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The Role of Common Law Concepts in Modern Criminal Jurisprudence (A Symposium)

CRIMINAL LAW CASE NOTES AND COMMENTS

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THE ROLE OF COMMON LAW CONCEPTS IN MODERN CRIMINAL JURISPRUDENCE (A SYMPOSIUM)

Courts have recently been troubled by the application of age-old criminal law concepts to offenses against modern criminal law. Such common law terms as "moral turpitude," "infamous crime," and "crimes against the public morals" have received attention in cases ranging from income tax violations to a prosecution for obscene telephone calls.

The first paper in this series, *"Tax Evasion And Moral Turpitude,"* examines the question of whether income tax evasion is necessarily a crime involving moral turpitude and it also deals with the related problem of summary disbarment.

The second paper *"Infamy And The Officeholder,"* traces the history and application of the infamous crime concept and suggests a new test of infamy to meet current problems concerning the right of one convicted of a crime to hold public office.

What are crimes against the public morals and how that common law concept is utilized by the courts today are the questions answered by the third paper in this series, *"Common Law Crimes Against The Public Morals."* The concluding paper, *"The Constitutionality Of Prosecutions For Crimes Against The Public Morals,"* measures this ancient concept against the demands of due process, and suggests some answers as to whether it is a vital principle of today's criminal law or an outmoded relic in the light of modern constitutional guarantees.

I. Tax Evasion and Moral Turpitude

DAVID H. KLEIMAN

In 1956, Abraham Teitelbaum, a Chicago attorney, pleaded guilty to an indictment alleging willful and *fraudulent* income tax evasion. Following a conviction, an action was instituted in federal district court calling for the disbarment of Teitelbaum from the practice of law in the federal courts. In a memorandum opinion, it was held that even though there had been a felony conviction, Teitelbaum's actions *did not involve moral turpitude* and therefore did not warrant disbarment.[1]

After the federal action, the Chicago Bar Association instituted an original proceeding before the Illinois Supreme Court charging Teitelbaum with conviction of a felony *involving moral turpitude* and recommending his disbarment from practice before the Illinois courts. The *Teitelbaum* case raises serious problems that have troubled both state and federal courts.

Thus far the several courts which have considered the problem have failed to achieve uniformity of decision on the question of whether an attorney who is convicted of income tax evasion should be disbarred, and if so, whether there might be some extenuating circumstances which should save him from disbarment.

The historical origin of the moral turpitude concept in relation to disbarment proceedings sheds little light on the cases involving tax evasion. The early cases do not indicate why the courts

[1] Teitelbaum was convicted for a violation of 26 U.S.C., Section 145(b) by the United States District Court for the Northern District of Illinois, Eastern Division. He pleaded guilty to one count and *nollo contendere* to a second and was given a suspended sentence. The disbarment decision was appealed to the United States Court of Appeals, Seventh Circuit and affirmed without comment upon the merits of the action. The United States Attorney who appealed the case was severely reprimanded for appealing a case of this type.

adopted the moral turpitude test, but its present day acceptance is reflected in the disciplinary proceedings of a majority of the jurisdictions in the United States where it has been adopted, either by statute or common law, as the controlling method of determining whether an attorney's acts warrant disbarment.[2] Notwithstanding its widespread use, the courts have failed to clarify the *scope* of the moral turpitude concept in relation to disbarment.[3]

In their efforts to achieve a satisfactory definition of moral turpitude, the courts have been faced with the problem of arriving at a definition that is restrictive enough to facilitate application to a particular fact situation and yet not so broad as to distort the statutory intent. In this context moral turpitude is generally defined as a base or vile act that violates the accepted social relationship among men.[4] This definition, however, is not completely satisfactory, and the courts generally base their decision upon the fact situation involved in the particular case.[5] Moreover, this procedure has not been conductive to obtaining uniformity among the various jurisdictions.

Disbarment proceedings are generally initiated by a bar association in an original proceeding before the state supreme court.[6] Before the case goes to the state supreme court, the facts are usually investigated by a bar association committee acting under the direction of the court. That committee recommends to the bar association whether or not a disbarment action should be instigated.

