994.00 which Mr. Schnitzer had contributed to the capital surplus of the corporation on July 21, 1952, in order to assist this corporation in its compliance with requirements of the Federal Housing Administration in the closing of its insured mortgage loan.

Mr. Schnitzer then stated that in his opinion the purposes for which said contribution to the capital surplus had been made were now consummated and that it was no longer necessary that the corporation retain said contribution.

After some discussion, the directors being of the unanimous opinion that it was no longer necessary that the corporation retain said capital contribution, the corporation adopted the following resolution:

RESOLVED, that since Harsh Utah Corporation has received the benefits accruing from the advance of \$624,994.00 to the corporation and that as it is no longer essential to the business of the corporation that *in* continue to retain said contribution, that the said capital contribution of \$624,994.00 be returned to Mr. Schnitzer at this time, and that the books of the corporation be set up in such manner as to

reflect the return of said contribution to the capital surplus of this corporation.

HAROLD SCHNITZER

President

WALTER E. HUTCHINSON

Secretary (Exhibit P-4).

### STATEMENT OF POINTS

Respondent deems it advisable to answer the points set out by petitioner numbering the said points as petitioner has numbered his points as follows:

#### I.

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE FINDINGS OF THE DISCIPLINARY COMMITTEE TO THE EFFECT THAT PETITIONER DID NOT MAKE A DISCLOSURE OF THE FALSE TESTIMONY WITHIN A REASONABLE TIME FROM THE DATE OF SUCH FALSE TESTIMONY.

#### I-A.

PETITIONER WAS NOT JUSTIFIED IN REFRAINING FROM DIVULGING THE TRUTH REGARDING PERJURED TESTIMONY IN ORDER "TO MAINTAIN IN VIOLATE THE CONFIDENCE" AND "PRESERVE THE SECRETS OF HIS CLIENT" BECAUSE:

(a) PETITIONER'S CLIENT HAD  
WAIVED THE PRIVILEGE PROHIB-

ITING DISCLOSURE OF COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT; AND

(b) PETITIONER'S FIRST DUTY WAS TO COURT AND NOT TO CLIENT.

I-B.

THE EVIDENCE DISCLOSES THAT PETITIONER DELIBERATELY REFRAINED FROM DIVULGING THE TRUTH TO THE COURT IN THE TRIAL OF CASE NO. 5096, DISTRICT COURT OF DAVIS COUNTY, CONCERNING PERJURED TESTIMONY GIVEN BY HAROLD J. SCHNITZER, ONE OF DEFENDANTS IN SAID CASE, AND WALTER E. HUTCHINSON, SECRETARY OF HARSH UTAH CORPORATION, ON JUNE 10, 1954, UNTIL EVIDENCE OF THE FALSITY OF SUCH TESTIMONY WAS PRESENTED TO THE COURT BY OPPOSING PARTIES.

II.

THE EVIDENCE AND FINDINGS JUSTIFY THE CONCLUSION THAT PETITIONER VIOLATED THE PROVISIONS OF RULE III, SECTION 32, SUBSECTIONS 15 AND 41, REVISED RULES OF THE UTAH STATE BAR, GOVERNING PROFESSIONAL CONDUCT AND DISCIPLINE, AS WAS CONCLUDED BY THE DISCIPLINARY COMMITTEE.

## III.

THE EVIDENCE SUSTAINS THE RECOMMENDATION OF THE BOARD OF BAR COMMISSIONERS THAT PETITIONER BE SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX MONTHS.

## ARGUMENT

## I.

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE FINDINGS OF THE DISCIPLINARY COMMITTEE TO THE EFFECT THAT PETITIONER DID NOT MAKE A DISCLOSURE OF THE FALSE TESTIMONY WITHIN A REASONABLE TIME FROM THE DATE OF SUCH FALSE TESTIMONY.

Petitioner says that his position at the hearing of this case was, and now is, that if he had a duty to disclose the facts to the court and counsel he did so within a reasonable time under all the facts and circumstances of the case (Petitioner's Brief, p. 11).

The testimony of petitioner shows that he concluded on June 10th, during the lunch hour of that day, which was the day the perjury was committed, that the record should be corrected and set right. He said:

"A. We concluded that the record should be corrected during the lunch hour, before we even got out of Wild Horse Charlie's, and that is what I told Mr. Hutchinson to do. I told him to correct that record and I told Mr. Schnitzer to do it too.

“Q. That was the 10th, wasn’t it?

“A. That was the day it occurred and there wasn’t any ifs, ands or buts about that, and there wasn’t any equivocation on the instructions. But they didn’t correct the record that afternoon and that night we began to thresh around and try to resolve the problems we were confronted with” (R. pp. 0270-0271).

Petitioner’s counsel stated:

“When the opportunity came to present his case they corrected it” (R. 0063).

And the following appears to be pertinent:

“MR. COLTON: Is it your position that if the evidence is immaterial then it isn’t the responsibility of counsel to disclose that even though it be immaterial?

“MR. NIELSON: We take that position but we don’t think we have to go that far. We say in any event Mr. King had that problem in his mind and he concluded he couldn’t tell from what the authorities said as to his duty as to whether it was to his client’s advantage psychologically to disclose it all and he did it at the most reasonable opportunity when he thought he could gain some advantage from it and not have it pulled out piecemeal by someone on the opposition to make a big show about it” (R. 0195).

Also, Harold J. Schnitzer, petitioner’s client, advised Mr. Hutchinson at the lunch hour on June 10th to tell the truth and honestly answer the questions regarding the preparation and signing of the two documents in question (the

Waiver and the Minutes containing the resolution). (Schnitzer's Deposition, pp. 13, 15 and 16.)

