

Fifty Years (and then some) of Lawyer Misconduct: It's Not Like in the Movies



COSA School Law Seminar
March 23-35, 2017
Denver, Colorado



William Fallon



Clarence Darrow



Thomas Lechford*

*The man in the portrait is not *actually* Thomas Lechford, but it *is* some other guy who lived in Massachusetts circa 1639.

M. Thomas Lechford for going to the [jury], pleading with them out of court, is debarred from pleading any man's cause thereafter, unless his own, and admonished not to presume to meddle beyond what he shall be called to by the Court.

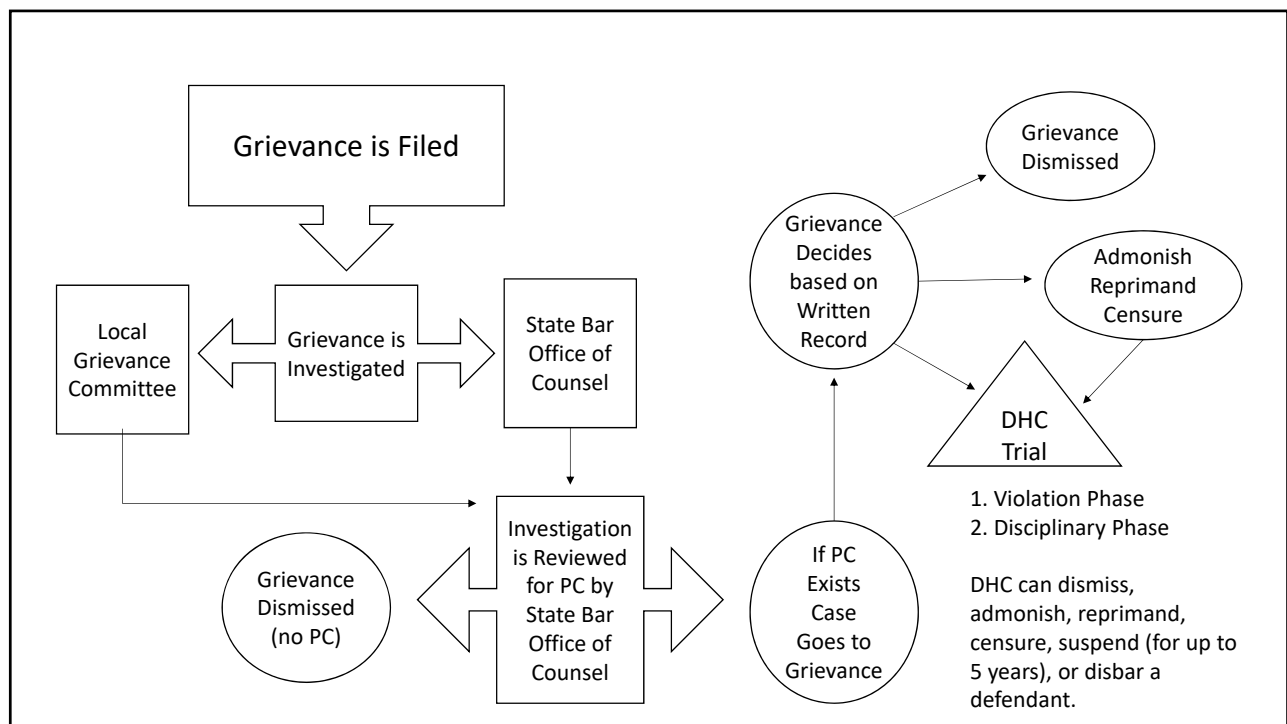
General Court of Massachusetts
September 3, 1639



Note, again, this guy isn't *actually* Thomas Lechford.

ABA's Model Rules for Lawyer Disciplinary Enforcement

- *Lawyer Regulation for a New Century* was the last comprehensive review by the Commission on Evaluation of Disciplinary Enforcement (1992)
- ABA Survey on Lawyer Discipline Systems (S.O.L.D.) last done in 2014
- Rules were last Amended in 2002



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In 1963 Jimmy Hoffa's lawyer Z.T. Osborne was disbarred for jury tampering.



