Constitutional Law--Due Process--Admission to Practice--Hearings Before Committees on Character and Fitness

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manslaughter in the first degree as "... an act creating such extreme risk of death as to manifest a wanton indifference to the value of human life according to the standard of conduct of a reasonable man under the circumstances. ...".16

The opinion in the principal case shows that the court considered the defendant's acts as falling under the heading of the old negligent voluntary manslaughter. This is difficult to understand. It is hard to see how the acts of hitting, beating, kicking, and stomping another person can be considered negligent. It was not treated as negligence in the Maulding case: There it was considered willful murder. This writer has been unable to find any case which treated these elements as belonging in the negligence field. While the purpose of this statute must be commended, it is suggested that this case does not fit within the class of negligence, and thus does not call for any consideration of the statute.

There is one further point of interest in this case. The court defined the word "wanton" as it is to be used in the first degree of KRS 435.022.

A wanton act is a dangerous act, done on purpose, in complete disregard of the rights of others. The actor must have conscious knowledge of the probable consequences and a complete disregard for them.16

It is suggested that this definition is not adequate to allow a jury to distinguish between the crimes of willful murder and involuntary manslaughter. Any intentional homicide would be a wanton act, under this definition. The jury could very easily find a person guilty of involuntary manslaughter in the first degree when he has deliberately shot another in the head and killed him. This would result in what we could call the "intentional involuntary manslaughter" rule to take the place of the negligent voluntary manslaughter. Then we would need another statute to do away with this equally impossible crime. Then a case interpreting ... AD infinitum.

Vernon G. Lewter

CONSTITUTIONAL LAW—DUE PROCESS—ADMISSION TO PRACTICE—HEARINGS BEFORE COMMITTEES ON CHARACTER AND FITNESS.—In 1936 the New York State Board of Bar Examiners certified that petitioner had passed the state's bar examinations. In 1938, after several hearings, the state's Committee on Character and Fitness refused to certify that

16 Lambert v. Commonwealth, 377 S.W.2d 76 (Ky. 1964).
petitioner possessed the general fitness required for an attorney-at-law. The Appellate Division thereupon denied petitioner admission to the bar. Petitioner, in 1943, asked the Appellate Division to direct the committee to review its earlier determination. This request was denied. In 1948 the Appellate Division permitted him to file a new application, but the committee in 1950 again refused to certify him. In 1951 petitioner's request that the committee be directed to furnish him with statements explaining why it refused to certify him was denied. In 1954 the Appellate Division denied petitioner's request to file a new application for admission. The Court of Appeals refused leave to appeal; the United States Supreme Court denied certiorari. Petitioner filed a fifth application with the Appellate Division in 1960 which was denied. Petitioner's present petition to file an application for admission was denied by the Appellate Division, the Court of Appeals affirming. The Court of Appeals, at petitioner's request, held expressly that petitioner was not denied due process of law in violation of his constitutional rights. Held: Reversed. Petitioner was denied procedural due process when he was denied admission to the bar without a hearing on the charges filed against him before either the committee or the Appellate Division. Willner v. Committee on Character and Fitness, 373 U.S. 92 (1963).

In the past the Court had concerned itself with the grounds upon which a state could base a denial of admission to the bar. In the principal case the Court was concerned "only with what procedural due process requires if the license is to be withheld." 2

The Court had not considered such a problem before. However, it had reached a similar conclusion in cases where a person was about to be deprived of his livelihood on the basis of another's testimony. In one case it was held that the government could not discharge an employee of a government contractor in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination. 3 An earlier case held that the application of an attorney to practice before the United States Board of Tax Appeals could not be rejected on charges of unfitness without a hearing. 4

A few state courts have passed upon the problem which the principal case raises. The Arizona court held that where an applicant for admission to the bar produced evidence of his good character, he could not be excluded from practice solely upon secret reports not

2 373 U.S. at 103.
4 Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926).
revealed to him.\textsuperscript{5} The court said: "If they [the informers] insist on hiding behind a cloak of secrecy, then their evidence cannot be used to impeach the character of a man whose only apparent fault has been to acquire a few devious secret enemies."\textsuperscript{6} Although the Arizona court does not so hold, one might conclude that a hearing would be required if the evidence against the applicant were to be used against him.

The Oregon court went further when it held that in bar admission proceedings "... the applicant is entitled to confront the witnesses, to subject them to cross-examination, and to invoke the protection of the tried, wise, and well-settled rules of evidence."\textsuperscript{7} Presumably this would require a hearing for the applicant. A similar result has been reached in Louisiana.\textsuperscript{8}

To require a hearing for an applicant to the bar before he is denied admission is in the best interests of all concerned. Although the principal case was decided under the due process clause of the fourteenth amendment to the United States Constitution, the requirement of a hearing finds expression in the sixth amendment. The framers of the Constitution wished to guarantee to every citizen in a criminal proceeding the right to a trial where he could confront his accusers and present his own evidence. The same should be true for one who is about to be denied admission to the bar:

Thus far the Court has considered admission to the bar,\textsuperscript{9} permission to practice before a government board\textsuperscript{10} and government employment\textsuperscript{11} as privileges which require a hearing before they can be denied. It is likely that such a requirement will in the future be extended to other areas of employment.

\textit{Situation in Kentucky}

The Kentucky Revised Statutes provide that the Court of Appeals may make such rules as it deems necessary regulating the admission of persons to practice law in Kentucky, such as regulating qualifications, application and license fees, and examinations.\textsuperscript{12} However, there are no statutory provisions made for an applicant who is denied admission for lack of good moral character to request a hearing. Nor are there cases which shed any light on the matter.

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\textsuperscript{5} Application of Burke, 351 P.2d 169 (Ariz. 1960).
\textsuperscript{6} Id. at 172.
\textsuperscript{7} In re Crum, 204 P. 948, 949 (Ore. 1922).
\textsuperscript{8} Moity v. Louisiana State Bar Association, 121 So. 2d 87 (La. 1960).
\textsuperscript{9} Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963).
\textsuperscript{10} Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926).