While disbarment may be either regular or summary, moral turpitude is decisive in each. In the regular disbarment procedure, the bar association and the attorney introduce evidence from which the court will determine whether moral turpitude was involved. If the court is convinced that the attorney's acts involved moral turpitude, a judgment for disbarment will be rendered. In a summary disbarment procedure, the records of conviction for the crime involved is the only evidence introduced. Therefore, the crime must *necessarily* and *inherently* involve moral turpitude.[7] The effect of this is to relieve the bar association from the necessity of introducing any evidence to prove moral turpitude other than the record of conviction. Similarly, the attorney will not have an opportunity to introduce evidence to disprove the presence of moral turpitude.

States which do not have provisions for summary disbarment are still faced with the question of whether a crime necessarily and inherently involves moral turpitude if they employ a semi-summary procedure. This situation arises where the bar association introduces into evidence *only* the record of conviction and makes it incumbent upon the court to determine whether the particular crime necessarily involves moral turpitude.[8] The attorney will have an opportunity to refute the contention that moral turpitude is involved; but if he fails to do so and the court is convinced from the nature of the crime that moral turpitude is necessarily and inherently involved, disbarment will be decreed upon the sole evidence of the conviction record.

The advantages of the summary and semi-summary[9] procedures are apparent. The amount of

[2] Illinois: *In re* Needham, 364 Ill. 65, 4 N.E.2d 19 (1936). The court held that in Illinois, even without a statute on the subject, a judgment of conviction of an attorney of a crime involving moral turpitude is grounds for disbarment. Louisiana: Louisiana State Bar Ass'n v. Steiner, 204 La. 1073, 16 So.2d 843 (1944). Louisiana State Bar Ass'n v. Connolly, 201 La. 342, 9 So.2d582 (1942). This list is not exhaustive and reference to disbarment proceedings in states not included under footnote 2 will establish the use of the term moral turpitude in that particular jurisdiction.

[3] For a complete summary of the various interpretations given by courts to the term moral turpitude in construing disbarment statutes, see 27 W. & P. PERM. (1940).

[4] The definition most commonly quoted by the courts is found in Bouvier's Law Dictionary which calls moral turpitude:

"An act of baseness, vileness or depravity in the private or social duties which a man owes to his fellowmen or to society in general, contrary to the customary and accepted rules of right and duty between man and man."

[5] See note 11, *infra*.

[6] For the procedures applicable in the various jurisdictions, see BRAND, BAR ASSOCIATIONS, ATTORNEYS, AND JUDGES (1956). This information may also be found in the statutes and rules applicable to the various courts.

[7] The requirement that the crime necessarily and inherently involve moral turpitude to support a summary disbarment was developed by Judge Traynor *In re* Hallinan, 43 Cal.2d 242, 272 P.2d 768 (1954). The case is discussed in more detail later in this paper.

[8] This situation is exemplified in the Teitelbaum case. Illinois has no provisions for summary disbarment. Teitelbaum cannot be denied the right, therefore, of introducing evidence. The question is whether the Chicago Bar Association *must* introduce any evidence showing moral turpitude other than the certificate of conviction itself. If it does not, the proceeding becomes one of a semi-summary nature.

[9] For the purposes of simplicity, whether speaking of semi-summary disbarment or summary disbarment reference will be made to the latter due to the similarity between the application of the two systems.

evidence and time involved under these procedures is less than in the regular disbarment proceeding where evidence relating to the attorney's conduct in committing the offense must be presented to prove the moral turpitude.

While a crime involving moral turpitude committed in any capacity may result in disbarment,[10] the courts have drawn a distinction between the attorney-client relationship and the individual capacity concept in respect to evidential requirements. Thus, when an act is committed in the attorney's individual capacity, the courts generally have required (1) a conviction of a crime, and (2) that the nature of the crime be such that it would result in the loss of confidence of the attorney's clients if his name were to remain on the roll of the bar.[11] Where the violation is of the fiduciary relationship, the attorney may be disbarred for non-criminal acts.[12]

Tax evasion has proved an exceptionally difficult problem for courts that must apply the moral turpitude test to disbarment cases. This is especially true when the courts utilize a summary procedure and have to justify a holding that income tax evasion inherently involves moral turpitude. This justification was predicated upon a long line of cases that held any crime involving *fraud* to involve moral turpitude.[13] It thus became necessary to show that income tax evasion involves some fraudulent act. The Internal Revenue Code which provides for the conviction of "any person who attempts in any manner to defeat any tax" is of little help since it does not mention any requirement of fraudulent conduct.[14] The proponents of