If petitioner had sincerely desired to correct the record and reveal the truth concerning said perjured testimony, he had ample opportunity to do so prior to June 21st, the date that his witnesses Schnitzer and Hutchinson testified as to the falsity of their previous testimony given on June 10th. The record reveals that the perjury was committed by Schnitzer on the morning of June 10th (Exhibit P-1, pp. 2 to 13, incl.), and was committed by the witness Hutchinson on the afternoon of said day, June 10th (Exhibit P-1, pp. 14 to 23, incl.). Petitioner called the said witness Mr. Hutchinson to testify on the next day, June 11th, and examined him on said date on direct, redirect and further redirect examination (R. 0136). The 12th and 13th days of June, the year being 1954, were Saturday and Sunday (R. 0135). On Monday, June 14th, the witnesses Miller and Ellis, the latter being an employee of defendants Schnitzer and Harsh Utah Corporation, and witness Goldberg were called and examined by counsel opposing petitioner and were cross examined by petitioner and petitioner then called and examined out of turn witness Isaacson (R. 0136 and R. 0139). On Tuesday, June 15th the aforesaid witness Ellis was called and examined by opposing counsel and cross examined by petitioner; later the aforesaid witness Goldberg was recalled and examined, then cross examined by petitioner. On Wednesday, June 16th, witnesses Ellis and Weber were again called and examined by opposing counsel and petitioner cross examined witness Weber; plaintiff Locke was then called and examined by opposing counsel

and was cross examined by petitioner (R. 0137). On Thursday, June 17th, witness Shipler, a photographer, and witness Goddard, a typewriting identity expert, were called by opposing counsel to identify the aforesaid Waiver and Minutes (R. 0138), both of whom were cross examined by petitioner (R. 0139); defendant Schnitzer was then, said date being June 17th, called and examined by opposing counsel (R. 0139). On Friday, June 18th, defendant Schnitzer again took the witness stand and was examined further by opposing counsel, cross examined, and recross examined, by petitioner; then said witness Ellis was cross examined and recross examined by petitioner. In the afternoon on this day, June 18th, opposing counsel called and examined Mr. Don H. Terry, the police officer from the City of Pasadena, who testified regarding the installation by him of sound equipment in room 904, Hotel Utah, later occupied by defendant Schnitzer and others and his listening to and recording of conversations which took place in said room. Petitioner cross examined this witness (R. 0139-0140). June 19th and 20th, 1954, were Saturday and Sunday. On Monday, June 21st, petitioner cross examined and recross examined and further recross examined plaintiff Locke, a portion of which had to do with the recordings testified to by the aforesaid witness Terry (R. 0140). Then it was that on the afternoon of June 21st petitioner examined the said witnesses Schnitzer and Hutchinson, who then testified under oath as to the falsity of their previous testimony given on June 10th concerning the preparation and signing of the said Waiver and Minutes containing the resolution (Exhibit P-1, pp. 151-153 and 154-166 incl.).

## I-A.

PETITIONER WAS NOT JUSTIFIED IN REFRAINING FROM DIVULGING THE TRUTH REGARDING PERJURED TESTIMONY IN ORDER "TO MAINTAIN INVIO L A T E THE CONFIDENCE" AND "PRESERVE THE SECRETS OF HIS CLIENT" BECAUSE:

(a) PETITIONER'S CLIENT HAD WAIVED THE PRIVILEGE PROHIBITING DISCLOSURE OF COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT.

The said deposition of petitioner's client, Schnitzer, (R. 0276) reveals that following the false testimony of Mr. Schnitzer at the noon recess on June 10th there was a conversation concerning the said false testimony between petitioner, Mr. Wayne Black, Mr. Hutchinson, Secretary of Harsh Utah Corporation, and Mr. Schnitzer at which they discussed the examination of Mr. Sherman concerning the preparation and signing of the aforesaid Waiver and Minutes, and petitioner then told Mr. Hutchinson that if he were questioned on the matter of these two documents he should not feel embarrassed about the fact that he had not prepared the minutes before coming to Salt Lake and to admit very honestly that he had neglected to do so and that he should very honestly answer the questions that Mr. Sherman gave without being ashamed of the fact that the minutes had not been prepared before. Mr. Schnitzer further

testified that he himself told Mr. Hutchinson that "Mr. King's advice was proper and that there was nothing wrong in having failed to do something of that nature, since no one was hurt and it had no bearing on the case" (Schnitzer Deposition, pp. 13, 15 and 16).

Also, petitioner says that they had concluded that the record should be corrected during the lunch hour even before they got out of Wild Horse Charlie's, which was on the 10th of June, the day the perjury had been committed (R. 0270).

Notwithstanding advice given to Mr. Hutchinson by petitioner and by Mr. Schnitzer, petitioner's client, to tell the whole truth on the afternoon of June 10th, this witness testified falsely concerning the preparation and signing of the said Waiver and Minutes thus corroborating the false testimony which Mr. Schnitzer previously gave that morning.

From the foregoing, it would appear to be clear that at this juncture of the case (afternoon of June 10th) petitioner's client, Mr. Schnitzer, had authorized that the whole truth concerning the preparation and signing of the said Waiver and Minutes should be divulged to the court and thus had waived any prohibition regarding the disclosure of the communications between him as client and petitioner as attorney.

At 58 *Am. Jur.*, pages 292-293, appears the following statement regarding communications between attorney and client, which appears to be the law on the said subject:

**"WITNESSES:** The right to prohibit disclosure of communication between attorney and client

belongs to the client and not to the attorney. The privilege may be waived and the waiver may be either express or implied by the conduct of those entitled to its benefits."

(b) PETITIONER'S FIRST DUTY  
WAS TO COURT AND NOT TO CLIENT.

In the light of the announced present position of petitioner to the effect that he disclosed to the court the facts on which perjured testimony had been previously given within a reasonable time under all facts and circumstances of the case, it would appear that petitioner does not now seriously contend that his primary duty was to keep the confidences of his client and refrain from divulging the same to the court.

