

LOYALTY TESTS FOR ADMISSION TO THE BAR*

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TRADITIONAL nonacademic standards for admission to the bar require the applicant to be of good moral character and to support the Constitution.¹ The inquiry of this paper is to what extent these comfortable norms nowadays include, or are supplemented by, loyalty tests. Indefinite in its boundaries, the current insistence on loyalty gains some content by its identification with the quality of not being a Communist. But experts tell us it is difficult to detect communism, and the search for its essence takes us off again in many directions. Lawyers are likely to find the heart of communist disloyalty not in the support of public housing or racial equality, but in the fostering of revolution, allegedly on behalf of the oppressed masses, but actually, most of us believe, in the interests of the Kremlin. Even with the virus thus isolated, there remain troubling questions, of perhaps only philosophical importance, about the sincerity of a revolutionary's belief, and about his possibly deep devotion to an

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¹ All states, by statute, rule, or practice, require that the moral character of all applicants for admission be approved prior to admission to the bar. See, e.g., Rules Governing Admission to the Bar of Illinois, § I (adopted by the Supreme Court of Illinois, 1937, amended, 1947, 1952). See also, Jackson, Character Requirements for Admission to the Bar, 20 Fordham L. Rev. 305 (1951); Rules for Admission to the Bar (West Pub. Co., 1951).

All states require the applicant, upon acceptance for admission, to subscribe to an oath to support the Constitution. Although these oaths vary in detail, many follow approximately a form recommended by the American Bar Association. See, e.g., the Ohio Oath:

"I Do Solemnly Swear:

"I will support the Constitution of the United States and the Constitution of the State of Ohio;

"I will maintain the respect due to courts of justice and judicial offices;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice, *So Help Me God.*"

America which he envisages with different eyes from the rest of us. But if we confine our attention to the loyalty of lawyers, some of these uncertainties diminish. What the Association of American Law Schools recently observed about teachers of law applies as much to the legal profession at large:

To say that a man is free to believe as he sees fit does not mean that his attitudes toward his chosen profession are irrelevant to his qualifications for that profession. A belief in lawful procedures may properly be demanded of one who undertakes to be a teacher of law. Whatever ideals he may cherish, he must be willing to work for a realization of them within the framework of orderly, lawful and democratic processes. The teacher of law with no real belief in the principle of legality is a contradiction in terms.²

Since constitutions are our fundamental source of legality, a willingness to support and defend our constitutional system (which includes procedures for its orderly alteration) would seem to be a prerequisite for a lawyer's faithful performance of his duties *as a lawyer*. A history of actual conduct in defiance of constitutionally established positive law (e.g., against espionage, or perjury) might well justify exclusion from the bar, even though the applicant had not been (or could not be) convicted for the offenses. They could be said to go both to his moral character and his support of the Constitution. Furthermore, even in the guarded realm of belief as distinct from action, a lawyer's loyalty may be strictly measured. Thus, an ordinary citizen might believe with the utmost sincerity and devotion to his country that its welfare required abstention from violence under all circumstances, even against invasion. Contrariwise, another might urge immediate resort to violence to overthrow a government he believed to be corrupt. Whether such beliefs are permissible for a lawyer has been questioned.

The case of the conscientious objector who would become a lawyer reached the Supreme Court of the United States in *In re Summers*.³ There the Illinois Supreme Court, acting through one of its Committees on Character and Fitness, denied Summers's application apparently on the sole ground that he was, on religious grounds, totally unwilling to resort to violence and thus unwilling to serve in the armed forces. This stand, in the Illinois court's view, made it impossible for him to take in good faith the oath to support the Constitution of Illinois.⁴ Though it found that a justiciable controversy existed, the United States Supreme Court found no state action violating the Fourteenth Amendment in the denial of admission.

The urgent question of this decade, however, is not the loyalty of the conscientious objector, but of the prospective revolutionary, who, as we have said, is usually identified with the communist movement. Central issues about the advo-

² Proceedings of the Association of American Law Schools 61, 99 (1951).

³ *In re Summers*, 325 U.S. 561 (1945).

⁴ But cf. Application of Charles J. Steinbugler, 297 N.Y. 713, 77 N.E. 2d 16 (1947), where the New York Court of Appeals held that a claim of exemption from military service upon conscientious and lawful grounds, without proof of insincerity or disloyalty, was not evidence bearing on an applicant's character or fitness for admission to the bar.

cacy of violent overthrow of the government and about the inquiries that may be made to discover it are raised by the more recent Illinois case of George A.⁵ There seems to be no indication whatever that George A. was in fact a Communist. He attracted the attention of the Committee by expounding, as one of the principles of the Constitution, the "right of revolution" in Jeffersonian terms. Then, when a panel and later the full Committee sought to inquire further into his political beliefs to detect, one supposes, the degree of communist influence, George A. refused on principle to answer questions about his political associations, reading habits, or anything else that would disclose any attitudes save those he himself chose to expound to the Committee. He was denied admission, and has not as yet filed a petition to have the denial judicially reviewed.⁶

These two cases are apt and important illustrations of the extent to which bar examiners may choose to investigate questions of loyalty, and of the apparent range of discretion which their mandate to determine "good moral character" leaves them. The question is not, however, one to be approached primarily as a matter of constitutional limitations. There are limitations, to be sure, which are discussed below. More important are the actual practices of bar examiners, courts, and legislatures. Those practices can be modified by the bodies that have evolved them. Whatever the limits of their inquisitorial and exclusionary powers, they may find it advisable not to press to those limits. And examining bodies whose procedures are still innocent of loyalty tests may, on considering the difficulties involved, decide to go on in the old-fashioned way.

The legislature, the courts, and the bar itself—each exercises some control over admission.

The power of the legislature to regulate admission to the bar has evoked varied degrees of judicial protest. In the name of "inherent powers," presumably founded on the relations of the Inns of Court to the law courts in Westminster, or of "separation of powers" and the independence of the judiciary, the courts have occasionally rebuffed the intrusion of the legislature, especially when it inclined to lower the barriers. The legislators, on their side, have summoned the mighty engine of "police power"—the power to regulate callings and professions in the interest of public health, safety, and welfare. The result, generally, is a practical if not entirely logical compromise. The legislature may set

⁵ The abbreviated name is used to facilitate impersonal discussion rather than to disguise identity. The individual concerned, George Anastaplo, a graduate of the Law School of the University of Chicago, was denied admission to the Illinois Bar in June, 1951. He has privately published a useful collection of excerpts from the proceedings, with his analysis and criticisms, in *Anastaplo, Some Rash Innovations and Speculations* (1951). See also, London, *Heresy and the Illinois Bar: The Application of George Anastaplo for Admission*, 12 *Lawyers Guild Review* 163 (1952).

⁶ The Illinois Supreme Court has held that it will not reverse the denial of a certificate of character and fitness in the absence of a clear showing of abuse of discretion by the Committee. In *re Frank*, 293 Ill. 263, 127 N.E. 640 (1920). See Sprecker, *Admission to Practice Law in Illinois*, 46 Ill. L. Rev. 811 (1952).

qualifications; the courts may add to them.⁷ In any case, no conflict has developed in the area with which we are concerned.

Whatever the source of power, it is exercised in every state by committees of lawyers under some judicial supervision.⁸ The certification of good moral character may, in some states, be delegated to district judges, but they in turn may call on the local bar for assistance. In surveying the variety of requirements that bear on loyalty, the source of the requirement will be mentioned whenever it seems relevant. It makes little difference in immediate effect. However, the strength of a rule as an expression of public policy is certainly greater when it is promulgated by the legislature or the supreme court of a state than when it is the practice of a committee or of individual members of a committee. And the strength of a rule, as against legal attacks on its validity, is clearly enhanced when it is the offspring of the very court asked to undo it, rather than of the legislature or a committee of the bar.

OATHS AND AFFIDAVITS OF LOYALTY

Only a few states have so far prescribed for lawyers a loyalty oath going beyond the traditional promise to uphold the state and national Constitutions. In 1952, the Kentucky Court of Appeals added the requirement for admission that "no person who is a Communist or who advocates the overthrow of government by force may become or remain a member of the Bar." Applicants for admission in that state are now required to take an oath generally following the language of the court's mandate.⁹

⁷ See generally on the role of court and legislature in governing admission to practice law, Green, *The Courts' Power Over Admission and Disbarment*, 4 *Tex. L. Rev.* 1 (1925); *Power of Legislature Respecting Admission to Bar*, 144 *A.L.R.* 150 (1943).

⁸ *Survey of the Legal Profession, Bar Examinations and Requirements for Admission to the Bar 77* (1952).

