

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

AT CHARLESTON

NO. 25794

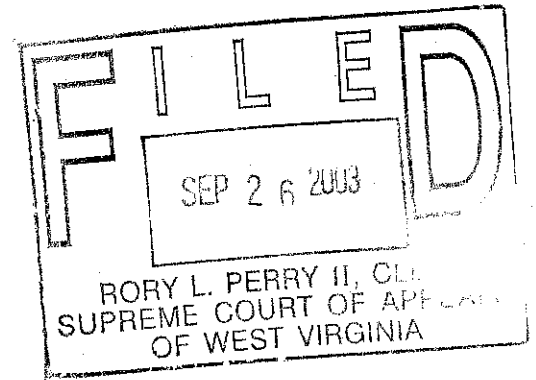
ARCH A. MOORE, JR.,

Petitioner,

v.

LAWYER DISCIPLINARY BOARD,

Respondent.



**BRIEF IN SUPPORT OF
PETITION FOR REINSTATEMENT**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS:

Petitioner, Arch A. Moore, Jr., hereby petitions this Court for reinstatement to the Bar of this Court, and in opposition to the recommendation of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board.

I PROCEDURAL HISTORY

On October 31, 1991, Petitioner's licence to practice law was annulled. Petitioner sought reinstatement to the Bar of this Court by Petition filed with this Court on December 22, 1998.¹ The Office of Disciplinary Counsel ("ODC") then conducted an investigation and issued its

¹ The Panel's recommendation incorrectly states the Petition was filed in 1999.

report on its investigation, as required by Rule 3.33(b) of the *Rules of Lawyer Disciplinary Procedure*, on September 16, 2002.² The ODC did not make any recommendation as to the disposition of the Petition in its report. A public hearing date then was scheduled for and held on December 3, 2002.³ Although further hearings were held, no other live testimony was taken before the Hearing Panel Subcommittee.⁴ Pursuant to Rule 3.3(c) of the *Rules of Lawyer Disciplinary Procedure*, the Hearing Panel Subcommittee then prepared a report and recommendation and transmitted it to the Court on August 20, 2003. Also pursuant to Rule 3.3(c) of the *Rules of Lawyer Disciplinary Procedure*, on August 22, 2003 Petitioner timely requested, in writing, a hearing on the matters arising on the Petition for Reinstatement.

II PETITIONER'S BACKGROUND

The Hearing Panel Subcommittee essentially ignores the *undisputed* testimony

² As explained by the Hearing Panel Subcommittee Chairman on the record at the public hearing,

“This case has taken a little while to get to this point. My recollection is that this is in part because the previously [*sic*] Special Counsel, Mr. Patton, took a little time developing the record; requesting records from Mr. McGinley; putting together the rather extensive record that we’ve got, and throughout that period of time, there was cooperation on behalf of Governor Moore and no objection to those delays to put together the record[.]”

Dec. 3, 2002 Transcript at 24-25.

³ Rule 3.3(b) requires the Hearing Panel Subcommittee to hold a hearing on a petition for Reinstatement within sixty (60) days of its receipt of the ODC’s report. The Panel’s recommendation correctly notes that Petitioner did not object to holding the hearing some two weeks after the sixty day deadline.

⁴ Although the Panel was not present, an out-of-state deposition took place in Boston, Massachusetts on April, 8, 2003, and the transcript of that deposition was made part of the record.

concerning Petitioner's background. The Panel also recognizes the Petitioner as a former three term Governor of the State of West Virginia, but ignores recognition of any of the specifics of Petitioner's lengthy history of public service.⁵ The Panel recognizes the fact that Petitioner's Petition includes fifty-six (56) members of the Bar of this Court who appear as *amicus curiae* and move that Petitioner be reinstated to the practice of law. Petitioner's December 22, 1998 Petition for Reinstatement at 1-2.⁶ Curiously, the Panel gave *no weight* to the fact that many

⁵ The Panel's discussion of Petitioner's extensive public service is limited to unspecific, albeit complimentary statements, such as the following: "Moore is an astute politician with a charismatic persona and an uncanny ability to reach across gender and income lines, all as reflected by his elected political history." Recommendation at 2. The Panel also states: "Arch A. Moore, Jr., is a gifted politician and competent attorney. . . . who made significant contributions in the various public offices which he held." *Id.* at 47.

⁶ The *amici* named in the Petition are Hon. Franklin D. Cleckley, Hon. Joseph P. Albright, Sr., Hon. Richard F. Neely, Thomas V. Flaherty, Prof. Forrest J. Bowman, Robert P. Fitzsimmons, C. Richard Wilson, David A. Jividen, Wray V. Voegelin, Harry L. Buch, R. Noel Foreman, Gilbert S. Bachmann, Lester C. Hess, Jr., Jeffrey R. Miller, Suzanne Quinn, Anthony I. Werner, Rhonda L. Wade, Lea W. Ridenour, Cathy Munster, Benjamin L. Bailey, Phillip D. Gaujot, Bradley A. Crouser, Wesley W. Matheny, Michael E. Caryl, Steven V. Wehner, John D. Amos, Richard A. Hayhurst, Hoy G. Shingleton, Jr., Herbert G. Underwood, John A. Rollins, Stephen T. Taylor, Ed A. Zagula, Frank A. O'Brien, Jr., Patrick S. Cassidy, John P. Bailey, Joseph A. Gompers, Frederick E. Gardener, John K. Chase, IV, Rodney T. Berry, Donald M. Kresen, C. Richard Wilson, Gregory A. Gellner, Bert M. Whorton, James A. Varner, Dennis R. Vaughan, Jr., Michelle Widmer Eby, Harry W. Moore, Jr., James E. Riley, John R. Hoblitzell, George A. Daugherty, Harry F. Bell, Jr., James W. St. Clair, David K. Hendrickson, John F. Wiley, J. Robert Rogers, Robert L. Shuman, all of whom are members of the West Virginia State Bar. Non-lawyer West Virginians who joined in the Petition include Hon. Ken Hechler, then-West Virginia Secretary of State, Father Thomas S. Acker, then-President of Wheeling-Jesuit University, Rev. J. Thomas Steele, Pastor of the Moundsville Baptist Church, Father William E. Calhoun, Pastor of the Simpson United Methodist Church, Charles Jones, President of Amherst Industries, Dr. William L. Harris, and William J. Scott.

The Panel excluded from its consideration the endorsement of the *amici*. Inexplicably, the Panel excluded from consideration the substantive letters of Professors Cleckley, Ex. A hereto, and Bowman, Ex. B hereto, and the Resolution of the Marshall County Bar Association, Ex. C hereto, and other exhibits that were *admitted into the record at the hearing without objection*.

prominent West Virginia lawyers support Petitioner's reinstatement to the Bar, and likewise ignored the prominent non-lawyer West Virginians who joined in moving the Supreme Court Petition. Petitioner's Petition for Reinstatement at 2.

The evidence shows Petitioner has been married to Shelley Riley Moore for 53 years. *Id.* at 26. He has three children: Arch Alfred Moore, III, Shelley Moore Capito and Lucy Moore Durbin, and seven grandchildren. *Id.* at 26. Petitioner's son Arch A. Moore, III is an Executive Vice President of the Middleburg Bank in Middleburg, Virginia, and is he also a trustee at Shenandoah College. Shelley Moore Capito is the present elected Representative to the House of Representatives of the United States' Congress. Lucy Moore Durbin is the President of a Paging and Telecommunications company in Charleston, West Virginia. *Id.* at 69-70.

There is *undisputed* evidence of record concerning Petitioner's valor in his military service to his Country, and this evidence, although not its specifics, is recognized even by the Panel.⁷ Petitioner was drafted into military service in the United States' Army in May of 1943. *Id.* at 27. He did his "basic training" at Camp Joseph T. Robertson in Little Rock, Arkansas. Petitioner was selected by the United States Army to enter (Army Specialized Training Corps) training, where he was selected to be the commander of a group of three hundred men. *Id.* at 28. At the conclusion of the Army Specialized Training program, the Petitioner returned for infantry training at Camp Clayborne in Louisiana. Petitioner was 21 at the time, and held the rank of Combat Infantry Sergeant. As a Combat Infantry Sergeant, Petitioner was responsible for thirty-

⁷ "Moore served in the United States Military during World War II and was wounded in combat, earning the Purple heart and Bronze Star for valor. Former Governor Moore's military service was exemplary, and the Panel wishes to acknowledge and state its heartfelt appreciation for that service." Recommendation at 2.

six men in his Platoon. *Id.* at 29. He was sent with his Division to the European theater of World War II in September of 1944. *Id.* at 28. Petitioner's Division was in Europe was assigned to the invasion of Germany. His Division was sent to the northern part of Europe. His Division was sent to the front lines almost immediately upon arrival in Europe. *Id.* at 30. Petitioner's Division was in combat there for a period of approximately 60 days, fighting its way to the German border. *Id.* at 29. Petitioner's Division then was confronted with the Siegfried Line in Germany (The Siegfried Line included the tremendous fortifications that the Hitler Government had built over a long number of years across the whole length of the German border, from the Baltic Sea until it extinguished itself somewhere on the French and Spanish borders). *Id.* at 30. Petitioner's platoon was one of the first, if not the first, platoons to undertake a human attack upon the Siegfried Line. *Id.* at 32. Of the thirty-six men in Petitioner's platoon, thirty-three were killed in that attack. *Id.* at 32. Petitioner was shot in the face. *Id.* at 33 ("The bullets entered the right side of my face, broke my right jaw and exploded on the left side of my face and broke my left jaw. Severed my tongue."). For his conduct in that campaign, Petitioner was awarded the Bronze Star for Heroism in Action, the Military Order of the Purple Heart, the European Campaign Medal with three battle stars, well as the Combat Infantrymen's Badge. *Id.* at 34.