It is well settled that the fidelity which a lawyer owes to his client must not be allowed to override the duty which devolves upon an attorney to deal honorably with the court of which he is an officer, and to inform it on the law and the facts of a case in which he appears; in *Thornton on Attorneys at Law*, Vol. 2, p. 1235, Sec. 822, this duty on the part of a lawyer is recited and this authority further states that the lawyer violates his oath of office when he resorts to deception *or permits his client to do so.* (Italics added.) This authority further says:

"An attorney is never justified in continuing a case after he has knowledge of the fact that it is being supported by perjured testimony; and if he proceeds with the trial thereafter, without acquainting the court of the fact that the testimony is false, and seeks to recover judgment on such testimony, his misconduct merits his disbarment."

We further call attention to the following provisions of Revised Rules of the Utah State Bar governing professional conduct and discipline which are pertinent, in addition to Rule III, Sec. 32, sub-paragraphs 15 and 41, upon which the said Disciplinary Committee relied, to-wit:

## “RULE II

“Conduct Prescribed by Statute.

Section 21. “It is the duty of an attorney and counselor:

“4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;” *Title 78-51-31, Utah Code Annotated 1953, Treble Damages.*

Section 22. “An attorney or counselor shall not:

“5. Take part in deceit or collusion, or consent thereto with intent to deceive a court or judge or a party to an action or proceeding.” *Title 78-51-26, (4), Utah Code Annotated 1953.*

## “RULE III

“Conduct Prescribed by Rule.

Section 32. “The following Rules comprising the Canons of Ethics of the American Bar Association, together with such interpretations thereof as may be promulgated by the Board of Commissioners of the Utah State Bar with the approval of the Supreme Court, were promulgated and prescribed for the conduct of the members of the Utah State Bar:

“\* \* \*

“29. Upholding the Honor of the Profession.

“\* \* \* The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities.”

I-B.

THE EVIDENCE DISCLOSES THAT PETITIONER DELIBERATELY REFRAINED FROM DIVULGING THE TRUTH TO THE COURT IN THE TRIAL OF CASE NO. 5096, DISTRICT COURT OF DAVIS COUNTY, CONCERNING PERJURED TESTIMONY GIVEN BY HAROLD J. SCHNITZER, ONE OF DEFENDANTS IN SAID CASE, AND WALTER E. HUTCHINSON, SECRETARY OF HARSH UTAH CORPORATION, ON JUNE 10, 1954, UNTIL EVIDENCE OF THE FALSITY OF SUCH TESTIMONY WAS PRESENTED TO THE COURT BY OPPOSING PARTIES.

Contrary to the aforesaid contentions of petitioner, the record reveals clearly that petitioner deliberately refrained from divulging the truth regarding the aforesaid perjured testimony until virtually forced to do so by the evidence submitted by his opposing counsel through the aforesaid witnesses Shipley, Goddard and Terry. In this regard attention is directed to Exhibit P-3, which is the transcript of the hearing before the Utah State Bar Investigating Committee of the Third Division, consisting of five lawyers in said Division, held December 4, 1954. At this hearing peti-

tioner made a voluntary statement under oath he being "interested in having the Committee here, hear what I have to say and at the earliest date possible" (Exhibit P-3, page 6).

After petitioner had explained in some detail what he considered to be the facts pertaining to the preparation and signing of the aforesaid Waiver of Notice and Minutes of Special Meeting of Directors of Harsh Utah Corporation and the false testimony submitted to the court by his client, Mr. Schnitzer, and by the witness, Mr. Hutchinson, Secretary of the Harsh Utah Corporation, the following answers were made by petitioner to the following questions submitted by members of the said Committee:

"MR. BOYLE: What was your feeling right after you had told Hutchinson, in no uncertain terms, you wanted him to tell the truth about this matter, and then in the afternoon session he completely disregarded your instructions? Did you have any feeling then you should inform the Court, or withdraw, or call a recess, or do anything of that kind?

"MR. KING: I did not feel any responsibility for him. As I say, he is an attorney. I did not offer his testimony, and I disavowed it, and when we started our other case, the first two witnesses we put on,—Mr. Hutchinson and Mr. Schnitzer—and of course here the problem occurred. Some people said, 'We think that an attorney, when he was disgusted, should have gotten up and said, 'Wait a minute now, that is false'".

"Maybe I should have. I did not think about doing that at the time, either with Hutchinson or Schnitzer. I do not believe if I was examining, I would permit them to tell a lie, I knew was a lie,

and not make them correct it, while under my examination.

“MR. BOYLE: You feel there is a substantial difference then in the fact Sherman was examining rather than you examining?”

“MR. KING: I do not think I had that feeling at that time. I—that is an after-thought. In other words, at that time I did not have this thing even thought out in my own mind, but, the question occurs to me, as I look back over it, I do not know whether I should have, on Schnitzer, said, ‘Wait a minute now, you are either going to tell the truth or I am withdrawing as your counsel’, or, ‘That is false and perjured testimony you are giving there.’ Maybe I had a duty as an attorney to confess to the Court a crime which he was committing in the presence of the Court. Maybe I had that duty, as far Mr. Hutchinson was concerned. I don’t know, Mark. I was not Mr. Hutchinson’s counsel, I did not in any way represent him at that time. I was Mr. Schnitzer’s counsel, and the attorney-client relationship being such as it is, I did not believe, and I do not believe now, that I would have the superior duty to the Court or the superior duty to Mr. Schnitzer.

“In other words, even though I knew, in the presence of the Court, he was committing a crime, if it was a crime, if perjury—even if I knew he was—I doubt as counsel, as long as I remain in this position, that I would have the superior duty to the Court. I think my duty to him is to protect his interest and keep his conduct and conversation and disclosure to me confidential at all times—is superior to my duty as an officer of the Court.

“I base that on what Judge Murray said up here when we had one of these Bar Associations. He said, ‘Well we all say a lawyer is an officer of the

Court, but he is primarily, and his first duty as an advocate and as counsel is for his client.'

"Now so far as Mr. Schnitzer is concerned, that is my feeling about it, and I do not believe that I would have been justified in disavowing, or saying to the Court, 'Now wait a minute, Mr. Schnitzer, you are telling a lie under oath' and I don't know, Mr. Hutchinson is a little different than it is with Mr. Schnitzer, but with Hutchinson, he is an attorney.