[10] *In re* Cruickshank, 47 Cal. App. 496, 190 Pac. 1038 (1920), the attorney had been convicted of obtaining money by false pretenses. He defended himself in a disbarment proceeding upon the theory that he was not in the practice of law when the act was committed. This theory was rejected on the grounds that it is immaterial in what capacity the defendant acted when he was disbarred. A somewhat similar problem was raised *In re* Dampier, 46 Idaho 195, 267 Pac. 452 (1928). Dampier, an attorney who had been convicted in a federal court for sending obscene letters through the mail, defended a disbarment action lodged against him on the statute. The Idaho Supreme Court agreed with Dampier saying the object of the disbarment statute was to protect the public "against unprofessional, improper, and unauthorized practice of law, unprofessional conduct of members of the bar." It was then concluded that disbarment would not lie for a felony conviction in another jurisdiction when the act was not a crime in Idaho.

[11] *Acts in Attorney's Individual Capacity: adultery,* Grievance Comm. v. Broder, 112 Conn. 263, 152 Atl. 292 (1930), *fraud, In re* Hopkins, 54 Wash. 569, 103 Pac. 805 (1909), *larceny, In re* Liliopoulos, 175 Wash. 338, 27 P.2d 691 (1933), *mail fraud, In re* Comyns, 132 Wash. 391, 232 Pac. 269 (1925), *prohibition violation, In re* Finch, 156 Wash. 609, 287 Pac. 677 (1930), *contra,* Bartos v. United States, 19 F.2d 722 (8th Cir. 1927), *receiving stolen goods, In re* Kirby, 10 S.D. 322, 73 N.W. 92 (1897), *seduction, In re* Wallace, 323 Mo. 203, 19 S.W.2d 625 (1929), *draft evasion, In re* McAllister, 14 Cal.2d 602, 95 P.2d 932 (1939), *narcotics, In re* Pontarelli, 393 Ill. 310, 66 N.E.2d 83 (1946), *subversion, In re* McNeese, 346 Mo. 425, 142 S.W.2d 33 (1940).

Acts In Attorney's Fiduciary Capacity: false evidence, In re Carr, 377 Ill. 140, 36 N.E.2d 243 (1941), *false claims, In re* Wiltse, 109 Wash. 261, 186 Pac. 848 (1920), *fraud, In re* Hopkins, 54 Wash. 569, 103 Pac. 805 (1909), *character assault, In re* Humphrey, 174 Cal. 290, 163 Pac. 60 (1917), *negligence, In re* McGarry, 380 Ill. 359, 44 N.E.2d 7 (1942), *conspiracy, In re* Craig, 12 Cal.2d 93, 82 P.2d 442 (1938), *extortion,* Libarian v. State Bar, 38 Cal.2d 328, 239 P.2d 865 (1952), *undue delegation,* McGregor v. State Bar, 24 Cal.2d 283, 148 P.2d 865 (1944), *misrepresentation, In re* Copland, 66 Ohio App. 304, 33 N.E.2d 857 (1940), *allowing rebates, In re* Alschuler, 388 Ill. 492, 58 N.E.2d 563 (1944), *false swearing, In re* King, 165 Ore. 103, 105 P.2d 870 (1940).

[12] The rationale in these cases is stated by the California Supreme Court in Marsh v. State Bar, 210 Cal. 303, 291 Pac. 583 (1930):

"Neither can it be denied that the breach by petitioner of the confidential relationship—a fiduciary relation of the very highest character, binding him to the most conscientious fidelity—between himself and his said clients involved moral turpitude."

Petitioner was charged and susequently disbarred for failure to file actions for which he was retained and failure to appear in court thereby allowing a default judgment against his client.

[13] The United States Supreme Court settled the question of whether moral turpitude includes fraud while reviewing an order to deport an alien on the basis of a crime involving moral turpitude where the alien was convicted of perpetrating fraud on the government. In that case, Jordan v. De George, 341 U.S. 223 (1951), the court said:

"Whatever else the phrase 'crime involving moral turpitude' may mean in the peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude .... Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."

[14] Henceforth, when speaking of income tax evasion, the reference will be to Internal Revenue Code of 1939, §145(a) and (b), or the historical predecessors to these sections.

26 U.S.C. §145(b)—"Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

It will be noted that subsection (a) of Section 145

summary disbarment, however, argue from the following syllogism to show that income tax evasion necessarily involves moral turpitude:

(1) Any crime involving fraud is moral turpitude.

(2) Income tax evasion involves fraud.

(3) Therefore income tax evasion involves moral turpitude.

