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## BAR ADMISSION COMMITTEES— CONSTITUTIONALLY PERMISSIBLE SCOPE OF INQUIRY

In three recent decisions, the Supreme Court has narrowed the scope of questions that may be legitimately asked of prospective members of a State Bar Association regarding their moral character, participation in certain esoteric organizations, and belief in a constitutional form of government. In *Law Students Civil Rights Research Council, Inc. v. Wadmond*,<sup>1</sup> the Court upheld New York's revised statutes and rules governing the screening procedure for admitting prospective lawyers to practice.<sup>2</sup> Making a salient distinction, the Court *In re Stolar*,<sup>3</sup> concluded that the State of Ohio could

<sup>1</sup> 401 U.S. 154 (1971).

<sup>2</sup> N.Y. JUDICIARY LAW § 90(1) (a) (McKinney 1968), provides: "Upon the state board of law examiners certifying that a person has passed the required examination . . . the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counselor-at-law, shall admit him to practice . . . in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys." Section 528.1 states: "Every applicant for admission to the bar must produce before a committee on character and fitness appointed by an Appellate Division of the Supreme Court and file with such Committee evidence that he possesses the good moral character and general fitness requisite for an attorney and counselor-at-law as provided in Section 90 of the Judiciary Law, which must be shown by the affidavits of two reputable persons residing in the city or county in which he resides, one of whom must be a practicing attorney of the Supreme Court of this State." N.Y. RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW §528.1 (McKinney Supp. 1971).

<sup>3</sup> 401 U.S. 23 (1971).

not deny admission to practice law based upon the applicant's refusal to answer certain questions about his beliefs and associations. Likewise, in *Baird v. State Bar of Arizona*,<sup>4</sup> the Court sustained the applicant's contention that his beliefs and views were immune from bar examination inquiry. The primary basis of decision in each of these cases was that the system of screening and questioning utilized, violated the applicant's rights of free speech and association as protected by the first amendment.

It has been a long established tradition that the judiciary has complete supervision and control over the legal profession.<sup>5</sup> To effectuate this practice, it became necessary for the local bar associations of the various states to assume the responsibilities for screening applicants to practice law.<sup>6</sup> Traditionally, these admission requirements have been as austere or benign as the state desired.<sup>7</sup>

An example of an early requirement occurred during the post-Civil War era when efforts were made to prevent certain supporters of the Confederacy from practicing law in the federal courts without first taking a loyalty oath to the effect that the applicant had never sympathized with the South, and had always been loyal to the United States.<sup>8</sup> In *Ex parte Garland*,<sup>9</sup> the Supreme Court held such oaths unconstitutional as being an *ex post facto* law which imposed a new punishment for a person's prior legal acts, and as a bill of attainder due to the imposition of a penalty without having had a trial. It appears, however, that this case has been an exception to the general practice of the Supreme Court. In most situations, the Court has been most reluctant

<sup>4</sup> 401 U.S. 1 (1971).

<sup>5</sup> *E.g.*, *Ex Parte Burr*, 22 U.S. (9 Wheat.) 168 (1824).

<sup>6</sup> *See* Comment, 15 STAN. L. REV. 500 (1963).

<sup>7</sup> *See* Note, 106 U. PA. L. REV. 753, 755 (1958).

<sup>8</sup> *See, e.g.*, Act of Jan. 24, 1865, ch. 20, 13 Stat. 424; Act of July 2, 1862, ch. 128, 12 Stat. 502.

<sup>9</sup> 71 U.S. (4 Wall.) 333 (1866).

to reverse determinations made by the various states regarding an applicant's character and fitness to practice law. For example, in *Bradwell v. State*,<sup>10</sup> the Court upheld the right of the Illinois State Bar to deny a woman applicant admittance. The Court stated that it was the State's right to elucidate the qualifications required of prospective members of the State Bar, and these qualifications are not within the ambit of the fourteenth amendment. Likewise, the Supreme Court *In re Lockwood*<sup>11</sup> sustained the Virginia Bar in excluding a woman from membership, by stating that it was the right of the Virginia Courts to construe the meaning of the word "person" in the state statute prescribing admission to the bar.