As a result of his battle wounds, Petitioner remains to this day paralyzed from part of his eye, across his lip and down the left side of his face. Petitioner was operated on three times and his mouth was laced with copper wire for close to a year to hold his face back together. From his battle wounds, Petitioner has an entry mark on the right side of his face and scars on the left side of his face. *Id.* at 34-35, 38; ODC Exhibit 23 (March 5, 1999 letter comment of Charles R. Bain). Despite his heroism, Petitioner never made his military service a part of any political

campaign in which he was involved. *Id.* at 38.

Petitioner attended and received his undergraduate and law degrees from West Virginia University. Transcript at 39. He graduated from law school in 1951, where he was President of his class. *Id.* Petitioner also was President of his fraternity and President of the Fraternity Council. *Id.* at 40. At West Virginia University, Petitioner founded "Mountaineer Day", now celebrated as "Mountaineer Week." At West Virginia University, Petitioner was the first person to be selected twice as Summit of the Mountain. *Id.* He was also president of Sphinx. *Id.*

After graduating with his law degree, Petitioner was elected to the West Virginia House of Delegates in 1952. Petitioner was elected to the House of Representatives of the United States Congress in 1956 (the 85th Congress). *Id.* Petitioner was elected President of the new members of the 85th Congress. Petitioner served as an elected Representative to the United States Congress for six consecutive terms. *Id.*

It is undisputed that Petitioner's service as a United State's congressman was distinguished in its connection to the law. While a member of the United States House of Representatives, Petitioner served on the House Judiciary Committee. As a member of that Committee, Petitioner played a significant part in the enactment of the federal Civil Rights Acts, including the Civil Rights Acts of 1964 and 1967. *Id.* at 41, 240. As a member of the Judiciary Committee of the United States' House of Representatives, Petitioner played a significant role in the enactment of the Criminal Justice Act of 1963, that for the first time mandated and made provision so that legal counsel would be provided to indigent individuals charged with federal crimes. *Id.* at 42.

As a member of the Judiciary Committee of the United States' House of Representatives,

Petitioner co-chaired the hearings concerning putative member Adam Clayton Powell. *Id.* A petition had been filed in the United States House of Representatives to exclude Congressman Powell from taking his seat in the Congress because of the circumstances of the manner in which he conducted the affairs of this committees, as well as the affairs of his re-election campaigns. A special committee was put together by the Speaker of the House of Representatives, Speaker Rayburn, initially, and then after Mr. Rayburn died, by Speaker McCornick from Massachusetts. As the ranking Republican on the House Judiciary Committee, Petitioner co-chaired the hearings. *Id.* at 43. Petitioner's Committee filed a report concluding Congress did not have authority to unseat Congressman Powell. Nevertheless, the full Congress voted to unseat Mr. Powell. An appeal of Congress' vote to exclude Mr. Powell was taken to the United States' Supreme Court. The Supreme Court adopted the legal reasoning articulated by Petitioner in the committee report, and allowed Mr. Powell to be seated as a member of Congress. *Id.* at 44-45.

As a member of Congress, Petitioner's legislative submission was the first such bill to create the Appalachian Regional Commission. *Id.* at 45. He also was selected and served as chairman of the Appalachian Regional Commission when he later was elected Governor of the State of West Virginia. *Id.* at 46. The Commission was a governmental grouping of 13 states for the purpose of making resources available from the federal government to rehabilitate mountainous areas and geographically difficult areas for development - the Commission played a significant role in building the highway system, particularly through the state of West Virginia. For example, certain West Virginia highway corridors, such as A, B, C, D, E and F were actually Appalachian Regional Commission corridors. The Commission also played a role in contributing to the educational system, including "bricks and mortar" development to help

restructure schools in each of the 13 states.⁸ *Id.* at 45-46.

Inter alia, Petitioner directly appointed, or recommended to the President of the United States, the appointment of the following members of the state and federal judiciary: Hon. Charles H. Haden, II (Supreme Court of Appeals and federal district court); Hon. John E. Carrigan (Supreme Court of Appeals); Hon. Donald R. Wilson (Supreme Court of Appeals); Hon. Oliver D. Kessel (Supreme Court of Appeals); Hon. Edwin F. Flowers (Supreme Court of Appeals); Hon. James M. Sprouse (Fourth Circuit Court of Appeals); Hon. John A. Field, Jr. (federal district court); Hon. Charles F. Paull (federal district court); Hon. Dennis R. Knapp (federal district court); Hon. John T. Copenhaver, Jr. (federal district court); Hon. Elizabeth V. Hallanhan (federal district court). Petitioner also appointed the first female judge to a West Virginia circuit court position (Hon. Callie Tsapis). While Governor, Petitioner made other appointments to state circuit courts, including many appointments that crossed party lines, all of whom were thereafter elected upon their own to serve a term as circuit judge. *Id.* at 46-47; *see* Petition for Readmission at 3.

The Panel virtually ignores the foregoing significant aspects of Petitioner's background. Petitioner certainly recognizes that his past experiences, accomplishments and public service are not the only measure used to determine reinstatement. Nevertheless, the foregoing *undisputed* events in Petitioner's background are significant, and certainly should be an appropriate and substantial part this Court's consideration of the Petition for Reinstatement.

⁸ The Panel does recognize that Petitioner, "was, in fact, instrumental in helping enact some of the most historical legislation in this country." Recommendation at 47.

III THE UNDISPUTED EVIDENCE OF PETITIONER'S GOOD CONDUCT SINCE DISBARMENT

As a result of his guilty pleas, Petitioner voluntarily reported to a federal prison camp, and thereafter served a sentence of incarceration of twenty-seven months at the Montgomery, Alabama Air Force Base. *Id.* at 47. In other words, Petitioner served the sentence required of him, and has paid the required substantial fine. *Inter alia*, while incarcerated, Petitioner helped redesign the facility law library, and taught and tutored other individuals at the Camp.⁹ *Id.* at 50-53; *see* Exhibits R1 and R2.

Following Petitioner's release, he has been self-employed as a consultant.¹⁰ *Id.* at 53,

⁹ The Panel recognized, and it was undisputed that Petitioner, "served his sentence without event and was a model prisoner." Recommendation at 24.

¹⁰ The Panel recognized, as it had to, that Petitioner's present employment as a consultant "is lawful, and as a result, this issue was not considered in the decision." Recommendation at 46, n.45. Nevertheless, the Panel attempted to cast aspersions on Petitioner's undisputedly lawful work, baldly suggesting without a shred of evidentiary citation or support that he profits "personally, politically and professionally" from his consulting and therefore his work as a consultant "raises questions" about Petitioner's understanding of "unlawful political influence." *Id.* Simply stated, although the Panel was certainly correct that Petitioner's limited consulting engagements are entirely lawful, its less than subtle attempt to cast aspersions on that work is absurd. The Court can take judicial notice that it is quite common for individuals involved in government service to later work in the consulting field – indeed, it is so common that it is probably expected. Petitioner is no different from other consultants who previously served in government and even the Panel recognized his work is entirely lawful; thus, the Panel's odd attempt to portray Petitioner's consulting engagements as malevolent is not just a stretch of the facts, it is baseless and unsupported.

The Panel also opines that some of the consulting work done by Petitioner is similar to what a lawyer does, but rightly concludes Petitioner has not unlawfully practiced law. Recommendation at 46. Nevertheless, the Panel then speculates obtusely and without basis that Petitioner "does not appear to have thought through the line between unlawful practice and bona fide consulting." *Id.* There is no basis for the foregoing statement of the Panel. To the contrary, Petitioner testified quite clearly at the public hearing that he **never** gives legal advice, and if he were asked to do so, he simply tells his consulting client that legal advice is a matter he can not handle and he would be happy to refer them to a lawyer:

162. He also has performed limited paralegal work.¹¹ *Id.* at 163-164. Following Petitioner's release, he has been involved in considerable charitable endeavors in his community. These activities are nothing new -- Petitioner and Mrs. Moore have participated regularly in charitable activities throughout their lives.¹² *Id.* at 53.

As part of his uncompensated charitable work, Petitioner recently has been involved heavily in leading and helping coordinate and effort to bring a "City of Hope" program to

“Q In the course of providing information to your consulting clients, I guess for want of a better word, do you ever give them advice on their legal issues?

A No ma'am.

Q How do you handle that when a client asks you for legal advice, knowing that you have a substantial legal background, in addition to your legislative background?

A I usually take care of it, ma'am, by saying to that person or that company, 'That is a matter which I cannot handle. I would be happy to refer you to a lawyer.'”

December 3, 2003 Transcript at 162. The foregoing evidence is undisputed in the record, and inexplicably was overlooked by the Panel.

¹¹ The Panel jumps to baseless negative conclusions at every turn. When Petitioner testified he had not be paid for his very limited paralegal work, and would work out something later with the lawyer he was working for, the Panel baselessly speculated that “this may constitute an unethical ‘fee sharing’ arrangement.” Recommendation at 46. Petitioner was questioned as to his fee arrangement at the public hearing and stated quite clearly that he had **no contract** and **no type of billing arrangement**, and would leave any compensation at all up to the discretion of the lawyer for whom he was working. December 3, 2003 Transcript at 166. The foregoing is totally undisputed. The Panel's venture into lurid speculation concerning unethical fee sharing arrangements is contradicted and unsupported by the clear evidence in the record, and no evidence is cited to support the Panel's curiously baseless observation.

¹² The Panel rightly acknowledged that Petitioner is “active within his community[,]” and that such activities “are commendable.” Recommendation at 45.