About the first premise there is little question, as the United States Supreme Court has conclusively decided that the "phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."[15] The difficulty lies with the second premise, for there has been considerable judicial confusion about the inclusion of fraud as an element of income tax evasion.

The Internal Revenue Code speaks in terms of "willfulness" which has been judicially interpreted to mean "bad faith," "bad motive," and "tax evasion motive."[16] It has also been said that "willfully" denotes an intentional or voluntary act and when used in a criminal statute it generally means an act done with a bad purpose.[17] On this rationale it has been held by some courts that the word "willfully" in the Internal Revenue Code is synonomous with the word fraudulent.[18]

Another line of reasoning attempting to bring tax evasion within the scope of summary disbarment is based upon the fact that in the indictments for tax violations it is often alleged that the defendant willfully and knowingly evaded the payment of taxes *by filing a false and fraudulent return.* A conviction pursuant to this indictment, it is contended, involves *fraud* as evidenced by the indictment itself. The decisions relating to this matter are in conflict and are discussed later.

Upon the introduction of evidence showing moral turpitude, there is no question but that an attorney will be disbarred for tax evasion under a regular procedure. There is no corresponding uniformity among the decisions relating to summary procedures.

The leading case in this area, and the strongest case denying disbarment summarily, is *In re Hallinan*,[19] wherein was enunciated the rules applicable to these cases.[20] Reaffirming the premise that fraud necessarily involves moral turpitude, it was stated that there is no difference between defrauding an individual and defrauding the government. It was further declared that any offense involving intentional dishonesty for personal gain is moral turpitude. Nevertheless the court held that conviction of income tax evasion will not invoke summary disbarment because a conviction for the crime *could* be had without showing fraud and, therefore, without moral turpitude. The court felt bound by the federal courts' interpretation of the federal income tax

provides for penalties of another sort, and makes the crime involved a misdemeanor. This section is as follows:

"Failure to file returns, submit information or pay tax...." In 1954 the Internal Revenue Code was recast, but the substance of these two sections was embodied in Title 26, Sections 7201 and 7203.

"Section 7201. *Attempt to Evade or Defeat Tax.* Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided bylaw, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with costs of prosecution."

"Section 7203. *Willful Failure to File Return, Supply Information, or Pay Tax*... be guilty of a misdemeanor..."

[15] See note 13, *supra.*

[16] Berra v. United States, 351 U.S. 131 (1956); Spies v. United States, 317 U.S. 492 (1942); Wardlow v. United States, 230 F.2d 884 (5th Cir. 1953). *Contra,* United States v. Scharton, 285 U.S. 518 (1931); United States v. Albanese, 117 F. Supp. 736 (S.D. N.Y. 1954).

[17] In United States v. Murdock, 290 U.S. 389 (1933) the defendant was indicted for refusing to give testimony and supply information as to deductions claimed in his income tax returns, claiming that it would incriminate him in violation of the fifth amendment. The court had to construe the word "willfully" as used in the statute and in doing so established the principle that violating the statute requires intentional wrong doing rather than accidental conduct.

[18] "Fraud is so inextricably woven into the term, 'willfully' as it is employed in 145(b), that it is clearly an ingredient of the offense proscribed by that section. Only by creating unwarranted semantic distinctions could a contrary conclusion be reached." Chanan Din Khan v. Barber, 147 F. Supp. 771 (N.D. Cal. 1957).

[19] 43 Cal.2d 243, 272 P.2d 768 (1954).

[20] Judge Traynor, speaking for the California Supreme Court, set out the "ground rules."

(1) "(I)t is settled that whatever else it (moral turpitude) may mean, it includes fraud and that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude."

(2) "It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude."

(3) "We see no moral distinction between defrauding an individual and defrauding the government..., and an attorney whose standard of conduct should be one of complete honesty..., who is convicted of either offense is not worthy of the trust and confidence of his clients, the courts, or the public, and must be disbarred, since his conviction of such a crime would necessarily involve moral turpitude."

(4) "Conversely, if a conviction for any crime can be had without proof of facts showing moral turpitude, an attorney convicted of such a crime cannot be summarily disbarred..." 272 P.2d at 771.

statute and examined a number of Supreme Court cases which

"establish that fraud is not an essential element of the offense proscribed by section 145(b), that some measure of bad faith or evil intent is an essential element, but that such bad faith or evil intent, which can be inferred from evidence that the defendant acted without justifiable excuse, without ground for believing his acts were lawful, or in careless disregard of the lawfulness of his acts, do not necessarily involve moral turpitude."