Modern restrictions on lawyers and prospective lawyers were initiated at the close of World War II. The first in a series of such cases was *In re Summers*,<sup>12</sup> which held that admission to a state bar could be refused solely on the ground that the applicant, as a conscientious objector, could not in good faith take the required oath to support and defend the state constitution; and, as a result of his denial, the state did not violate the applicant's first amendment right to freedom of religion. "The responsibility for choice as to the personnel of its bar rests with Illinois."<sup>13</sup> During the subsequent Cold War era, many fears were expressed concerning the unique opportunity that existed for the Communist Party to infiltrate

<sup>10</sup> 83 U.S. (16 Wall.) 130 (1872).

<sup>11</sup> 154 U.S. 116 (1894).

<sup>12</sup> 325 U.S. 561 (1945).

<sup>13</sup> *Id.* at 570. The authority of *Summers* has been somewhat weakened by the Court's subsequent decision in *Girouard v. United States*, 328 U.S. 61 (1946). (Alien unwilling to bear arms in military service may be admitted to citizenship). *Summers* relied heavily upon the decisions in *United States v. Schwimmer*, 297 U.S. 644 (1927), and *United States v. Macintosh*, 283 U.S. 605 (1931), both of which were overruled by *Girouard*.

the legal profession.<sup>14</sup> As a result, a variety of security and loyalty oath cases besieged the courts.<sup>15</sup> The first significant cases of this nature regarding the legal profession were *Schware v. Board of Bar Examiners*<sup>16</sup> and *Konigsberg v. State Bar (Konigsberg I)*<sup>17</sup>. In *Schware*, the New Mexico Board of Bar Examiners denied admission to the applicant on three grounds: (1) the use of certain aliases to procure employment and prevent anti-semitism reaction; (2) the applicant having been arrested in a labor dispute with no subsequent conviction or indictment; and (3) for eight years, the applicant had been a member of the Communist Party. All of these activities had occurred some twenty years before the decision (from 1932 to 1940). Some of the "plus factors" of the applicant's character had been his service in the armed forces as a paratrooper; his operating a successful business while in law school to support his wife and two children; and his good character references from four students, teachers, and associates. The Supreme Court reversed in favor of the applicant, holding the state had deprived the petitioner of due process by denying him admission without sufficient evidence. Justice Black, concluding for the Court, stated: "There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law."<sup>18</sup>

<sup>14</sup> See Note, *Inquiries Into the Political Beliefs and Activities of Applicants for Admission to the Bar*, 1 COLUM. SURVEY OF HUMAN RIGHTS L. 33 (1968).

<sup>15</sup> See *Bates v. City of Little Rock*, 361 U.S. 516 (1960) (compulsory disclosure of N.A.A.C.P. membership under the pretext of a city tax ordinance, ruled as unconstitutional); *Slochower v. Board of Higher Education*, 350 U.S. 551 (1956) (a teacher claimed the fifth amendment in an investigation, and dismissal resulted; Court held dismissal invalid. The Court concluded that since the questions were unrelated to a legitimate state interest, a person's refusal to answer could not be used to penalize him for his non-cooperation).

<sup>16</sup> 353 U.S. 232 (1957).

<sup>17</sup> 353 U.S. at 246.

<sup>18</sup> 353 U.S. at 246.

The decisions in *Summers* and *Schwartz* had dealt with the issue whether a personal or moral characteristic was justifiable grounds of denial of admission to the state bar. In *Konigsberg I*,<sup>19</sup> a different issue was presented to the Court for decision, whether an applicant can be denied admission to the state bar solely because of his refusal to answer a relevant question. Konigsberg was denied admission to practice law in California not only for his refusal to answer certain questions concerning Communist affiliations, but also because of certain previous activities which had cast doubt about his belief in and adherence to a constitutional form of government, and his moral character. The California Supreme Court denied Konigsberg's petition for review<sup>20</sup> and the Supreme Court reversed. The majority, speaking through Justice Black, refused to reverse *solely* on the constitutional issue of the applicant's right to refuse to answer pertinent questions. The majority concluded that, as in *Schwartz*, upon an examination of the entire record, including his refusal to answer, there existed evidence to rationally support the state bar's decision.<sup>21</sup> On remand of the case, the state bar association conducted further investigations during which the applicant submitted evidence of his good moral character to abate the claims of his militant attitude toward the government. However, Konigsberg again refused to answer specific questions concerning his membership in the Communist Party. On the grounds that his refusal to answer obstructed the full and fair inquiry into the applicant's qualifications, the state bar association again rejected his application and the State Supreme Court again denied Konigsberg's petition for review.<sup>22</sup> In affirming, the Supreme