Marshall University. The program is intended to bring a very needed large scale oncology facility to treat children in partnership with Marshall University's Medical School. *Id.* at 54-56, 183-186.¹³

Petitioner has been a member of the Simpson United Methodist Church for seventy-six years. *Id.* at 56-57. Over the last decade, Petitioner has been very active in his Church and has served as a member of his Church's Board of Trustees, and as a member of his Church's Finance Committee. *Id.* at 57. As part of his service to his Church, Petitioner has led an effort to restore and rehabilitate his Church. *Id.* at 57. Petitioner and Mrs. Moore have contributed to their Church's House of Carpenter program (a program for the indigent and the poor, providing food, clothing and other help to needy individuals). *Id.* at 58-59, 186. Petitioner and Mrs. Moore also have helped an African-American Church in their community, and also helped local schools, the Boy Scouts, and the Girl Scouts. Petitioner also has helped lead a substantial fund-raising drive for the Salvation Army.¹⁴ *Id.* at 59-61, 188.

¹³ The Panel makes the curious finding that "Moore's claims of involvement with the City of Hope and Marshall University Medical School were never substantiated[.]" Recommendation at 25. This is curious because the Petitioner himself testified to his activities on behalf of the City of Hope and his testimony was wholly and completely uncontested and undisputed. *Id.* at 54-56, 183-186. Without a scintilla of evidence or even a suggestion that Petitioner's participation in the City of Hope is in any way, shape or form in question, one must wonder why further substantiation would be necessary.

¹⁴ ODC Ex. 23 includes a letter written by Professor Forrest Bowman of the West Virginia University College of Law. Professor Bowman's letter, dated November 11, 1998, states, *inter alia*:

"Three or four years ago, at my request, Governor Moore lent his personal assistance for a fund raising drive for the College of Officer Training of the Salvation Army, in Atlanta, Georgia. . . . His involvement in this effort required a substantial sacrifice of time and effort on his part[.]"

Although he was asked to do so, Petitioner did not accept any public speaking positions or invitations after he initially returned home. He took a while for things to heal personally. Thereafter, he did accept such invitations, but only requests for to speak on Memorial Day, and Veteran's Day. More recently, Petitioner has accepted invitations to speak at Marshall University and West Virginia University (to a faculty group at the business school and to political science classes) on several different occasions. He also has spoken more recently to several civic organizations (including the Civitan Club and the "Movers and Shakers" organization). He has spoken to classes at local public schools as well, including Sanford Elementary School, and Moundsville Junior High School. Nevertheless, Petitioner still turns down 80% of the requests he receives for public appearances or speech making purposes. *Id.* at 61-64.

During the last decade, Petitioner has been invited to and has attended events at the

Professor Bowman continued:

“In light of Governor Moore’s distinguished record of service to his state and his nation prior to his conviction and incarceration, and especially in light of his exemplary life since paying what is tritely referred to as his ‘debt to society,’ I firmly believe that his licence to practice law should be reinstated. His disbarment clearly established the point that our profession is serious about misconduct within our ranks. The equally valid point can now be made that, if one complies with the discipline that is meted out and gives sound evidence of rehabilitation, the licence should be reinstated. In the case of former Governor Arch A. Moore, Jr., that time is now. . . . **My experience as a teacher of legal ethics, a frequent lecturer on the subject for CLE organizations throughout the country, and as an expert witness in legal ethics cases in West Virginia and a dozen other states leads me to the firm conclusion that, in this case, reinstatement to the practice of law is not only appropriate, but highly desirable.**”

Id., and Ex. B hereto. (Emphasis added). Although there was no objection made to the admission of Professor Bowman’s letter, the Panel inexplicably ignored it.

Governor's Mansion. He also has participated in other events, including the ceremony commemorating the thirtieth anniversary of the enactment of the State's black lung legislation, initially signed into law by Petitioner during his first term of Governor in 1969. *Id.* at 65-67 and Ex. R3. Petitioner recently received a legislative citation for his work in this regard. *Id.*

IV THE PLEA

At the hearing on Petitioner's request for reinstatement, Petitioner testified he pled guilty to the indictment admitted as ODC Exhibit 1. *Id.* at 74-75. He testified he was not guilty of the charges, but that prior to entering his guilty plea he had discussed with his counsel the strategy, recommended by his counsel, of making a plea with the intent of later withdrawing the plea, in order to obtain as much information about the government's case as possible, in order to assist his defense. *Id.* at 74-80, 82-83, 85, 88, 91-92.

Petitioner explained in his testimony that he was not guilty of those charges. *Id.* at 74-75, 110-118, 124-125. Petitioner further explained why he pled guilty:

"I acted to a degree on advice of my counsel for the express purpose of withdrawing that plea at an appropriate time after he had learned as much as he could of the case that was before us at that time.

I had no reason not to follow that advice. As the record will show, subsequently a petition was filed to withdraw that plea and it was refused by the court."

Id. at 75. *See also id.* at 82-83 ("[T]he records will show, I had no idea that that requirement existed and that I did not have the right to file a petition to withdraw this plea. I knew I was in trouble at that point in time and it, very frankly, was an honest statement upon the part of my counsel because he indicated to the court that he had had experience in criminal law, but that he was not aware that just a matter, of course, that the guilty plea could be withdrawn [any time

prior to sentencing] simply by motion and by him making that specific request."); and *id.* at 85 ("I did as anybody would do, rely upon their counsel and I relied upon my counsel."); and *id.* at 88 ("I understood that was my right [and], on the advice of my counsel, an opportunity for him to be better educated [about the government's evidence] and I honestly believe that he didn't realize that I had [no] carte blanche authority to, and he says so to the court, to withdraw that plea."); and *id.* at 91-92("[O]n the day that this plea was entered, I took my counsel to the airport for him to fly back to Washington, D. C., and the date and time from the filing the petition to withdraw this was discussed in that. That's May 8 [1990]. He even mentioned it to counsel for the United States Government [in] a period of a week or ten days after the 8th and waited until the 29th of June to file it. Now if you hire counsel, you expect counsel to be certainly timely, but if counsel believes that the law is you can withdraw your verdict anytime before sentencing, that's the only explanation I can have in my mind as to why he would wait so long. Now you may say, "Well, you're a lawyer." I've got a lot of compliments in court for being a lawyer but I wasn't a lawyer in my own case. If I was, I certainly did a poor job. But the circumstances are such that Mr. Hundley, I believe, felt as sure as we're in this room that he had as much time up until the day the court convened to give me my sentence."); and *id.* at 148, 226-227.

Petitioner explained that, although he had not reviewed the transcript of the plea hearing introduced as ODC Exhibit 3, he assumed the transcript was accurate. *Id.* at 76-77. Petitioner explained why he responded the way he did to questions concerning his plea:

"I believe that these responses are responses that were recommended for me to be given by my counsel. There was more than the discussion of the court's paragraph as he questioned me in this regard. But the conferences that I had with my counsel, these circumstances were simply going through the motions, as far as I was concerned.

There's one thing that is not included in this transcript, not particularly -- Well, yes, particularly with this. This transcript doesn't show that three, four, or perhaps as much as five minutes passed before I responded to [the Court's] question. That might not be significant to you, and I do not intend to be argumentative with you, but even though I knew what my lawyer was telling me the path was, this was the most seemingly difficult day of my life and time in my life and notwithstanding the road that had been painted for me.

I had extremely hard time to say yes to that question and it wasn't until, and I think there is some mention in the general press of this, that it wasn't until my counsel had pulled on my coat time and again, visible to everybody in that court room, that I answered as I answered."

Id. at 78-79. *See also id.* at 79-80 ("I think the question that was asked of me by the court, on the path that my counsel had chosen to go, is a correct answer that I submitted on the advice of my counsel.").

Petitioner testified that, prior to his sentencing, he moved the federal court to withdraw his guilty pleas. *Id.* at 90, 94 and ODC Exs. 5 and 6.

ODC Exhibit 7 is an affidavit of Petitioner's counsel, William G. Hundley, that was filed with the federal district court in support of Petitioner's Motion to Withdraw his guilty plea. Mr. Hundley testified in his affidavit, *inter alia*, that Petitioner had "vehemently" denied their was a factual basis for his guilty pleas to Counts I through IV of the indictment to which he pled. ODC Ex. 7, Hundley Affidavit at ¶¶ 12-13.

ODC Exhibit 9 is a second affidavit filed by Mr. Hundley in support of Petitioner's Motion to Withdraw his plea. Mr. Hundley testified that he never told any government lawyer that Petitioner had admitted guilt to Counts 1 through 4: "I never told Mr. Campbell or any other prosecutor that Mr. Moore was admitting all of this to me, because he was not."). ODC Ex. 9, Second Hundley Affidavit at ¶ 4. He further testified that, "[t]here are, as I have stated, some

things I wish I had done differently. I believe my client always was troubled and uncertain about the guilty plea to Counts 1, 2, 3 and 4." *Id.* at ¶ 9. Mr. Hundley further testified that, "What I should have done is gone to [the Court] the morning of May 8 with the government and, just as I have done in this affidavit, laid out these problems. I regret that I did not." *Id.* at ¶ 6. Consistent with the foregoing, Mr. Hundley further testified that he was told by government prosecutor Joe Savage that in Mr. Savage's interviews with Petitioner immediately following the guilty plea, Mr. Savage stated that the Petitioner "had not accepted responsibility[.]" *Id.* at ¶ 7.

Despite Mr. Hundley's affidavits (ODC exs. 7 and 9), the federal district court denied Petitioner's Motion to Withdraw the pleas. Transcript at 95. After denying the Petitioner's Motion to Withdraw, the federal court sentenced Petitioner to a total period of incarceration of five years and ten months, and a fine of \$173,000. Transcript at 99. Petitioner's appeals of the denial of his motion to withdraw was appealed to the Fourth Circuit, where the appeal was rejected, and to the Supreme Court of the United States, where *cert.* was denied. Transcript at 99-100. Petitioner then sought relief from his conviction by filing several writs of *habeas corpus*, but those writs were denied. Transcript at 100.

V WHY PETITIONER SEEKS REINSTATEMENT

At the conclusion of his direct examination, Petitioner testified that,

"it's sort of old fashion to say that this is something you've always wanted to be, but I always wanted to be a lawyer.

