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State Bar Admission Requirements, "Good Moral Character" and First Amendment Rights

NOTES

STATE BAR ADMISSION REQUIREMENTS, "GOOD MORAL CHARACTER" AND FIRST AMENDMENT RIGHTS

It is axiomatic that the lawyer should possess personal qualifications commensurate with holding positions of trust and responsibility. It is equally obvious that the lawyer must be willing to protect and uphold the laws of his state and nation. To these ends, states have long required those seeking to enter the profession of law to establish their "good moral character."[1] Traditionally, this broad term has embodied personal characteristics such as "honesty," "integrity," "candor," and the like. Recently, with national concern over the communist movement, many states have attempted to incorporate within this concept the idea that the individual must adhere to and agree to work within the traditional framework of our society.[2] For most states the modern definition of "good moral character" seems to have two parts: one is ethical in the traditional sense, the other requires the individual to hold political views consistent with our form of government. To establish the latter, the applicant for admission to the bar is often required to state that he does not advocate violent overthrow of the government and to answer questions otherwise pertaining to his political beliefs and associations.[3] Since this second facet of "good moral character" is related to free speech and assembly, its use by the states as an admission requirement presents a potential conflict with rights guaranteed by the first amendment[4] and made applicable to the states by incorporation into the fourteenth.[5]

This conflict between individual rights of free expression and asso-

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." Brown & Fassett, Loyalty Tests for Admission to the Bar, 20 U. Chi. L. Rev. 480 n.1 (1953). See, e.g., Mo. Sup. Ct. Rule 8.01 (Vernon 1949). See also Jackson, Character Requirements for Admission to the Bar, 20 Fordham L. Rev. 305 (1951).

2. A few states have adopted non-communist or "loyalty" oaths. The majority inquire into the applicant's political beliefs and associations and relate the information obtained to "good moral character." Some states do neither. See generally Brown & Fassett, supra note 1.

3. See generally Brown & Fassett, supra note 1, where the authors detail the various procedures by which state bar committees inquire into the applicant's political beliefs and associations.

4. See note 8 infra.

5. See note 9 infra.

ciation and admission requirements seems to underlie two recent Supreme Court decisions[6] reversing state determinations excluding applicants from the practice of law for their failure to prove "good moral character." One applicant was a former member of the Communist Party; the other refused to permit inquiry into his political beliefs. In neither case did the state argue that the applicant, in order to establish his "good moral character," was required to prove himself fit both politically and ethically. In neither case did the Court attempt to resolve the conflict. Rather, the Court reviewed the evidence and held the state action violated due process. This treatment makes it necessary, before analyzing these cases and assessing their significance, to discuss briefly the general requirements placed on the states by the fourteenth amendment and the extent to which they have limited state bar proceedings in the past.

The fourteenth amendment, through both the due process and equal protection clauses, restrains state action that unreasonably infringes individual rights and liberties.[7] Those rights guaranteed by the first amendment,[8] freedom of expression and association, are made applicable to the states by the fourteenth.[9] For the most part, when reviewing a determination under the due process clause, the Court has assumed that the state action was reasonable and upheld it, unless it was clearly arbitrary or lacked any reasonable basis in fact.[10] These

6. Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Konigsberg v. State Bar, 353 U.S. 252 (1957).

7. U.S. Const. amend. XIV, § 1 provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person . . . the equal protection of the laws."

8. U.S. Const. amend. I provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . ." In two recent decisions by the Supreme Court there appears the assertion that free political belief and association are individual rights protected by the first amendment. See Watkins v. United States, 354 U.S. 178, 188 (1957); Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957).

9. This proposition was first sustained by the Court in Gitlow v. New York, 268 U.S. 652, 666 (1925). See also Board of Education v. Barnette, 319 U.S. 624 (1943) (religion); Bridges v. California, 314 U.S. 252 (1941) (press); De Jonge v. Oregon, 299 U.S. 353 (1937) (assembly); Near v. Minnesota, 283 U.S. 697 (1931) (press); Whitney v. California, 274 U.S. 357 (1927) (speech). Cf. Sweezy v. New Hampshire, 354 U.S. 234 (1957).