<sup>19</sup> 353 U.S. 252 (1957). For a case summary of the denial of medical or legal professional license as violating due process see Annot., 6 L. Ed. 2d. 1328 (1957).

<sup>20</sup> 353 U.S. at 254.

<sup>21</sup> 353 U.S. at 262.

<sup>22</sup> 52 Cal.2d at 722, 344 P.2d at 779, 780 (1959). Konigsberg reiterated his disbelief in a violent overthrow of the government, and denied any membership in such a group that adheres to such a policy.

Court (*Konigsberg II*) based its decision upon "an appropriate weighing of the respective interests involved."<sup>23</sup> The Court found the state's interest in not admitting an applicant whose political views were somewhat doubtful outweighed the applicant's right to free speech.<sup>24</sup> The majority of the Court rejected the contention that freedom of speech and association as espoused in the first and fourteenth amendments are absolute. Justice Harlan, speaking for the majority, stated:

[I]t is difficult, indeed, to imagine a view of the constitutional protections of speech and association which would automatically and without consideration of the extent of the deterrence of speech and association and of the importance of the state function, exclude all reference to prior speech or association on such issue as character, purpose, credibility, or intent.<sup>25</sup>

*In re Anastaplo*,<sup>26</sup> decided the same day as *Konigsberg II*, presented in a more precise context, the result of an applicant refusing to answer a relevant question asked him by a bar examination committee. Anastaplo refused to answer questions concerning his membership in the Communist Party on the grounds that his affiliation with that group was not reasonably related to the bar association's function of determining moral character of the applicant. In addition, he claimed it violated his first amendment right of association. On the single ground of obstruction, the committee refused certification, and Anastaplo charged the committee's reasoning as being a pretext for personal animosity.<sup>27</sup>

<sup>23</sup> 366 U.S. 36, 56 (1961). See Cranton, *The Supreme Court and State Power to Deal with Subversion and Loyalty*, 43 MINN. L. REV. 1025, 1065-68 (1959).

<sup>24</sup> See *Barenblatt v. United States*, 360 U.S. 109 (1959) (Court upheld sentence imposed on a professor for his refusal to answer certain questions asked him by a legislative committee in investigating communist activity in the state).

<sup>25</sup> 366 U.S. at 51 (1961).

<sup>26</sup> 366 U.S. 82 (1961).

<sup>27</sup> See Kalven & Steffen, *The Bar Admission Cases: An Unfinished Debate*, 21 LAW IN TRANSITION 155, 186 (1961).

A majority of the Court considered the claims of Anastaplo precluded by the decision in *Konigsberg II*, but restated:

[T]he State's interest in enforcing such a rule as applied to refusals to answer questions about membership in the Communist Party outweighs any deterrent effect upon freedom of speech and association. . . .<sup>28</sup>

A celebrated state court decision to apply certain guidelines of the Supreme Court is *Hallinan v. Committee of Bar Examiners*.<sup>29</sup> The bar examining committee had denied admission to the applicant based upon his past history of misdemeanor convictions obtained during civil rights demonstrations. To the bar examiners, this conduct showed a disrespect for the judicial process and the law.<sup>30</sup> The California Supreme Court reasoned, *inter alia*, that since a substantial number of legal scholars, professional practitioners, and eminent citizens supported and shared the applicant's belief, that this was not evidence that the applicant lacked good moral character.<sup>31</sup>

There have been a multitude of related cases concerning areas of employment other than the legal profession.<sup>32</sup> For example, there has been significant litigation on restrictions of public employees,<sup>33</sup> public office holders,<sup>34</sup> and aliens.<sup>35</sup> The current approach toward first amendment issues is the controversial "balancing test."<sup>36</sup> The older "clear and present

<sup>28</sup> 366 U.S. at 88.