It's just a total foreign life to me to be a business consultant . . . And I read every opinion of the United States Supreme Court, the Supreme Court of the State of West Virginia. I'm a regular subscriber to the Law Quarterly. I can't get law out of my life and I don't want it out of my life. . . . I've always wanted to be a lawyer and I want to die a lawyer."

Id. at 70-71.

VI THE HEARING PANEL SUBCOMMITTEE'S RECOMMENDATION

The Panel recommends against reinstatement. Although the report is quite lengthy, at its root is a condition for reinstatement antithetical to the principles of compassion laid down by this Court. Essentially, the Panel seeks to impose a lifelong punishment on Petitioner for his attempts to withdraw his guilty pleas and his efforts to have a trial -- the Panel attacks those legitimate motions, and puts Petitioner in the "catch-22" situation of reiterating his reasons for seeking to withdraw his guilty pleas, and then baselessly accuses him of insincerity and untruthfulness when he explains those reasons. Worse, the Panel in its report ignores or misconstrues much of the *undisputed* evidence put forward in Petitioner's case-in-chief. The Panel's recommendation advocates an impossible readmission standard, one based wholly on a requirement of an "admission of guilt" and expressions of apology and remorse--a standard explicitly rejected by this Court.¹⁵ Factually, the Panel's report focuses almost wholly on the voluntary statements Petitioner made in response to questions of federal prosecutors almost fourteen years ago, in early 1990. ODC Ex. 27(a). Those voluntary statements from 1990, in turn, discussed events from fifteen to twenty years ago. And although much of what was discussed in those voluntary statements never was raised or discussed by the ODC or the Panel in the public hearing on this Petition¹⁶, the Panel's report nevertheless relies heavily (almost

¹⁵ Such a standard was advocated previously by the Board's predecessor, the Committee on Legal Ethics, and explicitly was rejected in *In re Smith, infra*.

¹⁶ This seems to run counter to this Court's holding in Syllabus Point 2, *In Re Brown*, 164 W.Va. 234, 262 S.E.2d 444 (1980):

exclusively) on negative spins of the questions asked and answers given in those voluntary statements as support for its recommendation. Simply stated, the Panel's report and recommendation is misguided in its focus, and wholly mistaken in its conclusions. Fortunately, this Court reviews Petitions for Reinstatement *de novo*.

VII APPLICATION OF THE FACTS TO THE CORRECT REINSTATEMENT STANDARD SUPPORTS REINSTATEMENT

In *Syllabus* Point 3 of *Committee on Legal Ethics of the West Virginia State Bar v. McCorkle*, 192 W.Va. 286, 452 S.E.2d 377 (1994), this Court explained that reviews an "adjudicatory record" made before the Committee on Legal Ethics *de novo*:

"A *de novo* standard applies to a review of the adjudicatory record made before the Committee on Legal Ethics of the West Virginia State Bar as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; **this Court gives respectful consideration to the Committee's recommendations while ultimately exercising its own independent judgment.** On the other hand, substantial deference is given to the Committee's findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record."

(Emphasis added).

Concerning the standard for reinstatement, this Court has held as follows:

"The general rule for reinstatement is that a disbarred attorney in order to regain admission to the practice of law bears the burden of showing that he presently possesses the integrity, moral character and legal

"In cases involving reinstatement proceedings, we require, under this Court's supervisory powers, that the Committee on Legal Ethics of The West Virginia State Bar shall hold *an evidentiary hearing* to enable a record to be made on the issues relating to the petitioner's qualifications to have his license reinstated."

(Emphasis added).

competence to resume the practice of law. To overcome the adverse effect of the previous disbarment he must demonstrate a record of rehabilitation. In addition, the court must conclude that such reinstatement will not have a justifiable and substantial adverse effect on the public confidence in the administration of justice and in this regard the seriousness of the conduct leading to disbarment is an important consideration.”

Syllabus Point 1, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980). Furthermore,

“Rehabilitation is demonstrated by a course of conduct that enables the court to conclude there is little likelihood that after such rehabilitation is completed and the applicant is readmitted to the practice of law he will engage in unprofessional conduct.”

Syllabus Point 2, *In Re Brown*, 166 W.Va. 226, 273 S.E.2d 567 (1980).” This Court has admonished that, “rather than endeavoring to establish a uniform standard of disciplinary action, [the Court] will consider the facts and circumstances [in each case],” *Syllabus* Point 2, in part, *Committee on Legal Ethics v. Mullins*, 159 W.Va. 647, 226 S.E.2d 427 (1976). *See also Lawyer Disciplinary Bd. v. Cunningham*, 195 W.Va. 27, 36, 464 S.E.2d 181, 190 (1995) (“We endeavor to make an individualized assessment of the sanction rather than follow a punishment schedule.”). Obviously, then, the foregoing standard makes a comparison of the various types of conduct that have led to disbarment in other cases somewhat less helpful to the primary consideration upon a Petition for Reinstatement, that being the Petitioner’s rehabilitation and conduct since disbarment. This is not to minimize the seriousness of the guilty pleas rendered by Petitioner; rather, it is to stress that in this case, it is undeniable that the primary reinstatement consideration has been met, *i.e.*, Petitioner’s conduct and character since his disbarment have been exemplary and are worthy of strong consideration for reinstatement.

Notwithstanding the foregoing, it is worth noting in regard to the reported reinstatement cases published by this Court, where a lawyer was disbarred or suspended, this Court consistently

has reserved its harshest assessment for wrongful conduct or action taken in the lawyer's role *qua* lawyer, (*i.e.*, lawyer bribing a juror in his client's case; lawyer profiting wrongfully at the expense of a client). Thus, the conduct to which Petitioner plead guilty is dissimilar to the foregoing type of conduct (four election-law related violations, and one Hobbs Act violation). Moreover, of the five counts to which Petitioner pled guilty, four counts related to conduct that occurred outside of Petitioner's term as Governor.

Although strict comparisons with other cases are not dispositive, they may nevertheless be helpful to the Court. In that regard, Petitioner's circumstances have more in common with cases where lawyers have been reinstated, than cases where reinstatement has been disallowed. For example, in *Lawyer Disciplinary Board v. Simmons*, 202 W.Va. 654, 505 S.E.2d 717 (1998), an attorney who had been suspended for entering into business transactions with longtime clients without making adequate disclosures, failing to protect his clients' interests, and failing to refer them to independent counsel. His application for reinstatement was granted with conditions.

In *In re Hess*, 201 W.Va. 192, 495 S.E.2d 563 (1998), a lawyer had been suspended for actions clearly constituting dishonesty, fraud, deceit, and misrepresentation by deceiving and misrepresenting to his partners, either directly or by his failure to disclose, the nature of a bank account he set up to deposit firm monies, and also took money which clearly was not his and converted it to his own use. His application for reinstatement was granted with conditions.

In *Lawyer Disciplinary Bd. v. Pence*, 194 W.Va. 608, 461 S.E.2d 114 (1995), an attorney had been disbarred for (1) failing to promptly pay over client funds on demand; (2) commingling client funds with his own funds; (3) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; (4) intentionally prejudicing a client; (5) knowingly failing to disclose

information he was required by law to reveal; (6) knowingly making false representations of fact; (7) counseling and assisting a client in conduct known to be illegal; and (8) knowingly engaging in conduct which was both illegal and contrary to certain disciplinary rules. The Supreme Court granted his application for reinstatement.

In *Lawyer Disciplinary Board v. Vieweg*, 194 W.Va. 554, 461 S.E.2d 60 (1995), a lawyer had been suspended for (1) taking funds from his law firm without authorization; (2) misappropriating monies from various clients thereby causing liability to his firm; (3) conversion of monies from a private dinner club to personal use while a member of the club's board of directors); (4) converted family trust monies to his own use without authorization of the trust beneficiaries; (5) several instances of obtaining bank loans through misrepresentation of his financial status, and through misrepresentation of the fact that he was obtaining the loan in order to make payments on a loan to a different bank, thereby causing banks to lose substantial sums of money. The lawyer's request for reinstatement was granted with conditions.

In *Committee on Legal Ethics of the West Virginia State Bar v. Hobbs*, 190 W.Va. 606, 439 S.E.2d 629 (1993), the conduct of attorney who made "secret payments" to presiding judge warranted disbarment, but was given lesser two year suspension in light of other factors.

In *In re Smith*, 166 W.Va. 22, 270 S.E.2d 768 (1980), *opinion withdrawn*, Nov. 25, 1980, *opinion reissued* (No. 13493, November 25, 1980), a lawyer who had been disbarred after federal court conviction for conspiring to cause fraudulent and illegal votes to be cast in a primary election. The lawyer's request for reinstatement was granted.¹⁷

¹⁷ When the *In re Smith* opinion was re-filed on November 25, 1980, *Syllabus* Point 2 stated:

In *In re Daniel*, 153 W.Va. 839, 173 S.E.2d 153 (1970), an attorney had been disbarred for three instances in which he failed to pay over money collected for his clients and the failure to institute proceedings for which he had received money from his clients. The attorney's request for reinstatement was granted.

Eschewing any comparative analysis of other cases where reinstatement was granted, the Panel's recommendation extensively relies upon innuendo and mis-characterizations of Petitioner's voluntary statements to federal prosecutors in early 1990, rather than actual testimony presented at the public hearing, to support its recommendation. The recommendation itself is based almost exclusively on the fact that Petitioner has, since before he pled guilty, maintained his innocence to the criminal charges that resulted in his disbarment.¹⁸ The Panel's position reflects nothing more than a recycled assertion of a standard for readmission rejected by

" Article VI, Sec. 35, By-Laws, West Virginia State Bar, which provides that an attorney whose license to practice has been annulled may reapply for admission after five years **is a rule of compassion**, and unless the Court concludes that the underlying offense which caused original disbarment is so serious that the Court cannot be satisfied that the public will be adequately protected, a lawyer's licence to practice law will ordinarily be reinstated after five years of satisfactory behavior.

(Emphasis added).