⁹ Letter from R. Vincent Goodlatt, Esq., Secretary, State Board of Bar Examiners (Oct. 30, 1952). See also *N.J. Stat. Ann.* (1949) Tit. 41, §§ 1-3. The New Jersey legislature, in 1949, passed this statute requiring an oath of all public officials and employees and all counselors and attorneys at law. The oath confines itself to an abjuration of belief, advocacy, etc., of forcible or unlawful change in government, and of affiliation with organizations having such aims. To these conventional loyalty oath terms is added a provision that echoes the verbiage of another age: ". . . and that I am not bound by any allegiance to any foreign prince, potentate, state or sovereignty whatever. So Help me God." Nominees of the Progressive party in the general election of 1948 attacked the constitutionality of this statute and other related statutes prescribing similar oaths for nominees for public office. In *Imbrie v. Marsh*, 3 *N.J.* 578, 71 *A. 2d* 352 (1950), the New Jersey Supreme Court held that so much of the challenged legislation as was applicable to the governor, members of the legislature, and candidates for those offices was unconstitutional and void, since the legislature does not have the power to vary the oaths prescribed in the state constitution for those offices. It did not mention the validity of the provision relating to lawyers. However, since the *Imbrie* decision, the supreme court has not administered the statutory oath to incoming lawyers. Letter from John Gildea, Esq., Deputy Clerk, Supreme Court of New Jersey (Dec. 19, 1952). But cf. *Thorp v. Board of Trustees*, 6 *N.J.* 498, 79 *A. 2d* 462 (1951), holding an identical oath constitutional when applied to teachers.

See also questions in the Michigan, New York, Rhode Island, and Illinois applicants'

which has been declared a subversive group by the Department of Justice of the United States.¹²

That the declaration is intended to be made without any reservations is indicated by the wording of many other paragraphs of the application, which uniformly add "except as follows" (e.g., "I have never been discharged from any employment, except as follows"). In Washington, the state bar recommended to the supreme court that a specific disavowal of Communist party membership be included in the admission oath. The court modified the suggestion and added to the oath this provision: "I am not now and never have been a member of any organization having as its purpose and object the overthrow of the United States government by force or violence."¹³

Finally, when the Oklahoma legislature demanded of all public employees an "Oath of Allegiance" of remarkable scope as to past, present, and future subversion, the Oklahoma Supreme Court promptly adopted it as a supplement to the admission oath for lawyers and found it free of all constitutional infirmities.¹⁴ In

¹² Question 2, Application for Admission to the Bar of Colorado (Form No. 2).

¹³ Clause 2, Oath of Attorney, State of Washington. For an account of the background of this provision, see Washington Supreme Court Adopts Canons of Professional and Judicial Ethics and Non-Communist Admission Oath, 34 J. Am. Jud. Soc. 173 (1951); Report of Committee on Legal Education of Washington State Bar Association, 25 Wash. L. Rev. 367 (1950).

¹⁴ Board of Regents v. Updegraff, 205 Okla. 301, 237 P. 2d 131 (1951). The text of the oath is:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Oklahoma against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of Oklahoma; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of Oklahoma by force or violence or other unlawful means; That I am not affiliated directly or indirectly with the Communist Party, the Third Communist International, with any foreign political agency, party, organization or Government, or with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive Organization, nor do I advocate revolution, teach or justify a program of sabotage, force or violence, sedition or treason, against the Government of the United States or of this State, nor do I advocate directly or indirectly, teach or justify by any means whatsoever, the overthrow of the Government of the United States or of this State, or change in the form of Government thereof, by force or any unlawful means; that I will take up arms in the defense of the United States in time of War, or National emergency, if necessary; that within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member of The Communist Party, The Third Communist International, or of any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized public agency of the United States to be a communist front or subversive organization, or of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of Oklahoma by force or violence or other unlawful means;

"And I do further swear (or affirm) that during such time as I am . . . [name of office or

Wieman v. Updegraff,¹⁵ however, the Supreme Court of the United States found this oath, it seems fair to say, just a little bit unconstitutional.

Its infirmity lay in an interpretation by the Supreme Court of Oklahoma which made it impossible for an employee to show that his membership in a subversive organization had been an innocent one. The Court, through Mr. Justice Clark, pointed out that in each of three loyalty test cases already decided it had insisted that knowledge of the unlawful purposes of an organization was essential.¹⁶ To bar a candidate for office or a civil servant or a teacher because of an affiliation maintained in reasonable ignorance of its import would be a denial of due process. This was the case with the Oklahoma oath, so the Oklahoma courts were reversed without any disposition of other interesting problems that had been raised.

One of these was clearly the validity of the five-year retrospective ban on subversive membership. It will be recalled that the significance for public employment of past membership in suspect organizations had already been before the Court in *Garner v. Board of Public Works*.¹⁷ There the Court held that an oath for municipal employees requiring them to disclaim membership in subversive organizations during a preceding five-year period was neither a bill of attainder nor an ex post facto law, especially since five years had already elapsed between the prohibition of employment to members of such organizations and the requirement of the oath. These special facts would not yet apply to the oaths here under review. Since the Court divided closely on the validity of the oath in the *Garner* case because of its retrospective features, one may seriously question both the five-year provision of the Oklahoma oath and the "never have been" language of the others.

Are they not ex post facto laws? To put a simple case, certainly a person who joined the Communist Political Association during World War II when Russia was our ally and Earl Browder had undertaken to shake hands with J. P. Morgan¹⁸ had no expectation that he was doing an act which would later disqualify him from becoming a lawyer (or a public employee or teacher). The Oklahoma Supreme Court, in a generally unilluminating opinion, missed the distinction between the five-year provision in its oath, which sprang full-blown from the legislature in 1951, and that of the oath in the *Garner* case, which was authorized in 1941, but not put into effect until 1948. It further asserted that separation from a state college staff was not the sort of "punishment" that an ex post facto law

'an employee'] I will not advocate and that I will not become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of Oklahoma by force or violence or other unlawful means."

¹⁵ 344 U.S. 183 (1952).

¹⁶ *Adler v. Board of Education*, 342 U.S. 485 (1952); *Garner v. Board of Public Works*, 341 U.S. 716 (1951); *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951).

¹⁷ 341 U.S. 716 (1951).

¹⁸ Schlesinger, *The Vital Center* 110 (1949).

is struck down for imposing.¹⁹ To be sure, the United States Supreme Court bypassed this issue in the *Garner* case, but if there is any vitality at all left to the once-great cases of *Cummings v. Missouri*²⁰ and *Ex Parte Garland*,²¹ it must reside in their holding that "punishment" in the ex post facto context includes deprivation of the opportunity to practice a profession. Cummings, it will be remembered, was a priest; Garland, a lawyer. The Court in the *Garland* case recognized a distinction between setting qualifications and inflicting punishment.²² There is room for argument whether freedom from some of the affiliations and conduct proscribed may not constitute reasonable qualifications for admission. But the absence from these oaths of any opportunity for repentance or explanation seems to fit them into the pattern condemned in the *Garland* case. It is their unequivocal character that distinguishes them from a variety of other demands (to be discussed below) for sworn information about the same sorts of affiliations.

It is safe to say, then, that all the lawyers' oaths now in operation or in prospect are contrary to due process unless they are construed to include a requirement of *knowing* participation in subversive movements. All of them, one may further venture, are ex post facto laws and invalid to the extent that their terms flatly exclude candidates on account of lawful conduct occurring before the promulgation of the oath. But an oath like Oklahoma's is, as has been suggested, only a little bit unconstitutional at this moment in history. One word—"knowingly"—meets the due process argument; and the passage of time will blunt the ex post facto objection.

Even in unconstitutional form these oaths are indicative of the kinds of barriers to admission some authorities want to raise. If these particular barriers are not wholly effective as a result of lingering constitutional limitations, cannot others, equally formidable, be constructed out of the unquarried depths of "good moral character"? Though remote membership in a subversive organization may not automatically disqualify, perhaps it may be reviewed in judging the applicant's character and fitness; and if such matters are open to consideration at all, the applicant may be required to disclose them to the examiners.

INQUIRIES TO CANDIDATES BEARING ON LOYALTY

Before surveying the kinds of questions that are put to applicants, it may be desirable to describe the sources of information used in this discussion, with more prominence than the obscurity of a footnote. There are two useful compendia on bar admission practices, one a substantial pamphlet summarizing, from official sources, the requirements for each state,²³ the other a recently pub-

¹⁹ Board of Regents of Oklahoma Agricultural Colleges v. Updegraff, 237 P. 2d 131, 138 (Okla., 1951).

²⁰ 4 Wall. (U.S.) 277 (1867).

²¹ 4 Wall. (U.S.) 333 (1867).

²² *Ibid.*, at 379.

²³ Rules for Admission to the Bar (West Pub. Co., 1951).

lished monograph in the Survey of the Legal Profession.²⁴ Neither contains any detailed information on political tests, which is not surprising in view of the relative novelty of such tests and, as will appear, the sporadic character of their administration. We consequently circularized the bar examiners of all the states, the District of Columbia, Alaska, and Hawaii, asking if they had any settled mandate or policy about the effect of "past or present subversive beliefs or acts" on admissibility, what weight they attached to such beliefs or acts "as bearing on character and fitness," whether they had formulated standards to guide them in this field, and what sort of inquiries they made. Replies were received from all but five of the jurisdictions addressed,²⁵ most of them quite helpful. In some states the determination of character is left very largely to county committees. A few of these were also queried in populous areas,²⁶ and where it appeared that there might be significant variation within a state.