<sup>29</sup> 65 Cal.2d 447, 55 Cal. Rptr. 228, 421 P.2d 76 (1966).

<sup>30</sup> 65 Cal.2d at 450, 55 Cal. Rptr. at 231, 421 P.2d at 79; see Note, *Bar Admissions—The Character Investigation as an Unconstitutional Scheme to Promote Conformity*, 23 VAND. L. REV. 131, 135 (1969).

<sup>31</sup> 65 Cal.2d at 460, 55 Cal. Rptr. at 238, 421 P.2d at 86.

<sup>32</sup> *E.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923) (an individual has a right to engage in any "common" occupation).

<sup>33</sup> *E.g.*, *Garner v. Board of Public Works*, 341 U.S. 716 (1951).

<sup>34</sup> *E.g.*, *Gerende v. Board of Supervisors of Elections*, 341 U.S. 56 (1951).

<sup>35</sup> *E.g.*, *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952).

<sup>36</sup> *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961).



danger test" has generally been considered abandoned by the Court in the area of first amendment rights due to its "difficult" application.<sup>37</sup> Under the balancing test, the first amendment purports to protect "interests" rather than "rights." These protected interests are those of state action versus individual affairs. The higher the virtues of state action are, the more intrusions on private interests may be made without being considered arbitrary or capricious.<sup>38</sup> This theory was developed by the Supreme Court during the Cold War era of the 1950's when the courts were besieged by loyalty oath cases.

An important development in the first amendment area occurred in *N.A.A.C.P. v. Alabama ex rel. Patterson*.<sup>39</sup> In that case, the Supreme Court made it clear that the right of free association was a protected first amendment right. The State of Alabama ordered the state N.A.A.C.P. chapter to disclose the names and addresses of all its members in Alabama to determine whether that organization was in violation of the foreign corporation law. The Court said the need for the records had no substantial bearing upon whether the N.A.A.C.P. had violated the state's foreign corporation law, and therefore, there was no legitimate state interest sufficient to outweigh the individual rights of free association.<sup>40</sup> More substantial reiteration came in *United States v. Robel*,<sup>41</sup> when the Supreme Court dispelled all doubts about whether free association was a fully protected first amendment right. In *Robel*, the Court held that a provision of the Subversive Activities Control Act that prohibited a Communist from working in certain defense plants was invalid as it rendered one guilty by association, without a determination that an individual's belief was in

<sup>37</sup> *E.g.*, *N.A.A.C.P. v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

<sup>38</sup> *E.g.*, *Shelton v. Tucker*, 364 U.S. 479 (1960).

<sup>39</sup> 357 U.S. 449 (1958).

<sup>40</sup> *Id.* at 464.

<sup>41</sup> 389 U.S. 258 (1967).

fact violent or militant.<sup>42</sup> In *Elfrandt v. Russel*,<sup>43</sup> members of an organization were prevented from working at certain jobs due to association in a "subversive" organization. As a result, the Supreme Court concluded that the statute infringed upon the petitioners' freedom of association.

In the area of tax exemptions, the Supreme Court held unconstitutional a California statute which required each applicant, as a prerequisite to obtaining tax exemption on veterans' property, to subscribe to a loyalty oath.<sup>44</sup>

Loyalty oaths for teachers have been struck down by the Court as unconstitutionally vague or overbroad.<sup>45</sup> Likewise, the Court has invalidated loyalty oaths as a condition of employment for state employees as being void for vagueness in many analogous cases.<sup>46</sup>

In *Law Students Civil Rights Research Council, Inc. v. Wadmond*,<sup>47</sup> the appellants were contending: (1) That the screening system used by the Committee on Character and Fitness was void for vagueness and overbreadth, (2) that this system, by its very existence, worked a chilling effect upon the exercise of free speech and association of prospective applicants of the New York Bar.<sup>48</sup>

The procedure used by the appellants in the trial court was the commencement of two separate suits in the United States District Court for the Southern District of New York,

<sup>42</sup> 389 U.S. at 265. Therefore, as the Act included mere membership, it was unconstitutional.