10. The textual statement refers to that area of due process sometimes termed "substantive," where the question is whether a state regulatory measure, adopted in the public interest, is invalid because it conflicts with individual rights of liberty and property. State action in order to be sustained "must be exercised for an end which is in fact public" and the means employed must be reasonably related thereto. Treigle v. Acme Homestead Ass'n., 297 U.S. 189, 197 (1936). However, the Court in determining the validity of a regulatory measure will grant

are the normal limitations of due process. Generally, where the right alleged to have been violated is one guaranteed by the first amendment, no greater limitation has been placed on the state.[11] However, there have been indications by the Court that these rights should be given a "preferred position" in deciding whether the requirements of due process have been met.[12] The reasoning is that these rights are so important to the maintenance of a democratic society that their infringement can only be justified where the state shows some necessity for its action. Thus, if a "preferred" test is employed, state action would not satisfy the requirements of due process merely because it is not arbitrary.[13]

The state in licensing attorneys is limited by operation of the fourteenth amendment.[14] Even though a state may prescribe its own peculiar standards of qualification and proficiency, due process requires them to be not unreasonable and their application uniform and

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every possible presumption in favor of the state. United States v. Carolene Products Co., 304 U.S. 144, 152 (1938); Nebbia v. New York, 291 U.S. 502, 537-38 (1934).

11. Gitlow v. New York, 268 U.S. 652, 668-69 (1925). See Beauharnais v. Illinois, 343 U.S. 250, 261 (1952).

12. The doctrine that first amendment rights enjoy a "preferred position" under the fourteenth amendment was first enunciated by Justice Stone in a footnote to United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938). Basically, the idea suggested by this footnote was that, although legislation regulating ordinary transactions would be presumed reasonable and valid, perhaps this same presumption should not operate when legislation conflicted with specific constitutional prohibitions made applicable to the states by the fourteenth amendment. Subsequently the idea that first amendment rights should be given a "preferred position" has appeared in a number of cases. See Board of Education v. Barnette, 319 U.S. 624, 639 (1943); Schneider v. State, 308 U.S. 147, 161 (1939); Beauharnais v. Illinois, 343 U.S. 250, 269-70 (1953) (dissenting opinion); Dennis v. United States, 341 U.S. 494, 581 (1951) (dissenting opinion); Jones v. Opelika, 316 U.S. 584, 608 (1942) (dissenting opinion); Minersville District v. Gobitis, 310 U.S. 566, 604 (1940) (dissenting opinion).

The doctrine of "preferred position" has not been fully adopted by the Court, however, and has on several occasions been expressly repudiated. See Dennis v. United States, 341 U.S. 494, 540-44 (1951) (concurring opinion); Kovacs v. Cooper, 336 U.S. 77, 90-97 (1949) (concurring opinion); Brinegar v. United States, 338 U.S. 160, 180 (1949) (dissenting opinion).

For further discussion of the doctrine of "preferred position" see Dumbauld, The Bill of Rights and What It Means Today 127-32 (1957); Mason, The Core of Free Government, 1938-40: Mr. Justice Stone and "Preferred Freedoms," 65 Yale L.J. 597 (1956).