Between a third and a half of the states require an interview with a character committee as a routine part of the admissions process; others may summon the candidate if his papers suggest that an interview is desirable.²⁷ As the result of rumors of close questioning by some committees, it was decided to direct a questionnaire to a group of recent law school graduates, inquiring about their experiences. The questionnaire was constructed on the basis of a few first-hand reports, and requested the respondent to say whether he had been asked any of a range of questions, beginning with one about membership in the Communist party and ending with a variety of recent political issues, e.g., the President's seizure of the steel mills and the Marshall Plan, opinions on which might be elicited to establish conformity either with a communist line or with an examiner's line. Most of the putative questions, however, dealt with familiar indices of subversiveness, such as the Attorney General's list of subversive organizations and association with Communists.

The questionnaires were sent to the last three graduating classes (1950, 1951, and 1952) of the Yale and University of Chicago Law Schools, who were selected because they could be easily reached, because it was hoped they would have above-average motivation to take the trouble to reply, because they were expected to produce a good geographical dispersion, and because they (more than older groups) would have been exposed to loyalty tests. All these assumptions

²⁴ Survey of the Legal Profession, Bar Examinations and Requirements for Admission to the Bar (1952).

²⁵ Arizona, Hawaii, North Carolina, Oregon, and Virginia.

²⁶ Connecticut, New York, Ohio, Pennsylvania, and Texas. In New York State the admitting units are the four appellate departments each of which has its own character committee. In Illinois, the Supreme Court appoints a character committee for each appellate district.

²⁷ Survey of the Legal Profession, *op. cit. supra* note 24, at 257 suggests that more than half the states require an interview. Our survey, on the other hand, disclosed such a requirement by only a few more than one third of the states.

were justified, as the tabulation in the note below shows.²⁸ The weakness of the questionnaire lay in the assumption that any recurring pattern of oral interrogation would emerge. None did (except *within* some committees), and no statistical tabulation of the results is feasible. What we did get from many cooperative respondents was a wealth of information about all loyalty aspects of admissions procedure, supplementing that supplied by the examiners.

Bar examiners, it appears, have had little specific guidance from the courts or legislatures in this field. Where there is a valid loyalty oath, they may, of course, undertake to exclude those who cannot honestly subscribe to it. And where a state has embarked upon an ambitious program of "communist control," the examiners may feel that it evidences a general public policy which they should try to carry out. We have no express communications to this effect, however, and it may, with plausibility, be argued that if the legislature harries Communists in six different ways but says nothing about admitting communist lawyers, it has no policy on that score. Such a doubt is raised, for example, about the laws of Michigan, which have, in the last few years, piled up a veritable code of anti-communist measures.²⁹ At its 1951 meeting, the Michigan Bar Association recommended passage of a statute giving the Association access to information about subversives in the hands of the state police in aid of disbarment proceedings, and a change in the canons of ethics to make advocacy of violent overthrow a ground for disbarment. The Michigan Supreme Court amended the

²⁸ Response to questionnaires:

	Yale	Chicago
Number Sent.....	502	280
Returned Undelivered.....	7	18
Net Group Reached.....	495	262
Replies.....	320	87
% Replies.....	64.6%	33.2%

Distribution of Replies:

California.....	16	Massachusetts.....	7	Oregon.....	5
Colorado.....	6	Michigan.....	3	Pennsylvania.....	15
Connecticut.....	41	Minnesota.....	5	Rhode Island.....	3
Florida.....	3	Missouri.....	5	Tennessee.....	3
Hawaiï.....	4	New Jersey.....	7	Texas.....	7
Illinois.....	63	New York.....	105	Washington.....	10
Iowa.....	4	Ohio.....	9	Wisconsin.....	5
Maine.....	4	Oklahoma.....	3	Dist. of Col.....	33
Maryland.....	3				

One or two replies from: Alabama, Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Nevada, New Mexico, West Virginia, Wyoming.

No replies from: Louisiana, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Utah, Vermont, Virginia.

²⁹ See Mich. Stat. Ann. (Supp., 1951) §§ 28.236, 28.243(1) to (5), 28.813(1) to (4), 27.3178 (71a); Mich. Const. Art. II, § 22.

canon, but the legislation died in committee.³⁰ The situation is similar in Massachusetts.³¹ In neither of those great states (on the basis of limited information) did the examiners in recent years make any out-of-the-ordinary efforts to discover subversives.³²

The argument that if the legislature has set out to annihilate communism, it will come to lawyers in its own good time, gains support from the Maryland experience. Maryland's famous Ober Act, passed in 1949, created the category of "subversive person," who is barred from holding office, etc. An act of the General Assembly in 1952 now requires the Court of Appeals to find that an applicant for admission to the bar is "not a subversive person, as defined by the Subversive Activities Act of 1949."³³

This is one of two legislative loyalty standards for lawyers, aside from oaths, that have come to our attention. The other is California's Business and Professional Code, amended in 1951 to provide that "no person who advocates overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means shall be certified" for a license to practice; if already licensed, this is a ground for disbarment.³⁴ Two states have rules of court laying down general loyalty standards. Kentucky's has already been mentioned: "No person who is a Communist or who advocates the overthrow of government by force may become or remain a member of the bar of the State of Kentucky."³⁵ New York's has been in existence since 1921. In its current form it requires the applicant to "furnish satisfactory proof to the effect: (1) That he believes in the form of government of the United States and is loyal to such government. . . ."³⁶ It is this rule that is the basis for the following question in the New York applicant's questionnaire:

(A) Do you believe in the principles underlying the form of government of the United States?

³⁰ Stason, *Disciplining Subversive Members of the Bar*, 30 Mich. S.B.J. No. 12, at 16 (1951); Canon 32 Amended, 31 *ibid.* No. 4, at 31 (1952).

³¹ See Mass. Ann. Laws (Supp., 1951) §§ 264-16 to 264-23, 50-1.

³² The seven recent applicants' questionnaires from Massachusetts and the three from Michigan disclosed no loyalty questioning by the interviewers. But see note 9 *supra* for a loyalty question in a Michigan form. The State Board of Bar Examiners in Michigan recently decided, for the first time, to summon an applicant for oral examination on loyalty grounds. Letter from Stanley E. Beattie, Esq. (Jan. 7, 1953). He was cleared. *Ibid.* (Jan. 22, 1953).

³³ Md. Acts (1952) c. 27, p. 243. The Ober Act, Md. Ann. Code Gen. Laws, Art. 85A, defines "subversive person" as follows: "'Subversive person' means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the Government of the United States, or of the State of Maryland, or any political sub-division of either of them, by revolution, force, or violence; or who is a member of a subversive organization or a foreign subversive organization."

³⁴ Calif. Bus. & Prof. Code (Deering, Supp., 1951) §§ 6064.1, 6106.1.

³⁵ Goodlatt, *op. cit. supra* note 9.

³⁶ N.Y. Rules of Civil Practice (Gilbert-Bliss, Supp., 1952) § 1.

(B) Can you conscientiously and do you affirm that you are, without any mental reservation, loyal to the Government of United States?³⁷

Perhaps one-third of the states have what may be called direct loyalty questions in their application forms; the phrasing of many of them suggests that a wrong answer would have serious consequences, but they fall a little short of setting positive standards. For example, Alabama asks:

- (a) Do you believe in the form of, and are you loyal to, the Government of the United States?
- (b) Are you a member of the Communist Party or affiliated with such party, or have you ever been?
- (c) Do you believe in, are you a member of, do you support, any organization that believes in or teaches the overthrow of the United States Government by force or by illegal or unconstitutional methods? Or have you ever believed (*sic*) in, belonged to or supported any such organization?³⁸

Others follow either the New York pattern of a general question about loyalty, or the up-to-date formula exemplified by Alabama, or some combination of the two.³⁹

The most remarkable question encountered is reported from Hawaii by an applicant.⁴⁰ After having answered "yes" or "no" to every organization on the Attorney General's list, plus several direct questions designed to avoid any possible escape for the guileful Communist (e.g. "Are you now, or have you ever been, a member of any organization or committee the name of which included the word 'Communist?'"), the applicant is finally confronted with this attempt to close the last loophole:

If you were to be listed as a "Communist" in the records of any federal investigative agency, what past actions or organizational affiliations of yours not already listed

³⁷ Question 23, Applicants' Questionnaire, First Dep't, State of New York. Similar questions appear as numbers 31 and 34 of the Second Dep't Questionnaire. The questionnaires of the other two New York departments were not available to us.

³⁸ Question 15, Application for Admission to Bar Examination, State of Alabama.

³⁹ Idaho, Illinois, Michigan, New Jersey, Ohio, Oklahoma, and Rhode Island have questions similar to those in the New York questionnaire.

Question 10(d) on the Indiana application reads: "Have you ever been a member of or affiliated with an organization which advocates the overthrow of the government of the United States by force and violence or have you ever been a member of or affiliated with an organization which is on the subversive list of the Attorney General of the United States?"

The North Dakota questionnaire asks: "Are you now or have you ever been a member of the Communist Party or any organization seeking the overthrow of our Government?"

The applicant's questionnaire of the Houston (Texas) Bar Association includes the following questions: "Do you belong to or advocate the principles of the Communist Party? Have you ever belonged to, or attended the meetings of that organization or any other group which individually, or as members, advocate the ultimate overthrow of the Government of the United States of America, by force? Do you belong to or have you attended the meetings of any group which advocates any theory or 'Ism' which would prevent you from taking the following oath wholeheartedly?: 'I do solemnly swear that I will support the Constitution of the United States, and of this State; that I will honestly demean myself in the practice of the law, and will discharge my duties to my clients to the best of my ability. So help me God.'"