"MR. DRAPER: Didn't you, in fact, represent the corporation of which Mr. Schnitzer was President and Hutchinson was secretary?

"MR. KING: Yes, I did, but I don't know—does that make me represent Hutchinson?

"MR. DRAPER: I do not know.

"MR. BOYLE: This is not the place, probably, to argue the case. I would like to make this observation, and see what you think of it. It seems to me, under your explanation, that you feel your duty to your client, is superior to your duty to the Court under these circumstances. Doesn't that, in effect, do away with any question of having your witness or client give perjured testimony, if that duty overrides the duty to have him tell the truth, or see the truth is told; then under those circumstances, there would be no objection to ever giving perjured testimony through your own client? Certainly, that is not the situation we practice under.

"MR. KING: That would be suborning a witness to testify falsely. The distinction, as I see it, Mark, is this. We did not tell, nor procure, nor approve, nor condescend, or even acquiesce in Mr. Schnitzer's telling false testimony. Mr. Black and I would never be a party to that, and it is not pos-

sible. Anyone who would say we discussed that with him, or condoned what they were doing, if we were we would be, as I understand it, guilty of suborning a witness to perjury, even though our client. But once the client commits a crime in our presence, then do we have the duty to disclose all we know about the thing, and in effect, convict our own client? I don't know. If we do have, we did not perform that kind of a duty. Certainly at the moment he said he did not remember, we knew, if he was an ordinary person, he did remember. So, so far as knowing that he did, of course we did.

"As I look back on it—of course hindsight is always better than foresight—as I look back on it, there may have been—we may have been able to prevent it by getting up and saying, 'If you want to know about that, why that was prepared this morning' and so on, but it did not occur to us at that time—it did not occur to me at that time, because this thing came so—well sort of slid out of Schnitzer. He was always leading up to a certain point, and then he was all the way in" (Exhibit P-3, pps. 36, 37, 38, 39).

Later at the said hearing petitioner made the following answers to the following questions regarding his failure to "set the record straight", to-wit:

"MR. KING: We knew all of the time that what he was saying was not a fact.

"MR. HATCH: Was there any discussion between you and Schnitzer and Hutchinson as to the possibility of setting the record straight as to that date?

"MR. KING: I did so remark on it myself. *I think right after, within the next day or so, and discussed it with Mr. Roberts. I do not know if he*

*will remember or not. I did discuss it though, as to whether or not it would do us any good to have these witnesses go back on the witness stand and correct their testimony, and I did my research and discovered that a very serious conflict of authority and one authority said it did not do a damned bit of good to put him back and have him correct it, and the Supreme Court of the United States in a case involving a Senator from Nebraska has held (Senator Norris) that since the word is out, it does not do you any good to correct it at all. (Italics supplied.)*

“MR. CROFT: What do you mean it does not do you any good?

“MR. KING: It does not purge your report.

“MR. CROFT: It did not remove the perjury from the record?

“MR. KING: *That is right, it does not purge the record of the false statement to correct it, and with that in mind, we did not want to jeopardize Mr. Schnitzer, by having it go in and admit that he made false statements; and Mr. Hutchinson, likewise, was jeopardizing them both, so with that in mind, we could see there wasn't—as far as correcting it, it would not be clearly removed—would not remove the perjury from the record. (Italics added.)*

“MR. DRAPER: Why didn't you put them on after it broke, to admit all these things?

“MR. KING: *Afterwards, once the fat was in the fire, then of course, it was to their interest to admit it; even though it did not purge the record, it would make for a much more salutary defense before any jury, if they had admitted it. In other words, we could not do them any damage then. The proof was in that they had committed perjury, but before that time, it would have been very seriously preju-*

*dicial to have them go back on and admit they had committed this so-called crime, and in an effort to purge the record, when it would not be purged, according to the Supreme Court of the United States"* (Exhibit P-3, pp. 68 and 69). (Italics added.)

The following further took place at said hearing:

"MR. HATCH: After thinking this over, and reconsidering on the matter of the perjury, you determined in your own opinion, your duty was to protect your client against a criminal aspect regardless of the way it would affect others?

"MR. KING: I don't think hardly that is what; I still thought, and I still am of the opinion, that this was an immaterial matter, and I considered it my duty not to jeopardize, unnecessarily, perhaps, their interests. Frankly—and I don't now—frankly believe that this particular fact has any materiality at all in the trial of this lawsuit, nor would have affected Judge Cowley's decision one way or the other. It should not have. It didn't make any difference, so I concluded, after my research, that to put them back on, would serve no purpose, so far as they were concerned, and would seriously jeopardize their position" (Exhibit P-3, p. 70).

Petitioner further testified at the hearing before the Disciplinary Committee as follows:

"A. No, I don't think we didn't know which way to turn. We were very much aware that these men were in an extremely dangerous position. That they were men of substance and character in the community and there was a very difficult problem. First we had this job of informing the court concerning the truth of the matter and as a secondary consideration we had the welfare of Mr. Hutchin-

son. You might not know it but he is about sixty years old, a very dignified appearing person, and an intelligent man and I considered very carefully the course we were to take" (R. 0270).

The aforesaid statements of petitioner reveal conclusively that petitioner, after deliberation and careful consideration, concluded that he had the primary duty to his client to retain the confidences of his client which he did until "once the fat was in the fire", referring, it would appear, to the evidence adduced by the opposition regarding the perjured testimony, after which petitioner considered it to be in his client's interest to admit the false statements even though such admission did not purge the record, according to the holding in the aforesaid *Norris* case (*U. S. v. Norris*, 300 U. S. 564).

Bearing out petitioner's above statements, and contrary to his present announced position, petitioner continued to resist the introduction of evidence to correct the record until it became entirely clear, through evidence adduced by his opposition, as to the perjured testimony of witnesses Schnitzer and Hutchinson.