Model Rules of Professional Conduct 3.5

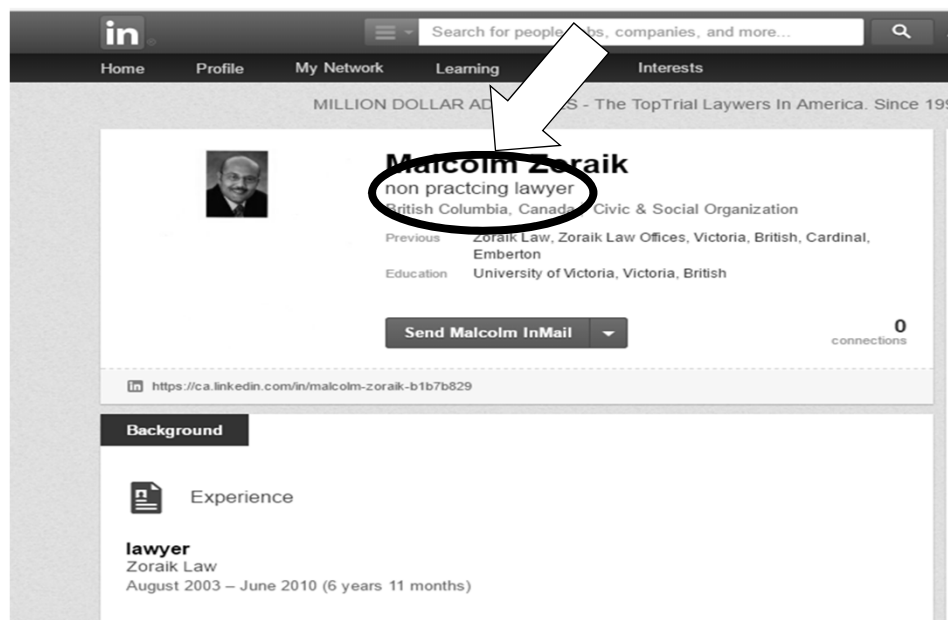
A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.

They refused to speak to me this morning. We kept our distance, but the sneers and scowls of contempt told me they're appalled by my direct contact with the jurors. They're shocked and disgusted, and they don't know what to do about it. With the exception of stealing money from a client, contacting potential jurors is probably the gravest sin a lawyer can commit. It ranks right up there with illegal wiretaps on your opponent's phone. They look stupid trying to appear indignant.

From *The Rainmaker*, by John Grisham

In 2009 a lawyer in British Columbia was disbarred for writing a letter that falsely alleged jury tampering in Supreme Court case he lost in Victoria.



Rule 10(c) of the ABA's Model Rules for Lawyer Disciplinary Enforcement

Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions.

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.



Asheville, NC - **Harry DuMont**, 89, of Palm City, Fla., and Asheville, NC, died Monday, January 6, 2003 at Park Ridge Hospital.

He graduated from Grinnell College, Phi Beta Kappa and played professional basketball for the Chicago Bruins before graduating from Northwestern University Law School, Summa Cum Laude. He was a veteran of World War II, and a trial lawyer, having his own law firm of Uzzell and DuMont. He was past president of the [28th Judicial District Bar in 1969. Harry] served on the Board of Directors at Lees McRae College, First Citizens Bank and Martin Downs Country Club.

Harry DuMont

Lawyer Resigns Bar Post Protesting 'Leniency'

An Asheville attorney has resigned his position as chairman of the Disciplinary Hearing Commission because of what he termed a soft penalty levied against lawyer Harry DuMont who was acquitted in 1978 on charges of jury tampering.

Harold Bennett, an attorney who has chaired the Commission since its inception in 1975, said he was concerned over the fact that the commission of the N.C. State Bar Association found DuMont guilty on only one of four misconduct charges levelled against him as well as the suspension of DuMont's law license for six months.

The commission last week issued its verdict on the misconduct charges against DuMont and ruled that the punishment be a six months law license suspension.

"This was just a slap on the wrist," Bennett said of the commission's verdict and punishment in regard to DuMont. "This was the type of offense that should not be treated so lightly."

There are 10 lawyers and five laymen who make up the commission and for each case a committee of two lawyers and one layman is selected. The committee which heard DuMont's case last week were attorneys E. James Moore of North Wilkesboro and Jerry Jarvis of Durham, and Fred Byerly, a retired Dunn businessman.