¹⁸ The Panel suggests it recognizes "expressions of repentance may not be required in every case," Recommendation at 48, and as an example of such a case, the Panel cites to the circumstance,

"where the attorney seeking reinstatement *honestly and sincerely believes in his innocence* and, in light of all the evidence, his failure to acknowledge guilt should not be held against him."

Id.

this Court long ago. Indeed, this Court long has held that, in reinstatement proceedings, "*that while expressions of repentance were helpful, they were not critical for the reinstatement.*" *In re Brown*, 166 W.Va. 226, 273 S.E.2d 567, 574 at n.12 (1980) (emphasis added), *citing with approval, In re Hiss*, 368 Mass. 447, 455, 333 S.E.2d 429, 437 (1975). The Panel instead puts forth a standard of readmission where "expressions of repentance" and admissions of guilt not only are "critical," but are mandatory. The Court should reject the Panel's recommendation as an erroneous misapplication of the law of West Virginia.

In *Hiss, supra*, cited with approval in *In re Brown, supra*, the court explained why statements of innocence after a conviction should not disqualify an applicant from readmission following annulment:

"Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance creates a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hardretained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule: 'Circumstances may be made to bring innocence under the penalties of the law. If so brought, escape by confession of guilt . . . may be rejected, --preferring to be the victim of the law rather than its acknowledged transgressor--preferring death even to such certain infamy.' *Burdick v. United States*, 236 U.S. 79, 90--91, 35 S.Ct. 267, 269, 59 L.Ed. 476 (1915). Honest men would suffer permanent disbarment under such a rule. Others, less sure of their moral positions, would be tempted to commit perjury by admitting to a nonexistent offense (or to an offense they believe is nonexistent) to secure reinstatement. So regarded, this rule, intended to maintain the integrity of the bar, would encourage corruption in these latter petitioners for reinstatement and, again paradoxically, might permit reinstatement of those least fit to serve."

In re Hiss, supra, 368 Mass. at 458-59, 333 N.E.2d at 437. See also *In re Wigoda*, 77 Ill.2d 154,

159, 395 N.E.2d 571, 574 (Ill. 1979) ("[R]epentance and rehabilitation are not the same.

Rehabilitation, the most important consideration in reinstatement proceedings, is a matter of one's 'return' to a beneficial, constructive and trustworthy role. Repentance is a matter of contrition and regret."); *In re Walgren*, 104 Wash.2d 557, 563-564, 708 P.2d 380, 384-385 (Wash. 1985) ("The continued assertion by Walgren of his innocence does not reflect negatively on our assessment of his rehabilitation.").

In *In re Smith* (No. 13493, November 25, 1980), slip opinion at 10, this Court rejected the standard of readmission implicitly advocated by the Panel in this case:

"The Ethics Committee argues in essence that in order for the petitioner to meet the burden of rehabilitation he must, for all intents and purposes, 'live at the foot of the cross' and do constant acts of penance. If the affirmative burden of proof regarding rehabilitation were as heavy as the Committee urges, their proposed rule of evidence would accomplish indirectly what this court has declined to do directly, namely make reinstatement impossible."

The case at bar is not dissimilar to the 1980 *Smith* case. In that case the Panel's predecessor, the Committee on Legal Ethics, advocated reinstatement of Mr. Smith be denied. Slip op. at 2. Mr. Smith was convicted of a felony election law violation in federal court. Slip op. at 1. He had protested his innocence and nevertheless was convicted, and his several appeals were denied in the federal appellate courts. *Id.* It is important to note that in *In re Smith*, the Supreme Court of Appeals applied the same five-part test articulated in *In re Brown* (first articulated in the *Hiss* case), the same standard acknowledged to be applicable here. *See In re Smith, supra.* That test is as follows:

"In judging whether a petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is necessary to look to (1) the nature of the original offense for which the petitioner was

disbarred, (2) the petitioner's character, maturity, and experience at the time of his disbarment, (3) the petitioner's occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills."

In re Brown, 164 W.Va. 234, 237-38, 262 S.E.2d 444, 446 (1980), quoting *In re Hiss*, 368 Mass. at 460, 333 N.E.2d at 437-38.

The first analysis concerns "the nature of the original offense for which the petitioner was disbarred[.]" As explained in *In re Smith*, the "nature of the offense" analysis goes to whether or not the offense was committed as part of the practice of law:

"The nature of the original offense for which the petitioner was disbarred was reprehensible, *but it was completely unrelated to petitioner's law practice or activities as an officer of the court.*"

Id., slip op. at 10 (emphasis added). The evidence is clear in this case that the offenses to which Petitioner pled guilty were completely unrelated to petitioner's law practice or activities as an officer of the court. The Panel seems to have misunderstood the focus of this analysis and instead focused on the undisputed fact that the offenses are felonies and therefore reprehensible, but did not discuss the fact that the offenses that caused his disbarment did not involve the practice of law.¹⁹ Thus, as in *In re Smith*, the "nature of the offense" analysis does not somehow

¹⁹ The Panel engages in a lengthy but erroneous discussion of Petitioner's contract for legal services with a client who had retained him 1983, but where the written contract was created after the retention and dated from the date of the retention. First, the Panel's discussion, although not irrelevant to the total picture, is inappropriate to the analysis of the severity of the offenses because he was not disbarred for "backdating" the contract. Second, the Panel does not dispute that Petitioner was, in fact, retained for legal services in 1983. Third, the Petitioner's contract was not the result of "dishonesty, fraud, deceit or misrepresentation," because the premise of the Panel that the reason for the dating of the contract is wrong. The basis was, as testified by Petitioner and **undisputed in the record**, simply to reflect the true date of the agreement. It was not to conceal some unlawful purpose, as insinuated by the Panel. See generally, *State v. Moore*, 895 F.Supp. at 867.

warrant denial of the Petition for Reinstatement.

The second analysis required by the five-part test is a review of the Petitioner's "character, maturity, and experience at the time of his disbarment[.]" The Panel misunderstands the foregoing test by baldly stating "there is not much discussion of this factor in the case law[.]" and then proceeding to ignore, without any discussion of *In re Smith*, which is the closest case on point in West Virginia jurisprudence.²⁰ As this Court applied it in *In re Smith*, however, the foregoing test is designed to aid one who is young and immature at time of the offense – and, although the test is of no benefit to one who is older at the time of the offenses, there is no justification for then turning the standard on its head and placing a heavier burden on one who is older, as the Panel attempts to do in this case:

"The petitioner's character, maturity and experience at the time of his disbarment certainly do not militate in favor of petitioner's reinstatement, but at the same time, they do not militate against reinstatement. The criteria of character, maturity, and experience are basically designed to permit forgiveness of a young man who has been stupid in his youth and can demonstrate that over the course of years he has become wiser and stronger. That may very well have been the case in *In re Hiss*, *supra*. These criteria then can only be interpreted positively in those cases where they are applicable **and should be ignored in a case like this where there has been no significant change in maturity and experience since the time of disbarment.**"

Id., slip op. at 10-11 (emphasis added). In this case, then, where, as in *In re Smith*, there has been

²⁰ It is *undisputed* that Petitioner has maintained his innocence of the crimes to which he pled guilty since *before he pled guilty*. Transcript of the Evidentiary Deposition of Joe Savage at 56-57; ODC Ex. 11 at 27 (affirming that Mr. Savage, on behalf of the prosecution, represented to the federal district judge that Petitioner consistently had denied he had committed the crimes to which he had pled guilty). Nevertheless, the Panel erroneously attacks Petitioner's "consistency" in maintaining his innocence. Apparently, an unwavering thirteen (13) years of maintaining one's innocence, *beginning even before a guilty plea*, does not amount to consistency as far as the Panel is concerned.

no significant change in maturity and experience since the time of disbarment, the foregoing analysis is inapplicable. Despite the fact that the foregoing was explained explicitly to the Panel in Petitioner's Brief below, the Panel blatantly ignored the foregoing instruction of this Court.

The third part of the five part test is an analysis of the Petitioner's "occupations and conduct in the time since his disbarment[.]" The Panel mis-characterizes and mostly ignores the undisputed evidence relevant to this part of the reinstatement standard. The *undisputed* evidence of record shows that since the time of Petitioner's release, he has been employed as a business and financial consultant. *Id.* at 53, 162. He also has performed limited paralegal work. *Id.* at 163-164. Following Petitioner's release, he has been involved in considerable charitable endeavors in his community. These activities are nothing new -- Petitioner and Mrs. Moore have participated regularly in charitable activities throughout their lives. *Id.* at 53. For example, as part of his uncompensated charitable work, Petitioner recently has been heavily involved in leading and helping coordinate and effort to bring a "City of Hope" program to Marshall University. The program is intended to bring a very needed large scale oncology facility to treat children in partnership with Marshall University's Medical School. *Id.* at 54-56, 183-186. The evidence also is undisputed that Petitioner, a lifelong member of the Simpson United Methodist Church, *id.* at 56-57, has maintained strong ties to his Church, and over the last decade, Petitioner has served as a member of his Church's Board of Trustees, and as a member of his Church's Finance Committee. *Id.* at 57. As part of his service to his Church, Petitioner has led an effort to restore and rehabilitate his Church. *Id.* at 57. Petitioner and Mrs. Moore have contributed to their Church's House of Carpenter program (a program for the indigent and the poor, providing food, clothing and other help to needy individuals). *Id.* at 58-59, 186. Petitioner

and Mrs. Moore also have helped an Afro-American Church in their community, and also helped local schools, the Boy Scouts, the Girl Scouts. Petitioner has helped lead a substantial fund-raising drive for the Salvation Army.²¹ *Id.* at 59-61, 188. In Mr. Smith's case, the petitioner had "a lack of regular salaried employment," but the Supreme Court of Appeals found his occupation "acceptable in light of his participation in his own business, his regular consulting services, and the fact that his private assets were sufficient to provide for his family." *In re Smith, supra*, slip op. at 11.²² In the case at bar, when compared to Mr. Smith's situation, the *undisputed* evidence of Petitioner's occupations and conduct in the time since disbarment far exceed the requirements of the standards for reinstatement. Thus, although the Panel refuses to address or even acknowledge most the facts concerning Petitioner's "occupations and conduct in the time since his disbarment," the undisputed facts concerning this factor clearly support reinstatement.