⁴⁰ No reply was received from our inquiries to the Hawaiian examining board.

by you might be used by such investigative agency to support its conclusion? In answering this question, assume that all of your past actions and organizational affiliations are known to such investigative agency.

Other questions frequently encountered may be considered as an indirect way of eliciting information bearing on loyalty. Probably every state requires the applicant to disclose any arrests or convictions. A truthful reply would expose the rare applicant who had been involved in criminally subversive behavior. In a quite different setting, both New York and Illinois ask the applicant to write a short essay on basic constitutional principles; it was the answer to this question, the reader will recall, that may have led to George A.'s undoing. Some states require a listing of every organization the applicant has ever belonged to. This may be intended (or coupled with a direct question so intended) to gauge the applicant's public-spiritedness; it is also a way of getting information about affiliations that the examiners may find suspect.

New York has a question that hovers on the borderline of indirection. In the form used in the First Department, it reads:

Are you a member of any party or organization the object or purpose of which is to effect, directly or indirectly, changes in the form of government provided for by the United States Constitution? . . . If so, state the facts on a rider.⁴¹

If this question refers to changes *by means other than those* provided for in the Constitution, then it is an ambiguous way of asking the applicant if he is associated with a group seeking unlawful change. But if it should be read to include "*as the Constitution is currently written and expounded*," then, of course, it takes in any group advocating constitutional change, from the (women's) equal rights amendment to the denunciation of executive agreements in lieu of treaties recently espoused by the American Bar Association.⁴² Perhaps the question is intended as an exercise in interpretation for the neophyte lawyer, who has already, in the same document, been asked to list all his memberships, past or present, in clubs, associations, etc.

The examiners, of course, are not confined to information received from the applicant himself. Character references are a universal and central part of the admission process and, in Indiana and probably elsewhere, the questionnaires sent to references include specific loyalty inquiries. A considerable number of examining boards make some kind of independent investigation of every applicant on character grounds, including loyalty. The extent and technique of these investigations are not much publicized. In some cases, state or local police are used; in others, private investigating agencies.⁴³ In a special

⁴¹ Question 22, Applicants' Questionnaire, First Dep't, State of New York. The Second Dep't questionnaire includes substantially the same question. The questionnaires from the Third and Fourth Dep'ts were not available to us for comparison.

⁴² See Proceedings of the House of Delegates: 1952 Annual Meeting, 38 A.B.A.J. 1018, 1069 (1952).

⁴³ E.g., the New Mexico board employs a private investigating service to investigate applicants.

category is the National Conference of Bar Examiners. It maintains an elaborate and efficient character investigating service which is used by most bar examiners for all applicants who are already attorneys and by a few states for student applicants not long resident in the state.⁴⁴ The National Conference supplies the examiners with whatever obtainable information the examiners want, and presumably this would include loyalty information of the sorts already described.

A number of examiners reported that they would make an independent examination if something questionable appeared from other sources; doubtless any board would if it seemed necessary.

When, from whatever source, something turns up that raises a question about fitness, an interview with the candidate is the logical next step. In many—perhaps most—states interviews are not customary in unchallenged cases.⁴⁵ In those that do schedule an interview for every applicant, whether with one or more members of the bar examining board or of a separate character committee, the interviews are often perfunctory and ordinarily do not even approach topics bearing on loyalty.⁴⁶

So far as our inquiries disclose, oral questions bearing on loyalty have been recently put to applicants in the following jurisdictions: California, Connecticut (New Haven County), District of Columbia, Florida, Illinois, Iowa, Maryland, New Jersey, New York, Oregon, and Pennsylvania (Philadelphia County). It should be emphasized that the reports from some states number only one or two, and may, in some instances, have reflected a misunderstanding of our questionnaire to recent graduates, in that the respondent in making an affirmative reply may have had in mind written inquiries instead of interviews. Thus, against two replies from New Jersey reporting some questioning about communism, there should be set a statement from a member of several years' standing of the Character Committee for Essex County (New Jersey's most populous county):

In all of my experience on the Committee, I have never heard any questions addressed to the applicant which bore on political issues and I have never heard of any other section of our Committee questioning an applicant along those lines. We have never denied approval to an applicant on grounds of disloyalty or subversion and I cannot recall having heard about, or read about anything of this sort in any other County in New Jersey.⁴⁷

⁴⁴ Survey of the Legal Profession, *op. cit.* supra note 8, at 262, 472 et seq.

⁴⁵ See note 27 supra.

⁴⁶ Some typical replies received from recent applicants were:

"The only question asked was my law school and my undergraduate college."

"I was asked no questions except my name and where I planned to practice."

"My father is a member of the local bar. The examination was pro forma, perfunctory, and designed to elicit no information."

"The interview consisted principally of reminiscing about law school days."

"No political questions. Committee spent its time doubting ability of women to be lawyers."
[Female applicant.]

"The local bar committee sticks solely to questions of legal ethics."

⁴⁷ Letter from Ward J. Herbert, Esq. (Oct. 24, 1952).

After making due allowance for such reservations, it seems to be the fairly common, but by no means universal, practice to question applicants about loyalty matters in a routine interview in the following jurisdictions: Connecticut (New Haven County), District of Columbia, Illinois (Chicago), and New York (Second Department). Though we had substantial numbers of questionnaires from candidates in each of these jurisdictions, it is not possible to infer with any accuracy why some were questioned and others were not. Of fifty-four University of Chicago Law School graduates admitted in Chicago, the division appeared to be exactly even. One probable explanation for inconsistency is that the committees do not usually sit en banc. An applicant may be questioned by a panel or by a single member. It is likely that there are committee members who discuss anything but communism, and it appears that there are some who discuss little else.

The standard questions are what one would expect: Are you a Communist? Do you believe in the overthrow of the government by force? Are you a member of any organization advocating such overthrow? Usually this is as far as it goes. Some diffidence on the part of questioners is reflected by reported questions like these: "You don't belong to any of those 'ism' organizations, do you?" "You aren't a Communist or anything are you?" Such sketchy patterns as develop emerge from topical matters or, one suspects, from the interests of the particular examiner. Thus, in 1952, a number of respondents were asked about the supposedly "pinkish" or "leftish" character of Americans for Democratic Action. Another group of responses describe a recurring colloquy that might be employed by a whole committee, but sounds more like a highly personal manifestation. As reconstructed from several versions, it goes something like this: "Who was Karl Marx?" "Have you ever read his 'Capital' *outside of school*?" "Have you ever read the one he wrote with Engels?" The italicized phrase is presumably the key, but to what? A respondent, reporting rumors about this line of questioning, had heard of one extracurricular reader of Marx who was commended for acquainting himself with the communist menace, and of another who was critically and searchingly questioned for his sympathies, if any, with the heretical works. If there is a single favorite test question, it is probably this: "Do you think that Communists are eligible to practice law?" In one jurisdiction it is reported that the "wrong" answer to this question will lead to protracted scrutiny of the applicant's record.

If bar examiners on the basis of "wrong" answers or other data decide not to recommend a candidate for admission, judicial review is usually available; but it is weighted against the applicant by a presumption in favor of the sound exercise of discretion by the examiners and by placing on the applicant the burden of proof to establish his character and fitness.⁴⁸ There is little likelihood that the

⁴⁸ See, generally, Booker, *The "Right" to Practice Law*, 1 Duke B.J. 249, 250 (1951); *Power of Legislature Respecting Admission to Bar*, 144 A.L.R. 150 (1943); *Good Moral Character of Applicant as Requisite for Admission to Bar*, 72 A.L.R. 929 (1931), 28 A.L.R. 1140 (1924). Some states provide by statute for court review of the action of character and admission committees. See, e.g., Calif. Bus. and Prof. Code Ann. (Deering, 1951) § 6066.

scope of questioning will be confined, unless it invades some legally protected privilege. In a New York case that seems to have been arranged for the purpose of indicating in a rather bizarre way the permissible range of questioning, the petitioner refused to tell the character committee "who discovered America?" The Appellate Division upheld him, saying that all matters of "learning and ability" were outside the jurisdiction of the character committee.

In the opinion of the court it is the duty of the Committee on Character and Fitness to certify to this court an applicant for admission who has been certified by the State Board of Law Examiners that he has passed the examination and if the candidate satisfies the committee as to his moral character and general fitness and that he believes in the form of, and is loyal to, the government of the United States. This court does not propose to define the limitations of questions which may be propounded to a candidate in these respects.⁴⁹

No American cases have been reported in the current era that would indicate what courts will find meets the burden of proof of good moral character, as against a finding by the committee of "disloyalty," "belief in the violent overthrow of the government," "inability to subscribe honestly to the attorney's oath to support the constitution," or any other formula that may be devised to express forbidden degrees of subversiveness.^{49a} To the extent that disbarment and denial of admission are analogous (conduct supporting disbarment will certainly support a denial), we have the record of a variety of disbarment cases during and after World War I. Some of them were on technically sound grounds, in that the lawyers had been convicted of violation of the Espionage Act.⁵⁰ Others mirror vividly the pro-war and later the anticommunist passions of the era. There were disbarments for sympathetically addressing the I.W.W.,⁵¹ for advocating anarchism and obstructing the draft,⁵² for helping aliens avoid military service by assisting them in withdrawing applications for citizenship,⁵³ and

⁴⁹ Application of Brennan, 230 App. Div. 218, 228, 243 N.Y. Supp. 705, 715 (1930).