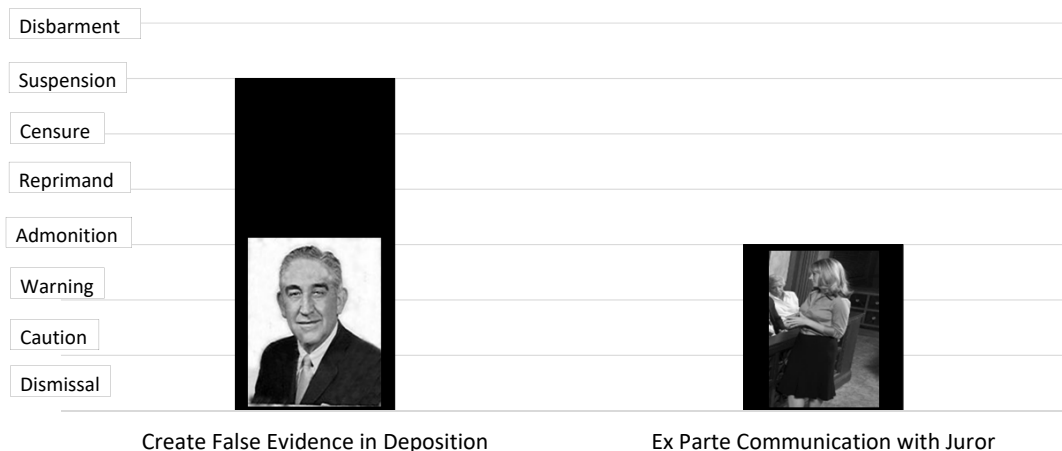
"As a result of the commission's actions, I feel the only thing I could do was resign."

...and one for ...
investigated seven accidents, provided 15 escorts, and made 12 assists to other law enforcement agencies.

VOTE "U.C."
...to see better county government in action
U.C. EVERALL JR.
Rep. County Commission
Pd. Pol adv. By Candidate

GOT A PROBLEM?
Call us...we'll listen!
WEEKDAYS
692-3741
Evenings-Weekends-Holidays
692-5366
A service of TREND Community Mental Health Services.

Punishment – Misconduct Chart



Create False Evidence in Deposition

Ex Parte Communication with Juror

NORTH CAROLINA
WAKE COUNTY

IN RE: J

On January 1995, the court considered the following:

Pursuant to the North Carolina State Bar, the Grievance Committee found that a disciplinary act was committed.

The rule determines that the Commission on Discipline deprecates aggravating or reprimand, or a

A censure in which an attorney has caused justice, the profit of the attorney's

The Grievance Committee, the Grievance Committee, I am certain that

In your closing argument, you argued that Mr. Talley not only shot at the car, but killed the driver. At the time you made this argument to the jury, you knew that another man had been convicted in state court of the driver's murder. You also argued on rebuttal that Mr. Talley murdered the driver of the car.

Mr. Talley had not been charged with murder. He was charged with the various drug offenses and a firearms violation. The jury convicted Mr. Talley on all charged offenses.

In May 1995, about two months after the trial, you sent a letter to a United States Probation Officer with your objections to the proposed presentence report. In your letter, you again state that Mr. Talley was "responsible for homicide", he fired into a person's vehicle and that person was subsequently found dead. Again, you knew that Mr. Talley had not been convicted of such an offense, but another man had been convicted of the murder.

Mr. Talley appealed his conviction to the Fourth Circuit Court of Appeals. The Fourth Circuit held that your "murder argument" appeared "to have been a deliberate, calculated decision to assert facts not in evidence in order to divert the jury from the real issues in the case." U.S. v. Wilton, 135 F.3d 291, 302 (4th Cir. 1998). The court also found that your argument was inflammatory and created a "serious risk that the jury decided to convict Talley simply because it believed he was a murderer, not because it weighed the evidence for proof of drug conspiracy and possession, the crimes actually charged." Id. at 300. The court vacated Mr. Talley's convictions because of prosecutorial misconduct and remanded for a new trial.

Your jury argument was improper. You argued facts that were not in evidence. You also argued that Mr. Talley was responsible for a murder when you had information to the contrary. You compounded your misconduct by advising the court that it should consider the murder in sentencing Mr. Talley.

Your conduct in this regard violated Rule 1.2(c) and (d) of the North Carolina State Bar's Rules of Professional Conduct.