Through the testimony of both witnesses Shipler, the photographer, and Goddard the typewriter expert, on June 18th, petitioner refrained from revealing the complete truth to clear the record of perjury. During the testimony of the said witness Goddard, petitioner stated:

"MR. KING: I don't want to interfere, but as to the typewriter, I think Mr. Hutchinson left our office and dictated those minutes.

"MR. SHERMAN: On what date, and what type of stipulation would you like to make?

"MR. KING: I don't know when he did it, or the exact date.

"MR. SHERMAN: I will continue with the examination, unless you want to make a complete stipulation the documents were prepared by Mr. Hutchinson, yourself, Mr. Black and Mr. Schnitzer in your office.

"MR. KING: Mr. Hutchinson, I understand— (sentence not completed by Mr. King).

"MR. SHERMAN: I offer the stipulation, and you can either leave or take it, that stipulation is that you, yourself, and Mr. Schnitzer, Mr. Black and Mr. Hutchinson were there?

"MR. KING: I won't stipulate to that. I had nothing to do with preparing the minute.

"MR. SHERMAN: Your contention is you had nothing to do with it?

"MR. KING: I knew Mr. Hutchinson was going to use our girl to do it.

"MR. SHERMAN: It was done last week in your office?

"MR. KING: It was done about on the 5th.

"MR. SHERMAN: I will continue the examination for the purpose of the record, I would prefer to have it testified to.

"MR. KING: O. K.

"THE COURT: Go ahead" (Exhibit P-2, pages 224 and 225).

On June 18th, in the afternoon, the aforesaid detective, Don H. Terry of Pasadena, California, testified of the installing by him of sound equipment in Room 904 of the Hotel Utah on the night of June 6th and of his exclusive

operation and control of the same to the date of his testimony. He listened and made recordings of conversations which took place in the said room from June 7th to June 18th (Exhibit P-1, pp. 52 to 54).

Petitioner objected to the testimony of Mr. Terry as being unlawfully obtained (Exhibit P-1, p. 55). There was discussion as to the admissibility of such evidence and the court held it to be admissible (Exhibit P-1, p. 60). It was agreed to produce the records from which the transcription was taken (Exhibit P-1, p. 60). Petitioner thereafter stated:

“MR. KING: I want that platter on which you have that I was ever mentioned or any word was ever said to me in that room, and I want it right now.

“Q. You’ll have it, Mr. King, and it will show you and Mr. Walter Hutchinson were in a conversation about the resolution, to leave and go to your office and prepare it.

“MR. KING: It won’t, Mr. Sherman.

“Q. We’ll get that Mr. King. We have it” (Exhibit P-1, p. 63).

Again petitioner objected to the testimony of Mr. Terry on the basis of attorney-client relationship. He said:

“MR. KING: We are resisting, your Honor, the admission of this evidence on the ground that it’s in violation of the rights of the parties. We would also call the court’s attention to another right that has been violated, and that the privilege of attorney-client relationship, especially with Mr. Schnitzer, and we object” (Exhibit P-1, p. 64-4).

Again petitioner objected to the testimony of Mr. Terry on the basis of attorney-client relationship as follows:

“Q. And can you identify who was in the room at that time?

“THE COURT: What time did you say?

“A. 8:47 A. M. June 10th.

“Q. And who was in the room at that time?

“A. Mr. King, Mr. Hutchinson, Mr. Schnitzer; and Mr. King, Mr. Hutchinson and Mr. Schnitzer.

“Q. All right. Will you state what was said?

“A. Mr. King said: ‘Using all of this, \* \* \*

“MR. KING: (interposing) We are not waiving any objection, including attorney-client relationship to this conversation. Go ahead” (Exhibit P-1, pp. 65 and 66).

## II.

THE EVIDENCE AND FINDINGS JUSTIFY THE CONCLUSION THAT PETITIONER VIOLATED THE PROVISIONS OF RULE III, SECTION 32, SUBSECTIONS 15 AND 41, REVISED RULES OF THE UTAH STATE BAR, GOVERNING PROFESSIONAL CONDUCT AND DISCIPLINE, AS WAS CONCLUDED BY THE DISCIPLINARY COMMITTEE.

Petitioner has quoted the subsections involved and further quotation appears unnecessary.

With the said subsections in mind, the following cases appear to be in point in this matter:

*People v. Beattie* (Ill.) 27 N. E. 1096.

In this case the lawyer involved drew a complaint in divorce falsely stating his client was a resident of Illinois and allowed her to testify, though he knew the same to be false. He also introduced other evidence that would have been inadmissible if his client had not given such false testimony. While the activities of Mr. Beattie were shown to be of such a nature as to cause the court to conclude that he "procured" false evidence, and in that sense may be beyond the facts in the instant case, the court comments on his sitting by and allowing his client to testify falsely and said on page 1103:

"The lawyer's duty is of a double character. He owes his client the duty of fidelity, but he also owes the duty of good faith and honorable dealing to the judicial tribunals before whom he practices his profession. He is an officer of the court—a minister in the temple of justice. His high vocation is to correctly inform the court upon the law and the facts of the case, and to aid it in doing justice and arriving at correct conclusions. He violates his oath of office when he resorts to deception *or permits his clients to do so.*" (Italics added.)

In *Re Mendelsohn*, 135 N. Y. S. 438 (1912), the attorney's father-in-law testified falsely and the attorney conducting the trial heard this testimony without attempting to correct it, but allowed the trial to continue without calling any attention to the fact that the witness was testifying falsely. The attorney stated that he was so shocked at hearing the false testimony and by the realization of the fact that the witness was guilty of perjury that he lost his head and so did not attempt to correct the erroneous testimony. The court described this as indefensible.

On page 441 the court said:

“This is too flagrant a violation of the duty imposed upon an attorney and counselor at law by his acceptance of the office to overlook. If he was willing to sacrifice his professional duty to save his father-in-law from danger because of the crime that he had committed, he certainly is not a proper person to be a member of the profession.—We concur with the referee in stating that his explanation is absolutely unsatisfactory, that it really explained nothing, and that his misconduct stands out in bold relief without excuse or palliation.”