^{49a} But see *Martin v. The Law Society* [1950] 3 D.L.R. 173, where the Court of Appeals of British Columbia upheld the Benchers of the Law Society of that province in their refusal to admit an avowed Communist to the practice of law. The Benchers concluded that a Communist cannot conscientiously take an oath which "binds him to disclose and make known to His Majesty all treasons and traitorous conspiracies against him and not to seek to destroy any man's property," and that the applicant had not satisfied them that he was a person of good repute within the meaning and intent of the Legal Professions Act. It is noteworthy that Canada does not have legislation comparable to the Smith Act. This decision is noted with approval in Meredith, *Communism and the British Columbia Bar*, 28 *Canadian B. Rev.* 893 (1950); *Law Practitioners: Refusal of Admission to a Communist*, 27 *New Zealand L. J.* 17 (1951); *Membership in or Affiliation with the Communist Party as Grounds for Disbarment*, 26 *Notre Dame Lawyer* 498 (1951).

⁵⁰ See, e.g., *In re Kerl*, 32 *Idaho* 737, 188 *Pac.* 40 (1920); *In re O'Connell*, 184 *Cal.* 584, 194 *Pac.* 1010 (1920); *In re Wells*, 121 *Wash.* 68, 208 *Pac.* 25 (1922). But see Chafee, *Free Speech in the United States* 38 et seq. (1948), on abuse of the Espionage Act.

⁵¹ *In re Smith*, 133 *Wash.* 145, 233 *Pac.* 288 (1925).

⁵² *In re Margolis*, 269 *Pa.* 206, 112 *Atl.* 478 (1921).

⁵³ *In re Arcander*, 110 *Wash.* 296, 188 *Pac.* 380 (1920).

for advising men not to register for selective service.⁵⁴ As we approach or exceed the temper of the early 1920's, such cases become pertinent again.⁵⁵

World War II produced one exclusion and one disbarment case, neither a firm basis for generalization. In *Application of Cassidy*,⁵⁶ the New York Appellate Division rejected the application of a candidate who, it found from "undisputed documentary evidence," believed "in the resort to force to overthrow the existing form of government of the United States"—not as a Communist but as a follower of Father Coughlin and the Christian Front. The applicant had been acquitted, the court recognized, "by a jury after trial in the Federal court upon an indictment charging him with conspiracy to overthrow the government of the United States." But the jury did not have the benefit of the documents, and in any case noncriminal conduct may evidence lack of "character and general fitness requisite for an attorney."⁵⁷ The decision is noteworthy because the court reversed a recommendation of a majority (5-2) of the character committee for admission. The disbarment case concerned an attorney who was involved in isolationist propaganda early in World War II under such auspices that he was tried and convicted for failure to register as a foreign agent. The court held that the Foreign Agents Registration Act was "political in character" and that a violation of it did not involve moral turpitude.⁵⁸ As for the further charge that his propagandistic activities constituted misconduct, the views of the judges were most pointedly expressed in a concurring opinion:

It must be at all times remembered that the right of free speech is a guarantee embodied in the Constitution of the United States. And while this writer vigorously dissents from some of Mr. Burch's political views and activities as revealed by the record, nevertheless his right to express his views must be respected by the courts so long as his activities do not contravene the laws of the state and nation. This record does not reveal any such contravention.⁵⁹

The tone of the opinions and the outcome in this case are in marked contrast to the World War I cases, and may be said to be characteristic of a spirit which survived World War II, but not the cold war.⁶⁰

⁵⁴ *In re Hofstede*, 31 Idaho 448, 173 Pac. 1087 (1918). See also *In re Wiltsie*, 109 Wash. 261, 186 Pac. 848 (1920) (disbarred for soliciting employment to seek exemptions from Selective Service and for encouraging false affidavits). But cf. *In re Clifton*, 33 Idaho 614, 196 Pac. 670 (1921) (disloyal statements made by attorney not ground for disbarment); *Lotto v. State*, 208 S.W. 563 (Tex. Civ. App., 1919) (statement that "Germany is going to win the war and I hope she will," referring to war between U.S. and Germany, held not conduct warranting disbarment under Texas statute).

⁵⁵ See, generally, O'Brian, *New Encroachments on Individual Freedom*, 66 Harv. L. Rev. 1 (1952).

⁵⁶ 268 App. Div. 282, 51 N.Y.S. 2d 202, aff'd, 296 N.Y. 926, 73 N.E. 2d 41 (1947).

⁵⁷ 268 App. Div. at 287, citing Judiciary Act § 88(1).

⁵⁸ *In re Burch*, 73 Ohio App. 97, 54 N.E. 2d 803 (1943).

⁵⁹ 54 N.E. 2d, at 808.

⁶⁰ See Chafee, *Thirty-Five Years with Freedom of Speech* (1952).

EFFECTS

We have now reviewed the factual material available on the rise of loyalty tests for admission to the bar, and have come up with a handful of oaths, many requests for written information, some half-concealed supplementary investigative techniques, and a few character committees with inquisitorial tendencies. How many denials of admission have there been? Most bar examiners either stated or implied that they had had none. This is certainly the case in California.⁶¹ About New York we have only rumors. In Illinois, there was George A. In Washington, we understand that two attorney applicants, but no student applicants, have been denied admission.⁶² Florida, we are advised, has had "some" rejections.⁶³ There may, of course, be others. It is relevant to note that denials on any character grounds, in the case of student applicants, are extremely infrequent. Estimates from New York, Illinois, and California indicate that they run to less than one-half of one percent. In the First Appellate Court District of Illinois, "in the ten years 1938-1948 only 8 out of a total of 3,805 applicants were rejected on the recommendation of the Committee on Character and Fitness."⁶⁴

It is also relevant, for the sake of perspective, to record that at least seventeen states apparently make no loyalty investigation and have no loyalty tests at all, except the traditional oath to uphold the constitution. They are Arizona, Georgia, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. To these may be added Connecticut, except New Haven County.

OBSERVATIONS AND RESERVATIONS

There seems to be no ready basis for unvarying distinction between those states that assume their applicants are not Communists and those that have

⁶¹ Letter from Goscoe O. Farley, Esq., Secretary, Committee of Bar Examiners (Nov. 12, 1952).

⁶² A student questionnaire. See also note 93 *infra*.

⁶³ Letter from Olin E. Watts, Esq., Chairman, Board of Law Examiners (Oct. 31, 1952).

Professor Curtis Wright, Jr. has helpfully lent us a number of newspaper clippings on the curious North Carolina case of Myron Ross. Ross, a veteran, a former union organizer and Progressive party candidate for Congress in 1948, graduated from the University of North Carolina Law School at the age of 33 with an admirable academic record. On August 4, 1952, the day before the bar examinations, he was summoned before the Board of Law Examiners without notice or charge, and, after a long interrogation, was excluded from the examination. Ross made no issue of this until, about August 13, the Winston-Salem Journal (owned by Gordon Gray, President of the University) charged that Ross "had a long record of Communist underground activities in North Carolina." This Ross denied and told reporters that his questioning had been almost entirely directed at his union activities. The Board chairman said that neither Ross's union nor his Progressive party activities had influenced him, but cast no further light on the Board's action. Indignant editorial comment on the Board's procedures was led by the Raleigh News-Observer, which declared (August 14, 1952) that they were "more reminiscent of practices under totalitarianism Communism than of liberty under law in the United States."

⁶⁴ Survey of the Legal Profession, *op. cit. supra* note 8, at 255. See also Sprecker, *op. cit. supra* note 6.

erected the varieties of screening devices we have described. Generally speaking, the roll of do-nothing states consists largely of the less populous ones, where applicants are likely, as some of their examiners pointed out, to be personally known to the committee, and where there are no urban centers of communist activity. In two or three states, which we are not free to identify, there is no loyalty investigation in the rural areas, but the examiners in the metropolis feel obliged to make one. This rough separation between the wicked city and the virtuous country is expectable but not universal. Thus both the Alabama and Mississippi examiners advised us with understandable pride that their citizens were quite free of communist tendencies. The Mississippi examiners have never investigated an applicant for his subversive tendencies or activities because "we have never entertained any suspicion on the part of any of them";⁶⁵ but the Alabama board, concededly out of "extreme caution," has adopted the questions set forth earlier in this paper.⁶⁶ Again, California and Hawaii are, in a sense, neighboring communities which have experienced a similar turmoil of communist infiltration in labor and other groups. California has a statute, set forth above, barring advocates of violent overthrow from admission; but its bar examiners make no special inquiries of applicants, and "[d]uring the past seven years, at least, the Committee has not denied an applicant the right to take an examination on the ground of subversive beliefs or acts."⁶⁷ Whether this is the case in Hawaii we do not know, but we do have a report, also discussed above, of a set of questions almost ludicrous in their intensity. Such inconsistencies may be attributable quite simply to the composition of the boards at any given period.