<sup>43</sup> 384 U.S. 11 (1966); *accord*, *Brown v. Louisiana*, 383 U.S. 131 (1966).

<sup>44</sup> *Speiser v. Randall*, 357 U.S. 513 (1958).

<sup>45</sup> *Shelton v. Tucker*, 364 U.S. 479 (1960); *see Comment, Judicial Rewriting of Overbroad Statutes: Protecting the Freedom of Association from Scales to Robel*, 57 CALIF. L. REV. 240 (1969); Note, 55 CALIF. L. REV. 549 (1967); Comment, *Void-for-Vagueness Doctrine*, 109 U. PA. L. REV. 67 (1960).

<sup>46</sup> *E.g.*, *Baggett v. Bullitt*, 377 U.S. 360 (1964).

<sup>47</sup> 401 U.S. 154 (1971).

<sup>48</sup> N.Y. CIV. PRAC. LAW R. 9401 *et. seq.* (McKinney 1963).

seeking declaratory and injunctive relief against two Committees on Character and Fitness. A three-judge court was convened and consolidated the actions into one suit.<sup>49</sup>

The Supreme Court ruled at the outset that the character and general fitness requirements of applicants for admission to the New York Bar were not unconstitutional.<sup>50</sup> The Court noted the long standing usage of the requirement that the appellants found objectionable, and reiterated that such character inquiries concerning previous conduct that were relevant to the legal profession were still valid.<sup>51</sup>

The appellees maintained that part of the procedure which required an applicant to furnish proof of his belief in and loyalty to the form of government of the United States, as not placing a burden of proof on the applicant, and that the "form of government" in question refers only to the Constitution. Also, "belief" and "loyalty" only mean that an applicant be willing to take the oath with the ability to do so in good faith. Based upon this construction of the rule, the Court found no constitutional violation, and no intention to "penalize political beliefs."<sup>52</sup>

As to the issue of the constitutionality of the questions asked concerning organizational membership, the Court said the questions contained the necessary limitations to prevent them from being unconstitutional.

"We have held that knowing membership in an organization advocating the overthrow of the Government by force or violence, on the part of one sharing the specific intent to further the organization's illegal goals, may be made criminally punishable."<sup>53</sup> Further, the Court stated: "It is also well set-

<sup>49</sup> The suits were commenced under 28 U.S.C. § 1343 (3) (1964) and 42 U.S.C. § 1983 (1964).

<sup>50</sup> 401 U.S. at 159.

<sup>51</sup> *Id.* at 160; see *Knight v. Board of Regents*, 269 F. Supp. 339, *aff'd per curiam*, 390 U.S. 36 (1968).

<sup>52</sup> 401 U.S. at 163.

<sup>53</sup> *Id.* at 165.

tioned that Bar examiners may ask about Communist affiliations as a preliminary to further inquiry into the nature of the association and may exclude an applicant for refusal to answer."<sup>54</sup>

The "chilling effect" complaint alleged by the appellants was considered groundless by the Court due to New York's scrupulous and careful administration of the screening process. The Court held that so long as the screening procedure used by the committee shows a willingness to keep the process within the safeguards of the Constitution, the procedure will be upheld.<sup>55</sup>

The dissenting opinion in *Wadmond* by Justice Marshall, was echoed in the majority holding *In re Stolar*,<sup>56</sup> and *Baird v. State Bar of Arizona*.<sup>57</sup> In *Stolar*, the appellant had previously been admitted to practice law in New York, and in his initial application, had answered questions presented him by the New York Bar. When the appellant applied to the Ohio Bar for admission to practice, he again answered certain questions concerning his moral character and fitness to practice law. *Stolar* did not however answer some questions posed on the bar application, contending that they infringed upon his first and fifth amendment rights.<sup>58</sup>

Initially, the Supreme Court found the question asking for the applicant to list all organizations to which he has belonged since the age of 16 violative of the petitioner's first amendment rights. The Court sounded the reasoning of *Shelton v. Tucker*<sup>59</sup> that such a question infringed upon the applicant's freedom of association due to its effect of stifling his membership in an organization that might be considered offensive by those who control his "professional destiny."