The fourth part of the five-part test is an analysis of "the time elapsed since the disbarment[.]" The Panel acknowledges this analysis, but rather than discuss it as an equal measure, this factor is brushed aside apparently because "mere passage of time alone is insufficient to warrant reinstatement." Recommendation at 46. While the Panel is accurate that

²¹ ODC Ex. 23 (Ex. B hereto) includes a letter written by Professor Forrest Bowman of the West Virginia University College of Law. Professor Bowman's letter, dated November 11, 1998, states, *inter alia*:

"Three or four years ago, at my request, Governor Moore lent his personal assistance for a fund raising drive for the College of Officer Training of the Salvation Army, in Atlanta, Georgia. . . . His involvement in this effort required a substantial sacrifice of time and effort on his part[.]"

²² The Panel again inexplicably ignores the holding of this Court in *In re Smith* in its analysis of this factor.

one may not be readmitted *solely* on the basis of the time elapsed, the Panel conspicuously ignores the fact that twelve (12) years now have elapsed, *more than twice as long as the minimum five-year period*. It is only logical, too, that the passage of time must be reviewed in conjunction with Petitioner's gradual return to limited public life. When he was first released, although he was asked to do so, Petitioner did not accept any public speaking positions or invitations. He took a while for things to heal personally. Thereafter, he did accept such invitations, but only requests for to speak on Memorial Day, and Veteran's Day. More recently, Petitioner has accepted invitations to speak at Marshall University and West Virginia University (to a faculty group at the business school and to political science classes) on several different occasions. He also has spoken more recently to several civic organizations (including the Civitan Club and the "Movers and Shakers" organization). He has spoken to classes at local public schools as well, including Sanford Elementary School, and Moundsville Junior High School. Nevertheless, Petitioner still turns down 80% of the requests he receives for public appearances, for speech making purposes. *Id.* at 61-64. More recently also, Petitioner has been invited to and has attended events at the Governor's Mansion. He also has participated in other events, including the ceremony commemorating the thirtieth anniversary of the enactment of the State's black lung legislation, initially signed into law by Petitioner's during his first term of Governor in 1969. *Id.* at 65-67 and Ex. R3. Petitioner received a legislative citation for his work in this regard. *Id.* These types of public appearances, perhaps unthinkable at the time Petitioner was incarcerated, show that with the passage of time, Petitioner's standing in the State community has increased markedly. The Panel has cited no evidence to the contrary. In regard to Mr. Smith's case, only six (6) years, just one year more than the mandatory minimum, was

deemed sufficient for reinstatement purposes. *In re Smith, supra*, slip op. at 11 ("The time elapsed since disbarment is one year longer than that required by our Rules."). Thus, although unrecognized by the Panel, it is beyond dispute that this factor, the passage of time, overwhelmingly favors reinstatement.

The last part of the five-part test requires an analysis of "the Petitioner's present competence in legal skills[.]" In regard to this analysis, the testimony of record is as follows: Petitioner testified he stays current with the law by regularly reading recent opinions of the West Virginia Supreme Court and the Court of Appeals for the Fourth Circuit. Transcript at 147. He also has attended courses for "continuing legal education." *Id.* at 167. The Panel concluded Petitioner is a "competent attorney." Recommendation at 47. In regard to this last analysis Petitioner is no different than Mr. Smith, of whom the Supreme Court of Appeals stated the following:

"[T]here is absolutely no evidence in the record to indicate that petitioner's present competence in legal skills is anything less than superior. The record demonstrates conclusively that during petitioner's period of disbarment he has actively read in the law and kept himself abreast of all current developments, and that he maintains a keen interest in developing case law and the legal literature in general."

In re Smith, slip op. at 11. Thus, factor number five also supports reinstatement.

Based upon all of the foregoing, application of the facts of record to the five-part test from *Brown, supra* and *Hiss, supra*, recognized by the Panel as the applicable test for determining rehabilitation, strongly supports Petitioner's application for reinstatement.

VIII THE IMPORT OF THE SUMMARY JUDGMENT RULING FAVORING PETITIONER IN THE STATE'S CIVIL CASE

Petitioner's explanation of his guilty pleas is undisputably sincere. This Court should not countenance an attack on that sincerity based, as it is, on insinuation and innuendo. It is significant that, contrary to the Panel's suggestions in its recommendation, Petitioner has not sought to turn these proceedings into the trial he never received, and never sought to make the factual circumstances surrounding his guilty pleas, and his explanations thereof, the central focus of these proceedings. Rather, Petitioner's case in chief specifically acknowledged his guilty pleas, and his time served and fine paid therefore. He is not attempting to use this forum to somehow "rewrite history." And indeed, his statements concerning the circumstances surrounding the guilty pleas were made only upon inquiry by *the ODC and the Panel*, and he responded to those inquiries in a way that can be characterized only as complete sincerity.²³ Nevertheless, in light of the single-minded focus of the Panel's Recommendation concerning Petitioner's sincerity and culpability, it must be pointed out that the specifics of the partial summary judgment ruling (by the only court to actually evaluate the factual evidence surrounding the federal government's indictment) supports Petitioner's long-held belief in his innocence. *State v. Moore*, 895 F.Supp. 864 (S.D.W.Va. 1995), COMEX.1. Although the Panel apparently disagrees with factual findings of the federal district court, that decision reinforces

²³ The Panel's repeated assertions that Petitioner's "demeanor" somehow reflected insincerity is offensive and preposterous. Petitioner's demeanor at the public hearing reflected nothing but the utmost sincerity and dignity, and the fact that the Panel refers to Petitioner's demeanor without any explanation at all (in its 55 page report) of how it possibly could be viewed negatively speaks volumes.

Petitioner's "sincerity," and can not be ignored.²⁴

For example, the Panel trots out the same assertions concerning Petitioner's legal representation of Mr. Kizer that was made in the civil case. However, in an over-reaching effort to spin a one-sided story, the Panel wholly ignores the findings of the federal district court that were as follows:

"As Governor of West Virginia, Moore had no authority over or control of DOL [the Department of Labor]. John H. Kozak, a state employee familiar with the administration of the black lung fund, reviewed DOL files and found nothing to indicate that DOL's certification of the Adventure Resources Group for self-insured status was mistaken or improper. Additionally, **no evidence before the Court demonstrates that Moore improperly interfered with DOL officials in order to convince them to approve Kizer's application for self-insured status.**"

Id., 895 F.Supp. at 867 (emphasis added). The Court found further that:

"The State also relies on Moore's guilty plea for evidentiary support. However, by his guilty plea, Moore has only admitted to extorting money which was not lawfully due and owing to him. The plea does not establish that Moore in any way interfered with DOL. **In fact, even if the Court were to accept as established the facts asserted by the U.S. Attorney at Moore's Rule 11 plea hearing (which it does not) nothing indicates that Moore interfered with DOL.**"

Id. The federal district court continued its review of the evidence as follows:

"According to the State, Moore's improper conduct prompted the State to make a large payment out of the fund in violation of state law. Thus,

²⁴ The Panel relegates the federal district court's decision to a discussion in a single paragraph at the end of its lengthy report. Recommendation at 54. Rather than address the many undisputed findings that support Petitioner, the Panel overlooks all but a single paragraph that discusses the only *contested* factual issue in that case. Disappointingly, the Panel's report fails to address Judge Williams findings of an undisputed lack of factual support for the criminal charges and suggests that the only reason the federal court granted summary judgment on "most" of the counts was "that the State failed to demonstrate that it had actually suffered a financial loss" as a result of conduct of Petitioner. *Id.*

under the State's theory, it has suffered a \$2.2 million injury, all of which is subject to treble damages under RICO. However, to determine the true nature of the State's injury, the Court must examine the purpose of the black lung fund. The fund is used to pay claims made by employees of companies which subscribe to it. Once a company becomes self-insured, the fund is no longer liable for claims made by that company's employees. Therefore, once Kizer became self-insured, the State was no longer responsible for any black lung claims made by employees of Kizer companies.

The State contends that state law authorizes the transfer of excess black lung funds into other state funds in order to meet budgetary shortfalls in other governmental programs. In fact, a portion of the surplus from the black lung fund was transferred in 1992 'for the use of the financially troubled worker's compensation fund.' (July 10, 1995 Aff. of John H. Kozak at p 3). Therefore, if the money had been in the fund, the State would have been able to transfer it to help cover the shortfall.

The State's theory of damages simply is not supported by the evidence. Although the Adventure Resources Group refund violated state law at the time it was made, the regulations changed approximately three months later. Under the window of opportunity provided by the amended emergency rule, Kizer's companies would have qualified for a refund in January of 1986 because they had been approved by the Department of Labor for self-insured status. Therefore, the \$2.2 million would not have remained in the fund until 1992 when money was transferred to cover a shortfall in the workers' compensation fund. Moreover, the causal chain asserted by the State is too weak to meet the proximate cause requirement for standing under civil RICO. The State has the burden to present some evidence showing that Moore's racketeering conduct caused the coal workers' fund to approve the Kizer refund. As noted by the Fourth Circuit, the Court must examine 'whether the conduct [engaged in by the defendant] has been so significant and important a cause [of the injury] that the defendant should be held responsible.' *Brandenburg*, 859 F.2d at 1189, quoting Prosser and Keaton, Torts, s 42, p. 272 (5th Ed.1984).

With respect to the refund, DOL officials, not Arch Moore or any other employee of the State of West Virginia, made all of the important decisions. Under the State's program, refunds were available to self-insured companies until July 1, 1985 and between January 16 and April 16, 1986. Once a company received an approval letter from DOL, the State issued a check. Thus, unless the State can present some evidence that Moore's racketeering activities caused DOL to grant self-insured

status to Kizer's companies, the causal requirement for RICO damages has not been met.