Whether the momentum of the present period will carry more bar examiners into the loyalty business we do not undertake to predict. The Louisiana examiners advised us that they are considering a loyalty oath;⁶⁸ Minnesota has a program under discussion;⁶⁹ and two boards replied that they had no loyalty tests at present, but would take the matter up at their next meeting.⁷⁰

If our inquiries have prompted them to action, we are frank to confess dismay. Our own preferences are for a lessening of loyalty tests, not for their extension. The present survey leaves us with the impression that loyalty tests for lawyers are not so prevalent as one might have expected, taking the situation of public employees and especially teachers as the crest against which one measures

⁶⁵ Letter from Henry E. Barksdale, Esq., Chairman, Board of Bar Examiners (Nov. 26, 1952).

⁶⁶ Letter from John B. Scott, Esq., Secretary, Board of Bar Commissioners (Oct. 24, 1952).

⁶⁷ Farley, *op. cit.* supra note 61.

⁶⁸ Letter from Stephen A. Mascaro, Esq., Ass't Secretary, Committee on Bar Admissions (Nov. 29, 1952).

⁶⁹ Letter from Francis T. Ryan, Esq., Secretary, Board of Law Examiners (Dec. 8, 1952).

⁷⁰ Letters from Edward T. Lazear, Esq., Secretary, State Board of Law Examiners of Wyoming (Dec. 10, 1952), and from Raymond F. Rice, Esq., Acting Secretary, State Board of Law Examiners of Kansas (Dec. 6, 1952).

other inundations. At the same time, enough is described here to make it clear, we think, that our inquiries are not infected with the vice felicitously suggested by one bar examiner who wrote: " 'Witch hunting' is, of course, very obnoxious and on the other hand, it is well to guard against another evil, namely witch hunting for witch hunters."⁷¹

Another thing that is, we think, clear is that bar examiners everywhere are groping for fair resolutions between the demands created by anticommunist tensions and the common tradition of implicit loyalty that did not have to be "proved" or sworn to. Such a resolution is possible, provided that the problem of domestic communism is put into perspective, say in accordance with the estimate of George Kennan, recently Ambassador to Russia:

The American Communist party is today, by an large, an external danger. It represents a tiny minority in our country; it has no real contact with the feelings of the mass of our people; and its position as the agency of a hostile foreign power is clearly recognized by the overwhelming mass of our citizens.⁷²

To those who agree with this view, who accept the authoritative estimates of J. Edgar Hoover that membership in the Communist party has shrunk to a few thousand,⁷³ who noted the insignificant showing of revolutionary groups of any description in the recent election, and who do not attribute communist tendencies to everyone with whom they disagree, we offer the following tentative recommendations.

1. As for test oaths, we do not propose here to restate the historical and legal case against them. If a legislature adopts one applicable to lawyers in a form that will currently be considered valid, then the examiners and the courts have no alternative but to administer it, and to deny admission to applicants who will not subscribe to it, or who, on undisputed facts, cannot honestly subscribe to it. Loyalty oaths especially for lawyers have come into discussion largely as the result of the action of the American Bar Association in recommending that all lawyers take an oath forswearing both Communist party membership and adherence to "Marxism-Leninism"⁷⁴—a piece of jargon with no past, and, we trust, no future legally operative significance. Quite aside from the peculiar infelicity of the ABA oath,⁷⁵ it has been criticised from all sides as unnecessary and unworthy of the traditions of the profession.⁷⁶ Its failure to achieve adoption,

⁷¹ Letter from D. L. Sears, Esq., Chairman, Bar Applicant Committee, Toledo, Ohio (Nov. 19, 1952).

⁷² Kennan, *Where Do You Stand on Communism?*, *N.Y. Times Magazine* § 6, p. 7 (May 27, 1951). See also Justice Douglas, dissenting, in *Dennis v. United States*, 341 U.S. 494 (1951).

⁷³ See 32 U.S. News 35 (Apr. 11, 1952); *N.Y. Times*, p. 26, col. 3 (Aug. 30, 1952) ("24,647 known members").

⁷⁴ See *Proceedings of the House of Delegates: 1950*, 36 A.B.A.J. 948, 972 (1950). See also *The Lawyer's Loyalty Oath*, 37 A.B.A.J. 128 (1951).

⁷⁵ See Report, Special Committee on Disbarment of Subversive Members of the Bar, 30 Mich. S.B.J., No. 9, p. 70 (1951); Stason, *op. cit. supra* note 30.

⁷⁶ See *The Proposed Anti-Communist Oath: Opposition Expressed to Association's Policy*, 37 A.B.A.J. 123 et seq. (1951) (Letters in opposition from the Massachusetts Bar, the Ass'n

though one must note the counterparts promulgated by the Supreme Courts of Colorado, Oklahoma, and Washington, gives one hope that the question of loyalty oaths for lawyers is dormant.

2. Inquiries about criminally subversive activities are not improper, if one accepts the general assumption that character committees may investigate the applicant's behavior pretty much at will and may recommend his exclusion if it finds him not of "good moral character." A uniform feature of applicants' questionnaires is a demand for information about convictions, arrests, and charges of crime. Since we now have a variety of criminal seditions on the books,⁷⁷ the chief question open to bar examiners is whether they should single out such offenses for special attention. A counsel of restraint would imply a negative answer.

3. In any case, we believe that routine inquiries to the candidate should be confined to written forms, and not made the subject of oral examination. If the examiners feel that they must make some investigation, a printed form has the advantage of precision and impersonality. It can embody a formula which meets the requirements of the law and does not expose the examiner to embarrassment if he (consciously or unconsciously) misstates a key question and reveals his own prepossessions. Thus (a question reported to us), "Do you have any Communist or extreme liberal tendencies?" Compare the proposed solution of the Maryland bar examiners to their mandate to exclude "subversive persons." They plan to put on their form the question: "Are you a subversive person as defined by the Subversive Activities Act of 1949?"⁷⁸ If the question sounds silly, it is not the examiners' fault.

4. There are a number of other reasons why any detailed examination on loyalty matters, presumably oral, should be avoided as a routine matter. First, as already suggested, it gives too much scope for the examiner's own views to be borne in upon presumably impressionable students. If they are his views about legal ethics and the applicant's role in the legal profession, that is one thing. If the examiner is a mature lawyer, as he should be, he is an expert on such subjects. But we question the desirability of giving the committee members scope to lecture applicants on the evils of communism and related subjects. It has been suggested to us that this is a good opportunity for indoctrination on this vital topic. We doubt it. And as for the sort of examination required to ferret out the hidden Communist, we strongly urge examiners not to attempt to supplant the

of the Bar of the City of New York, and from 27 eminent lawyers); Chafee, *A Statement to My Fellow-Lawyers* (1951); Koenigsberg and Stavis, *Test Oaths: Henry VIII to the American Bar Association*, 11 *Lawyers Guild Rev.* 111 (1951). Cf. *Constitutional Issues Raised by the Proposed Loyalty Oath for Lawyers*, 36 *Iowa L. Rev.* 529 (1951).

⁷⁷ Smith Act, 54 Stat. 671 (1940), 18 U.S.C.A. § 2385 (1950); Internal Security Act, § 4(a), 64 Stat. 987 (1950), 50 U.S.C.A. § 783 (1951). The state statutes are compiled in Gellhorn, *The States and Subversion* 397 et seq. (1952). Cf. *Dennis v. United States*, 341 U.S. 494 (1951).

⁷⁸ Letter from Wilson K. Barnes, Esq., Secretary, Board of Law Examiners (Dec. 16, 1952).

FBI. It leads to displays of ignorance, such as asserting that Americans for Democratic Action was on the Attorney General's List (the questioner had American Youth for Democracy in mind, it turned out), asking if the American Civil Liberties Union wasn't a communist organization, and the following colloquy:

"And the United World Federalists. I've never heard of that. What's that?" (From another member of the examining committee) "Oh, I wouldn't worry about that. Everyone up on the North Shore belongs to that."

It also leads to downright improprieties, like the following:

"Did you vote for Henry Wallace in 1948?"

"No, I voted for Harry Truman."

"Don't tell me that—we don't have the right to ask you that."

The consequence of aimlessly hectoring students about membership in left-wing organizations, like the National Lawyers' Guild, may obviously be, as the word gets along, to discourage other students from joining such organizations. However desirable such a result might seem to the individual examiner, he should hardly use his official capacity to achieve it. Worse, the use of test questions, such as the applicant's views on Communists at the bar, and the insistence on "right" answers, may lead to a deplorable attitude on the part of applicants. The affair of George A. made a considerable impression on his contemporaries at Chicago, one of whom wrote as follows: "Although I have never been a Communist nor a member of organizations on the Attorney-General's list, my attitudes are such that had I acted with complete sincerity, I would not have replied simply 'no sir' to the question I was asked [about membership in subversive organizations]. But, I decided in advance, as did most of my friends, to give the answers best fitted to admission to the Bar without difficulty."

5. When is it proper to bar an applicant for disloyalty? We have framed the question in such a way that the answer, we suggest, is "never," for the reason that loyalty and disloyalty are concepts too elusive to be used as the basis for decision. The same objection, superficially, may be made to "lack of good moral character," which would presumably underlie a disloyalty rejection. Even if we equate "lack of good moral character" with "moral turpitude," a rough equivalent used as the catch phrase in disbarment proceedings, it must be admitted that the phrases lack precise meaning throughout the law.⁷⁹ But they are not empty vessels in the context of admission or discipline. Like many such terms, use has encrusted them with meaning; doubtless "disloyalty" could also come to have a meaning in bar examining, as it supposedly has for the Loyalty Review Board.