13. Board of Education v. Barnette, 319 U.S. 624, 639 (1943).

14. See In re Summers, 325 U.S. 561 (1945). But see In re Lockwood, 154 U.S. 116 (1894); Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872) (practice of law not within the privilege and immunities clause of the fourteenth amendment); In re Anastaplo, 3 Ill.2d 471, 121 N.E.2d 826 (1954), cert. denied, 348 U.S. 946 (1955) (exclusion from the bar raises no federal question).

fair.[15] The Court, while recognizing these limitations on state action, has in the past assumed the state acted reasonably and has shown marked reluctance to disturb decisions excluding applicants from the bar. Generally, its position has been that responsibility for licensing attorneys rests solely with the states.[16] Thus, absent a conflict with Bill of Rights guarantees incorporated into it, the fourteenth amendment has imposed few limitations on state bar proceedings.[17] However, as previously mentioned, current admission requirements, i.e., the double-edged definition of "good moral character," present a potential conflict with rights guaranteed by the first amendment.[18] It is, therefore, necessary to determine what significance the inclusion of political fitness into the term "good moral character" has on the results reached in the principal cases, and to ascertain whether additional limitations will be imposed on the states because of its inclusion.

The *Schware* case,[19] where exclusion from the practice of law was based primarily on former membership in the Communist Party,[20] illustrates the conflict that may exist between admission requirements and rights guaranteed by the first amendment. The Supreme Court, however, had other grounds on which to base its decision and made no attempt to resolve this conflict.[21] New Mexico, although conceding Schware had established an excellent reputation since leaving the Party in 1940, presumed any former communist was a person of "questionable character," and found that Schware had failed to establish his fitness for the bar.[22] The Supreme Court reviewed all the

15. Cf. Ex parte Garland, 71 U.S. (4 Wall.) 333, 379-80 (1866); Ex parte Secombe, 60 U.S. (19 How.) 9, 13 (1856). The same requirements are imposed on the states in licensing other professions. See Douglas v. Noble, 261 U.S. 165 (1923) (dentist); Dent v. West Virginia, 129 U.S. 114 (1889) (doctor).

16. See In re Summers, 325 U.S. 561, 570-71 (1945); Selling v. Radford, 243 U.S. 46, 50 (1916); Keeley v. Evans, 271 Fed. 520, 522 (D. Ore 1921), appeal dismissed, 257 U.S. 667 (1922).

17. Research has not disclosed any case in which the Supreme Court has, prior to the principal cases, by application of the fourteenth amendment reversed a state determination excluding an applicant from admission to the bar. See cases cited in note 14 supra.

18. See note 8 supra.

19. Schware v. Board of Bar Examiners, 353 U.S. 232 (1957).

20. Other evidence unfavorable to Schware was his prior use of aliases and record of arrests. However, since he had allegedly used aliases to procure employment where his Jewish ancestry might have proved detrimental and since the arrests did not result in convictions or even indictments, these factors were useful only to support the real ground for denying Schware admittance.

21. 353 U.S. at 243-44 n.13.

22. Schware v. Board of Bar Examiners, 60 N.M. 304, 319, 291 P.2d 607, 617 (1955). At the time Schware sought admission to the bar, New Mexico required applicants to be of "good moral character." See N.M. Stat. Ann. § 18-1-8 (1953) and Rules Governing Admission to the Bar appended thereto, Rule I(1). The

evidence and, emphasizing that such a presumption precluded the individual from ever establishing his "good moral character," declared the state action arbitrary.[23] Since the Court was able to reach this conclusion either by reviewing the evidence or attacking the presumption made, the presence of a conflict between first amendment rights and the modern definition of "good moral character" does not seem determinative of the conclusion reached. Rather than impose new limitations on the state because of the presence of first amendment rights, the Court, by basing its decision on the arbitrariness of the state's action, put into practice a principle long recognized, namely, that state bar proceedings are limited by operation of the fourteenth amendment.[24] Therefore the *Schware* case seems to be merely a judicial determination that the *normal* requirements of due process are not satisfied when admission to the bar is denied an applicant *solely* because of his past membership in the Communist Party. This case is significant because it marks the first instance in which the Court, by applying the fourteenth amendment, reversed a state decision holding an applicant unqualified for the practice of law.[25] Perhaps the special concern of the Court for first amendment rights was a factor prompting it to hear the case. It does not seem reasonable to assume that the Court by this decision has indicated a willingness to review all state determinations whenever the applicant claims his exclusion violated the requirements of due process.