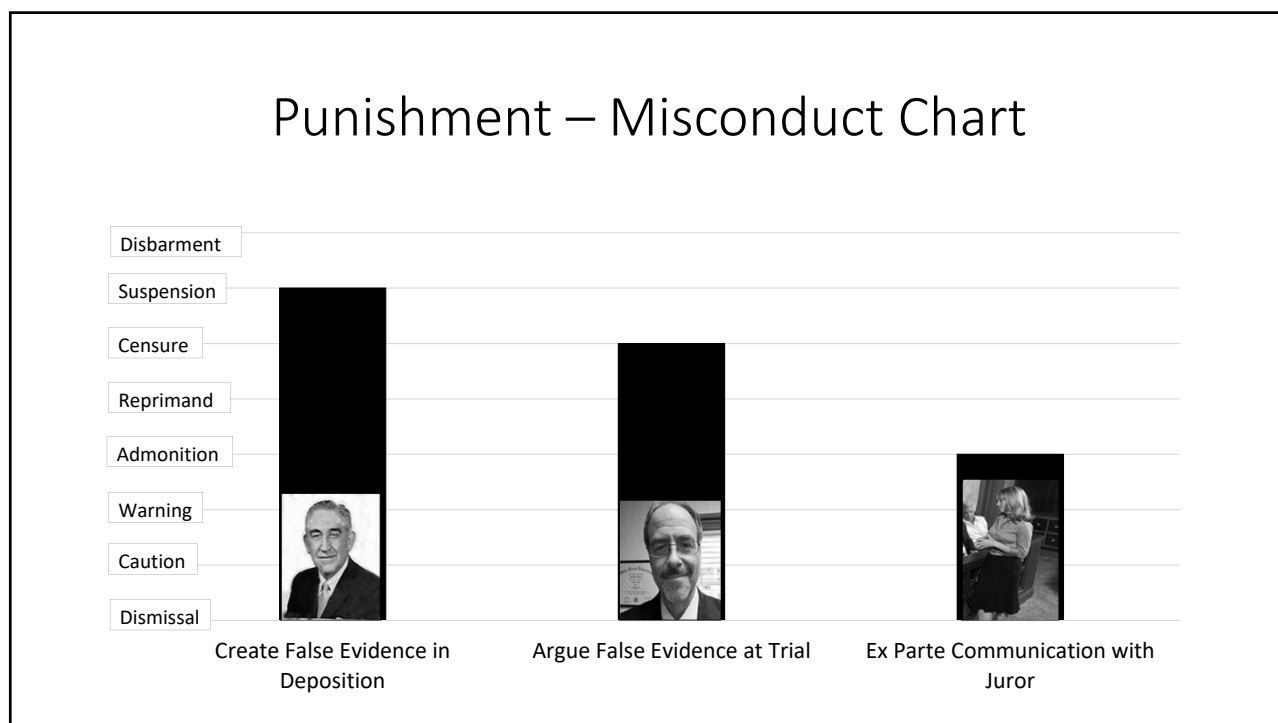
The Grievance Committee is mindful that the conduct in question occurred approximately six years ago and that your professional record is otherwise unblemished.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any



John Bennett



Candor

- Do not engage in fraudulent or criminal conduct (1.2)
- Do not make a false statement of fact or law to a tribunal (3.3)
- Do not falsify evidence (3.4)

STATE BAR OF NEVADA

Caramagno

Q

☰

FIND A LAWYER

Find a Lawyer

☐
☐
☐

Search Attorneys... (eg. last name, bar #, company or city)

Q



Caramagno, Joseph S.

Bar # : 8393

Member since: 9/25/2003

Status: Attorney Disability Inactive

Law school : University of Miami

Disciplinary Actions:

None.



William Fallon



Clarence Darrow



Thomas Lechford

**"If your Honor's
sense of justice
is as keen as
your sense of
smell, then my
client need have
no fear in this
court."**



- A reporter, William Hurst, noticed that Fallon had a knack for hanging juries, prompting an investigation
- In 1924 he was tried for jury tampering
- He had a lawyer but did it all himself
- Put himself up for cross-examination and concluded with a 2 hour summation during which he argued Hurst had framed him



Model Rule of Professional Conduct 1.2(d)

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Model RPC 1.2(d) - Comment 10

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like.



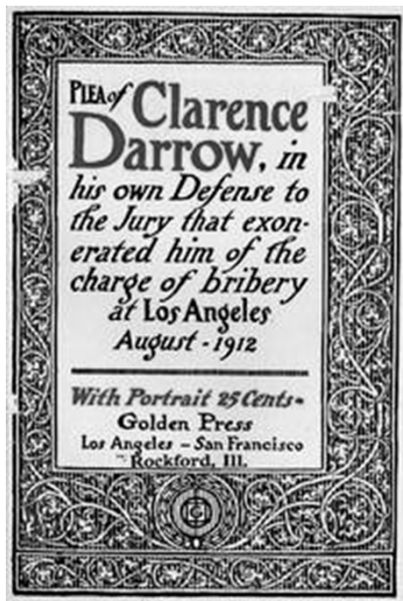
William Fallon



Clarence Darrow



Thomas Lechford



There is a cause for all sorts of human conduct.... The real cause of crime is poverty, ignorance, hard luck.

Lawyer Assistance Programs

Lawyer assistance programs help deal with a variety of issues, including:

- Anxiety
- Stress, burnout, work-life balance
- Depression and suicide
- Anger management
- Substance abuse
- Process addictions (food, gambling, sex)
- Grief and loss
- Compassion fatigue

= Hard Luck

Compassion Fatigue

com·pas·sion fa·tigue

- *noun*
- the cumulative physical, emotional, psychological effects of continual exposure to traumatic or distressing stories or events, when working in a helping capacity, where demands outweigh resources