The court emphasized that disbarment procedings were based upon the conviction of a *crime* involving moral turpitude and since the proceeding was summary, the *crime* must necessarily and inherently involve moral turpitude and this cannot be affected by words added to the *indictment* by a careful and overzealous prosecutor. The overall effect of the *Hallinan* case was to firmly establish the principle that income tax evasion is under no circumstances grounds for a summary disbarment, irrespective of an allegation of fraud in the indictment.[21] For several years the doctrine of the *Hallinan* case remained unquestioned.[22]

The first deviations from the rule of the *Hallinan* case—that a conviction for income tax evasion does not necessarily involve moral turpitude and that therefore a summary disbarment proceeding will not be allowed—came in two federal deportation cases. In *Chanan Din Khan v. Barber*,[23] the government, in order to satisfy the requirements of the deportation statute, had to prove that the defendant had been convicted of a felony involving moral turpitude. The only evidence introduced by the government was the record of conviction for income tax evasion upon indictments alleging fraudulent returns. It was held that income tax evasion involved moral turpitude and an order of deportation was granted.

The court arrived at this conclusion by two lines of reasoning. It first examined numerous tax violation cases that to some degree supported the contention that fraud is involved in a violation of the Internal Revenue Code. (These cases, however, were not concerned with the same provisions of the Internal Revenue Code; and in fact, the statute involved in many of them specifically declared fraud to be an element of the crime.) In addition, the court held that fraud is so inextricably woven into the term "willfully," as that term is used in the tax evasion statute, that it is clearly an ingredient of the offense. The case actually equated the terms "fraud" and "willfullness." Upon these two grounds the court ruled that tax evasion necessarily involved moral turpitude.

The first case to strike directly at the rationale of the *Hallinan* case was *Tseung Chu v. Cornell*.[24] Here the court expressly rejected *Hallinan's* determination that an allegation of fraud in the indictment was of no significance. Relying on *Chanan Din Khan*, and the fact that in the *Tseung Chu* case fraud *was* alleged in the indictment, the court concluded that moral turpitude is necessarily and inherently involved in tax evasion cases and a summary deportation proceeding was sanctioned. The court, aware that the cases are in conflict, restricted its holding to those cases where fraud is alleged in the indictment, but did not foreclose the possibility that the principle might be extended.

Here the law stood, with several state court decisions holding that tax evasion did not necessarily involve moral turpitude and two federal cases holding that it did, when the supreme court of the state of Washington was faced with the question, in the case of *In re Seijas*,[25] of whether or not a lawyer who had been convicted of income tax evasion should be summarily disbarred. The facts were essentially the same as those in the *Hallinan* case and the court examined that opinion and the contrary federal cases of *Chanan Din Khan* and

[21] Answering the contention that Hallinan was guilty of "false and fraudulent" conduct *as charged in the indictment*, the court said,

"The language of the statute itself clearly indicates that an attorney can be summarily disbarred only when the *crime* of which he was convicted involves moral turpitude. Even if it is assumed that the statements in the indictment or judgment of conviction describing conduct that goes beyond the essential elements of the crime charged are a part of the "record of conviction" as the State Bar contends, the record of conviction is "conclusive evidence" only when the crime itself necessarily involves moral turpitude."

[22] Kentucky State Bar Ass'n. v. McAfee, 301 S.W.2d 899, (Ky. 1957) (a per curiam opinion following the *Hallinan* case), Baker v. Miller, 138 N.E.2d 145 (Ind. 1956). The Indiana court, in what is certainly a sad commentary on professional ethics, said, "This court cannot bring itself to say that a willful attempt to evade a tax imposed by statute, even if defined by the statute as a felony, should automatically disbar an attorney from his profession, and strip him from his livelihood in which he probably has spent most of his life. True, an attorney's conduct should be of the highest character, but the difference between striving for perfection, and the attainment of perfection in conduct, is a margin of some width for all of us."

[23] 147 F. Supp. 771 (N.D. Cal. 1957).

[24] 247 F.2d 929 (9th Cir. 1957).

[25] —Wash.—, 318 P.2d 961 (1957). This is the first case where an attorney was disbarred summarily for income tax evasion upon the theory that moral turpitude is a necessary ingredinet of that crime.