The result reached in the *Konigsberg* case[26] can be fully understood only after a detailed analysis of the reasoning employed and the facts presented. California requires an applicant for the bar to establish his "good moral character" and to prove that he does not advocate the violent overthrow of the government.[27] The state denied Konigsberg admission because of doubts whether he was a communist raised by his refusal to answer questions concerning his political beliefs and held that he failed to satisfy either requirement.[28] Again, although

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statute now in force requires the applicant, in addition, to swear that he is not a member of the Communist Party. See N.M. Stat. Ann. § 18-1-8 and Rules Governing Admission to the Bar, Rule I(5) (Supp. 1957).

23. 353 U.S. at 246-47. The concurring justices limited their decision to an attack on the presumption made by the state. Id. at 250.

24. See notes 14 and 15 supra.

25. See note 17 supra.

26. Konigsberg v. State Bar, 353 U.S. 252 (1957).

27. Cal. Bus. and Prof. Code Ann. §§ 6060(c), 6064.1 (Deering Supp. 1957).

28. The decision of the California Supreme Court in reviewing the bar proceedings is unreported. Besides Konigsberg's refusal to answer, certain other evidence unfavorable to the applicant was introduced at the hearings. One witness identified him as having attended meetings of the Communist Party in 1941; it was shown that he had refused to answer questions concerning his political beliefs when called before the California Un-American Activities Committee; and

rights of free political beliefs and associations were claimed to have been violated, the case was decided on other grounds.[29] The Supreme Court based its decision solely on the sufficiency of the evidence, holding the state's determination arbitrary in light of (a) applicant's express statement that he did not advocate overthrow of the government and (b) numerous testimonials indicating his good reputation.[30] On first impression it is difficult to see how the Court, assuming the admission requirements valid and recognizing the burden to be on the applicant, could have found the state unreasonable in concluding that Konigsberg had failed to establish his fitness for the bar when he obstructed inquiry into his political beliefs. This, however, was the clear holding of the Court.

To decide this case by a normal application of the fourteenth amendment to state action, it was necessary for the Court to declare that no adverse inference about Konigsberg's qualifications could be drawn from his refusal to answer questions concerning his political beliefs. This conclusion was possible only because California failed to define what was included within its standard, "good moral character."[31] The state maintained that Konisgberg's refusal to answer tended to support an inference that he was a member of the Communist Party and, thus, a person of "bad moral character."[32] California compels the applicant for admission to the bar to establish his fitness in both the areas embraced by the modern definition of "good moral character," but it segregates the two aspects of that term by requirements that are separate and distinct.[33] Having made this separation, it would have been more logical had the state claimed that the inference to be drawn related to its non-advocacy requirement, i.e., as raising doubts concerning the validity of applicant's statement that he did not advocate violent overthrow of the government. This would seem especially true since the state in presenting its argument had defined its requirement, "good moral character," as embodying only ethical concepts.[34] This, however, was not done and the Court, adopting the state's definition, had to decide what pos-

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editorials were introduced in which he had violently attacked public officials. These factors, however, do not appear to have been the real basis on which the state refused to grant Konigsberg admission to the bar. For a partial record of the state bar proceedings see 353 U.S. at 284-309 (dissenting opinion).

29. 353 U.S. at 261-62.

30. Id. at 273-74.

31. Apparently, California defined this term in its argument as including "honesty, fairness and respect for the rights of others and for the laws of the state and nation." Id. at 263.