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 167.

<sup>56</sup> 401 U.S. 23 (1971).

<sup>57</sup> 401 U.S. 1 (1971).

<sup>58</sup> 401 U.S. at 27.

<sup>59</sup> 364 U.S. 479 (1960).

Expanding the reasoning of *Shelton* the Court stated: "law students who know they must survive this screening process before practicing their profession are encouraged to protect their future by shunning unpopular or controversial organizations."<sup>60</sup>

Due to the fact that Stolar had previously been a member in good standing of the New York Bar, and had supplied the Ohio Committee with extensive information concerning his personal and professional character, the Court concluded that questions of his past organizational associations would not aid Ohio in determining whether Stolar had the required qualifications necessary to practice law.

In conclusion, the Court stated the principle that:

. . . Ohio may not require an applicant for admission to the Bar to state whether he has been or is a "member of any organization which advocates the overthrow of the government of the United States by force." As we noted above, the first amendment prohibits Ohio from penalizing a man solely because he is a member of a particular organization. . . . Since this is true, we can see no legitimate state interest which is served by a question which sweeps so broadly into areas of belief and association protected against government invasion.<sup>61</sup>

In *Baird v. State Bar of Arizona*,<sup>62</sup> as in *Stolar*, the applicant was asked to list all organizations that she had been associated with since she was 16 years of age. However, the Arizona Bar Committee also solicited a response as to whether or not she had ever been a member of the Communist Party, or any similar organization that advocated the violent overthrow of the government. The applicant answered the first question to the committee's satisfaction. As to the second question, Baird refused to answer, and for this reason, she was denied admission to the state bar.

<sup>60</sup> 401 U.S. at 28.

<sup>61</sup> *Id.* at 30.

<sup>62</sup> 401 U.S. 1 (1971).

The Court first stated that for the protection of the freedom of association, a state could not exclude a person from a profession solely due to membership in a political organization, or for holding certain beliefs. This area is protected from unbridled state inquiry by the first amendment. The Court stated: ". . . it is sufficient to say we hold that views and beliefs are immune from bar association inquisitions designed to lay a foundation for barring an applicant from the practice of law. . . . [T]he practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character."<sup>63</sup>

Relating the holdings in these cases to the present Oklahoma Bar application, it appears some of the questions asked are violative of the Supreme Court's rulings. Under the heading of "moral character," question 13(a) on the applicant's questionnaire would appear to be in direct conflict with the holdings in *Baird* and *Stolar*. This question asks: "Are you now, or have you ever been a member of or affiliated with the communist party, U.S.A., or any communist organization?"<sup>64</sup> This question could have the effect of denying an applicant membership into the Oklahoma Bar solely because of his affiliation with this particular organization, or just because he holds certain political beliefs that are contrary to those of the bar examiners. Question 13(b), asks if the applicant has ever belonged to an organization "which has adopted, or shown a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights, under the Constitution of the United States, or which seek to alter the form of government of the United States by unconstitutional means?"<sup>65</sup> This question not only does not include the necessary element of belief and partici-

<sup>63</sup> *Id.* at 8.

<sup>64</sup> BOARD OF BAR EXAMINERS OF THE OKLAHOMA BAR ASSOCIATION, Form No. 4, *Applicant's Questionnaire and Affidavit*, Question 13(a) (Hereinafter cited as Form No. 4).

<sup>65</sup> *Id.*, question 13(b).

pation in such an organization on the part of the applicant, but also is vague as to what "unconstitutional means" covers. Although question 13(d) which deals in participation in "demonstrations, sit-ins, etc."<sup>66</sup> was not specifically considered by the Supreme Court, it would appear that the effects of such a question are clearly within the ambit of the three recent cases discussed. First, this question creates a "chilling effect" on the exercise of an individual's constitutional rights of free speech and free association. If law students knew that they must answer such a question on the bar application, then they would be "encouraged to protect their future by shunning unpopular or controversial organizations."<sup>67</sup> Secondly, what is meant by "demonstrations," "sit-ins," or "etc.?" Are only controversial or unpopular actions to be considered? This again demonstrates the vagueness upon which such a question rests.