Tseung Chu. It chose to follow the lead of the recent federal decisions and allowed summary disbarment. The court felt bound by the federal courts' interpretation of the federal income tax statute. The court in *Hallinan*, it will be remembered, came to the opposite conclusion concerning the holding of the federal cases on whether fraud was always present in tax evasion. The decision was not limited, however, to a case where fraud was alleged in the indictment. The absence of this requirement in the majority opinion would seem to indicate that the court would allow summary disbarment in every case of tax evasion, but a later Washington case, *In re Kindschi*,[26] involving the revocation of a license to practice medicine, limited its holding to a situation where fraud was alleged in the indictment.

The Illinois Supreme Court faces a similar situation in the *Teitelbaum* case. It must decide, in a case of first impression in Illinois, whether an attorney who has been convicted of income tax evasion should be disbarred in a summary procedure. It must also consider the significance of an allegation, or the lack of it, of fraud in the indictment. On the first question the courts are in direct conflict. California, Indiana, and Kentucky are committed to a denial of summary disbarment in all cases of tax evasion. Washington, supported by recent federal deportation cases, would likely allow summary disbarment in all cases and definitely so in those cases where fraud is alleged in the indictment. As to the second issue, the opinions are not clear and it may well be that whatever decision the Illinois supreme court makes concerning the effect of the terms of the indictment will have a settling effect on the law in this area.

The issues now before the Illinois court will undoubtedly face numerous courts in the near future. In most jurisdictions, as in Illinois, there is no authority upon which a decision may be based. The decision in the *Teitelbaum* case will very likely have a great influence upon future litigation. To decide against summary disbarment would likely end the recent trend of the Washington and federal cases toward a moral liberal application of moral turpitude to income tax evasion cases. On the other hand if the Illinois court follows the *Seijas* case, it will be a significant step away from the influence of the *Hallinan* doctrine.

The question to be ultimately answered by the Illinois court is whether tax evasion is so serious an offense as to preclude an attorney from offering mitigating evidence when faced with disbarment. It is submitted that the recent federal and Washington cases reflect a changing attitude toward tax evasion. No longer can the analysis of Judge Learned Hand—that the public does not look down on the tax evader—be sustained.[27] It is especially important that an attorney, who has been commissioned by the people to uphold the integrity of the law, show the highest regard and respect for those laws he has vowed to protect. Surely no one can be asked to know and understand the law better than an attorney, and since the courts have charged an alien with understanding the moral turpitude implications of tax evasion, no less can be demanded of an officer of the court. It is hoped, therefore, that the Illinois supreme court, in order to foster the trust and confidence of the public in the legal profession, will deem the evasion of taxes an offense for which disbarment can be ordered upon the sole evidence of the record of conviction.[28]

[26] —Wash.—, 319 P.2d 824 (1958). It is interesting to note that the medical ethics committee only suspended Kindschi for eight months, whereas the attorney *In re Seijas* was disbarred indefinitely. The court said that they would not interfere with the committee recommendation but in light of the *Seijas* disbarment period, Kindschi was being treated too lightly.

[27] United States *ex rel* Berlandi v. Reimer, 113 F.2d 429 (2d Cir. 1940). Judge Learned Hand dissented on the grounds that while tax evasion is a crime, the public does not consider it a serious moral deviation and it is therefore not moral turpitude.

[28] The Illinois supreme court handed down a decision in the *Teitelbaum* case after this paper had been completed. In re Teitelbaum, Civil No. 34490, Ill., May 21, 1958. The court held that his evasion of income taxes involved moral turpitude and he was suspended from the practice of law for three years.

The court re-affirmed its earlier holdings that a conviction of a crime involving moral turpitude is ground for disbarment. (See footnote 2, *supra*.) The court also concluded, citing the *Jordan* case, (footnote 13, *supra*) that whatever else "moral turpitude" meant, a crime in which fraud was involved was a crime involving moral turpitude.

The courts holding seems predicated upon the fact that fraud *was* alleged in the indictments. This is certainly *contra* to the *Hallinan* case, but in line with the *Seijas* case if that decision was modified by the later *Kindschi* case.

"It will be noted that section 145(b) is not specifically couched in terms of fraud but speaks in terms of willful intent to evade. A conviction under the section necessitates a finding that the willful-intent-to-evade element therein was proved. *In our view such a finding tends strongly to import fraud in a prosecution thereunder.*

Furthermore, each of the six counts of the indict ment . . . charged that the respondent 'did wilfully and knowingly attempt to defeat and evade a large part of the taxes due' by filing a 'false and fraudulent' tax return.

Despite the charge of fraud in each of the indict-