32. Id. at 270.

33. See text supported by note 27 supra.

34. See note 31 supra.

sible evidentiary value applicant's refusal to declare his political beliefs could have in determining whether he was truthful, honest, and possessed of integrity.[35] Since political beliefs and associations, even those of the communist, would seem to have no direct correlation to an individual's ethical qualities,[36] the Court could logically maintain that, "obviously," no unfavorable inference as to "truthfulness, candor, or moral character in general" could be drawn from Konigsberg's refusal to answer, if he believed in good faith that the Constitution gave him this right.[37] Once the refusal to answer was made an evidentiary nullity, nothing remained to refute the evidence introduced by Konigsberg attesting his good character or to impeach his statement of non-advocacy[38] and the Court could conclude that the state had no reasonable basis for finding that he had failed to qualify himself for admission to the bar.[39] Only by assuming that the Court viewed the inference drawn from his refusal to answer as relating solely to "good moral character" as traditionally defined can the *Konigsberg* case be explained as a normal determination under the due process clause. However, merely to detail the holding of the Court and describe the reasoning by which its conclusion was reached would be to overlook a significant aspect of this decision.

The conflict in the instant case between first amendment rights and admission requirements seems too obvious to be ignored. Although the Court expressly refrained from resolving this conflict, and did not question the validity of the state admission requirements, there are strong indications throughout the opinion that to require an applicant to prove his political fitness in order to establish his "good

35. 353 U.S. at 264.

36. This suggestion stems from several recent works that have attempted to depict the individual and analyze the reasons behind his joining the Communist Party. Throughout it appears that the average member is a person of above average intelligence and a high degree of social conscience, who joined the Party with a sincere desire to eradicate existing social evils and work toward producing a new and more perfect society. However misguided might be this ideal or the method chosen for its accomplishment, this person could appear to the community as reputable as a social worker. Outwardly at least he would seem to have little difficulty in establishing his "good moral character," as that term has been traditionally employed. See generally Draper, The Roots of American Communism (1957); Ernst & Loth, Report on the American Communist (1952). See also The God That Failed (Crossman ed. 1949); Fast, The Naked God (1957).

37. 353 U.S. at 270.

38. The Court had little difficulty in discarding the other evidence unfavorable to Konigsberg that was introduced at the hearing. See note 28 supra. It declared that, even had applicant been a member of the Communist Party in 1941, he could not be excluded on that fact alone, citing the Schware case. 353 U.S. at 267. The editorials were seen as fair comment and criticism of political officials. Id. at 268-69.

39. Id. at 273-74.

moral character" may infringe on rights guaranteed by the first amendment.[40] Further, the apparent willingness of the Court to afford protection to these rights must be emphasized in assessing the importance of this decision. Although the Court refused to pass on the validity of Konigsberg's claim that the Constitution prevented the state from inquiring into his political beliefs and associations, it did hold that no adverse inference could be drawn from his failure to respond. The effect therefore was the same as if there had been a clear determination that political beliefs were in fact privileged. Of more significance, however, is language which indicates that a state in selecting members for its bar may not act in an arbitrary or unreasonable manner, *nor interfere with free political expression or association.*[41] This statement, although clearly dictum, suggests that first amendment rights should be given a preferred position in determining whether state action satisfies the requirements of due process. Its presence may be explained because the state attempted to incorporate ideas of political fitness into its "good moral character" requirement.

What significance can be attached to the results reached in these two decisions? Since both involved a conflict between first amendment rights and state admission requirements, and because of the indications in the opinions that these rights deserve special protection, it might be said that the *Schware* case makes past membership in the Communist Party irrelevant in determining whether an applicant is qualified for admission to the bar and that, after the *Konigsberg* case, an individual may refuse to state his political beliefs without fear of exclusion. However, to deduce such broad general rules would seem unwarranted. The Court neither attacked admission requirements nor decided that an individual's political beliefs and associations could not be considered in determining his fitness for the bar. The only conclusion reached by the Court in each instance was that the state had acted arbitrarily in light of the evidence presented. Therefore it would seem wiser to accord these decisions no more *direct* importance than representing narrow holdings on their particular facts. Of more significance are the dicta which suggest that the former latitude allowed states in selecting members of the bar will be limited when the applicant is required to prove his political fitness, and the fact that the Court failed to review the evidence of past membership and refusal to answer as relating to the second aspect of "good moral character." In each case the evidence was reviewed solely to determine whether there was any reasonable basis for finding that the applicant lacked honesty, candor, and good

40. Id. at 263, 269, 273.
41. Id. at 273.

character in general. It is submitted that this occurred because the states failed to define "good moral character" properly and also failed to present the real issues involved to the Court for determination.