The elements of question 14 were discussed by the Supreme Court, and as it is stated on the applicant's questionnaire for admission to the Oklahoma Bar, is unconstitutional: "List below the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member."<sup>68</sup> This question is not even limited as to a recent number of years, but includes all such memberships since the applicant was born.

In this writer's opinion, the Oklahoma Bar application should be revised and corrected to conform to the mandate of the Supreme Court set forth in the three cases discussed above.

Although it appears that employment of the nebulous term "good moral character" as a standard for determining the worthiness of an applicant for admission to the bar has not been significantly weakened, there still remain more constructive and practical methods of reaching the same de-

<sup>66</sup> *Id.*, question 13(d).

<sup>67</sup> *In re Stolar*, 401 U.S. 23, 28 (1971).

<sup>68</sup> Form No. 4, question 14.

sirable goal. Because of the large number of applicants participating in certain organizations which voice their concern over the governmental endeavors, bar examiners have probably never faced a more difficult time in determining whether an applicant has the necessary respect for and belief in a constitutional form of government. There have been many moral questions and objections to the existing laws and the procedure used in enforcing them. But, how far can a prospective member of a state bar association go in voicing his opinion as to these problems? What if his conduct in exercising his right to free speech shows some "disrespect" toward the existing establishment? It is this grey area in which bar examiners must function, and as most agree, a better system would be most advantageous.<sup>69</sup>

Some authors suggest a more satisfying and enduring method of considering the moral character problem; start the investigation procedure earlier in the student's legal career.<sup>70</sup> A procedure developed along this concept would enable a student to know for certain that upon his graduation he would be acceptable to the state bar. If a student's previous conduct was questionable, then before his time and financial resources were wasted, he would know for a fact whether he would be admitted. This process could even be accomplished before a student entered law school, as for example during his senior year of undergraduate school. Proof of good moral character could be required before admission to law school, with the condition that acceptance to law school would constitute acceptance to the state bar association.

Some commentators have suggested that the standard of

<sup>69</sup> See Bard & Bamford, *The Bar: Professional Association or Medieval Guild*, 19 CATHOLIC U. L. REV. 393 (1970).

<sup>70</sup> Kanner, *Dual Character Investigation: At Time of Law School Registration and Prior to Admission to the Bar*, 30 BAR EXAMINER 60 (1961); See THE NATIONAL CONFERENCE OF BAR EXAMINERS, THE BAR EXAMINER HANDBOOK 48-107 (1968).



“good moral character” be changed to one of “dishonorable conduct relevant to the occupation.”<sup>71</sup> Under this standard, only certain types of unlawful conduct would prevent an applicant from being admitted to practice. In addition, it would be much easier to administer, without the built-in limitations and subjective bias of the older procedure.

A more practical approach to the problem, viewed in light of the Supreme Court's holdings in *Wadmond*, *Stolar*, and *Baird*, would be a four-fold method: (1) That there is a presumption that the applicant is loyal to the constitutional form of government, and is admissible to practice in the state, (2) if the applicant gives no indication of certain beliefs or illegal conduct, then the examining committee has the burden of proving the applicant is unfit to practice, (3) the applicant should not be compelled to answer questions pertaining to his first amendment rights unless the examining committee has sustained its burden of proof, (4) the examining committee must divulge to the applicant all of its information relied upon in making its determination.<sup>72</sup>

Due to the highly competitive status of available positions in entering classes of law schools, it is the opinion of this writer that if a student is acceptable to an accredited law school, based upon a showing of good moral character, he should likewise be acceptable to the state bar association, with a subsequent limited inquiry upon graduation being conducted.

It has now become necessary for bar examiners to realize that not everyone will think as they do—that political activists have the same rights as non-activists, and are protected by the same Constitution. That so long as their political views

<sup>71</sup> See generally Selinger & Schoen, *To Purify the Bar; A Constitutional Approach to Non-Professional Misconduct*, 5 NATURAL RESOURCES J. 299 (1965).

<sup>72</sup> See Brown & Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. CHI. L. REV. 480 (1953).