In *re Taylor* (Ky.) 189 S. W. (2d) 403 (1945). Taylor a lawyer in Kentucky, who had had considerable trouble and bore a bad reputation, permitted a lady to testify falsely that she was his wife and to procure a divorce and then endeavored to have the decree entered, knowing the testimony to be false. He later explained that he had boarded at the home of this lady and it had been rumored in the community that they were married and she wanted a divorce because “that will make it all right and keep down suspicion, and protect my reputation”. For this reason he had consented to the proceedings and declined to cross examine her, she being represented by counsel. On page 404 the court said:

“There is no occasion to hunt through the law books for authorities to support the conclusion that the conduct of the respondent was reprehensible and in violation of his obligation as a member of the bar. He is guilty of deceit and assisting to perpetrate a fraud upon the court. There is no condonation. The respondent's explanation is weak—. Is this conduct not as reprehensible as knowingly exhibiting to the

court false affidavits in an effort to obtain some advantage for a client or knowingly and deliberately presenting perjured testimony; or having a certificate to a legal paper falsely executed? These have been deemed sufficient causes for disbarment",

and cites 5 *Am. Jur.*, Attorneys at Law, Sections 262 and 263. The court also cites the annotation at 14 *A. L. R.* 868. In quoting from the above indicated *Beattie* case the court said that a lawyer "owes the duty of good faith and honorable dealing to the judicial tribunals before whom he practices his profession. He is an officer of the court,—a minister in the temple of justice. His high vocation is to correctly inform the court upon the law and the facts of the case, and to aid it in doing justice and arriving at correct conclusions. He violates his oath of office when he resorts to deception *or permits his clients to do so.*" (Italics added.)

In *Re Goodrich* (Vt.) 11 A. (2d) 325. In this case the attorney prepared, or caused to be prepared, a "libel for divorce" in which plaintiff alleged and later testified in court that "during said coveture she on her part had faithfully kept the marriage covenant and performed all of the duties appertaining thereto" and the attorney well knew she had previously entered a plea of guilty to adultery. The attorney claimed he did not know or realize the law of Vermont prevented a person from getting a divorce on any ground who had been guilty of adultery. On page 326 the court said:

"There is nothing in the duty of diligence which a lawyer owes to his client which in any way makes it necessary, under any circumstances, for him to

practice, or *permit to be practiced*, a fraud on the court." (Italics added.)

Annotation 14 A. L. R. 868, Attorneys, Presenting or permitting false evidence as ground for disbarment or suspension. At this citation appears the following general statement:

"It cannot be tolerated that an attorney present or *permit* (italics added) evidence, pleadings, or affidavits on behalf of his client which he knows to be false. And such misconduct is ample ground for disbarment."

There is cited the case of *In re: Hardenbrook*, 121 N. Y. S. 250, in which it was held that an attorney, who was not the attorney of record, who proceeded with a trial in silence after discovering that his client had testified falsely and that her claim was based upon such perjured testimony, should be disbarred. In that case the court said:

"\* \* \* Nor is it essential, in order that the disciplinary powers of the court may be exercised, that the attorney should be guilty of a violation of the penal law; but it is sufficient if it appears that he had a direct knowledge of the fact that his client sought to recover on perjured testimony, and, notwithstanding such relief, continued the suit and insisted on recovery."

5 *Am. Jur.*, Attorneys at Law, page 419, paragraph 263:

"An attorney may be suspended or disbarred for—offering in evidence as valid an instrument which he knows is not valid and lawful—for using as evidence documents known by him to be fabri-

cated, or testimony known to him to be false and perjured.”

*In re Carroll* (Ky.) (1951)—244 S. W. (2d) 474, an attorney was charged with the violation of Canon No. 41 of the Canons of Professional Ethics of the American Bar Association which require a lawyer to rectify discovered fraud or deception used to impose unjustly upon the court or a party. Said Canon 41 is the same as our Rule III (Conduct Prescribed by Rule), Section 32, paragraph 41.

The attorney involved represented the husband in a divorce action before the court and when his client was asked concerning his property he testified that he owned no property whatsoever excepting an old automobile. This answer was false and the attorney knew it to be false because the attorney was then holding real property in trust for the client. On page 474 the court states:

“Under any standard of proper ethical conduct an attorney should not sit by silently and permit his client to commit what may have been perjury and which certainly would mislead the court and the opposing party of a matter vital to the issue under consideration”,

and cites *In re Taylor* (Ky.) 189 S. W. (2d) 403.

Respondent claimed, among other defenses:

- (1) That he had a duty not to divulge the confidence of his client;
- (2) That the matter involved was immaterial, and

- (3) That he did not violate Canon 41 because the opposing party knew that Robinson was claiming an interest in the property concerned.

Concerning defense (1) the court said on page 475:

“This duty to the client, of course, does not extend to the point of authorizing collaboration with him in the commission of fraud.”

On defense (2) the court held it was the duty of the husband to make a full disclosure and said on page 475:

“Even if we could say that the false testimony of Robinson did not affect the award, it was still fraud upon the court and the opposing party.”

Concerning defense (3) the court stated on page 475:

“It may be true that prior to the hearing, in connection with another matter, respondent and opposing counsel had discussed the question of whether or not Robinson was actually the owner, \* \* \*. Both he and the court had a right to rely upon Robinson’s sworn testimony. Any proper sense of fair dealing would have impelled respondent at least to state for the record and for the court’s information the fact that a controversy existed on the question of ownership.”

*In re Hargis*, (Ky.) (1945), 190 S. W. (2d) 333. The attorney in this case claimed that he did not know his client and a witness for his client had testified falsely regarding the client’s residence in Kentucky (as he was later shown to have resided in Ohio) until after the divorce proceedings were heard but before the court entered judgment and did not divulge to the court the fact because he understood a

reconciliation between the parties was likely. The court said on page 338:

“That the respondent made no such disclosure to the court, tends to confirm the conclusion of the trial committee that the respondent himself was a party to the attempted fraud on the court from its inception. But whether that be so or not, respondent has clearly shown by his own testimony that he became a party to his client’s attempted fraud when, admittedly in possession of the facts, he failed to disclose them to the court.”