But the perils of launching a jurisprudence of loyalty in times like these are so

⁷⁹ See, generally, Bradway, *Moral Turpitude as the Criterion of Offenses that Justify Disbarment*, 24 Calif. L. Rev. 9 (1935); Cahn, *Authority and Responsibility*, 51 Col. L. Rev. 838 (1951); *The Imposition of Disciplinary Measures for the Misconduct of Attorneys*, 52 Col. L. Rev. 1039 (1952). See also *Jordan v. DeGeorge*, 341 U.S. 223 (1951). That exclusion may rest on slighter grounds than disbarment, see *In re Stepsay*, 15 Cal. 2d 71, 98 P. 2d 489 (1946).

obvious that we urge the examiners to stick to the familiar. Specifically, a person who presently advocates or works toward the overthrow of the government by unconstitutional means, whether as a Communist or a philosophical anarchist, may be denied admission, for the reasons suggested at the beginning of this essay. It may be said that he is not of good moral character, because he contemplates criminally reprehensible conduct, or that he is not fit to practice law, because he will not uphold the Constitution. On the other hand, George A.'s defense of the "right" of revolution by those who believe that lost democratic processes can only thus be restored should not, standing alone,⁸⁰ have barred him, because he made it quite clear that he had not the slightest intention himself of promoting such a revolution.

For another example, we think that ex-Communists are clearly admissible, if the committee is reasonably satisfied that they are no longer members. The California⁸¹ and New Haven County⁸² authorities have confronted this case, and reached that result.

But as one moves back from these relatively easy examples of eligibility toward the equally clear one of ineligibility—that of the currently conspiring revolutionary—hard borderline cases crop up to stub the toe. We will mention two. First, assume an applicant who candidly confesses to a secret sincere belief in the necessity and desirability of a revolution along communist lines. With equal candor, he assures the examiners that he is a timid soul who prefers books to barricades, and that he never has lifted and never will lift a finger to advocate or support the revolution he dreams of. This improbable hypothesis highlights the constitutional freedom to believe as one will. Looking from the bar examiner's standpoint at this case (which is not the same as George A.'s belief in the moral right to revolt), it seems plausible to say that such a person lacks the "belief in lawful procedures" that the assembled law teachers consider essential to their profession,⁸³ and that his subversive thoughts show a poor moral character. But if the examiners propose to apply the sanction of exclusion, they should first read the several opinions in *American Communications Association v. Douds*.⁸⁴ There they will find the six sitting members of the Court evenly divided over the

⁸⁰ Another element in his case was his refusal to answer questions bearing on party membership or political views. Our personal impression of the case, based upon the record available to us (see note 5 supra), is that the Committee really had no occasion to ask him such questions, for his statement of the "right" of revolution, though gratuitous, was clearly hypothetical, and all other information about him, it appears, was highly favorable. But, once the Committee decided it had reasonable grounds for suspicion, then we think it had the power to ask him if he was a member of the Communist party, defining such membership, as the Committee did, to refer to a conspiratorial movement to overthrow the government. There were other issues developed in the two hearings; they are either related to the principal ones (e.g., George A. saw no objection to admitting Communists to the bar) or are examples of the byways into which oral examination can stray. Compare the comments of Professor Malcolm Sharp in Anastaplo, *op. cit. supra* note 5, following p. 79.

⁸¹ Farley, *op. cit. supra* note 61.

⁸² Student questionnaire.

⁸³ See p. 481 *supra*.

⁸⁴ 339 U.S. 382 (1950).

validity of that part of the Taft-Hartley oath requiring a denial of belief in the overthrow of the government by unconstitutional means. Against the firm position, as expressed by Mr. Justice Jackson, that "While the Governments, State and Federal have expansive powers to curtail action, and some small powers to curtail speech or writing, I think neither has any power, on any pretext, directly or indirectly to attempt foreclosure of any line of thought,"⁸⁵ the Chief Justice could only dilate on the perils to commerce of the political strike, and promise that the Court would be firm to resist any less warranted intrusion on belief.

The second hard case is the converse of the first, and probes the assumption that Communist party membership is an immediate badge of outlawry. Suppose the candidate admits present membership, but urges stoutly (and again credibly) that *he* does not advocate violent overthrow, nor does the party mean to him any more than an instrument of social reform—or even a setting for social diversion. If this seems preposterous in 1953, it certainly was not so in recent years. We have it on the authority of the House Committee on Un-American Activities (complaining that some of its friendly witnesses had lost their jobs) that

An examination of the testimony of a large group of these witnesses conclusively reveals that they did not join the Communist Party to participate in any action designed to overthrow the United States. They joined in some instances to defeat Hitler, or support labor, and it was only long after their association with the Communist Party that they learned the true intent and purpose of this organization.⁸⁶

The case may be brought closer to the present problem by considering the group of Los Angeles lawyers alleged to be Communists. According to testimony, uncontroverted to date, by ex-members before the House Committee on Un-American Activities,⁸⁷ this was an unwieldy, earnest, and apparently boring study group of dues-paying party members who carried on busy practices despite the strain of trying to master the theories of dialectical materialism, the intricacies of which were what caused some of the apostates to fall by the way-side.⁸⁸ The testimony of two of them was explicit that force and violence were never advocated at the meetings.^{88a} If any charges of unethical conduct have been made against these lawyers—we assume that it is not yet unethical to specialize in labor and civil liberties matters—we have not heard of it. The worst public offense of some of them, in our perhaps overly fastidious opinion, was in trying to outdo in bad manners the Committee on Un-American Activities when it sought to question them.⁸⁹

⁸⁵ *Ibid.*, at 442 (Jackson, J., dissenting in part).

⁸⁶ Committee on Un-American Activities, House of Representatives, Annual Report for the Year 1952, at p. 3 (1952).

⁸⁷ Hearings before the Committee on Un-American Activities, House of Representatives, Communist Activities Among Professional Groups in the Los Angeles Area—Part 1, 82d Cong. 2d Sess. 2,501-2,630 (1952).

⁸⁸ *Ibid.*, at 2,535-42.

^{88a} *Ibid.*, at 2,540 and 2,582.

⁸⁹ *Ibid.*, Part 3, at 3,903 et seq.

What about these two cases? By eliminating from them any question of credibility and any room for inference about either the candidate's present belief or his predictable future action, we have made them untrue to real life, and thus perhaps insoluble in real life. A flesh and blood committee would balk at the promise of the revolutionary dreamer always to uphold the laws; but do not many of us spin lawless fantasies without ever acting on them? The same committee could be excused for rejecting, after three years of Korea, the peaceful protestations of the party member; but do not men cling to hopeless faiths without impairing their moral character? The problems cannot, in fact, be isolated from the beliefs and faiths of committee members and from issues of credibility and proof.

6. The usual proposition that the applicant has the burden of proof of establishing his good moral character should not be literally applied to loyalty matters. Opposing views on this point are well developed by bar examiners. The chairman of the Florida board writes:

I give great weight to the proposition that the practice of law is a privilege and that every applicant who seeks admission should carry the burden of establishing his complete loyalty to our constitutional government and that he is in quite a different position from one seeking employment in some other undertaking. It does not seem to me that the burden should be upon the examiners in such case to establish that the applicant's loyalty is doubtful.⁹⁰

One may agree, hesitantly, that the burden should not be on the examiners; but at the same time there should still be room in American life for a strong presumption of loyalty. As the chairman of an Ohio character committee wrote:

It has been uniformly true that with the general information readily available concerning applicants who have appeared before our Committee, we have considered all applicants completely beyond suspicion of treason and have considered it unnecessary to make any investigation calculated to develop treasonable beliefs or acts.⁹¹

Related to the burden of proof are such matters as making an adequate record, referring findings to some reasonable standards, and disclosing all the evidence on which the committee acted, so that, if the applicant appeals, there will be something on which the reviewing court can act. Though committees often undertake to treat communications made to them as confidential, for the sake of encouraging disclosures, it seems unlikely that they could use such communications as a basis for an *adverse* decision and then refuse to disclose them as part of the record on an appeal.⁹² While the episode that follows is doubtless atypical,

⁹⁰ Watts, *op. cit. supra* note 63.

⁹¹ Sears, *op. cit. supra* note 71.