The real issue is whether a state may require an applicant for admission to the bar to prove his political as well as his ethical or moral fitness. To reach a decision in terms of this issue, the Court would be required to balance a state interest against those individual rights guaranteed by the first amendment.[42] Before any conclusion can be made to what extent these rights will impose limitations on state bar proceedings, i.e., before a balance can be reached, the states must clearly define their interests.

A state in licensing attorneys may protect its citizens and its own sovereignty. It has a vital interest in excluding applicants who would be unable to discharge those fiduciary obligations imposed on an attorney, or who would not uphold the laws and constitution of the state and nation.[43] A state may, therefore, compel the individual to prove that he has satisfied requirements reasonably related to this interest. Since the individual who fails to sustain this burden may be excluded from the bar, it should follow that a state may inquire into any fact pertinent in determining whether these requirements have been met. The question, then, is whether political beliefs of the applicant are pertinent in deciding whether he is qualified to practice law. It has been recognized that the Communist Party, in advocating the violent overthrow of governments, makes no attempt to work within the constitutional framework of our society, and believes in destruction of the judicial system as one method of fostering its ultimate goal.[44] It would seem that a state could exclude from the practice of law any person who, because of a belief in these principles, would obstruct justice if given the opportunity.[45] The Court has previously held that inquiry into political beliefs is proper in determining whether a person is qualified to teach in state institutions.[46] Since the lawyer occupies a position equally as sensitive as that held

42. See note 8 supra.

43. In re Summers, 325 U.S. 561 (1945). (See also Schware v. Board of Bar Examiners, 353 U.S. 232, 247-48 (1957) (concurring opinion).

44. Dennis v. United States, 341 U.S. 494, 561-66 (1951) (concurring opinion); American Communications Ass'n, C.I.O. v. Douds, 339 U.S. 382, 425-26 (1950) (concurring opinion); Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. § 841 (Supp. 1956).

45. See Sacher v. United States, 9 F.R.D. 394 (S.D.N.Y. 1950), aff'd and decree modified, 182 F.2d 416 (2d Cir. 1950), cert. denied, 341 U.S. 952 (1951).

46. Adler v. Board of Education, 342 U.S. 485 (1952); Gerende v. Board of Supervisors, 341 U.S. 56 (1951); see Slochower v. Board of Education, 350 U.S. 551 (1956); Weiman v. Updegraff, 344 U.S. 183 (1952); cf. Garner v. Board of Public Works, 341 U.S. 716 (1951).

by the educator, it would seem that this same criterion could be used in bar proceedings. If this is true, then political beliefs and associations would be pertinent in deciding whether an applicant is qualified for admission to the bar. It should be noted, however, that exclusion or admittance should not be based solely on whether the individual is or was a member of the Communist Party; membership is only evidence indicating his present political beliefs. Rather, the question to be decided is whether the individual because of his present political beliefs is unable to prove that he will uphold the laws of the state and nation and, therefore, would constitute a threat to a valid state interest. It would seem that a person unable to do so could be properly excluded.