Petitioner cites the case of *In re Hoover* (Ariz. 1935) 46 P. (2) 647 to support his position and quotes therefrom on page 34 of petitioner’s brief. While the Supreme Court of Arizona did not think that the attorney’s conduct merited disbarment, suspension or reproof, such conclusion appears to have been based upon the attorney’s inexperience and lack of ethical appreciation, that court having stated:

“Plainly it was respondent’s duty, when his client incorrectly and falsely stated that he bought the medicine himself, to endeavor by questions put to him to elicit the correct and truthful answer. This duty he owed to his client, to the court, and to himself. While a lawyer owes the duty to his client of seeing that his rights are fully protected under the forms of the law, *he is never justified in imposing upon the court or knowingly permitting his client to do so by testifying falsely.* We think that an experienced right-thinking lawyer, under the circumstances, would have felt impelled to take steps, before his client left the witness stand or during the trial, to have him correct his testimony. \* \* \* We are satisfied if like circumstances ever arise in his practice he will act more ethically and more

wisely.” (Italics added.) (Pp. 649-650 of above citation.)

### III.

THE EVIDENCE SUSTAINS THE RECOMMENDATION OF THE BOARD OF BAR COMMISSIONERS THAT PETITIONER BE SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX MONTHS.

Respondent takes the position in this matter that the offense of which petitioner is charged is of sufficient seriousness to warrant careful consideration by the court. The quantum of punishment, however, is a matter within the discretion of the court. In the light of the facts, cases and rules submitted it appears that the recommendation of the Bar Commissioners should be sustained.

Petitioner places considerable emphasis on the statement of Mr. Black, associate attorney of Mr. King, quoted on pages 47 and 48 of petitioner's brief, in which Mr. Black indicates he has yet to see one single counsel stand forth immediately and without question, either before the court or in the chamber of the court, and denounce the perjury, —suggests that if such procedure be proper “we ought to be educated to that fact”, and further says that he knows “of no such counsel who has such a shining armor of virtue that he has been doing that in this community or in any other community”.

Respondent does not have either the disposition or the means of refuting this statement, since it appears to be based upon Mr. Black's own experience, but it should be

pointed out that Mr. Black is not entirely disinterested in this matter and appears to be endeavoring to find excuse rather than approval for petitioner's acts. His view does not appear to be shared by all attorneys in this vicinity, as appears from the recommendation of the Investigating Committee (R. 0006 and 0007), the findings and conclusions of the Disciplinary Committee (R. 0279 to 0281) and the recommendation of the Board of Bar Commissioners (R. 0282), Utah State Bar, all being made up of attorneys at law practicing in this community. The statement to petitioner of Mr. Boyle, Chairman of the aforesaid Investigating Committee, in this regard deserves emphasis:

“MR. BOYLE: This is not the place, probably, to argue the case. I would like to make this observation, and see what you think of it. It seems to me, under your explanation, that you feel your duty to your client, is superior to your duty to the Court under these circumstances. Doesn't that, in effect, do away with any question of having your witness or client give perjured testimony, if that duty overrides the duty to have him tell the truth, or see the truth is told; then under those circumstances, there would be no objection to ever giving perjured testimony through your own client? Certainly, that is not the situation we practice under” (Exhibit P-3, p. 38).

Petitioner told the Investigating Committee of the Bar that “Mr. Schnitzer had destroyed any confidence the court could have had prior to June 10th and on too numerous occasions to mention, simply by saying ‘I don't know, I don't remember, God, I forgot.’ He was just hedging, dodging and equivocating.” Mr. King told him to be honest and

state his position frankly "Because if you do not you are going to destroy the confidence of the court in you and if you destroy the confidence of the court in you, our chance of getting fair and adequate consideration of your case is destroyed by the same token" (Ex. P-3, pages 23-24).

On June 9th, Mr. John Sherman, attorney for Mr. Locke, had called Mr. Schnitzer under the rule governing examination of adverse witnesses. On the morning of June 10th, at the time when Mr. Schnitzer resumed the witness stand for testimony, Mr. Sherman stated into the record

"Now you have been able to locate—I believe your testimony was yesterday, that there were minutes of the directors meeting and that they were held in Portland and that you had them at the hotel.

"Answer: (By Schnitzer) "We are glad to produce them this morning" (Ex. P-1, page 27).

On the evening of June 9th, Mr. Hutchinson, who was an attorney at law and was secretary of Harsh Utah Corporation, a resident of Portland, Oregon, arrived in Salt Lake City from Portland, to be a witness in the case at the request of Mr. Schnitzer. Apparently Mr. Hutchinson had not been in Salt Lake City during the trial prior to this time and he again left Salt Lake on the 11th of June, (after testifying at the instance of petitioner on June 11th), returning to testify on June 21st.

In view of the fact that Mr. King had lost confidence in Mr. Schnitzer's willingness to tell the truth without evasion or perjury, it would appear that petitioner was not justified in reposing too much confidence in what Mr.

Schnitzer might do. Under these circumstances, Mr. King was called to the Hotel Utah to have breakfast with Schnitzer, Hutchinson and others on the morning of June 10th. It was at that time and place that it was decided that it was necessary to prepare minutes and a waiver in Mr. King's office that morning before going to court at Farmington. Mr. King knew that minutes and a waiver were being prepared covering a meeting held some time prior thereto in Portland, Oregon. The waiver of notice and the minutes containing the resolution of Harsh Utah Corporation are signed by Harold Schnitzer, president, and W. E. Hutchinson as secretary, and while the minutes do not show on their face the date of their preparation, the waiver is dated April 1, 1953.

When Mr. Schnitzer went on the stand on June 10th he took these documents with him and they were introduced in evidence as part of the minutes of the corporation, then Mr. King told the court that these were part of Mr. Hutchinson's files (Ex. P-1, page 2-3).