The State has presented no evidence regarding DOL's process for evaluating Kizer's application to become self-insured. No deposition or affidavit of a DOL employee is before the Court. Moore obviously had no control over a federal agency, and the State's own witness, after reviewing the file, found nothing improper about DOL's decision. According to the complaint, Moore's intervention with the Department of Natural Resources allowed Kizer's mine to continue operating. This, in turn, provided Kizer with the financial resources necessary to gain DOL approval. More specifically, the complaint alleges that 'the closure [of Kizer's mine] would have jeopardized the Kizer coal companies' ability to receive Department of Labor approval to become self-insured.' (Am.Compl. at p 60). **This theory might succeed if the State could present one shred of evidence to support it. However, no one from DOL has provided a statement indicating that Kizer would not have received self-insured status if the Kizer mine had been closed."**

Id., 895 F.Supp. at 869-70 (emphasis added). The federal district court concluded as follows:

"[T]he State has the burden to present at least some evidence showing that Moore's conduct was so significant and important a cause of the refund that he should be held liable. *Given the complete lack of evidence* regarding DOL's process for approving Kizer's self-insurance application, the State has not met its burden."

Id., 895 F.Supp. at 870 (emphasis added). Although the foregoing is not proffered for the purpose of suggesting that it amounts to a complete exoneration of Petitioner, it certainly raises substantial issues regarding the facts asserted by the U.S. Attorney, and provides strong justification for Petitioner's sincerity in maintaining his innocence.²⁵

²⁵ It must be emphasized that Petitioner is not seeking to re-litigate old issues – although that appears to be the intent of the Panel in questioning Petitioner's basis for his long-standing assertion of innocence. The foregoing is significant not as part of an effort to re-litigate Petitioner's criminal or civil culpability, but rebut the Panel's mistaken conclusions by conclusively showing that Petitioner's assertions concerning his conduct are both *sincere* and *honest*.

The Panel also makes a one-sided and thoroughly incomplete presentation of the facts surrounding the evidence concerning Petitioner's alleged tax liability. The ODC simply ignores the federal district court's 1995 findings, which were as follows:

"Even if Moore failed to report certain campaign contributions as income, that additional gross income would not necessarily translate into additional taxable income. Moore might have been able to make use of deductions or other offsets to reduce his tax liability. To carry its burden on this issue, the State would need to produce some audit evidence indicating that Moore failed to pay sufficient tax during the years in question. The State has presented no such evidence. Moreover, to the extent that West Virginia relies on federal adjusted gross income to determine state taxable income, the State should be bound by the federal government's determination of whether or not Moore owes additional tax. **To date, the federal government has found no shortfall on Moore's part.** (July 14, 1995 Aff. of Moore at p 6). The only evidence filed by either party regarding Moore's tax liability comes from Moore himself. He states the following in his July 14th, 1995 affidavit:

I did not understate my taxable income for the years 1984, 1985, and 1988.

I did not fail to pay all federal and state tax due and owing on my income reported for 1984, 1985, and 1988.

The State of West Virginia has not initiated or maintained any administrative proceeding for any tax allegedly due and owing by me to the state.

The federal government has never initiated or maintained any assessment or collection against me with respect to the income or years at issue.

(July 14, 1995 Aff. of Moore at pp 3-6).

The Court simply cannot find an issue of material fact on Moore's tax liability. The State has presented evidence, by virtue of the collateral estoppel effect of Moore's guilty plea, that Moore failed to report certain cash payments as income. **The State has never presented evidence that Moore's failure to report those payments increased his tax liability.** Through an audit, the State certainly could have tried to

gather that evidence. For whatever reason, no such effort was made. Moore, on the other hand, has presented evidence through his affidavit that he owed no additional tax."

Id., 895 F.Supp. at 872 (Emphasis added). One would think the foregoing findings of the federal district court remarking on the total lack of evidence to support tax liability on the part of Petitioner would, at the very least, be recognized as a justification for the sincerity of Petitioner's long held belief in his innocence, if not of the innocence itself.²⁶ However, rather than acknowledging any of the foregoing, the Panel prefers to seek from the Petitioner a proverbial "pound of flesh," and the only way the Panel can do that is to ignore the foregoing substantial reasons for concluding Petitioner is sincere his beliefs. The Petitioner prays the Court will not be so limited and one-sided in its assessment of his sincerity.

The Court also should be clear that Petitioner is not here to argue that the foregoing conclusively shows his innocence to the charges to which he pled guilty. Rather he accepts that his attempts to overturn his guilty plea were unsuccessful, and he is simply trying to move on with his life. But if the Panel's insistence on focusing exclusively on the issue of the "sincerity" of Petitioner's long held belief in his innocence is addressed by the Court, it likewise must be recognized that the federal district court's findings give more than sufficient justification for Petitioner to sincerely continue to maintain his innocence.

²⁶ The Panel repeatedly asserts that the transcript of the conversation he had with Mr. Leaberry in January of 1990 shows an obstruction of justice. The Panel never explains these bald assertions. Perhaps this is because the transcript reveals that Petitioner stated clearly to Mr. Leaberry: "[Y]ou tell them the truth *period*. You tell them the truth whether there's a statute of limitations or [there is not] a statute of limitations." Leaberry Conversation Transcript at 11 (emphasis added). Unless encouraging one to tell the truth *period* is an effort to obstruct justice, the foregoing is quite hard to reconcile with the Panel's conclusion that "his conversation with Leaberry was an attempt to obstruct justice[.]" Recommendation at 42.

Again, Petitioner has not sought to turn this proceeding into a vindication of his claims of innocence -- to the contrary, he acknowledged to the Panel and this Court that he pled guilty, that he sought to withdraw his plea, and his efforts to withdraw his plea were denied; and he served his time and paid his fine. Petitioner is ready to move on with his life, but the Panel insists that the squeezing of an apology and an admission of guilt from the Petitioner is essential to reinstatement. The Panel is wrong in its conclusion that the standard of reinstatement must focus wholly on a subjective and metaphysical effort at adjudicating the "sincerity" of Petitioner's "reasoning," or that there is, in fact, evidence in the record showing Petitioner is insincere in his long-standing belief in his innocence. Indeed, the Panel's refusal to even acknowledge the substantial bases for concluding the Petitioner is sincere is revealing. The Petitioner simply requests the Court address the federal district court's findings in *State v Moore, supra*, findings that support the sincerity of Petitioner's long-held, consistent explanations.

IX PETITIONER EXPLAINED THE CIRCUMSTANCES SURROUNDING HIS GUILTY PLEAS WITH SINCERITY

Petitioner testified he pled guilty to the indictment admitted as ODC Exhibit 1. *Id.* at 74-75. It is true Petitioner testified that he was not guilty of the charges to which he pled. *Id.* at 74-75, 110-118, 124-125. He testified that he was not guilty of the charges, but that prior to entering his guilty plea he had discussed with his counsel the strategy, recommended by his counsel, of making a plea with the intent of later withdrawing the plea, in order to obtain as much information about the government's case as possible, in order to assist his defense. *Id.* at 74-80, 82-83, 85, 88, 91-92. Petitioner, in response to questions from the ODC and the Panel, repeatedly explained why he pled guilty:

"I acted to a degree on advice of my counsel for the express purpose of withdrawing that plea at an appropriate time after he had learned as much as he could of the case that was before us at that time.

I had no reason not to follow that advice. As the record will show, subsequently a petition was filed to withdraw that plea and it was refused by the court."

Id. at 75. See also *id.* at 82-83 ("[T]he records will show, I had no idea that that requirement existed and that I did not have the right to file a petition to withdraw this plea. I knew I was in trouble at that point in time and it, very frankly, was an honest statement upon the part of my counsel because he indicated to the court that he had had experience in criminal law, but that he was not aware that just a matter, of course, that the guilty plea could be withdrawn [any time prior to sentencing] simply by motion and by him making that specific request."); and *id.* at 85 ("I did as anybody would do, rely upon their counsel and I relied upon my counsel."); and *id.* at 88 ("I understood that was my right [and], on the advice of my counsel, an opportunity for him to be better educated [about the government's evidence] and I honestly believe that he didn't realize that I had [no] carte blanche authority to, and he says so to the court, to withdraw that plea."); and *id.* at 91-92("[O]n the day that this plea was entered, I took my counsel to the airport for him to fly back to Washington, D. C., and the date and time [for] the filing the petition to withdraw this was discussed [at that time]. That's May 8 [1990]. He even mentioned it to counsel for the United States Government [in] a period of a week or ten days after the 8th and waited until the 29th of June to file it. Now if you hire counsel, you expect counsel to be certainly timely, but if counsel believes that the law is you can withdraw your verdict anytime before sentencing, that's the only explanation I can have in my mind as to why he would wait so long. Now you may say, 'Well, you're a lawyer.' I've got a lot of compliments in court for being a lawyer but I wasn't a

lawyer in my own case. . . . But the circumstances are such that Mr. Hundley, I believe, felt as sure as we're in this room that he had as much time up until the day the court convened to give me my sentence."); and *id.* at 148, 226-227.

Significantly, the Panel's report concerning Petitioner's "sincerity" fails to recognize the change in the federal law concerning the standard for granting a withdrawal of a guilty plea. Petitioner acknowledges the law had in fact changed at the time he moved to withdraw his guilty plea. He has explained, quite clearly, that he understood at the time of his plea that withdrawal was permissible, essentially as a matter of course (the previous standard). In 1992, the Court of Appeals for the Fourth Circuit explained the change in the rule regarding withdrawal of pleas before sentencing as follows:

"Rule 32(d) was amended in 1983 to impose a more definite standard on presentence motions to withdraw pleas. Before the amendment, withdrawals of pleas were freely allowed unless the "prosecution [had] been substantially prejudiced by reliance upon the defendant's plea." *United States v. Strauss*, 563 F.2d 127, 130 (4th Cir.1977) (quoting 2 C. Wright, *Federal Practice and Procedure* § 528, at 474-75 (1969)); see also, *United States v. Savage*, 561 F.2d 554, 556 (4th Cir.1977). The permissive approach of these cases was rejected by the changes to Rule 32(d) and the institution of more formal proceedings for accepting pleas under Rule 11. See *United States v. Haley*, 784 F.2d 1218 (4th Cir.1986)."