Because the real issue involved in these cases has not been decided by the Court, it is difficult to determine what constitutional limitations will be imposed when a state, to protect a valid interest, excludes an applicant from the bar on the basis of his political beliefs. The state will, obviously, be limited by the usual requirements of due process,[47] i.e., requirements must be reasonably related to a valid state interest,[48] the applicant must be accorded a fair hearing in which the subject under inquiry is his present ability to satisfy these requirements,[49] and, finally, the conclusion of the state must be reasonable in light of all the evidence.[50] Because of the dicta appearing in the principal cases, the important question is what further limitations will be imposed on the state. It is possible that first amendment rights will be given special protection and a state will be required to show some necessity—instead of showing merely that its action was not unreasonable—for denying an applicant admission to the bar on the basis of his political beliefs. However, it is submitted that *if* the state interest to be protected in excluding an individual who holds political beliefs inimical to a constitutional form of government is understood and clearly defined, *if* the admission requirements adopted assure protection of this interest, and *if* the real issues involved are presented to the Court for its determination, no further limitations than the normal requirements of due process will be imposed. Moreover, unless the Court declares that a state cannot place the burden of proving political fitness on the applicant, even if a preferred position is given first amendment rights, it would seem that by properly defining and acting to protect its valid interest a state would, in effect, satisfy any requirement of "necessity." If this supposition is correct, the question

47. See note 10 supra and text supported thereby.

48. Weiman v. Updegraff, 344 U.S. 183 (1952).

49. Slochower v. Board of Education, 350 U.S. 551 (1956).

50. Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Konigsberg v. State Bar, 353 U.S. 252 (1957).

of communist affiliation would become an evidentiary determination of the individual applicant's ability to prove that his present political beliefs presented no danger to this valid state interest. However, until the state interest is properly defined, the reason for incorporating ideas of political fitness into its "good moral character" requirement is fully explained, and the real issue involved in the principal cases is presented to the Court, no clear definition of the permissible limits of state bar proceedings can be expected.

Perhaps more than either of the principal cases, the *Application of Patterson*[51] illustrates the confused results obtained when a state fails to define the interest protected by refusing to license an individual holding political beliefs inimical to a constitutional form of government and fails to adopt admission requirements related to it. In this instance, although it seems clear that the *real reason* Oregon excluded Patterson was his membership and leadership in the Communist Party from 1946 to 1949, and although it seems there was sufficient evidence to support a finding that his present political beliefs constituted a threat to a valid state interest,[52] the *sole basis* for the state action was that applicant failed to establish his "good moral character" as traditionally defined.[53] Noting from many sources the aims of the Communist Party, the state found that applicant lied in declaring that neither he, nor the Party, advocated the overthrow of the government by force and violence and therefore held that he failed to prove his "good moral character." On rehearing after the Supreme Court vacated and remanded,[54] Oregon affirmed this decision and found it reasonable. Because of the method by which the state excluded Patterson from the bar, it is difficult to predict what result will be reached if this case is again reviewed by the Supreme Court. If the Court reviews the evidence to determine whether there is any reasonable basis to support the state finding, i.e., if this case is handled in a manner similar to *Schware* and *Konigsberg*, it is suggested that the state action would be upheld. However, it is also possible that the Court

51. Application of Patterson, 210 Ore. 495, 302 P.2d 227 (1956), cert. granted, judgment vacated and case remanded, 353 U.S. 952 (1957). On rehearing, the Oregon Supreme Court affirmed its former decision excluding Patterson from admission to the bar and declared that the Schware and Konigsberg cases did not compel a different result. Application of Patterson, 318 P.2d 907 (Ore. 1957).

52. Patterson joined the Communist Party in 1946, became a leader in the state organization, and was finally expelled in 1949 for "disloyalty." Prior to his expulsion, he had no idea of leaving the Party. He withheld this information from the authorities at Northwestern College of Law in his application for admission in 1949. He also prevented inquiry into his political beliefs and associations when called as a witness by the House Un-American Activities Committee.

53. 210 Ore. at 510-11, 302 P.2d at 234.

54. See note 51 supra.

might decide that the state, by recognizing only one possible interpretation of the aims and character of the Communist Party and by concluding that any assertion to the contrary was a lie, acted arbitrarily in finding that Patterson did not tell the truth. Considering the basis on which applicant was excluded from the bar, it is doubtful that a decision will be reached in terms of the real issues involved.