Though it may appear from the record that petitioner did not specifically advise Mr. Schnitzer and Mr. Hutchinson to testify that the documents had been prepared and signed at a time prior to June 10th, the date of said preparation and signing, it is clear that if Mr. King had given the matter careful consideration before the documents were introduced in court, he should have anticipated that Schnitzer was going to try to leave the impression with the court that these documents had been prepared and signed in Portland, Oregon at a previous date.

If Mr. King had examined the documents prepared in his office on the morning of June 10th, and particularly the waiver of notice, it would be apparent that if nothing were said about the point by any witness the court would assume the document was signed on April 1, 1953, and that therefore it had been in existence prior to that date.

Before the minutes and waiver relating to the meeting of April 1, 1953 were introduced in evidence they were stapled into a book which contained the minutes of the corporation and it seems apparent that if petitioner had given the matter any thought and knowing as he did, that he had an unreliable witness, he should have examined the documents prepared in his office before they were introduced in evidence by his client. If, as petitioner claims, he was taken by surprise and was shocked when Mr. Schnitzer testified falsely regarding the documents, it seems reasonable to believe he would have taken a different course of conduct than he did at some time between that date and June 21st when Mr. Schnitzer and Mr. Hutchinson came back on the stand to correct their testimony. It is probably the fact to state that neither Schnitzer nor petitioner thought Schnitzer would be subjected to such a penetrating cross examination as he was given by Mr. Sherman.

The record indicates that Mr. Sherman was dealing with a very difficult witness in Mr. Schnitzer, and petitioner confirms his appraisal of his unwillingness to state the facts under oath. This Court is not called upon to pass upon whether Mr. Sherman was or was not justified in putting a listening device in Mr. Schnitzer's room. Certainly the

conduct of Mr. Sherman is not before this court for appraisal.

The records support the inference that Mr. Schnitzer and Mr. Hutchinson went to court on the morning of June 10th with the hope of having the court believe that the minutes and waiver had been prepared and signed in Oregon, the waiver on or prior to April 1, 1953, and the minutes at some time shortly thereafter. It probably did not occur to Mr. Schnitzer or Mr. Hutchinson or to petitioner, that Mr. Sherman was going to ask them about the details of the transaction and then be able to prove so clearly that they had perjured themselves.

It would appear that, in view of the fact that petitioner knew he had an unreliable witness and had documents prepared in his office the morning of June 10th which were going to be produced in court that day by his evasive client (and it must be remembered that petitioner himself joined in the production of these documents), the least petitioner could be expected to have done was to examine the documents to be introduced.

While the Supreme Court of Utah has held that the perjury was upon an immaterial matter, the permitting by petitioner of his client Schnitzer and witness Hutchinson to prepare documents in his office under circumstances which indicate that the said Schnitzer and Hutchinson would likely evade the fact of preparation and also the time and place thereof in the hope that the court would assume without Sherman's examination that the documents were prepared and signed in Portland on or about April 1, 1953,

and then to testify as they did regarding said documents, would appear to indicate a failure on the part of petitioner to appreciate his duties and obligations as an attorney and officer of the court, as expected by the Revised Rules of the Utah State Bar Governing Professional Conduct and Discipline involved herein.

### CONCLUSION

By way of conclusion it may be appropriate for respondent to state further that assuming Mr. King and Mr. Black, Mr. Schnitzer and Mr. Hutchinson held the conference testified to by Mr. King, Mr. Black and Mr. Schnitzer, as heretofore set out, during the lunch hour on June 10, 1954, at which it was agreed that if Hutchinson was asked about the preparation of the Waiver and Minutes he was instructed by both Mr. King and Mr. Schnitzer that he was to tell the complete truth, it seems hard to understand why petitioner did not stand up before the Court while the witness Hutchinson was lying about the matter, on the afternoon of June 10th, and frankly disclose that the documents were prepared in his office, using his typewriter and stenographer, on the morning of June 10th. It is hard to understand that if petitioner and Mr. Black gave the positive and vigorous criticism to Mr. Schnitzer, according to their testimony, they would have nevertheless remained silent when Mr. Hutchinson proceeded to evade and perjure himself on the same matter in the afternoon.

There is much discussion in the record by petitioner and Mr. Black about their uncertainty as to when they

should disclose the truth to the court because they did not wish to have their client Schnitzer and his secretary, Hutchinson, admit they were guilty of perjury, but if we are to believe that they instructed Hutchinson to tell the truth on the afternoon of June 10th that question, as we have heretofore stated, had been resolved in favor of full and fair disclosure on June 10th. The logical conclusion to be reached from this state of facts is that either petitioner did not advise witness Hutchinson to tell the truth on the afternoon of June 10th, or if he did and that advice was disregarded, it was his duty, as an attorney, at that point to make a full disclosure to the court. Because of what actually transpired, it is apparent that Mr. King and Mr. Black were not vitally concerned about the perjury of their witnesses until that perjury was proven by Mr. Sherman's independent evidence which was produced June 17th and 18th.

Respondent respectfully suggests to the Court that petitioner should have disclosed the facts on June 10th and on each trial date thereafter until June 21st. In the short space of a page of testimony (Exhibit P-2, page 224) there are two misstatements of fact by petitioner,—one, that Mr. Hutchinson “left our office and dictated those minutes,” and two, “that it was done about on the 5th”. Petitioner was not only failing to disclose the facts to the court but was continuing in his efforts to conceal or evade the truth. The fact that the difference between June 10th and June 5th and whether the dictation was in or out of Mr. King's office may be immaterial to the issues in the lawsuit gives added reason for him to state the facts.

Respondent submits that the facts and law pertaining to this matter appear to amply justify the sustaining by this court of the findings and conclusions of the Disciplinary Committee and the recommendation of the Board of Bar Commissioners.

Respectfully submitted,

LLEWELLYN O. THOMAS,  
ALLAN E. MECHAM,

*Prosecuting Committee,*

*Utah State Bar.*