U.S. v. Lambey, 974 F.2d 1389, 1393 (4th Cir. 1992). Petitioner testified he was unaware of the change in the standard for withdrawing one's guilty plea at the time he pled guilty and made his motion to withdraw his plea.²⁷

²⁷ Petitioner is aware that the period of time between the change in the law and his guilty plea was in excess of six years. He recognizes that period of time is relatively long. But the Court must recognize that Petitioner was not practicing federal criminal law at any time during this period was, in fact, Governor of West Virginia for four of those years, and would, as a

The ODC did not put any testimony, and in its report the Panel does not assert that any evidence actually shows, that Petitioner was aware of the foregoing change in the law. Thus, it is *undisputed* that Petitioner was unaware of the change in the law at that time, another factor completely ignored by the Panel in its attack on Petitioner's long-held maintenance of his innocence. The fact of the matter is that the evidence of record does not warrant the malevolent implication advocated by the Panel. Petitioner sincerely was not aware of the change in the law—he freely explains: "I wasn't a lawyer in my own case. If I was, I certainly did a poor job." Transcript at 148, 226-227. But doing a poor job understanding that rule change, and relying on the advice of his counsel at the time (Transcript at 148, 226-227), is not a bar to Petitioner's reinstatement – at worst it shows he shouldn't have relied on his lawyer and should have disregarded the old maxim admonishing lawyers representing themselves as having a "fool for a client." The Panel's failure to cite any direct evidence to support its theory of insincerity should lead the Court to reject the Panel's speculative, unsupported conclusions.

X THE OVERWHELMING SUPPORT FOR PETITIONER'S REINSTATEMENT SHOWS PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE WOULD NOT BE ADVERSELY EFFECTED BY PETITIONER'S REINSTATEMENT

The Petitioner has presented strong evidence that his reinstatement will not have a substantial adverse impact on the public's confidence in the administration of justice.

Petitioner's Petition lists fifty-six (56) members of the Bar of the State Supreme Court and of the

practical matter, have had no reason to become acquainted with that provision (or any other procedural nuance of the federal criminal laws). And this is especially so in light of his reliance on his counsel's advice to the effect that "the law is you can withdraw your [plea] anytime before sentencing[.]" Transcript at 148, 226-227. It seems his counsel, too, was unaware of that change in federal criminal law.

State Bar of West Virginia, as well as prominent non-lawyers, who appear as *amicus curiae* and officers of this Court who move that Petitioner be reinstated to the practice of law. Petitioner's Petition for Reinstatement at 1-2. Also admitted into evidence is the September 18, 1998 "Resolution" of the Marshall County Bar Association (Petitioner's home county) wherein the Marshall County Bar Association:

"endorse the Petition of Arch A. Moore, Jr., to the West Virginia Supreme Court of Appeals for the reinstatement of his license to practice law before that Court and the Trial Courts of this State."

Ex. R4.

Moreover, as noted above, Professor Forrest Bowman, widely recognized as the preeminent legal ethics scholar in this State has submitted a letter supporting Petitioner's reinstatement, as has Professor and former Justice of the Supreme Court of Appeals, Hon. Franklin D. Cleckley. *See* ODC Ex. 23 (Exs. A & B hereto). Both of those letters are quite specific and do not deserve the cursory label of "general statement" suggested by the ODC. Finally, Ex. R3 is letter from the present Governor, Robert Wise, seeking Petitioner's support for the passage of Amendment One in 2002 -- the significance of this letter cannot be understated -- if a Governor from the opposite political party thinks Petitioner's public support would be, as Gov. Wise put it, "a valued endorsement," Ex. R3, it only stands to reason that there must be a substantial amount of people in the State of West Virginia who would not look negatively on the Petitioner and his readmission to practice law. The Panel simply ignores all of the foregoing, dismissing the substantial support for Petitioner's Petition. Nevertheless, the Panel then relies wholly on the testimony of three random individuals who submitted negative comments concerning the Petitioner, none of whom had any personal knowledge of Petitioner's conduct

since his licence was annulled.

The Panel's lack of analysis of this outpouring of public support for Petitioner's reinstatement is inconsistent. On the one hand, it appears to accept as weighty evidence the pure opinion testimony of three individuals who do not know anything about Petitioner beyond what they have heard or read from the media, as the sole support for the Panel's conclusion that "public confidence in the administration of justice" will be impacted by granting the reinstatement request. Recommendation at 47. Yet it nevertheless later acknowledges that there is "no doubt Petitioner is well liked by some and has positive attributes." *Id.* at 53. The Panel then appears to have gone out of its way to exclude from its consideration of "public confidence in the administration of justice" the voluminous number of individuals who have expressed support for Petitioner's reinstatement as *amici*, in favor of the very limited opinion testimony of the three random individuals who have had no personal contact with Petitioner. It is difficult, if not impossible, to see how the bald opinion testimony of those three individuals outweighs the public support for Petitioner's reinstatement offered by the Court's *amici*. See, e.g., Ex. A, B and C hereto. To rely solely on the random testimony of those three witnesses (who also offered testimony favorable to Petitioner),²⁸ simply fails to overcome the overwhelming demonstration

²⁸ For example, the ODC called as a witness Roderick Harless, who opposed the readmission of Petitioner. Mr. Harless testified that he had very little information on Petitioner's conduct during the time period since Petitioner's law licence was annulled. Transcript at 256. Mr. Harless testified:

"Since 1991, I'm not aware of any negative conduct by Governor Moore. . . . But since 1991, in relation to his conduct, I don't know anything negative that I -- I'm not aware of anything negative about his conduct."

Id. at 257. He testified that he did not "question Governor Moore's legal competence." *Id.* at

of support for Petitioner's reinstatement.

258-259. Mr. Harless also testified:

"[Petitioner] was a man of great energy in the governor's office. He got a lot of things done. A lot of good things done. . . . I would give Governor Moore credit for his virtues, of which he has quite a few."

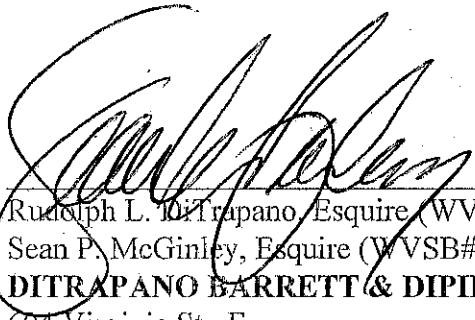
Id. at 261-262. The ODC also called John "Jack" Rogers as a witness. Mr. Rogers testified that he was in a government position by virtue of a 1989 appointment by former Governor Gaston Caperton [who ran against and defeated Petitioner in the gubernatorial election of 1988]. Transcript at 272. Mr. Rogers testified as to his understanding of Petitioner's reputation as follows: "the governor has a reputation as a very effective administrator and certainly he's done some very wonderful things in his career." Transcript at 274. Mr. Rogers stated that he was a former "ethics prosecutor" and that he believed Petitioner's military service and accomplishments as a United States congressman should be considered as relevant to his Petition for Readmission. Transcript at 275. Mr. Rogers further testified that, "I believe the governor has made serious efforts toward rehabilitation and I commend him for that." *Id.* at 278. Finally, The ODC also called as a witness Nathan Bowles. Mr. Bowles testified that, other than what he had read in the media, he had no "idea about any of [Petitioner's] activities since his law license was annulled." Transcript at 290. He testified that he understood Petitioner, since the time his law licence was annulled, "values his family; that he has tried to remain active in at least community affairs; that he has raised money for a church; perhaps the Salvation Army; that he has worked as a paralegal. That's about -- I think he's advised his daughter some in political affairs." Transcript at 290. Mr. Bowles candidly testified that, although he opposes the Petition for Readmission, he had no "reason to think that [Petitioner]'s engaged in any kind of wrongdoing in the last eleven years[.]" Transcript at 291.

The testimony of these three individuals hardly overcomes the substantial show of support within the public for Petitioner's reinstatement.

XI CONCLUSION

Petitioner has put forth significant and substantial undisputed evidence of rehabilitation. He has led an exemplary life since his law licence was annulled. Based on all of the foregoing, this Court should disregard the Panel's recommendation as an erroneous application of the facts and the law, and recognize the most important issue in this matter, that is, Petitioner's undisputably exemplary record of conduct since his licence was annulled. If the appropriate standard of reinstatement is applied, reinstatement of Petitioner's law licence clearly is warranted.

ARCH A. MOORE, JR, Petitioner,
-----By Counsel-----

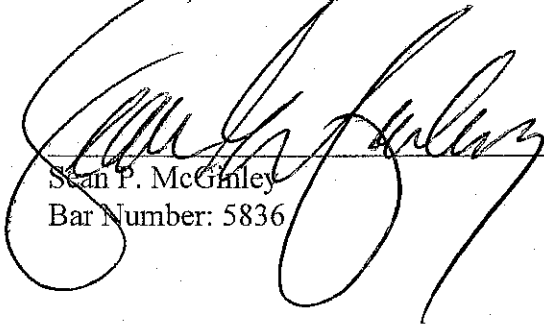


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CERTIFICATE OF SERVICE

I, Sean P. McGinley, do hereby certify that I mailed the foregoing Petitioner's **BRIEF IN SUPPORT OF PETITION FOR REINSTATEMENT** to the following, by first class mail on this the 26TH day of June, 2003:

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