⁹² The California examiners' rules specifically provide that an applicant shall be informed of all information on which an adverse decision is based. Rules for Admission to the Bar 35 (West Pub. Co., 1951). At the other extreme, the Houston (Texas) Bar Association apparently attempts to exact a waiver of disclosure of information received by the board. Applicant's Questionnaire, Question No. 41(b). State cases are inconclusive. Compare *Re Application of Crum*, 103 Ore. 296, 204 Pac. 948 (1922) (full procedural rights guaranteed), with *In re Frank*, 293 Ill. 263, 127 N.E. 640 (1920). Prior to *In re Summers*, 325 U.S. 561

it illustrates the need for a little more firmness in applying some principles of administrative procedure to these hearings. In a speech to the Washington (State) Bar Association, a member of the committee said:

[W]e have spent many hours during the last year in respect to an applicant from an eastern city whose record is such that we feel he is inherently an enemy of the state. He was not allowed to take the examination. We are, however, surprised that the record which we made, and which was the best record we could make, was not taken to the Supreme Court and our ruling challenged. It has not yet been, and we are thinking maybe he thinks we know more than we do.⁹³

7. If the procedures and policies we have proposed were uniformly followed, no doubt very few denials—even fewer than at present—would result. We see no reason to be alarmed at this prospect. Though it is theoretically more desirable, as the Secretary of the Alabama Bar Examiners wrote, “to keep out the unworthy than to remove them after admission,”⁹⁴ you first have to find the unworthy. Character tests are only meaningful as guides to future *conduct*. It is a difficult responsibility in any case to say that a man just out of law school may never practice; it is not surprising that denials are few. If a lawyer later shows that he is unworthy of the trust that has been reposed in him, adequate disciplinary procedures are everywhere available. There is then more of a life record on which to judge, and on which to base a defense.⁹⁵

(1945), there was no recognition of a federally protected guaranty of due process in state bar admission proceedings. Cf. *Bradwell v. Illinois*, 16 Wall. (U.S.) 130 (1872) (exclusion of a female applicant not a denial of privileges and immunities of 14th Amendment). But in the *Summers* case, the Court held that “a claim of a present right to admission to the bar of a state and a denial of that right is a controversy” (325 U.S. at 568) which may be reviewed when federal questions are raised, and added: “The responsibility for choice as to personnel of its bar rests with Illinois. Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention.” 325 U.S. at 570-71. The Supreme Court has not further clarified the scope of constitutional limitations on state admission procedures, but one federal court has recently considered this problem. In the course of reversing the denial of a license to engage in the bail bond business on the ground of a poor moral risk, the Court of Appeals for the District of Columbia said:

“Since a court’s order denying an application to practice law is a judicial act, as the Supreme Court determined in the *Summers* case, so is a court’s order denying an application to do business as a bondsman. Since the District Court’s order is judicial it is (1) appealable and (2) erroneous because not based upon a proceeding which contains the elements of due process of law, i.e., a hearing and revelation of all data upon which a decision is to be based. Old charges never brought to trial, and appellant’s innocent mistake of fact on an immaterial matter, do not support the order. Neither do any secret charges that may have been made by anonymous informants whom the appellant has had no opportunity to confront and cross-examine.” In *re Carter*, 192 F. 2d 15 (App. D.C., 1951). But cf. *Phipps v. Wilson*, 186 F. 2d 748 (C.A. 7th, 1951) (state disbarment proceeding), which held that “due process requires only that an attorney have a reasonable notice of the charges against him and a reasonable opportunity to be heard in his defense,” citing *Ex parte Wall*, 107 U.S. 265 (1882).

⁹³ Ashley, Discussion of Bar Applicants Taking Non-Communist Oath, 25 Wash. L. Rev. 374 (1950).

⁹⁴ Farley, *op. cit. supra* note 61.

⁹⁵ Exclusions, on character grounds, of attorney applicants, who will usually have had at least five years’ practice elsewhere, appear to occur much more often than do student ex-

The foregoing comments should suggest that the responsibility for excluding subversives from the practice of law is a delicate and burdensome one. At least, we feel that it should be so viewed by examiners; and we have no doubt that practically all of them have a professional sense of fair play more rigorous than the unguarded remarks of the Washington bar examiner quoted above would imply. Our brief references, in this particular context, to such matters as burden of proof, clarity of standards, adequacy of findings, and scope of review—matters that are common to any exclusionary or disciplinary proceeding—may suggest that the bar has leaned too comfortably on the fallacious privilege-right distinction. The notion that the practice of law is a guarded “privilege,” and that no one has any “right” to practice, and therefore no right to complain of the means by which he is excluded, is paralleled in the field of loyalty tests for public employment. One of the few commendable aspects of the loyalty cases in the Supreme Court has been the recognition, murky in the *Joint Anti-Fascist* case,⁹⁶ and realized only in the recent Oklahoma oath case,⁹⁷ that when “only a privilege” comes in the door, due process does not fly out the window.

It is not surprising that in loyalty cases analysis is closer than in those of the deadbeat or the grafter. It is universally assumed that a disability imposed on loyalty grounds carries a stain deeper and more indelible than most moral blots. Aside from the presumption of loyalty mentioned above, we do not propose that administrative standards should apply in loyalty cases different from those in other exclusion proceedings. We do hope that loyalty cases may bring to bear on the whole process the same mistrustful scrutiny that the bar is quick to lavish on other administrative bodies.

Even if procedures are adequate, we should like to reiterate that the current legality of exclusion on loyalty grounds—its not-unconstitutionality, if caution will excuse a barbarism—does not mean that bar examiners have a strong call to join the Red-hunt.

So far as casual inquiry shows, our brother professions of medicine and accounting, with no lower standards of good moral character than ours, have not felt the slightest need to probe for pinkness in their applicants.⁹⁸ Lawyers, as

clusions. Survey of the Legal Profession, op. cit. supra note 24, at 255. This difference tends to support the view expressed above that character committees can act with more assurance in the case of a practitioner; it may also reflect the shady past of some migrants.

⁹⁶ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951).

⁹⁷ *Wieman v. Updegraff*, 344 U.S. 183 (1952). See Fraenkel, *Law & Loyalty*, 37 *Iowa L. Rev.* 153, 163 (1952), discussing dicta in recent Supreme Court cases foreshadowing the holding in the *Wieman* case.

⁹⁸ State statutes prescribing requirements for licensure of doctors and accountants uniformly include “good moral character” provisions. See, e.g., *Conn. Gen. Stat.* (1949) §§ 4364, 4611; *Ill. Rev. Stat. (Supp., 1952)* c. 91, § 4, c. 110½, § 25. Limited inquiry among practitioners indicates that loyalty tests are unheard of. But cf. *Texas Civ. Stat. Ann. (Vernon, Supp., 1952)* Art. 4542a, § 9, requiring each applicant for a license to practice pharmacy to swear

such, are not privy to strategic secrets like scientists; if their talents take them into sensitive government areas, they are subject to screening there. Lawyers do not, like teachers, have the immediate opportunity to corrupt youth that is supposed to be the unchallenged opportunity of the dwindling band of communist teachers. They do have the opportunity to corrupt justice; and that brings us back to our initial conflict between the obligation of the lawyer to legality and the obligation of the Communist to destroy what to him is a part of the capitalist enslavement. The reader will, we suspect, cock a skeptical eye at the recent charge of the Attorney General of Pennsylvania that subversive elements are crippling the administration of the criminal law.⁹⁹ He may be more impressed by the judgment of Mr. Austin Canfield, one of the ABA's authorities on communism, that "fifteen or twenty" lawyers are the "master-minds" of the communist conspiracy.¹⁰⁰ We will make a dogmatic assertion that this is a piece of professional vainglory. The Justice Department's authorities on communism, in their selection of defendants in Smith Act cases, have so far singled out only one lawyer.¹⁰¹

If support of communism among practicing lawyers is insignificant, as we believe it to be, how much less so must it be among the present generation of law students. The average graduate of this year—assume he is twenty-four—was in diapers when the Great Depression drove some people into communism; starting school when the United Front attracted others; still a youth when the Second Front and similar issues warmed others toward Russia despite earlier disillusion. These were the peaks of communist sympathy in America. The dwindling role

that "he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods" and denying the right to practice pharmacy to any person within the oath's categories.

⁹⁹ Statement by Robert A. Woodside to the National Convention of State Attorneys General, Sea Island, Ga. (Dec. 9, 1952), reported in the *Washington Post*, p. 2, col. 6 (Dec. 10, 1952).

¹⁰⁰ Statement to the House of Delegates of the American Bar Ass'n, Chicago, Ill. (Feb. 25, 1952), reported in the *N.Y. Times*, p. 14, col. 2 (Feb. 26, 1952).

¹⁰¹ One of the defendants in the Baltimore Smith Act prosecution. Since 1947, 87 persons have been indicted under the Smith Act as Communist party leaders. *N.Y. Times*, p. 3 (Jan. 20, 1953); *N.Y. Times*, p. 4 (Jan. 22, 1953).

The House Committee on Un-American Activities has characterized the National Lawyers Guild as "the foremost legal bulwark of the Communist Party." Report on the National Lawyers Guild, H.Rep. No. 3, 81st Cong. 2d Sess. 123 (1950). See the reply to this report, *The National Lawyers Guild: Legal Bulwark of Democracy*, 10 *Lawyers Guild Rev.* 93 (1950). The national executive secretary of the Guild testified in April 1952, that its membership was approximately 2,100. House Committee on Un-American Activities, op. cit. supra note 87, at 2,661. The American Bar Association had, at that time, approximately 43,000 members. *Advance Program*, 74th Annual Meeting 26 (1951).

of the party since then strengthens our agreement with the bar examiner who wrote:

Speaking solely for myself, I do not think that inquiry into political beliefs has any place in bar examination work. I think that the study of law is the best training anyone can have for becoming a good American and I do not think it should be cluttered up with investigations about political beliefs and whether or not the applicant happens to agree with what a majority of the people may or may not consider at the moment to be subversive.¹⁰²

¹⁰² Letter from Robert E. Seiler, Esq., Secretary, Missouri Board of Law Examiners (Oct. 27, 1952).